

# MANUAL FOR COURTS-MARTIAL UNITED STATES

(2019 EDITION)



**MANUAL  
FOR  
COURTS-MARTIAL  
UNITED STATES  
(2019 EDITION)**

## PREFACE

The Manual for Courts-Martial (MCM), United States (2019 Edition) updates the MCM (2016 Edition). It is a complete reprinting and incorporates the MCM (2016 Edition), including all amendments to the Preamble, Rules for Courts-Martial (R.C.M.), Military Rules of Evidence (Mil. R. Evid.), Punitive Articles, and Nonjudicial Punishment Procedures made by the President in Executive Orders (EO) from 1984 to present, and specifically including EO 13825 (8 March 2018). *See* Appendix 19. This edition also contains amendments to the Uniform Code of Military Justice (UCMJ) made by Military Justice Act of 2016 (Division E of the National Defense Authorization Act (NDAA) for Fiscal Year 2017), and the NDAs for Fiscal Year 2018 and 2019. Finally, this edition incorporates amendments to the Supplementary Materials accompanying the MCM as published in the Federal Register on December 11, 2018. The aforementioned Statutes, NDAs, EOs, and Supplementary Materials are available at the Joint Service Committee on Military Justice website at <http://jsc.defense.gov>. Because this manual includes numerous changes, practitioners should consider the MCM completely revised.

JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

CONTENTS

	Page
<b>PART I PREAMBLE</b>	
<b>1. Sources of military jurisdiction</b>	I-1
<b>2. Exercise of military jurisdiction</b>	I-1
(a) Kinds	I-1
(b) Agencies	I-1
<b>3. Nature and purpose of military law</b>	I-1
<b>4. Structure and application of the Manual for Courts-Martial</b>	I-1
<b>PART II RULES FOR COURTS–MARTIAL</b>	
<b>CHAPTER I. GENERAL PROVISIONS</b>	
<b>Rule 101. Scope, title</b>	II-1
(a) In general	II-1
(b) Title	II-1
<b>Rule 102. Purpose and construction</b>	II-1
(a) Purpose	II-1
(b) Construction	II-1
<b>Rule 103. Definitions and rules of construction</b>	II-1
<b>Rule 104. Unlawful command influence</b>	II-6
(a) General prohibitions	II-6
(b) Prohibitions concerning evaluations	II-7
<b>Rule 105. Direct communications: convening authorities and staff judge advocates; among staff judge advocates</b>	II-7
(a) Convening authorities and staff judge advocates	II-7
(b) Among staff judge advocates and with the Judge Advocate General	II-7
<b>Rule 106. Delivery of military offenders to civilian authorities</b>	II-7
<b>Rule 107. Dismissed officer’s right to request trial by court-martial</b>	II-8
<b>Rule 108. Rules of court</b>	II-8
<b>Rule 109. Professional supervision of military judges and counsel</b>	II-8
(a) In general	II-8
(b) Action after suspension or disbarment	II-8
(c) Investigation of judges	II-8
<b>CHAPTER II. JURISDICTION</b>	
<b>Rule 201. Jurisdiction in general</b>	II-11
(a) Nature of courts-martial jurisdiction	II-11
(b) Requisites of court-martial jurisdiction	II-11
(c) [Reserved]	II-12
(d) Exclusive and nonexclusive jurisdiction	II-12
(e) Reciprocal jurisdiction	II-12
(f) Types of courts-martial	II-13
(g) Concurrent jurisdiction of other military tribunals	II-14
<b>Rule 202. Persons subject to the jurisdiction of courts-martial</b>	II-15
(a) In general	II-15
(b) Offenses under the law of war	II-16

	Page
(c) Attachment of jurisdiction over the person. ....	II-16
<b>Rule 203. Jurisdiction over the offense</b> .....	II-17
<b>Rule 204. Jurisdiction over certain reserve component personnel</b> .....	II-17
(a) Service regulations. ....	II-17
(b) Courts-Martial .....	II-17
(c) Applicability. ....	II-18
(d) Changes in type of service. ....	II-18
 <b>CHAPTER III. INITIATION OF CHARGES; APPREHENSION; PRETRIAL RESTRAINT; RELATED MATTERS</b>	
<b>Rule 301. Report of offense</b> .....	II-19
(a) Who may report .....	II-19
(b) To whom reports conveyed for disposition. ....	II-19
<b>Rule 302. Apprehension</b> .....	II-19
(a) Definition and scope .....	II-19
(b) Who may apprehend. ....	II-19
(c) Grounds for apprehension. ....	II-20
(d) How an apprehension may be made .....	II-20
(e) Where an apprehension may be made .....	II-20
<b>Rule 303. Preliminary inquiry into reported offenses</b> .....	II-21
<b>Rule 304. Pretrial restraint</b> .....	II-21
(a) Types of pretrial restraint. ....	II-21
(b) Who may order pretrial restraint. ....	II-22
(c) When a person may be restrained. ....	II-22
(d) Procedures for ordering pretrial restraint. ....	II-22
(e) Notice of basis for restraint. ....	II-23
(f) Punishment prohibited. ....	II-23
(g) Release .....	II-23
(h) Administrative restraint. ....	II-23
<b>Rule 305. Pretrial confinement</b> .....	II-23
(a) In general .....	II-23
(b) Who may be confined .....	II-23
(c) Who may order confinement .....	II-23
(d) When a person may be confined. ....	II-23
(e) Advice to the accused upon confinement. ....	II-24
(f) Military counsel. ....	II-24
(g) Who may direct release from confinement. ....	II-24
(h) Notification and action by commander. ....	II-24
(i) Procedures for review of pretrial confinement. ....	II-25
(j) Review by military judge. ....	II-26
(k) Remedy. ....	II-27
(l) Exceptions. ....	II-27
(m) Notice to victim of escaped confinee .....	II-27
<b>Rule 306. Initial disposition</b> .....	II-27

	Page
(a) Who may dispose of offenses. . . . .	II-27
(b) Policy. . . . .	II-28
(c) How offenses may be disposed of. . . . .	II-28
(d) National security matters. . . . .	II-29
(e) Sex-related offences . . . . .	II-29
<b>Rule 307. Preferral of charges</b> . . . . .	II-29
(a) Who may prefer charges. . . . .	II-29
(b) How charges are preferred; oath. . . . .	II-29
(c) How to allege offenses. . . . .	II-30
(d) Harmless error in citation. . . . .	II-33
<b>Rule 308. Notification to accused of charges</b> . . . . .	II-33
(a) Immediate commander. . . . .	II-33
(b) Commanders at higher echelons. . . . .	II-33
(c) Remedy. . . . .	II-33
<b>Rule 309. Pre-referral judicial proceedings</b> . . . . .	II-33
(a) In general . . . . .	II-33
(b) Pre-referral matters . . . . .	II-33
(c) Procedures for submissions . . . . .	II-34
(d) Hearings . . . . .	II-34
(e) Record . . . . .	II-34
(f) Military magistrates . . . . .	II-34
 <b>CHAPTER IV. FORWARDING AND DISPOSITION OF CHARGES</b>	
<b>Rule 401. Forwarding and disposition of charges in general</b> . . . . .	II-35
(a) Who may dispose of charges . . . . .	II-35
(b) Prompt determination . . . . .	II-35
(c) How may charges be disposed of . . . . .	II-35
(d) National security matters . . . . .	II-36
<b>Rule 403. Action by commander not authorized to convene courts-martial</b> . . . . .	II-36
<b>Rule 403. Action by commander exercising summary court-martial jurisdiction</b> . . . . .	II-36
(a) Recording receipt . . . . .	II-36
(b) Disposition. . . . .	II-37
<b>Rule 404. Action by commander exercising special court-martial jurisdiction</b> . . . . .	II-37
<b>Rule 404A Disclosure of matters following direction of preliminary hearing</b> . . . . .	II-38
(a) Generally . . . . .	II-38
(b) Contraband . . . . .	II-38
(c) Privilege . . . . .	II-38
(d) Protective order if privileged information is disclosed . . . . .	II-38
<b>Rule 405. Preliminary hearing</b> . . . . .	II-39
(a) In general. . . . .	II-39
(b) Earlier preliminary hearing . . . . .	II-39
(c) Who may direct a preliminary hearing . . . . .	II-39
(d) Personnel. . . . .	II-39
(e) Scope of preliminary hearing. . . . .	II-40

	Page
(f) Rights of the accused . . . . .	II-40
(g) Notice to and presence of victim . . . . .	II-40
(h) Notice, production of witnesses, and production of other evidence . . . . .	II-40
(i) Military Rules of Evidence. . . . .	II-43
(j) Preliminary hearing procedure. . . . .	II-44
(k) Supplementary information for the convening authority . . . . .	II-45
(l) Preliminary hearing report . . . . .	II-46
(m) Waiver. . . . .	II-47
<b>Rule 406. Pretrial advice . . . . .</b>	<b>II-47</b>
(a) In general . . . . .	II-47
(b) Contents . . . . .	II-47
<b>Rule 406A. Pretrial advice before referral to special court-martial . . . . .</b>	<b>II-48</b>
(a) In general . . . . .	II-48
<b>Rule 407. Action by commander exercising general court-martial jurisdiction . . . . .</b>	<b>II-48</b>
(a) Disposition . . . . .	II-48
(b) National security matters . . . . .	II-49
 <b>CHAPTER V. COURT-MARTIAL COMPOSITION AND PERSONNEL; CONVENING COURTS-MARTIAL</b>	
<b>Rule 501. Composition and personnel of courts-martial . . . . .</b>	<b>II-50</b>
(a) Composition of courts-martial . . . . .	II-50
(b) Counsel in general and special courts-martial . . . . .	II-50
(c) Other personnel . . . . .	II-50
<b>Rule 502. Qualifications and duties of personnel of courts-martial . . . . .</b>	<b>II-50</b>
(a) Members. . . . .	II-50
(b) President. . . . .	II-51
(c) Qualifications of military judge and military magistrate . . . . .	II-51
(d) Counsel. . . . .	II-51
(e) Interpreters, reporters, escorts, bailiffs, clerks, guards and orderlies . . . . .	II-54
(f) Action upon discovery of disqualification or lack of qualifications . . . . .	II-55
<b>Rule 503. Detailing members, military judge, and counsel, and designating military magistrates . . . . .</b>	<b>II-55</b>
(a) Members . . . . .	II-55
(b) Military judge . . . . .	II-56
(c) Counsel . . . . .	II-56
<b>Rule 504. Convening courts-martial . . . . .</b>	<b>II-56</b>
(a) In general . . . . .	II-56
(b) Who may convene courts-martial . . . . .	II-56
(c) Disqualification. . . . .	II-57
(d) Convening orders. . . . .	II-57
(e) Place. . . . .	II-58
<b>Rule 505. Changes of members, military judge, and counsel . . . . .</b>	<b>II-58</b>
(a) In general . . . . .	II-58
(b) Procedure. . . . .	II-58

	Page
(c) Changes of members. . . . .	II-58
(d) Changes of detailed counsel. . . . .	II-59
(e) Change of military judge or military magistrate . . . . .	II-59
(f) Good cause . . . . .	II-59
<b>Rule 506. Accused’s rights to counsel</b> . . . . .	II-59
(a) In general . . . . .	II-59
(b) Individual military counsel . . . . .	II-60
(c) Excusal or withdrawal . . . . .	II-60
(d) Waiver . . . . .	II-61
(e) Nonlawyer present . . . . .	II-61
 <b>CHAPTER VI. REFERRAL, SERVICE, AMENDMENT, AND WITHDRAWAL OF CHARGES</b>	
<b>Rule 601. Referral</b> . . . . .	II-62
(a) In general. . . . .	II-62
(b) Who may refer. . . . .	II-62
(c) Disqualification. . . . .	II-62
(d) When charges may be referred . . . . .	II-62
(e) How charges shall be referred . . . . .	II-63
(f) Superior convening authorities . . . . .	II-64
(g) Parallel convening authorities . . . . .	II-64
<b>Rule 602. Service of charges</b> . . . . .	II-64
(a) Service of charges . . . . .	II-64
(b) Commencement of trial . . . . .	II-64
<b>Rule 603. Changes to charges and specifications</b> . . . . .	II-64
(a) In general . . . . .	II-64
(b) Major and minor changes defined . . . . .	II-64
(c) Major and minor changes before referral . . . . .	II-65
(d) Major and minor changes after referral or preliminary hearing . . . . .	II-65
(e) Minor changes after referral . . . . .	II-65
<b>Rule 604. Withdrawal of charges</b> . . . . .	II-65
(a) Withdrawal . . . . .	II-65
(b) Referral of withdrawn charges. . . . .	II-65
 <b>CHAPTER VII. PRETRIAL MATTERS</b>	
<b>Rule 701. Discovery</b> . . . . .	II-67
(a) Disclosure by the trial counsel . . . . .	II-67
(b) Disclosure by the defense . . . . .	II-68
(c) Failure to call witness . . . . .	II-69
(d) Continuing duty to disclose . . . . .	II-69
(e) Access to witnesses and evidence . . . . .	II-69
(f) Information not subject to disclosure . . . . .	II-70
(g) Regulation of discovery . . . . .	II-70
(h) Inspect . . . . .	II-70
<b>Rule 702. Depositions</b> . . . . .	II-71



	Page
(a) In general . . . . .	II-71
(b) Who may order. . . . .	II-71
(c) Request to take deposition. . . . .	II-71
(d) Action on request . . . . .	II-71
(e) Duties of the deposition officer. . . . .	II-72
(f) Rights of accused . . . . .	II-72
(g) Procedure. . . . .	II-73
(h) Objections. . . . .	II-73
(i) Admissibility and use as evidence . . . . .	II-74
(j) Deposition by agreement not precluded. . . . .	II-74
<b>Rule 703. Production of witnesses and evidence . . . . .</b>	<b>II-74</b>
(a) In general. . . . .	II-74
(b) Right to witnesses. . . . .	II-74
(c) Determining which witness will be produced. . . . .	II-75
(d) Employment of expert witnesses. . . . .	II-75
(e) Right to evidence. . . . .	II-75
(f) Procedures for production of witnesses and evidence . . . . .	II-76
<b>Rule 703A. Warrant or order for wire or electronic communications . . . . .</b>	<b>II-79</b>
(a) In general. . . . .	II-79
(b) Warrant procedures . . . . .	II-79
(c) Order procedures . . . . .	II-80
(d) Delayed notice of order . . . . .	II-80
(e) No cause of action against a provider disclosing information under this rule . . . . .	II-81
(f) Requirement to preserve evidence . . . . .	II-81
<b>Rule 704. Immunity . . . . .</b>	<b>II-81</b>
(a) Types of immunity. . . . .	II-81
(b) Scope . . . . .	II-81
(c) Authority to grant immunity. . . . .	II-81
(d) Procedure. . . . .	II-82
(e) Decision to grant immunity. . . . .	II-82
<b>Rule 705. Plea agreements . . . . .</b>	<b>II-83</b>
(a) In general. . . . .	II-83
(b) Nature of agreement. . . . .	II-83
(c) Terms and conditions. . . . .	II-83
(d) Sentence limitations . . . . .	II-84
(e) Procedure . . . . .	II-84
(f) Nondisclosure of existence of agreement. . . . .	II-85
<b>Rule 706. Inquiry into the mental capacity or mental responsibility of the accused . . . . .</b>	<b>II-86</b>
(a) Initial action. . . . .	II-86
(b) Ordering an inquiry. . . . .	II-86
(c) Inquiry. . . . .	II-86
<b>Rule 707. Speedy trial . . . . .</b>	<b>II-87</b>
(a) In general. . . . .	II-87
(b) Accountability. . . . .	II-87

	Page
(c) Excludable delay. . . . .	II-88
(d) Remedy. . . . .	II-88
(e) Forfeiture . . . . .	II-88
(f) Priority . . . . .	II-89
 <b>CHAPTER VIII. TRIAL PROCEDURE GENERALLY</b>	
<b>Rule 801. Military judge’s responsibilities; other matters . . . . .</b>	<b>II-90</b>
(a) Responsibilities of military judge. . . . .	II-90
(b) Rules of court; contempt. . . . .	II-91
(c) Obtaining evidence. . . . .	II-91
(d) Uncharged offenses. . . . .	II-91
(e) Interlocutory questions and questions of law. . . . .	II-91
(f) Rulings on record. . . . .	II-92
(g) Effect of failure to raise defenses or objections. . . . .	II-92
<b>Rule 802. Conferences . . . . .</b>	<b>II-92</b>
(a) In general. . . . .	II-92
(b) Matters on record. . . . .	II-92
(c) Rights of parties. . . . .	II-93
(d) Accused’s presence. . . . .	II-93
(e) Admission. . . . .	II-93
(f) Limitations. . . . .	II-93
<b>Rule 803. Court-martial sessions without members under Article 39(a) . . . . .</b>	<b>II-93</b>
<b>Rule 804. Presence of the accused at trial proceedings . . . . .</b>	<b>II-93</b>
(a) Presence required. . . . .	II-93
(b) Presence by remote means. . . . .	II-93
(c) Continued presence not required. . . . .	II-94
(d) Voluntary absence for limited purpose of child testimony. . . . .	II-94
(e) Appearance and security of accused. . . . .	II-95
<b>Rule 805. Presence of military judge, members, and counsel . . . . .</b>	<b>II-95</b>
(a) Military judge. . . . .	II-95
(b) Members. . . . .	II-95
(c) Counsel. . . . .	II-95
(d) Effect of replacement of member or military judge. . . . .	II-95
<b>Rule 806. Public trial . . . . .</b>	<b>II-96</b>
(a) In general. . . . .	II-96
(b) Control of spectators and closure. . . . .	II-96
(c) Photography and broadcasting prohibited. . . . .	II-97
(d) Protective orders. . . . .	II-97
<b>Rule 807. Oaths . . . . .</b>	<b>II-97</b>
(a) Definition. . . . .	II-97
(b) Oaths in courts-martial. . . . .	II-97
<b>Rule 808. Record of trial . . . . .</b>	<b>II-98</b>
<b>Rule 809. Contempt proceedings . . . . .</b>	<b>II-98</b>
(a) In general . . . . .	II-98

	Page
(b) Method of disposition .....	II-99
(c) Procedure .....	II-99
(d) Record; review .....	II-99
(e) Sentence .....	II-99
(f) Informing person held in contempt .....	II-100
<b>Rule 810. Procedures for rehearings, new trials, other trials, and remands .....</b>	<b>II-100</b>
(a) In general. ....	II-100
(b) Composition. ....	II-101
(c) Examination of record of former proceedings. ....	II-101
(d) Sentence limitations. ....	II-101
(e) Definition. ....	II-101
(f) Remands .....	II-101
<b>Rule 811. Stipulations .....</b>	<b>II-102</b>
(a) In general. ....	II-102
(b) Authority to reject. ....	II-102
(c) Requirements. ....	II-102
(d) Withdrawal. ....	II-102
(e) Effect of stipulation. ....	II-103
(f) Procedure. ....	II-103
<b>812. Joint and common trials .....</b>	<b>II-103</b>
<b>813. Announcing personnel of the court-martial and the accused .....</b>	<b>II-103</b>
(a) Opening sessions. ....	II-103
(b) Later proceedings. ....	II-103
(c) Additions, replacement, and absences of personnel. ....	II-103
<b>CHAPTER IX. TRIAL PROCEDURES THROUGH FINDINGS</b>	
<b>Rule 901. Opening session .....</b>	<b>II-104</b>
(a) Call to order. ....	II-104
(b) Announcement of parties. ....	II-104
(c) Swearing reporter and interpreter. ....	II-104
(d) Counsel. ....	II-104
(e) Presence of members. ....	II-105
<b>Rule 902. Disqualification of military judge .....</b>	<b>II-105</b>
(a) In general. ....	II-105
(b) Specific grounds. ....	II-105
(c) Definitions. ....	II-105
(d) Procedure. ....	II-105
(e) Waiver. ....	II-105
<b>Rule 902A. Application of sentencing rules .....</b>	<b>II-106</b>
(a) Generally .....	II-106
(b) Election of sentencing rules applicable at a single trial .....	II-106
(c) Form of election .....	II-106
(d) Irrevocable election .....	II-106
<b>Rule 903. Accused's elections on composition of court-martial .....</b>	<b>II-106</b>

	Page
(a) In general . . . . .	II-106
(b) Form of election. . . . .	II-107
(c) Action on election. . . . .	II-107
(d) Right to withdraw request. . . . .	II-107
(e) Untimely requests. . . . .	II-108
<b>Rule 904. Arraignment</b> . . . . .	II-108
<b>Rule 905. Motions generally</b> . . . . .	II-108
(a) Definitions and form. . . . .	II-108
(b) Pretrial motions. . . . .	II-108
(c) Burden of proof. . . . .	II-109
(d) Ruling on motions. . . . .	II-109
(e) Effect of failure to raise defenses or objections. . . . .	II-109
(f) Reconsideration. . . . .	II-109
(g) Effect of final determinations. . . . .	II-109
(h) Written motions. . . . .	II-110
(i) Service. . . . .	II-110
(j) Application to convening authority. . . . .	II-110
(k) Production of statements on motion to suppress. . . . .	II-110
<b>Rule 906. Motions for appropriate relief</b> . . . . .	II-111
(a) In general. . . . .	II-111
(b) Grounds for appropriate relief. . . . .	II-111
<b>Rule 907. Motions to dismiss</b> . . . . .	II-113
(a) In general. . . . .	II-113
(b) Grounds for dismissal. . . . .	II-114
<b>Rule 908. Appeal by the United States</b> . . . . .	II-115
(a) In general. . . . .	II-115
(b) Procedure. . . . .	II-115
(c) Appellate proceedings. . . . .	II-116
<b>Rule 909. Capacity of the accused to stand trial by court-martial</b> . . . . .	II-116
(a) In general. . . . .	II-116
(b) Presumption of capacity. . . . .	II-116
(c) Determination before referral. . . . .	II-116
(d) Determination after referral. . . . .	II-117
(e) Incompetence determination hearing. . . . .	II-117
(f) Hospitalization of the accused. . . . .	II-117
(g) Excludable delay. . . . .	II-117
<b>Rule 910. Pleas</b> . . . . .	II-117
(a) Alternatives . . . . .	II-117
(b) Refusal to plead; irregular plea. . . . .	II-118
(c) Advice to accused. . . . .	II-118
(d) Ensuring that the plea is voluntary. . . . .	II-118
(e) Determining accuracy of plea. . . . .	II-118
(f) Plea agreement inquiry. . . . .	II-119
(g) Findings. . . . .	II-120

	Page
(h) Later action. . . . .	II-120
(i) [Reserved] . . . . .	II-120
(j) Waiver. . . . .	II-120
<b>Rule 911. Assembly of the court-martial . . . . .</b>	<b>II-120</b>
<b>Rule 912. Challenge of selection of members; examination and challenges of members . . . . .</b>	<b>II-120</b>
(a) Pretrial matters. . . . .	II-120
(b) Challenge of selection of members. . . . .	II-121
(c) Stating grounds for challenge. . . . .	II-121
(d) Examination of members. . . . .	II-121
(e) Evidence. . . . .	II-122
(f) Challenges and removal for cause. . . . .	II-122
(g) Peremptory challenges. . . . .	II-123
(h) Definitions. . . . .	II-123
<b>Rule 912A. Impaneling members and alternate members . . . . .</b>	<b>II-123</b>
(a) In general . . . . .	II-123
(b) Enlisted accused . . . . .	II-124
(c) Number of members detailed insufficient . . . . .	II-124
(d) Excess members following the exercise of all challenges . . . . .	II-124
(e) Lowest number . . . . .	II-125
(f) Announcement . . . . .	II-125
<b>Rule 912B. Excusal and replacement of members after impanelment . . . . .</b>	<b>II-125</b>
(a) In general . . . . .	II-125
(b) Alternate members available . . . . .	II-125
(c) Alternate members not available . . . . .	II-125
<b>Rule 913. Presentation of the case on the merits . . . . .</b>	<b>II-125</b>
(a) Preliminary instructions. . . . .	II-125
(b) Opening statements. . . . .	II-126
(c) Presentation of evidence. . . . .	II-126
<b>Rule 914. Production of statements of witnesses . . . . .</b>	<b>II-127</b>
(a) Motion for production. . . . .	II-127
(b) Production of entire statement. . . . .	II-127
(c) Production of excised statement. . . . .	II-127
(d) Recess for examination of the statement. . . . .	II-127
(e) Remedy for failure to produce statement. . . . .	II-127
(f) Definition. . . . .	II-127
<b>Rule 914A. Use of remote live testimony of a child . . . . .</b>	<b>II-127</b>
(a) General procedures. . . . .	II-127
(b) Definition. . . . .	II-128
(c) Prohibitions. . . . .	II-128
<b>Rule 914B. Use of remote testimony . . . . .</b>	<b>II-128</b>
(a) General procedures. . . . .	II-128
(b) Definition. . . . .	II-128
<b>Rule 915. Mistrial . . . . .</b>	<b>II-128</b>

	Page
(a) In general. . . . .	II-128
(b) Procedure. . . . .	II-128
(c) Effect of declaration of mistrial. . . . .	II-128
<b>Rule 916. Defenses . . . . .</b>	<b>II-128</b>
(a) In general. . . . .	II-128
(b) Burden of proof. . . . .	II-129
(c) Justification. . . . .	II-129
(d) Obedience to orders. . . . .	II-129
(e) Self-defense. . . . .	II-129
(f) Accident. . . . .	II-130
(g) Entrapment. . . . .	II-130
(h) Coercion or duress. . . . .	II-131
(i) Inability. . . . .	II-131
(j) Ignorance or mistake of fact. . . . .	II-131
(k) Lack of mental responsibility. . . . .	II-131
(l) Not defenses generally. . . . .	II-132
<b>Rule 917. Motion for a finding of not guilty . . . . .</b>	<b>II-132</b>
(a) In general. . . . .	II-132
(b) Form of motion. . . . .	II-133
(c) Procedure. . . . .	II-133
(d) Standard. . . . .	II-133
(e) Motion as to greater offense. . . . .	II-133
(f) Effect of ruling. . . . .	II-133
(g) Effect of denial on review. . . . .	II-133
<b>Rule 918. Findings . . . . .</b>	<b>II-133</b>
(a) General findings. . . . .	II-133
(b) Special findings. . . . .	II-134
(c) Basis of findings. . . . .	II-134
<b>Rule 919. Argument by counsel on findings . . . . .</b>	<b>II-134</b>
(a) In general. . . . .	II-134
(b) Contents. . . . .	II-134
(c) Forfeiture of objection to improper argument. . . . .	II-135
<b>Rule 920. Instructions on findings . . . . .</b>	<b>II-135</b>
(a) In general. . . . .	II-135
(b) When given. . . . .	II-135
(c) Request for instructions. . . . .	II-135
(d) How given. . . . .	II-135
(e) Required instructions. . . . .	II-136
(f) Forfeiture and objections . . . . .	II-136
<b>Rule 921. Deliberations and voting on findings . . . . .</b>	<b>II-136</b>
(a) In general. . . . .	II-136
(b) Deliberations. . . . .	II-137
(c) Voting. . . . .	II-137
(d) Action after findings are reached. . . . .	II-137

	Page
<b>Rule 922. Announcement of findings.</b> .....	II-138
(a) In general. ....	II-138
(b) Findings by members. ....	II-138
(c) Findings by military judge. ....	II-138
(d) Erroneous announcement. ....	II-138
(e) Polling prohibited. ....	II-138
<b>Rule 923. Impeachment of findings</b> .....	II-138
<b>Rule 924. Reconsideration of findings</b> .....	II-138
(a) Time for reconsideration. ....	II-138
(b) Procedure. ....	II-138
(c) Military judge sitting alone. ....	II-139
 <b>CHAPTER X. SENTENCING</b>	
<b>Rule 1001. Presentencing procedure</b> .....	II-140
(a) In general. ....	II-140
(b) Matter to be presented by the prosecution. ....	II-140
(c) Crime victim’s right to be reasonably heard .....	II-142
(d) Matter to be presented by the defense. ....	II-143
(e) Rebuttal and surrebuttal. ....	II-144
(f) Production of witnesses. ....	II-144
(g) Additional matters to be considered. ....	II-144
(h) Argument. ....	II-144
<b>Rule 1002. Sentence determination</b> .....	II-145
(a) Generally .....	II-145
(b) Sentencing forum election .....	II-145
(c) Form of election .....	II-145
(d) Noncapital cases .....	II-145
(e) Capital cases .....	II-146
(f) Imposition of sentence .....	II-147
(g) Information that may be considered .....	II-147
<b>Rule 1003. Punishments</b> .....	II-147
(a) In general. ....	II-147
(b) Authorized punishments. ....	II-147
(c) Limits on punishments. ....	II-149
(d) Circumstances permitting increased punishments. ....	II-151
<b>Rule 1004. Capital cases</b> .....	II-151
(a) In general. ....	II-151
(b) Procedure. ....	II-151
(c) Aggravating factors. ....	II-152
(d) Other penalties. ....	II-154
<b>Rule 1005. Instructions on sentence</b> .....	II-154
(a) In general. ....	II-154
(b) When given. ....	II-154
(c) Requests for instructions. ....	II-154

	Page
(d) How given. . . . .	II-154
(e) Required instructions. . . . .	II-155
(f) Failure to object . . . . .	II-155
<b>Rule 1006. Deliberations and voting on sentence</b> . . . . .	II-155
(a) In general. . . . .	II-155
(b) Deliberations. . . . .	II-155
(c) Proposal of sentences. . . . .	II-156
(d) Voting. . . . .	II-156
(e) Action after a sentence is reached. . . . .	II-156
<b>Rule 1007. Announcement of sentence</b> . . . . .	II-157
(a) In general. . . . .	II-157
(b) Announcement. . . . .	II-157
(c) Erroneous announcement. . . . .	II-157
(d) Polling prohibited. . . . .	II-157
<b>Rule 1008. Impeachment of sentence</b> . . . . .	II-157
<b>Rule 1009. Reconsideration of sentence</b> . . . . .	II-157
(a) Reconsideration. . . . .	II-157
(b) Exceptions. . . . .	II-157
(c) Clarification of sentence. . . . .	II-158
(d) Action by the convening authority. . . . .	II-158
(e) Reconsideration procedure. . . . .	II-158
<b>Rule 1010. Notice concerning post-trial and appellate rights</b> . . . . .	II-158
<b>Rule 1011. Adjournment</b> . . . . .	II-159
 <b>CHAPTER XI. POST-TRIAL PROCEDURE</b>	
<b>Rule 1101. Statement of trial results</b> . . . . .	II-160
(a) Content . . . . .	II-160
(b) Not guilty only by reason of lack of mental responsibility. . . . .	II-160
(c) Abatement . . . . .	II-160
(d) Distribution . . . . .	II-160
<b>Rule 1102. Execution and effective dates of sentencing</b> . . . . .	II-161
(a) In general. . . . .	II-161
(b) Exceptions . . . . .	II-161
(c) Other considerations concerning the execution of certain sentences . . . . .	II-162
<b>Rule 1103. Deferment of confinement, forfeitures, and reduction in grade; waiver of Article 58b forfeitures</b> . . . . .	II-163
(a) In general. . . . .	II-163
(b) Deferment requested by accused . . . . .	II-163
(c) Deferment without request from the accused. . . . .	II-163
(d) Action of deferment request . . . . .	II-163
(e) Restraint when deferment is granted . . . . .	II-164
(f) End of deferment . . . . .	II-164
(g) Recession of deferment . . . . .	II-164



	Page
(h) Waiving forfeitures resulting from a sentence to confinement to provide for dependent support .....	II-164
<b>Rule 1104. Post-trial motions and proceedings</b> .....	II-164
(a) Post-trial Article 39(a) sessions .....	II-164
(b) Post-trial motions .....	II-165
(c) Matters not subject to post-trial sessions .....	II-165
(d) Procedures .....	II-165
<b>Rule 1105. Post-trial hearing for person found not-guilty only by reason of lack of mental responsibility</b> .....	II-165
(a) In general .....	II-165
(b) Psychiatric or psychological examination and report .....	II-166
(c) Post-trial hearing .....	II-166
<b>Rule 1106. Matters submitted by the accused</b> .....	II-166
(a) In general. ....	II-166
(b) Matters submitted by the accused .....	II-166
(c) Access to court-martial record .....	II-166
(d) Time periods .....	II-166
(e) Waiver .....	II-167
<b>Rule 1106A. Matters submitted by crime victim</b> .....	II-167
(a) In general. ....	II-167
(b) Notice to crime victim .....	II-167
(c) Matters submitted by a crime victim .....	II-167
(d) Access to court-martial record .....	II-168
(e) Time periods .....	II-168
(f) Waiver .....	II-168
<b>Rule 1107. Suspension of execution of sentence; remission</b> .....	II-168
(a) In general. ....	II-168
(b) Who may suspend and remit. ....	II-168
(c) Conditions of suspension. ....	II-168
(d) Limitations on suspension. ....	II-169
(e) Termination of suspension by remission. ....	II-169
<b>Rule 1108. Vacation of suspension of sentence</b> .....	II-169
(a) In general. ....	II-169
(b) Timeliness. ....	II-169
(c) Confinement of probationer pending vacation proceedings. ....	II-169
(d) Vacation proceedings .....	II-170
(e) Action .....	II-171
<b>Rule 1109. Reduction of sentence, general and special courts-martial</b> .....	II-172
(a) In general. ....	II-172
(b) Limitation on authority on findings .....	II-172
(c) Limited authority to act on sentence .....	II-173
(d) General considerations .....	II-173
(e) Reduction of sentence for substantial assistance by accused .....	II-174
(f) Suspension .....	II-174

	Page
(g) Decision; forwarding of decision and related matters . . . . .	II-175
(h) Service on accused and crime victim . . . . .	II-175
<b>Rule 1110. Action by convening authority in certain general and special courts-martial . . . . .</b>	<b>II-175</b>
(a) In general . . . . .	II-175
(b) Action on findings . . . . .	II-175
(c) Action on the sentence . . . . .	II-175
(d) Procedures . . . . .	II-175
(e) Decision; forwarding of decision and related matters . . . . .	II-175
<b>Rule 1111. Entry of judgment . . . . .</b>	<b>II-176</b>
(a) In general . . . . .	II-176
(b) Contents . . . . .	II-176
(c) Modification of judgment . . . . .	II-177
(d) Rehearings, new trials, and other trials . . . . .	II-177
(e) When judgment is entered . . . . .	II-177
(f) Publication . . . . .	II-177
<b>Rule 1112. Certification of record of trial; general and special courts-martial . . . . .</b>	<b>II-177</b>
(a) In general. . . . .	II-177
(b) Contents of the record of trial . . . . .	II-178
(c) Certification . . . . .	II-178
(d) Loss of record, incomplete record, and correction of record . . . . .	II-178
(e) Copies of the record of trial . . . . .	II-178
(f) Attachments for appellate review . . . . .	II-179
(g) Security classification . . . . .	II-180
<b>Rule 1113. Sealed exhibits, proceedings, and other materials . . . . .</b>	<b>II-180</b>
(a) In general. . . . .	II-180
(b) Examination and disclosure of sealed materials . . . . .	II-180
<b>Rule 1114. Transcription of proceedings . . . . .</b>	<b>II-182</b>
(a) Transcription of complete record . . . . .	II-182
(b) Transcription of portions of the record . . . . .	II-182
(c) Cost . . . . .	II-182
(d) Inclusion in the record of trial . . . . .	II-182
(e) Authority . . . . .	II-182
<b>Rule 1115. Waiver or withdrawal of appellate review . . . . .</b>	<b>II-182</b>
(a) In general . . . . .	II-182
(b) Right to counsel . . . . .	II-182
(c) Compulsion, coercion, and inducement prohibited . . . . .	II-183
(d) Form of waiver or withdrawal . . . . .	II-183
(e) To whom submitted . . . . .	II-183
(f) Effect of waiver or withdrawal; substantial compliance required . . . . .	II-183
<b>Rule 1116. Transmittal of records of trial for general and special courts-martial . . . . .</b>	<b>II-183</b>
(a) Cases forwarded to the Judge Advocate General . . . . .	II-183
(b) Transmittal of records for cases eligible for appellate review by a Court of Criminal Appeals . . . . .	II-184
(c) Review of cases not eligible for appellate review by a Court of Criminal Appeals . . . . .	II-185

	Page
(d) Review when appellate review by a Court of Criminal Appeals is waived, withdrawn, or not filed .....	II-185
<b>Rule 1117. Appeal of sentence by the United States</b> .....	II-185
(a) In general .....	II-185
(b) Timing .....	II-185
(c) Approval process .....	II-185
(d) Contents of the record of trial .....	II-185
(e) Standard .....	II-186
 <b>CHAPTER XII. APPEALS AND REVIEW</b>	
<b>Rule 1201. Review by the Judge Advocate General</b> .....	II-187
(a) Review of certain general and special courts-martial .....	II-187
(b) Exception .....	II-187
(c) By whom .....	II-187
(d) Form and content for review of cases not eligible for appellate review at the Court of Criminal Appeals .....	II-187
(e) Form and content for review of cases in which the accused has waived or withdrawn appellate review or failed to file an appeal. ....	II-187
(f) Remedies .....	II-187
(g) Notification .....	II-188
(h) Application for relief to the Judge Advocate General after final review .....	II-188
(i) Remission and suspension .....	II-188
(j) Mandatory review of summary courts-martial forwarded under R.C.M. 1307 .....	II-188
(k) Cases referred or submitted to the Court of Criminal Appeals. ....	II-189
<b>Rule 1202. Appellate counsel</b> .....	II-189
(a) In general .....	II-189
(b) Duties .....	II-189
(c) Counsel in capital cases .....	II-190
<b>Rule 1203. Review by a Court of Criminal Appeals</b> .....	II-190
(a) In general. ....	II-190
(b) Cases reviewed by a Court of Criminal Appeals—Automatic review. ....	II-190
(c) Cases eligible for review by a Court of Criminal Appeals—Appeal by the accused ...	II-190
(d) Timeliness .....	II-191
(e) Action on cases reviewed by a Court of Criminal Appeals. ....	II-191
(f) Notification to accused. ....	II-192
(g) Cases not reviewed by the Court of Appeals for the Armed Forces. ....	II-192
<b>Rule 1204. Review by the Court of Appeals for the Armed Forces</b> .....	II-193
(a) Cases reviewed by the Court of Appeals for the Armed Forces. ....	II-193
(b) Petition by the accused for review by the Court of Appeals for the Armed Forces .....	II-193
(c) Action on decision by the Court of Appeals for the Armed Forces. ....	II-193
<b>Rule 1205. Review by the Supreme Court</b> .....	II-194
(a) Cases subject to review by the Supreme Court. ....	II-194
(b) Action by the Supreme Court. ....	II-194

	Page
<b>Rule 1206. Powers and responsibilities of the Secretary</b> .....	II-194
(a) Sentences requiring approval by the Secretary. ....	II-194
(b) Remission and suspension. ....	II-194
<b>Rule 1207. Sentences requiring approval by the President</b> .....	II-195
<b>Rule 1208. Restoration</b> .....	II-195
(a) New trial. ....	II-195
(b) Other cases. ....	II-195
<b>Rule 1209. Finality of courts-martial</b> .....	II-195
(a) When a conviction is final. ....	II-195
(b) Effect of finality. ....	II-195
<b>Rule 1210. New trial</b> .....	II-196
(a) In general. ....	II-196
(b) Who may petition. ....	II-196
(c) Form of petition. ....	II-196
(d) Effect of petition. ....	II-196
(e) Who may act on petition. ....	II-196
(f) Grounds for new trial. ....	II-196
(g) Action on the petition. ....	II-197
(h) Action when new trial is granted. ....	II-197
<b>CHAPTER XIII. SUMMARY COURTS-MARTIAL</b> .....	II-198
<b>Rule 1301. Summary courts-martial generally</b> .....	II-198
(a) Composition. ....	II-198
(b) Function. ....	II-198
(c) Jurisdiction. ....	II-198
(d) Punishments. ....	II-198
(e) Counsel. ....	II-199
(f) Power to obtain witnesses and evidence. ....	II-199
(g) Secretarial limitations. ....	II-199
<b>Rule 1302. Convening a summary court-martial</b> .....	II-199
(a) Who may convene summary courts-martial. ....	II-199
(b) When convening authority is accuser. ....	II-199
(c) Procedure. ....	II-199
<b>Rule 1303. Right to object to trial by summary court-martial.</b> .....	II-199
<b>Rule 1304. Trial procedure</b> .....	II-200
(a) Pretrial duties. ....	II-200
(b) Summary court-martial procedure. ....	II-200
<b>Rule 1305. Record of trial</b> .....	II-202
(a) In general. ....	II-202
(b) Contents. ....	II-202
(c) Certification. ....	II-202
(d) Forwarding copies of the record. ....	II-202
(e) Loss of record; defective record; correction of record. ....	II-203
<b>Rule 1306. Post-trial procedure, summary court-martial</b> .....	II-203

	Page
(a) Matters submitted . . . . .	II-203
(b) Convening authority’s action. . . . .	II-203
(c) Ordering rehearing or other trial . . . . .	II-204
(d) Contents of action and related matters . . . . .	II-204
(e) Incomplete, ambiguous, or erroneous action . . . . .	II-204
(f) Service . . . . .	II-204
(g) Subsequent action . . . . .	II-205
(h) Review by a judge advocate . . . . .	II-205
<b>Rule 1307. Review of a summary court-martial by a judge advocate . . . . .</b>	<b>II-205</b>
(a) In general . . . . .	II-205
(b) Exception . . . . .	II-205
(c) Disqualification . . . . .	II-205
(d) Form and content of review . . . . .	II-205
(e) Forwarding to officer exercising general court-martial jurisdiction . . . . .	II-205
(f) Action by officer exercising general court-martial jurisdiction . . . . .	II-205
(g) Records forwarded to the Judge Advocate General . . . . .	II-206
(h) Application for post-final review by the Judge Advocate General. . . . .	II-206
(i) Review by a Court of Criminal Appeals . . . . .	II-206
(j) Other Records . . . . .	II-206

**PART III        MILITARY RULES OF EVIDENCE**

*SECTION I    GENERAL PROVISIONS*

<b>Rule 101. Scope . . . . .</b>	<b>III-1</b>
(a) Scope . . . . .	III-1
(b) Sources of Law . . . . .	III-1
(c) Rule of construction . . . . .	III-1
<b>Rule 102. Purpose and construction . . . . .</b>	<b>III-1</b>
<b>Rule 103. Ruling on evidence . . . . .</b>	<b>III-1</b>
(a) Preserving a Claim of Error. . . . .	III-1
(b) Not Needing to Renew an Objection or Offer of Proof. . . . .	III-1
(c) Review of Constitutional Error. . . . .	III-1
(d) Military Judge’s Statement about the Ruling; Directing an Offer of Proof. . . . .	III-1
(e) Preventing the Members from Hearing Inadmissible Evidence . . . . .	III-1
(f) Taking Notice of Plain error . . . . .	III-1
<b>Rule 104. Preliminary questions . . . . .</b>	<b>III-2</b>
(a) In general . . . . .	III-2
(b) Relevance that Depends on a Fact . . . . .	III-2
(c) Conducting a Hearing so that the Members Cannot Hear It. . . . .	III-2
(d) Cross-examining the accused. . . . .	III-2
(e) Evidence Relevant to Weight and Credibility. . . . .	III-2
<b>Rule 105. Limiting evidence that is not admissible against other parties or for other purposes . . . . .</b>	<b>III-2</b>
<b>Rule 106. Remainder of or related writings or recorded statements . . . . .</b>	<b>III-2</b>

*SECTION II JUDICIAL NOTICE*

<b>Rule 201. Judicial notice of adjudicative facts</b> .....	III-2
(a) Scope .....	III-2
(b) Kinds of Facts that May be Judicially Noticed .....	III-2
(c) Taking Notice .....	III-2
(d) Timing .....	III-2
(e) Opportunity to be heard. ....	III-2
(f) Instructing the members. ....	III-2
<b>Rule 202. Judicial notice of law</b> .....	III-2
(a) Domestic law. ....	III-2
(b) Foreign law. ....	III-3

*SECTION III EXCLUSIONARY RULES AND RELATED MATTERS CONCERNING SELF-INCRIMINATION, SEARCH AND SEIZURE, AND EYEWITNESS IDENTIFICATION*

<b>Rule 301. Privilege concerning compulsory self-incrimination</b> .....	III-3
(a) General Rule. ....	III-3
(b) Standing. ....	III-3
(c) Exercise of the Privilege. ....	III-3
(d) Waiver by a Witness. ....	III-3
(e) Waiver by the Accused. ....	III-3
(f) Effect of Claiming the Privilege. ....	III-4
<b>Rule 302. Privilege concerning mental examination of an accused</b> .....	III-4
(a) General rule. ....	III-4
(b) Exceptions. ....	III-4
(c) Release of evidence from an R.C.M. 706 Examination. ....	III-4
(d) Noncompliance by the Accused. ....	III-4
(e) Procedure. ....	III-4
<b>Rule 303. Degrading questions</b> .....	III-4
<b>Rule 304. Confessions and admissions</b> .....	III-4
(a) General rule. ....	III-5
(b) Evidence Derived from a Statement of the Accused .....	III-5
(c) Corroboration of a Confession or Admission .....	III-5
(d) Disclosure of Statements by the Accused and Derivative Evidence .....	III-5
(e) Limited Use of an Involuntary Statement .....	III-5
(f) Motions and Objections .....	III-5
(g) Weight of the Evidence .....	III-6
(h) Completeness .....	III-6
(i) Evidence of an Oral statement .....	III-6
(j) Refusal to Obey an Order to Submit a Body Substance. ....	III-6
<b>Rule 305. Warnings about rights</b> .....	III-6
(a) General rule. ....	III-6
(b) Definitions. ....	III-6

	Page
(c) Warnings Concerning the Accusation, Right to Remain Silent, and Use of Statements .....	III-6
(d) Presence of Counsel. ....	III-7
(e) Waiver. ....	III-7
(f) Standards for Nonmilitary Interrogations. ....	III-7
<b>Rule 306. Statements by one of several accused</b> .....	III-8
<b>Rule 311. Evidence obtained from unlawful searches and seizures</b> .....	III-8
(a) General rule. ....	III-8
(b) Definition .....	III-8
(c) Exceptions. ....	III-8
(d) Motions to suppress and objections. ....	III-9
(e) Effect of guilty plea. ....	III-10
<b>Rule 312. Body views and intrusions</b> .....	III-10
(a) General rule. ....	III-10
(b) Visual examination of the body. ....	III-10
(c) Intrusion into body cavities. ....	III-10
(d) Extraction of body fluids. ....	III-11
(e) Other intrusive searches. ....	III-11
(f) Intrusions for valid medical purposes. ....	III-11
(g) Medical qualifications. ....	III-11
<b>Rule 313. Inspections and inventories in the armed forces</b> .....	III-11
(a) General rule. ....	III-11
(b) Lawful Inspections. ....	III-11
(c) Lawful Inventories. ....	III-12
<b>Rule 314. Searches not requiring probable cause</b> .....	III-12
(a) General Rule. ....	III-12
(b) Border Searches. ....	III-12
(c) Searches Upon Entry to or Exit from United States Installations, Aircraft, and Vessels Abroad. ....	III-12
(d) Searches of Government Property. ....	III-12
(e) Consent Searches. ....	III-12
(f) Searches Incident to a Lawful Stop. ....	III-13
(g) Searches Incident to Apprehension .....	III-13
(h) Searches Within Jails, Confinement Facilities, or Similar Facilities. ....	III-14
(i) Emergency Searches to Save Life or For Related Purposes. ....	III-14
(j) Searches of Open Fields or Woodlands. ....	III-14
<b>Rule 315. Probable cause searches</b> .....	III-14
(a) General rule. ....	III-14
(b) Definitions. ....	III-14
(c) Scope of Authorization. ....	III-14
(d) Who May Authorize .....	III-14
(e) Who May Search .....	III-15
(f) Basis for Search authorizations. ....	III-15
(g) Exigencies. ....	III-15

	Page
<b>Rule 316. Seizures</b> .....	III-15
(a) General rule. ....	III-15
(b) Apprehension. ....	III-15
(c) Seizure of Property or evidence .....	III-15
(d) Who May Seize .....	III-16
(e) Other Seizures. ....	III-16
<b>Rule 317. Interception of wire and oral communications</b> .....	III-16
(a) General rule. ....	III-16
(b) When Authorized by Court Order .....	III-16
(c) Regulations. ....	III-16
<b>Rule 321. Eyewitness identification</b> .....	III-16
(a) General rule. ....	III-16
(b) When Inadmissible .....	III-16
(c) Unlawful Lineup or Identification Process .....	III-16
(d) Motions to suppress and objections. ....	III-17
(e) Effect of guilty pleas. ....	III-18
<i>SECTION IV RELEVANCY AND ITS LIMITS</i>	
<b>Rule 401. Test for relevant evidence</b> .....	III-18
<b>Rule 402. General admissibility of relevant evidence.</b> .....	III-18
<b>Rule 403. Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons</b> .....	III-18
<b>Rule 404. Character evidence, crimes or other acts</b> .....	III-18
(a) Character Evidence .....	III-18
(b) Crimes, Wrongs, or Other Acts .....	III-19
<b>Rule 405. Methods of proving character</b> .....	III-19
(a) By Reputation or Opinion. ....	III-19
(b) By Specific instances of Conduct. ....	III-19
(c) By Affidavit .....	III-19
(d) Definitions. ....	III-19
<b>Rule 406. Habit; routine practice</b> .....	III-19
<b>Rule 407. Subsequent remedial measures</b> .....	III-19
<b>Rule 408. Compromise offers and negotiations</b> .....	III-20
<b>Rule 409. Offers to pay medical and similar expenses</b> .....	III-20
<b>Rule 410. Pleas, plea discussions, and related statements</b> .....	III-20
(a) Prohibited Uses .....	III-20
(b) Exceptions .....	III-20
(c) Request for Administrative disposition .....	III-20
<b>Rule 411. Liability insurance</b> .....	III-20
<b>Rule 412. Sex offense cases: The victim's sexual behavior or predisposition</b> .....	III-20
(a) Evidence generally inadmissible. ....	III-20
(b) Exceptions. ....	III-20
(c) Procedure to determine admissibility. ....	III-21
(d) Definitions. ....	III-21



	Page
<b>Rule 413. Similar crimes in sexual offense cases</b> .....	III-21
<b>Rule 414. Similar crimes in child-molestation cases</b> .....	III-21
<i>SECTION V PRIVILEGES</i>	
<b>Rule 501. Privilege in general</b> .....	III-22
<b>Rule 502. Lawyer-client privilege</b> .....	III-22
(a) General rule .....	III-22
(b) Definitions. ....	III-22
(c) Who May Claim the Privilege . ....	III-23
(d) Exceptions. ....	III-23
<b>Rule 503. Communications to clergy</b> .....	III-23
(a) General Rule .....	III-23
(b) Definitions. ....	III-23
(c) Who May Claim the Privilege . ....	III-23
<b>Rule 504. Marital privilege</b> .....	III-24
(a) Spousal Incapacity. ....	III-24
(b) Confidential Communication Made During the Marriage. ....	III-24
(c) Exceptions. ....	III-24
(d) Definitions. ....	III-24
<b>Rule 505. Classified information</b> .....	III-24
(a) General Rule .....	III-24
(b) Definitions. ....	III-24
(c) Access to Evidence. ....	III-25
(d) Declassification. ....	III-25
(e) Action Prior to Referral of Charges . ....	III-25
(f) Action after referral of charges. ....	III-25
(g) Protective Orders .....	III-26
(h) Discovery and Access by the Accused. ....	III-26
(i) Disclosure by the Accused . ....	III-27
(j) Procedure for Use of Classified Information in Trials and Pretrial Proceedings . ....	III-27
(k) Introduction into Evidence of Classified Information .....	III-29
(l) Record of Trial .....	III-29
<b>Rule 506. Government information</b> .....	III-30
(a) Protection of Government Information . ....	III-30
(b) Scope. ....	III-30
(c) Definitions. ....	III-30
(d) Who may claim the privilege. ....	III-30
(e) Action prior to referral of charges. ....	III-30
(f) Action after Referral of Charges. ....	III-30
(g) Protective Orders . ....	III-31
(h) Discovery and Access by the Accused . ....	III-31
(i) Disclosure by the Accused . ....	III-32
(j) Procedure for Use of Government Information Subject to a Claim of Privilege in Trials and Pretrial Proceedings .....	III-32

	Page
(k) Appeals of Orders and Rulings . . . . .	III-34
(l) Introduction into Evidence of Government Information Subject to a Claim of Privilege . . . . .	III-34
(m) Record of Trial . . . . .	III-34
<b>Rule 507. Identity of informants . . . . .</b>	<b>III-34</b>
(a) General Rule . . . . .	III-34
(b) Definitions. . . . .	III-34
(c) Who May Claim the Privilege. . . . .	III-34
(d) Exceptions. . . . .	III-35
(e) Procedures. . . . .	III-35
<b>Rule 508. Political vote . . . . .</b>	<b>III-35</b>
<b>Rule 509. Deliberations of courts and juries . . . . .</b>	<b>III-35</b>
<b>Rule 510. Waiver of privilege by voluntary disclosure . . . . .</b>	<b>III-35</b>
<b>Rule 511. Privileged matter disclosed under compulsion or without opportunity to claim privilege . . . . .</b>	<b>III-36</b>
(a) General Rule . . . . .	III-36
(b) Use of Communications Media . . . . .	III-36
<b>Rule 512. Comment upon or inference from claim of privilege; instruction . . . . .</b>	<b>III-36</b>
(a) Comment or Inference Not Permitted. . . . .	III-36
(b) Claiming Privilege Without Knowledge of the Members. . . . .	III-36
(c) Instruction. . . . .	III-36
<b>Rule 513. Psychotherapist—patient privilege . . . . .</b>	<b>III-36</b>
(a) General Rule . . . . .	III-36
(b) Definitions. . . . .	III-36
(c) Who May Claim the Privilege . . . . .	III-36
(d) Exceptions. . . . .	III-37
(e) Procedure to Determine Admissibility of Patient Records or Communications. . . . .	III-37
<b>Rule 514. Victim advocate—victim privilege . . . . .</b>	<b>III-38</b>
(a) General Rule . . . . .	III-38
(b) Definitions. . . . .	III-38
(c) Who may claim the privilege. . . . .	III-38
(d) Exceptions. . . . .	III-38
(e) Procedure to determine admissibility of victim records or communications. . . . .	III-38
 <i>SECTION VI WITNESSES</i>	
<b>Rule 601. Competency to testify in general . . . . .</b>	<b>III-39</b>
<b>Rule 602. Need for personal knowledge . . . . .</b>	<b>III-39</b>
<b>Rule 603. Oath or affirmation to testify truthfully. . . . .</b>	<b>III-39</b>
<b>Rule 604. Interpreter . . . . .</b>	<b>III-39</b>
<b>Rule 605. Military judge’s competency as a witness . . . . .</b>	<b>III-40</b>
<b>Rule 606. Member’s competency as a witness . . . . .</b>	<b>III-40</b>
(a) At the Trial by Court-Martial . . . . .	III-40
(b) During an Inquiry Into the Validity of a Finding or Sentence . . . . .	III-40
<b>Rule 607. Who may impeach a witness . . . . .</b>	<b>III-40</b>

	Page
<b>Rule 608. A witness’ character for truthfulness or untruthfulness</b> . . . . .	III-40
(a) Reputation or Opinion Evidence . . . . .	III-40
(b) Specific Instances of Conduct. . . . .	III-40
(c) Evidence of Bias. . . . .	III-40
<b>Rule 609. Impeachment by evidence of conviction of a criminal conviction or finding of guilty by summary court-martial</b> . . . . .	III-40
(a) In General . . . . .	III-40
(b) Limit on Using the Evidence After 10 Years . . . . .	III-41
(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. . . . .	III-41
(d) Juvenile Adjudications . . . . .	III-41
(e) Limit on the use of a finding of guilty by summary court-martial . . . . .	III-41
(f) Pendency of Appeal. . . . .	III-41
(g) Definition . . . . .	III-41
<b>Rule 610. Religious beliefs or opinions</b> . . . . .	III-41
<b>Rule 611. Mode and order of examining witnesses and presenting evidence</b> . . . . .	III-41
(a) Control by the Military Judge; Purposes . . . . .	III-41
(b) Scope of Cross-examination . . . . .	III-41
(c) Leading Questions . . . . .	III-41
(d) Remote Live Testimony of a Child . . . . .	III-41
<b>Rule 612. Writing used to refresh a witness’s memory</b> . . . . .	III-42
<b>Rule 613. Witness’ prior statements</b> . . . . .	III-42
(a) Showing or Disclosing the statement During Examination . . . . .	III-42
(b) Extrinsic Evidence of a Prior Inconsistent Statement . . . . .	III-42
<b>Rule 614. Court-martials calling or examining a witness</b> . . . . .	III-42
(a) Calling . . . . .	III-42
(b) Examining . . . . .	III-42
(c) Objections . . . . .	III-43
<b>Rule 615. Excluding witnesses</b> . . . . .	III-43
<i>SECTION VII OPINIONS AND EXPERT TESTIMONY</i>	
<b>Rule 701. Opinion testimony by lay witnesses</b> . . . . .	III-43
<b>Rule 702. Testimony by expert witnesses</b> . . . . .	III-43
<b>Rule 703. Bases of an expert’s opinion testimony.</b> . . . . .	III-43
<b>Rule 704. Opinion on an ultimate issue</b> . . . . .	III-43
<b>Rule 705. Disclosing the facts or data underlying expert’s opinion</b> . . . . .	III-43
<b>Rule 706. Court appointed expert witnesses</b> . . . . .	III-43
(a) Appointment Process . . . . .	III-43
(b) Compensation . . . . .	III-43
(c) Accused’s Choice of Experts . . . . .	III-44
<b>Rule 707. Polygraph examinations</b> . . . . .	III-44
<i>SECTION VIII HEARSAY</i>	
<b>Rule 801. Definitions</b> . . . . .	III-44
(a) Statement. . . . .	III-44

	Page
(b) Declarant . . . . .	III-44
(c) Hearsay. . . . .	III-44
(d) Statements that Are Not Hearsay . . . . .	III-44
<b>Rule 802. The rule against hearsay . . . . .</b>	<b>III-44</b>
<b>Rule 803. Exceptions to the rule against hearsay – regardless of whether the declarant is available as a witness. . . . .</b>	<b>III-44</b>
(1) Present Sense Impression. . . . .	III-44
(2) Excited Utterance. . . . .	III-44
(3) Then Existing Mental, Emotional, or Physical Condition. . . . .	III-44
(4) Statement Made for Medical Diagnosis or Treatment . . . . .	III-45
(5) Recorded Recollection. . . . .	III-45
(6) Records of regularly conducted activity. . . . .	III-45
(7) Absence of a Record of a regularly conducted activity . . . . .	III-45
(8) Public records . . . . .	III-45
(9) Public Records of vital statistics. . . . .	III-45
(10) Absence of a public record . . . . .	III-45
(11) Records of religious organizations Concerning Personal or Family History . . . . .	III-46
(12) Certificates of Marriage, baptism, and similar Ceremonies . . . . .	III-46
(13) Family records. . . . .	III-46
(14) Records of documents that affect an interest in property . . . . .	III-46
(15) Statements in documents that affect an interest in property . . . . .	III-46
(16) Statements in ancient documents. . . . .	III-46
(17) Market reports and similar commercial publications. . . . .	III-46
(18) Statements in Learned treatises, Periodicals, or Pamphlets . . . . .	III-46
(19) Reputation concerning personal or family history. . . . .	III-46
(20) Reputation concerning boundaries or general history. . . . .	III-46
(21) Reputation Concerning character. . . . .	III-46
(22) Judgment of previous conviction. . . . .	III-46
(23) Judgments Involving Personal, family or general history, or a boundary . . . . .	III-47
<b>Rule 804. Hearsay exceptions; declarant unavailable . . . . .</b>	<b>III-47</b>
(a) Criteria for Being Unavailable . . . . .	III-47
(b) The Exceptions . . . . .	III-47
<b>Rule 805. Hearsay within hearsay . . . . .</b>	<b>III-48</b>
<b>Rule 806. Attacking and supporting the declarant’s credibility . . . . .</b>	<b>III-48</b>
<b>Rule 807. Residual exception . . . . .</b>	<b>III-48</b>
(a) In General . . . . .	III-48
(b) Notice . . . . .	III-48
<i>SECTION IX AUTHENTICATION AND IDENTIFICATION</i>	
<b>Rule 901. Authenticating or identifying evidence . . . . .</b>	<b>III-48</b>
(a) In General . . . . .	III-48
(b) Examples . . . . .	III-48
<b>Rule 902. Evidence that is self-authenticating . . . . .</b>	<b>III-49</b>
(1) Domestic Public Documents that are Sealed and Signed . . . . .	III-49

	Page
(2) Domestic Public Documents that are Not Sealed but are Signed and Certified . . . . .	III-49
(3) Foreign Public Documents . . . . .	III-49
(4) Certified Copies of Public Records . . . . .	III-49
(4a) Documents or Records of the United States Accompanied by Attesting Certificates . .	III-49
(5) Official Publications . . . . .	III-49
(6) Newspapers and Periodicals . . . . .	III-49
(7) Trade Inscriptions and the Like . . . . .	III-49
(8) Acknowledged Documents . . . . .	III-49
(9) Commercial Paper and Related Documents . . . . .	III-49
(10) Presumptions Under a Federal Statute or Regulation . . . . .	III-50
(11) Certified Domestic Records of Regularly Conducted Activity . . . . .	III-50
<b>Rule 903. Subscribing witness’ testimony</b> . . . . .	III-50

*SECTION X CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS*

<b>Rule 1001. Definitions that apply to this section</b> . . . . .	III-50
(a) Writing . . . . .	III-50
(b) Recording . . . . .	III-50
(c) Photograph . . . . .	III-50
(d) Original . . . . .	III-50
(e) Duplicate . . . . .	III-50
<b>Rule 1002. Requirement of the original</b> . . . . .	III-50
<b>Rule 1003. Admissibility of duplicates</b> . . . . .	III-50
<b>Rule 1004. Admissibility of other evidence of content</b> . . . . .	III-50
(a) Originals lost or destroyed . . . . .	III-50
(b) Original not obtainable . . . . .	III-50
(c) Original in possession of opponent . . . . .	III-50
(d) Collateral matters . . . . .	III-50
<b>Rule 1005. Copies of public records to prove content</b> . . . . .	III-50
<b>Rule 1006. Summaries to prove content</b> . . . . .	III-51
<b>Rule 1007. Testimony or statement of a party to prove content</b> . . . . .	III-51
<b>Rule 1008. Function of the military judge and the members</b> . . . . .	III-51

*SECTION XI MISCELLANEOUS RULES*

<b>Rule 1101. Applicability of these rules</b> . . . . .	III-51
(a) Rules Applicable. . . . .	III-51
(b) Rules Relaxed . . . . .	III-51
(c) Rules on Privilege . . . . .	III-51
<b>Rule 1102. Amendments</b> . . . . .	III-51
<b>Rule 1103. Title</b> . . . . .	III-51

**PART IV PUNITIVE ARTICLES**

<b>1. Article 77—Principals</b> . . . . .	IV-1
(a) Text of statute . . . . .	IV-1
(b) Explanation . . . . .	IV-1
<b>2. Article 78—Accessory after the fact</b> . . . . .	IV-2

	Page
a. Text of statute . . . . .	IV-2
b. Elements . . . . .	IV-2
c. Explanation . . . . .	IV-3
d. Maximum punishment . . . . .	IV-3
e. Sample specification . . . . .	IV-3
<b>3. Article 79—Conviction of offense charged, Lesser included offenses, and attempts . . . .</b>	<b>IV-3</b>
a. Text of statute . . . . .	IV-3
b. Elements . . . . .	IV-3
c. Explanation . . . . .	IV-3
<b>4. Article 80—Attempts . . . . .</b>	<b>IV-3</b>
a. Text of statute . . . . .	IV-4
b. Elements . . . . .	IV-4
c. Explanation . . . . .	IV-5
d. Maximum punishment . . . . .	IV-5
e. Sample specification . . . . .	IV-5
<b>5. Article 81—Conspiracy . . . . .</b>	<b>IV-6</b>
a. Text of statute . . . . .	IV-6
b. Elements . . . . .	IV-6
c. Explanation . . . . .	IV-6
d. Maximum punishment . . . . .	IV-7
e. Sample specification . . . . .	IV-7
<b>6. Article 82—Soliciting commission of offenses . . . . .</b>	<b>IV-7</b>
a. Text of statute . . . . .	IV-7
b. Elements . . . . .	IV-8
c. Explanation . . . . .	IV-8
d. Maximum punishment . . . . .	IV-8
e. Sample specification . . . . .	IV-8
<b>7. Article 83—Malingering . . . . .</b>	<b>IV-9</b>
a. Text of statute . . . . .	IV-9
b. Elements . . . . .	IV-9
c. Explanation . . . . .	IV-9
d. Maximum punishment . . . . .	IV-9
e. Sample specification . . . . .	IV-9
<b>8. Article 84—Breach of medical quarantine . . . . .</b>	<b>IV-10</b>
a. Text of statute . . . . .	IV-10
b. Elements . . . . .	IV-10
c. Explanation . . . . .	IV-10
d. Maximum punishment . . . . .	IV-10
e. Sample specification . . . . .	IV-10
<b>9. Article 85—Desertion . . . . .</b>	<b>IV-10</b>
a. Text of statute . . . . .	IV-10
b. Elements . . . . .	IV-10
c. Explanation . . . . .	IV-11
d. Maximum punishment . . . . .	IV-12

	Page
e. Sample specifications . . . . .	IV-12
<b>10. Article 86—Absence without leave . . . . .</b>	<b>IV-13</b>
a. Text of statute . . . . .	IV-13
b. Elements . . . . .	IV-13
c. Explanation . . . . .	IV-14
d. Maximum punishment . . . . .	IV-15
e. Sample specifications . . . . .	IV-15
<b>11. Article 87—Missing movement; jumping from vessel . . . . .</b>	<b>IV-16</b>
a. Text of statute . . . . .	IV-16
b. Elements . . . . .	IV-16
c. Explanation . . . . .	IV-16
d. Maximum punishment . . . . .	IV-17
e. Sample specifications . . . . .	IV-17
<b>12. Article 87a—Resistance, flight, breach of arrest, and escape . . . . .</b>	<b>IV-17</b>
a. Text of statute . . . . .	IV-17
b. Elements . . . . .	IV-17
c. Explanation . . . . .	IV-18
d. Maximum punishment . . . . .	IV-19
e. Sample specifications . . . . .	IV-19
<b>13. Article 87b—Offenses against correctional custody and restriction . . . . .</b>	<b>IV-19</b>
a. Text of statute . . . . .	IV-19
b. Elements . . . . .	IV-20
c. Explanation . . . . .	IV-20
d. Maximum punishment . . . . .	IV-20
e. Sample specifications . . . . .	IV-21
<b>14. Article 88—Contempt toward officials . . . . .</b>	<b>IV-21</b>
a. Text of statute . . . . .	IV-21
b. Elements . . . . .	IV-21
c. Explanation . . . . .	IV-21
d. Maximum punishment . . . . .	IV-21
e. Sample specification . . . . .	IV-21
<b>15. Article 89—Disrespect toward superior commissioned officer; assault of superior     commissioned officer . . . . .</b>	<b>IV-21</b>
a. Text of statute . . . . .	IV-21
b. Elements . . . . .	IV-22
c. Explanation . . . . .	IV-22
d. Maximum punishment . . . . .	IV-23
e. Sample specifications . . . . .	IV-23
<b>16. Article 90—Willfully disobeying superior commissioned officer . . . . .</b>	<b>IV-24</b>
a. Text of statute . . . . .	IV-24
b. Elements . . . . .	IV-24
c. Explanation . . . . .	IV-24
d. Maximum punishment . . . . .	IV-25
e. Sample specification . . . . .	IV-25

	Page
<b>17. Article 91—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer</b> . . . . .	IV-25
a. Text of statute . . . . .	IV-25
b. Elements . . . . .	IV-25
c. Explanation . . . . .	IV-26
d. Maximum punishment . . . . .	IV-26
e. Sample specifications . . . . .	IV-26
<b>18. Article 92—Failure to obey order or regulation</b> . . . . .	IV-27
a. Text of statute . . . . .	IV-27
b. Elements . . . . .	IV-27
c. Explanation . . . . .	IV-27
d. Maximum punishment . . . . .	IV-28
e. Sample specifications . . . . .	IV-29
<b>19. Article 93—Cruelty and maltreatment</b> . . . . .	IV-29
a. Text of statute . . . . .	IV-29
b. Elements . . . . .	IV-29
c. Explanation . . . . .	IV-29
d. Maximum punishment . . . . .	IV-29
e. Sample specification . . . . .	IV-29
<b>20. Article 93a— Prohibited activities with military recruit or trainee by person in position of special trust</b> . . . . .	IV-30
a. Text of statute . . . . .	IV-30
b. Elements . . . . .	IV-30
c. Explanation . . . . .	IV-31
d. Maximum punishment . . . . .	IV-31
e. Sample specifications . . . . .	IV-31
<b>21. Article 94—Mutiny or sedition</b> . . . . .	IV-31
a. Text of statute . . . . .	IV-31
b. Elements . . . . .	IV-32
c. Explanation . . . . .	IV-32
d. Maximum punishment . . . . .	IV-33
e. Sample specifications . . . . .	IV-33
<b>22. Article 95— Offenses by sentinel or lookout</b> . . . . .	IV-33
a. Text of statute . . . . .	IV-33
b. Elements . . . . .	IV-34
c. Explanation . . . . .	IV-34
d. Maximum punishment . . . . .	IV-34
e. Sample specifications . . . . .	IV-35
<b>23. Article 95a—Disrespect to a sentinel or lookout</b> . . . . .	IV-35
a. Text of statute . . . . .	IV-35
b. Elements . . . . .	IV-35
c. Explanation . . . . .	IV-35
d. Maximum punishment . . . . .	IV-35
e. Sample specification . . . . .	IV-35



	Page
<b>24. Article 96— Release of prisoner without authority; drinking with prisoner . . . . .</b>	IV-36
a. Text of statute . . . . .	IV-36
b. Elements . . . . .	IV-36
c. Explanation . . . . .	IV-36
d. Maximum punishment . . . . .	IV-37
e. Sample specifications . . . . .	IV-37
<b>25. Article 97—Unlawful detention . . . . .</b>	IV-37
a. Text of statute . . . . .	IV-37
b. Elements . . . . .	IV-37
c. Explanation . . . . .	IV-37
d. Maximum punishment . . . . .	IV-37
e. Sample specification . . . . .	IV-37
<b>26. Article 98—Misconduct as prisoner . . . . .</b>	IV-37
a. Text of statute . . . . .	IV-37
b. Elements . . . . .	IV-37
c. Explanation . . . . .	IV-38
d. Maximum punishment . . . . .	IV-38
e. Sample specifications . . . . .	IV-38
<b>27. Article 99—Misbehavior before the enemy . . . . .</b>	IV-38
a. Text of statute . . . . .	IV-38
b. Elements . . . . .	IV-39
c. Explanation . . . . .	IV-39
d. Maximum punishment . . . . .	IV-40
e. Sample specifications . . . . .	IV-40
<b>28. Article 100—Subordinate compelling surrender . . . . .</b>	IV-41
a. Text of statute . . . . .	IV-41
b. Elements . . . . .	IV-41
c. Explanation . . . . .	IV-42
d. Maximum punishment . . . . .	IV-42
e. Sample specifications . . . . .	IV-42
<b>29. Article 101—Improper use of countersign . . . . .</b>	IV-42
a. Text of statute . . . . .	IV-42
b. Elements . . . . .	IV-43
c. Explanation . . . . .	IV-43
d. Maximum punishment . . . . .	IV-43
e. Sample specifications . . . . .	IV-43
<b>30. Article 102—Forcing a safeguard . . . . .</b>	IV-43
a. Text of statute . . . . .	IV-43
b. Elements . . . . .	IV-43
c. Explanation . . . . .	IV-43
d. Maximum punishment . . . . .	IV-44
e. Sample specification . . . . .	IV-44
<b>31. Article 103—Spies . . . . .</b>	IV-44
a. Text of statute . . . . .	IV-44

	Page
b. Elements . . . . .	IV-44
c. Explanation . . . . .	IV-44
d. Maximum punishment . . . . .	IV-45
e. Sample specification . . . . .	IV-45
<b>32. Article 103a—Espionage . . . . .</b>	<b>IV-45</b>
a. Text of statute . . . . .	IV-45
b. Elements . . . . .	IV-46
c. Explanation . . . . .	IV-46
d. Maximum punishment . . . . .	IV-46
e. Sample specification . . . . .	IV-46
<b>33. Article 103b—Aiding the enemy . . . . .</b>	<b>IV-47</b>
a. Text of statute . . . . .	IV-47
b. Elements . . . . .	IV-47
c. Explanation . . . . .	IV-47
d. Maximum punishment . . . . .	IV-48
e. Sample specifications . . . . .	IV-48
<b>34. Article 104—Public records offenses . . . . .</b>	<b>IV-48</b>
a. Text of statute . . . . .	IV-48
b. Elements . . . . .	IV-48
c. Explanation . . . . .	IV-48
d. Maximum punishment . . . . .	IV-48
e. Sample specification . . . . .	IV-48
<b>35. Article 104a—Fraudulent enlistment, appointment, or separation . . . . .</b>	<b>IV-49</b>
a. Text of statute . . . . .	IV-49
b. Elements . . . . .	IV-49
c. Explanation . . . . .	IV-49
d. Maximum punishment . . . . .	IV-49
e. Sample specifications . . . . .	IV-49
<b>36. Article 104b—Unlawful enlistment, appointment, or separation . . . . .</b>	<b>IV-50</b>
a. Text of statute . . . . .	IV-50
b. Elements . . . . .	IV-50
c. Explanation . . . . .	IV-50
d. Maximum punishment . . . . .	IV-50
e. Sample specification . . . . .	IV-50
<b>37. Article 105—Forgery . . . . .</b>	<b>IV-50</b>
a. Text of statute . . . . .	IV-50
b. Elements . . . . .	IV-50
c. Explanation . . . . .	IV-50
d. Maximum punishment . . . . .	IV-51
e. Sample specifications . . . . .	IV-51
<b>38. Article 105a—False or unauthorized pass offenses . . . . .</b>	<b>IV-52</b>
a. Text of statute . . . . .	IV-52
b. Elements . . . . .	IV-52
c. Explanation . . . . .	IV-52

	Page
d. Maximum punishment . . . . .	IV-53
e. Sample specifications . . . . .	IV-53
<b>39. Article 106—Impersonation of officer, noncommissioned or petty officer, or agent or official . . . . .</b>	<b>IV-53</b>
a. Text of statute . . . . .	IV-53
b. Elements . . . . .	IV-53
c. Explanation . . . . .	IV-54
d. Maximum punishment . . . . .	IV-54
e. Sample specification . . . . .	IV-54
<b>40. Article 106a—Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button . . . . .</b>	<b>IV-54</b>
a. Text of statute . . . . .	IV-54
b. Elements . . . . .	IV-54
c. Explanation . . . . .	IV-54
d. Maximum punishment . . . . .	IV-54
e. Sample specification . . . . .	IV-54
<b>41. Article 107—False official statements; false swearing . . . . .</b>	<b>IV-55</b>
a. Text of statute . . . . .	IV-55
b. Elements . . . . .	IV-55
c. Explanation . . . . .	IV-55
d. Maximum punishment . . . . .	IV-56
e. Sample specifications . . . . .	IV-56
<b>42. Article 107a—Parole violation . . . . .</b>	<b>IV-56</b>
a. Text of statute . . . . .	IV-56
b. Elements . . . . .	IV-56
c. Explanation . . . . .	IV-56
d. Maximum punishment . . . . .	IV-56
e. Sample specification . . . . .	IV-56
<b>43. Article 108—Military property of United States—Loss, damage, destruction, or wrongful disposition . . . . .</b>	<b>IV-57</b>
a. Text of statute . . . . .	IV-57
b. Elements . . . . .	IV-57
c. Explanation . . . . .	IV-57
d. Maximum punishment . . . . .	IV-57
e. Sample specification . . . . .	IV-58
<b>44. Article 108a—Captured or abandoned property . . . . .</b>	<b>IV-58</b>
a. Text of statute . . . . .	IV-58
b. Elements . . . . .	IV-58
c. Explanation . . . . .	IV-59
d. Maximum punishment . . . . .	IV-59
e. Sample specifications . . . . .	IV-59
<b>45. Article 109—Property other than military property of United States—waste, spoilage, or destruction . . . . .</b>	<b>IV-60</b>
a. Text of statute . . . . .	IV-60

	Page
b. Elements . . . . .	IV-60
c. Explanation . . . . .	IV-60
d. Maximum punishment . . . . .	IV-60
e. Sample specifications . . . . .	IV-61
<b>46. Article 109a—Mail matter: wrongful taking, opening, etc.</b> . . . . .	IV-61
a. Text of statute . . . . .	IV-61
b. Elements . . . . .	IV-61
c. Explanation . . . . .	IV-61
d. Maximum punishment . . . . .	IV-62
e. Sample specifications . . . . .	IV-62
<b>47. Article 110—Improper hazarding of vessel or aircraft</b> . . . . .	IV-62
a. Text of statute . . . . .	IV-62
b. Elements . . . . .	IV-62
c. Explanation . . . . .	IV-62
d. Maximum punishment . . . . .	IV-63
e. Sample specifications . . . . .	IV-63
<b>48. Article 111—Leaving scene of vehicle accident</b> . . . . .	IV-64
a. Text of statute . . . . .	IV-64
b. Elements . . . . .	IV-64
c. Explanation . . . . .	IV-64
d. Maximum punishment . . . . .	IV-65
e. Sample specification . . . . .	IV-65
<b>49. Article 112—Drunkenness and other incapacitation offenses</b> . . . . .	IV-65
a. Text of statute . . . . .	IV-65
b. Elements . . . . .	IV-65
c. Explanation . . . . .	IV-65
d. Maximum punishment . . . . .	IV-66
e. Sample specifications . . . . .	IV-66
<b>50. Article 112a—Wrongful use, possession, etc., of controlled substances</b> . . . . .	IV-66
a. Text of statute . . . . .	IV-66
b. Elements . . . . .	IV-66
c. Explanation . . . . .	IV-67
d. Maximum punishment . . . . .	IV-68
e. Sample specifications . . . . .	IV-68
<b>51. Article 113—Drunken or reckless operation of a vehicle, aircraft, or vessel</b> . . . . .	IV-69
a. Text of statute . . . . .	IV-69
b. Elements . . . . .	IV-70
c. Explanation . . . . .	IV-70
d. Maximum punishment . . . . .	IV-71
e. Sample specification . . . . .	IV-71
<b>52. Article 114—Endangerment offenses</b> . . . . .	IV-71
a. Text of statute . . . . .	IV-71
b. Elements . . . . .	IV-71
c. Explanation . . . . .	IV-72

	Page
d. Maximum punishment . . . . .	IV-72
e. Sample specification . . . . .	IV-72
<b>53. Article 115—Communicating threats . . . . .</b>	<b>IV-73</b>
a. Text of statute . . . . .	IV-73
b. Elements . . . . .	IV-73
c. Explanation . . . . .	IV-74
d. Maximum punishment . . . . .	IV-75
e. Sample specifications . . . . .	IV-75
<b>54. Article 116—Riot or breach of peace . . . . .</b>	<b>IV-75</b>
a. Text of statute . . . . .	IV-75
b. Elements . . . . .	IV-75
c. Explanation . . . . .	IV-75
d. Maximum punishment . . . . .	IV-76
e. Sample specifications . . . . .	IV-76
<b>55. Article 117—Provoking speeches or gestures . . . . .</b>	<b>IV-76</b>
a. Text of statute . . . . .	IV-76
b. Elements . . . . .	IV-76
c. Explanation . . . . .	IV-76
d. Maximum punishment . . . . .	IV-76
e. Sample specification . . . . .	IV-76
<b>56. Article 118—Murder . . . . .</b>	<b>IV-76</b>
a. Text of statute . . . . .	IV-76
b. Elements . . . . .	IV-77
c. Explanation . . . . .	IV-77
d. Maximum punishment . . . . .	IV-78
e. Sample specifications . . . . .	IV-78
<b>57. Article 119—Manslaughter . . . . .</b>	<b>IV-78</b>
a. Text of statute . . . . .	IV-78
b. Elements . . . . .	IV-78
c. Explanation . . . . .	IV-79
d. Maximum punishment . . . . .	IV-79
e. Sample specifications . . . . .	IV-80
<b>58. Article 119a—Death or injury of an unborn child . . . . .</b>	<b>IV-80</b>
a. Text of statute . . . . .	IV-80
b. Elements . . . . .	IV-80
c. Explanation . . . . .	IV-81
d. Maximum punishment . . . . .	IV-81
e. Sample specifications . . . . .	IV-81
<b>59. Article 119b—Child endangerment . . . . .</b>	<b>IV-82</b>
a. Text of statute . . . . .	IV-82
b. Elements . . . . .	IV-82
c. Explanation . . . . .	IV-82
d. Maximum punishment . . . . .	IV-83
e. Sample specifications . . . . .	IV-83

	Page
<b>60. Article 120—Rape and sexual assault generally</b> . . . . .	IV-83
a. Text of statute . . . . .	IV-83
b. Elements . . . . .	IV-85
c. Explanation . . . . .	IV-87
d. Maximum punishment . . . . .	IV-87
e. Sample specifications . . . . .	IV-87
<b>61. Article 120a—Mails: deposit of obscene matter</b> . . . . .	IV-91
a. Text of statute . . . . .	IV-91
b. Elements . . . . .	IV-91
c. Explanation . . . . .	IV-91
d. Maximum punishment . . . . .	IV-91
e. Sample specification . . . . .	IV-91
<b>62. Article 120b—Rape and sexual assault of a child</b> . . . . .	IV-91
a. Text of statute . . . . .	IV-91
b. Elements . . . . .	IV-92
c. Explanation . . . . .	IV-93
d. Maximum punishment . . . . .	IV-93
e. Sample specifications . . . . .	IV-93
<b>63. Article 120c—Other sexual misconduct</b> . . . . .	IV-95
a. Text of statute . . . . .	IV-95
b. Elements . . . . .	IV-96
c. Explanation . . . . .	IV-96
d. Maximum punishment . . . . .	IV-97
e. Sample specifications . . . . .	IV-97
<b>64. Article 121—Larceny and wrongful appropriation</b> . . . . .	IV-97
a. Text of statute . . . . .	IV-97
b. Elements . . . . .	IV-97
c. Explanation . . . . .	IV-98
d. Maximum punishment . . . . .	IV-101
e. Sample specifications . . . . .	IV-101
<b>65. Article 121a—Fraudulent use of credit cards, debit cards, and other access devices</b> . .	IV-101
a. Text of statute . . . . .	IV-102
b. Elements . . . . .	IV-102
c. Explanation . . . . .	IV-102
d. Maximum punishment . . . . .	IV-102
e. Sample specification . . . . .	IV-102
<b>66. Article 121b—False pretenses to obtain services</b> . . . . .	IV-102
a. Text of statute . . . . .	IV-102
b. Elements . . . . .	IV-102
c. Explanation . . . . .	IV-102
d. Maximum punishment . . . . .	IV-102
e. Sample specification . . . . .	IV-102
<b>67. Article 122—Robbery</b> . . . . .	IV-103
a. Text of statute . . . . .	IV-103

	Page
b. Elements . . . . .	IV-103
c. Explanation . . . . .	IV-103
d. Maximum punishment . . . . .	IV-104
e. Sample specification . . . . .	IV-104
<b>68. Article 122a—Receiving stolen property . . . . .</b>	<b>IV-104</b>
a. Text of statute . . . . .	IV-104
b. Elements . . . . .	IV-104
c. Explanation . . . . .	IV-104
d. Maximum punishment . . . . .	IV-104
e. Sample specification . . . . .	IV-104
<b>69. Article 123—Offenses concerning Government computers . . . . .</b>	<b>IV-104</b>
a. Text of statute . . . . .	IV-104
b. Elements . . . . .	IV-105
c. Explanation . . . . .	IV-105
d. Maximum punishment . . . . .	IV-105
e. Sample specification . . . . .	IV-105
<b>70. Article 123a—Making, drawing, or uttering check, draft, or order without sufficient funds . . . . .</b>	<b>IV-106</b>
a. Text of statute . . . . .	IV-106
b. Elements . . . . .	IV-106
c. Explanation . . . . .	IV-107
d. Maximum punishment . . . . .	IV-108
e. Sample specifications . . . . .	IV-108
<b>71. Article 124—Frauds against the United States . . . . .</b>	<b>IV-109</b>
a. Text of statute . . . . .	IV-109
b. Elements . . . . .	IV-109
c. Explanation . . . . .	IV-110
d. Maximum punishment . . . . .	IV-111
e. Sample specifications . . . . .	IV-111
<b>72. Article 124a—Bribery . . . . .</b>	<b>IV-112</b>
a. Text of statute . . . . .	IV-112
b. Elements . . . . .	IV-112
c. Explanation . . . . .	IV-112
d. Maximum punishment . . . . .	IV-113
e. Sample specification . . . . .	IV-113
<b>73. Article 124b—Graft . . . . .</b>	<b>IV-113</b>
a. Text of statute . . . . .	IV-113
b. Elements . . . . .	IV-113
c. Explanation . . . . .	IV-113
d. Maximum punishment . . . . .	IV-113
e. Sample specifications . . . . .	IV-113
<b>74. Article 125—Kidnapping . . . . .</b>	<b>IV-114</b>
a. Text of statute . . . . .	IV-114
b. Elements . . . . .	IV-114

	Page
c. Explanation . . . . .	IV-114
d. Maximum punishment . . . . .	IV-114
e. Sample specification . . . . .	IV-114
<b>75. Article 126—Arson; burning property with intent to defraud . . . . .</b>	<b>IV-114</b>
a. Text of statute . . . . .	IV-114
b. Elements . . . . .	IV-115
c. Explanation . . . . .	IV-115
d. Maximum punishment . . . . .	IV-116
e. Sample specifications . . . . .	IV-116
<b>76. Article 127—Extortion . . . . .</b>	<b>IV-116</b>
a. Text of statute . . . . .	IV-116
b. Elements . . . . .	IV-116
c. Explanation . . . . .	IV-116
d. Maximum punishment . . . . .	IV-116
e. Sample specification . . . . .	IV-117
<b>77. Article 128—Assault . . . . .</b>	<b>IV-117</b>
a. Text of statute . . . . .	IV-117
b. Elements . . . . .	IV-117
c. Explanation . . . . .	IV-118
d. Maximum punishment . . . . .	IV-121
e. Sample specifications . . . . .	IV-122
<b>78. Article 128a—Maiming . . . . .</b>	<b>IV-123</b>
a. Text of statute . . . . .	IV-123
b. Elements . . . . .	IV-123
c. Explanation . . . . .	IV-123
d. Maximum punishment . . . . .	IV-124
e. Sample specification . . . . .	IV-124
<b>79. Article 129—Burglary; unlawful entry . . . . .</b>	<b>IV-124</b>
a. Text of statute . . . . .	IV-124
b. Elements . . . . .	IV-124
c. Explanation . . . . .	IV-124
d. Maximum punishment . . . . .	IV-125
e. Sample specifications . . . . .	IV-125
<b>80. Article 130—Stalking . . . . .</b>	<b>IV-125</b>
a. Text of statute . . . . .	IV-125
b. Elements . . . . .	IV-126
c. Explanation . . . . .	IV-126
d. Maximum punishment . . . . .	IV-126
e. Sample specifications . . . . .	IV-126
<b>81. Article 131—Perjury . . . . .</b>	<b>IV-127</b>
a. Text of statute . . . . .	IV-127
b. Elements . . . . .	IV-127
c. Explanation . . . . .	IV-127
d. Maximum punishment . . . . .	IV-128



	Page
e. Sample specifications . . . . .	IV-128
<b>82. Article 131a—Subornation of perjury . . . . .</b>	<b>IV-128</b>
a. Text of statute . . . . .	IV-128
b. Elements . . . . .	IV-129
c. Explanation . . . . .	IV-129
d. Maximum punishment . . . . .	IV-129
e. Sample specification . . . . .	IV-129
<b>83. Article 131b—Obstructing justice . . . . .</b>	<b>IV-129</b>
a. Text of statute . . . . .	IV-129
b. Elements . . . . .	IV-129
c. Explanation . . . . .	IV-129
d. Maximum punishment . . . . .	IV-129
e. Sample specification . . . . .	IV-129
<b>84. Article 129—Misprision of serious offense . . . . .</b>	<b>IV-129</b>
a. Text of statute . . . . .	IV-129
b. Elements . . . . .	IV-130
c. Explanation . . . . .	IV-130
d. Maximum punishment . . . . .	IV-130
e. Sample specification . . . . .	IV-130
<b>85. Article 131d—Wrongful refusal to testify . . . . .</b>	<b>IV-130</b>
a. Text of statute . . . . .	IV-130
b. Elements . . . . .	IV-130
c. Explanation . . . . .	IV-130
d. Maximum punishment . . . . .	IV-130
e. Sample specification . . . . .	IV-130
<b>86. Article 131e—Prevention of authorized seizure of property . . . . .</b>	<b>IV-131</b>
a. Text of statute . . . . .	IV-131
b. Elements . . . . .	IV-131
c. Explanation . . . . .	IV-131
d. Maximum punishment . . . . .	IV-131
e. Sample specification . . . . .	IV-131
<b>87. Article 131f—Noncompliance with procedural rules . . . . .</b>	<b>IV-131</b>
a. Text of statute . . . . .	IV-131
b. Elements . . . . .	IV-131
c. Explanation . . . . .	IV-131
d. Maximum punishment . . . . .	IV-132
e. Sample specifications . . . . .	IV-132
<b>88. Article 131g—Article Wrongful interference with adverse administrative proceeding . . . . .</b>	<b>IV-132</b>
a. Text of statute . . . . .	IV-132
b. Elements . . . . .	IV-132
c. Explanation . . . . .	IV-132
d. Maximum punishment . . . . .	IV-132
e. Sample specification . . . . .	IV-132

	Page
<b>89. Article 132—Retaliation</b> .....	IV-133
a. Text of statute .....	IV-133
b. Elements .....	IV-133
c. Explanation .....	IV-133
d. Maximum punishment .....	IV-134
e. Sample specifications .....	IV-134
<b>90. Article 133—Conduct unbecoming an officer and a gentleman</b> .....	IV-134
a. Text of statute .....	IV-134
b. Elements .....	IV-134
c. Explanation .....	IV-134
d. Maximum punishment .....	IV-135
e. Sample specifications .....	IV-135
<b>91. Article 134—General article</b> .....	IV-135
a. Text of statute .....	IV-135
b. Elements .....	IV-135
c. Explanation .....	IV-136
<b>92. Article 134—(Animal abuse)</b> .....	IV-139
a. Text of statute .....	IV-139
b. Elements .....	IV-139
c. Explanation .....	IV-139
d. Maximum punishment .....	IV-139
e. Sample specification .....	IV-139
<b>93. Article 134—(Bigamy)</b> .....	IV-140
a. Text of statute .....	IV-140
b. Elements .....	IV-140
c. Explanation .....	IV-140
d. Maximum punishment .....	IV-140
e. Sample specification .....	IV-140
<b>94. Article 134—(Check, worthless making and uttering – by dishonorably failing to maintain funds)</b> .....	IV-140
a. Text of statute .....	IV-140
b. Elements .....	IV-140
c. Explanation .....	IV-140
d. Maximum punishment .....	IV-140
e. Sample specification .....	IV-140
<b>95. Article 134—(Child pornography)</b> .....	IV-141
a. Text of statute .....	IV-141
b. Elements .....	IV-141
c. Explanation .....	IV-141
d. Maximum punishment .....	IV-142
e. Sample specification .....	IV-142
<b>96. Article 134—(Debt, dishonorably failing to pay)</b> .....	IV-143
a. Text of statute .....	IV-143
b. Elements .....	IV-143

	Page
c. Explanation . . . . .	IV-143
d. Maximum punishment . . . . .	IV-143
e. Sample specification . . . . .	IV-143
<b>97. Article 134—(Disloyal statements)</b> . . . . .	IV-143
a. Text of statute . . . . .	IV-143
b. Elements . . . . .	IV-143
c. Explanation . . . . .	IV-143
d. Maximum punishment . . . . .	IV-144
e. Sample specification . . . . .	IV-144
<b>98. Article 134—(Disorderly conduct, drunkenness)</b> . . . . .	IV-144
a. Text of statute . . . . .	IV-144
b. Elements . . . . .	IV-144
c. Explanation . . . . .	IV-144
d. Maximum punishment . . . . .	IV-144
e. Sample specification . . . . .	IV-144
<b>99. Article 134—(Extramarital sexual conduct)</b> . . . . .	IV-144
a. Text of statute . . . . .	IV-144
b. Elements . . . . .	IV-144
c. Explanation . . . . .	IV-145
d. Maximum punishment . . . . .	IV-145
e. Sample specification . . . . .	IV-145
<b>100. Article 134—(Firearm, discharging—through negligence)</b> . . . . .	IV-146
a. Text of statute . . . . .	IV-146
b. Elements . . . . .	IV-146
c. Explanation . . . . .	IV-146
d. Maximum punishment . . . . .	IV-146
e. Sample specification . . . . .	IV-146
<b>101. Article 134—(Fraternization)</b> . . . . .	IV-146
a. Text of statute . . . . .	IV-146
b. Elements . . . . .	IV-146
c. Explanation . . . . .	IV-146
d. Maximum punishment . . . . .	IV-146
e. Sample specification . . . . .	IV-146
<b>102. Article 134—(Gambling with subordinate)</b> . . . . .	IV-147
a. Text of statute . . . . .	IV-147
b. Elements . . . . .	IV-147
c. Explanation . . . . .	IV-147
d. Maximum punishment . . . . .	IV-147
e. Sample specification . . . . .	IV-147
<b>103. Article 134—(Homicide, negligent)</b> . . . . .	IV-147
a. Text of statute . . . . .	IV-147
b. Elements . . . . .	IV-147
c. Explanation . . . . .	IV-147
d. Maximum punishment . . . . .	IV-147

	Page
e. Sample specification . . . . .	IV-147
<b>104. Article 134—(Indecent conduct)</b> . . . . .	IV-148
a. Text of statute . . . . .	IV-148
b. Elements . . . . .	IV-148
c. Explanation . . . . .	IV-148
d. Maximum punishment . . . . .	IV-148
e. Sample specification . . . . .	IV-148
<b>105. Article 134—(Indecent language)</b> . . . . .	IV-148
a. Text of statute . . . . .	IV-148
b. Elements . . . . .	IV-148
c. Explanation . . . . .	IV-148
d. Maximum punishment . . . . .	IV-148
e. Sample specifications . . . . .	IV-148
<b>106. Article 134—(Pandering and prostitution)</b> . . . . .	IV-148
a. Text of statute . . . . .	IV-148
b. Elements . . . . .	IV-148
c. Explanation . . . . .	IV-149
d. Maximum punishment . . . . .	IV-149
e. Sample specifications . . . . .	IV-149
<b>107. Article 107—(Self-injury without intent to avoid service)</b> . . . . .	IV-150
a. Text of statute . . . . .	IV-150
b. Elements . . . . .	IV-150
c. Explanation . . . . .	IV-150
d. Maximum punishment . . . . .	IV-150
e. Sample specification . . . . .	IV-150
<b>108. Article 134—(Straggling)</b> . . . . .	IV-151
a. Text of statute . . . . .	IV-151
b. Elements . . . . .	IV-151
c. Explanation . . . . .	IV-151
d. Maximum punishment . . . . .	IV-151
e. Sample specification . . . . .	IV-151

**PART V NONJUDICIAL PUNISHMENT PROCEDURE**

<b>1. General</b> . . . . .	V-1
a. Authority . . . . .	V-1
b. Nature . . . . .	V-1
c. Purpose . . . . .	V-1
d. Policy . . . . .	V-1
e. Minor offenses . . . . .	V-1
f. Limitations on nonjudicial punishment . . . . .	V-1
g. Relationship of nonjudicial punishment to administrative corrective measures . . . . .	V-2
h. Applicable standards . . . . .	V-2
i. Effect of errors . . . . .	V-2
<b>2. Who may impose nonjudicial punishment</b> . . . . .	V-2

	Page
a. Commander . . . . .	V-2
b. Officer in charge . . . . .	V-2
c. Principal assistant . . . . .	V-2
<b>3. Right to demand trial . . . . .</b>	<b>V-2</b>
<b>4. Procedure . . . . .</b>	<b>V-2</b>
a. Notice . . . . .	V-2
b. Decision by servicemember . . . . .	V-3
c. Nonjudicial punishment accepted . . . . .	V-3
d. Nonjudicial punishment based on record of court of inquiry or other investigative body . . . . .	V-4
<b>5. Punishments . . . . .</b>	<b>V-4</b>
a. General limitations . . . . .	V-4
b. Authorized maximum punishments . . . . .	V-4
c. Nature of punishment . . . . .	V-5
d. Limitations on combination of punishments . . . . .	V-6
e. Punishments imposed on reserve component personnel while on inactive-duty training . . . . .	V-6
f. Punishments imposed on reserve component personnel when ordered to active duty for disciplinary purposes. . . . .	V-6
g. Effective date and execution of punishments . . . . .	V-7
<b>6. Suspension, mitigation, remission, and setting aside . . . . .</b>	<b>V-7</b>
a. Suspension . . . . .	V-7
b. Mitigation . . . . .	V-7
c. Remission . . . . .	V-7
d. Setting aside . . . . .	V-8
<b>7. Appeals . . . . .</b>	<b>V-8</b>
a. In general . . . . .	V-8
b. Who may act on appeal . . . . .	V-8
c. Format of appeal . . . . .	V-8
d. Time limit . . . . .	V-8
e. Legal review . . . . .	V-8
f. Action by superior authority . . . . .	V-8
<b>8. Records of nonjudicial punishment . . . . .</b>	<b>V-9</b>

## Appendices

1. Constitution of the United States—1787
2. Uniform Code of Military Justice
- 2.1. Non-Binding Disposition Guidance
3. DoD Instruction 5525.07
4. Memorandum of Understanding Between the Departments of Justice and Transportation (Coast Guard) Relating to the Investigations and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction
5. Charge Sheet
6. Preliminary Hearing Officer's Report
7. Subpoena
8. Guide for Summary Courts-Martial
9. Record of Trial by Summary Court-Martial
10. Forms for Action (Cases Referred Before 1 January 2019)
11. Forms for Court-Martial Orders (Cases Referred Before 1 January 2019)
12. Maximum Punishment Chart
- 12A. Lesser Included Offenses
13. Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals
14. Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General (Cases Referred Before 1 January 2019)
15. Analysis of Rules for Courts-Martial
16. Analysis of the Military Rules of Evidence
17. Analysis of Punitive Articles
18. Analysis of Nonjudicial Punishment Procedure
19. Historical Executive Orders
20. Punitive Articles Applicable to Sexual Assault Offenses Committed Prior to 1 October 2007
21. Punitive Articles Applicable to Sexual Assault Offenses Committed During the Period 1 October 2007 through 27 June 2012
22. Punitive Articles Applicable to Sexual Assault Offenses Committed During the Period 28 June 2012 through 31 December 2018

THIS PAGE LEFT INTENTIONALLY BLANK

## PART I PREAMBLE

### 1. Sources of military jurisdiction

The sources of military jurisdiction include the Constitution and international law. International law includes the law of war.

### 2. Exercise of military jurisdiction

(a) *Kinds*. Military jurisdiction is exercised by:

(1) A government in the exercise of that branch of the municipal law which regulates its military establishment. (Military law).

(2) A government temporarily governing the civil population within its territory or a portion of its territory through its military forces as necessity may require. (Martial law).

(3) A belligerent occupying enemy territory. (Military government).

(4) A government with respect to offenses against the law of war.

(b) *Agencies*. The agencies through which military jurisdiction is exercised include:

(1) Courts-martial for the trial of offenses against military law and, in the case of general courts-martial, of persons who by the law of war are subject to trial by military tribunals. *See* Parts II, III, and IV of this Manual for rules governing courts-martial.

(2) Military commissions and provost courts for the trial of cases within their respective jurisdictions. Subject to any applicable rule of international law or to any regulations prescribed by the President or by other competent authority, military commissions and provost courts shall be guided by the appropriate principles of law and rules of procedures and evidence prescribed for courts-martial.

(3) Courts of inquiry for the investigation of any matter referred to such court by competent authority. *See* Article 135. The Secretary concerned may prescribe regulations governing courts of inquiry.

(4) Nonjudicial punishment proceedings of a commander under Article 15. *See* Part V of this Manual.

### 3. Nature and purpose of military law

Military law consists of the statutes governing the

military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

### 4. Structure and application of the Manual for Courts-Martial

The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, the Nonjudicial Punishment Procedures (Parts I-V), and Appendix 12A. This Manual shall be applied in a manner consistent with the purpose of military law.

The Department of Defense, in conjunction with the Department of Homeland Security, publishes supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Preface, a Table of Contents, Discussions, Appendices (other than Appendix 12A, which was promulgated by the President), and an Index. These supplementary materials do not have the force of law.

The Manual shall be identified by the year in which it was printed; for example, "Manual for Courts-Martial, United States (20xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "20xx" Amendments to the Manual for Courts-Martial, United States, "20xx" being the year the Executive Order was signed.

The Department of Defense Joint Service Committee (JSC) on Military Justice reviews the Manual for Courts-Martial and proposes amendments to the Department of Defense (DoD) for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice." DoD Directive 5500.17 includes provisions allowing public participation in the annual review process.



### Discussion

The Department of Defense, in conjunction with the Department of Homeland Security, has published supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Discussion (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), an Analysis, and various appendices. With the exception of Appendix 12A (lesser included offenses), which is issued by the President pursuant to Article 79, these supplementary materials do not constitute the official views of the Department of Defense, the Department of Homeland Security, the Department of Justice, the military departments, the United States Court of Appeals for the Armed Forces, or any other authority of the Government of the United States, and they do not constitute rules. *Cf., e.g.*, 5 U.S.C. § 551(4). The supplementary materials do not create rights or responsibilities that are binding on any person, party, or other entity (including any authority of the Government of the United States whether or not included in the definition of “agency” in 5 U.S.C. § 551(1)). Failure to comply with matter set forth in the supplementary materials does not, of itself, constitute error, although these materials may refer to requirements in the rules set forth in the Executive Order or established by other legal authorities (for example, binding judicial precedents applicable to courts-martial) that are based on sources of authority independent of the supplementary materials. *See* Appendix 15 in this Manual.

The 1995 amendment to paragraph 4 of the Preamble eliminated the practice of identifying the Manual for Courts-Martial, United States, by a particular year. Historically the Manual had been published in its entirety sporadically (*e.g.*, 1917, 1921, 1928, 1949, 1951, 1969, and 1984) with amendments to it published piecemeal. It was therefore logical to identify the Manual by the calendar year of publication, with periodic amendments identified as “Changes” to the Manual. Beginning in 1995, however, a new edition of the Manual was published in its entirety and a new naming convention was adopted. *See* Exec. Order No. 12960 of May 12, 1995. Beginning in 1995, the Manual was to be referred to as “Manual for Courts-Martial, United States (19xx edition).” In 2013, the Preamble was amended to identify new Manuals based on their publication date.

Amendments made to the Manual can be researched in the relevant Executive Order as referenced in Appendix 19. Although the Executive Orders were removed from Appendix 19 of the Manual in 2012 to reduce printing requirements, they can be accessed online. *See* Appendix 19.

---

**PART II**  
**RULES FOR COURTS–MARTIAL**

**CHAPTER I. GENERAL PROVISIONS**

**Rule 101. Scope, title**

(a) *In general.* These rules govern the procedures and punishments in all courts-martial and, whenever expressly provided, preliminary, supplementary, and appellate procedures and activities.

(b) *Title.* These rules may be known and cited as the Rules for Courts-Martial (R.C.M.).

**Rule 102. Purpose and construction**

(a) *Purpose.* These rules are intended to provide for the just determination of every proceeding relating to trial by court-martial.

(b) *Construction.* These rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

**Rule 103. Definitions and rules of construction**

The following definitions and rules of construction apply throughout this Manual, unless otherwise expressly provided.

(1) “Appellate military judge” means a judge of a Court of Criminal Appeals.

(2) “Article” refers to articles of the Uniform Code of Military Justice unless the context indicates otherwise.

(3) “Capital case” means a general court-martial to which a capital offense has been referred with an instruction that the case be treated as capital, and, in the case of a rehearing or new or other trial, for which offense death remains an authorized punishment under R.C.M. 810(d).

(4) “Capital offense” means an offense for which death is an authorized punishment under the UCMJ and Part IV of this Manual or under the law of war.

(5) “Commander” means a commissioned officer in command or an officer in charge except in Part V or unless the context indicates otherwise.

(6) “Convening authority” includes a commissioned officer in command for the time being and successors in command.

**Discussion**

*See* R.C.M. 504 concerning who may convene courts-martial.

---

(7) “Copy” means an accurate reproduction, however made. Whenever necessary and feasible, a copy may be made by handwriting.

(8) “Court-martial” includes, depending on the context:

(A) The military judge and members of a general or special court-martial;

(B) The military judge when a session of a general or special court-martial is conducted without members under Article 39(a);

(C) The military judge when a request for trial by military judge alone has been approved under R.C.M. 903;

(D) The military judge when the case is referred as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A); or

(E) The summary court-martial officer.

(9) “Days.” When a period of time is expressed in a number of days, the period shall be in calendar days, unless otherwise specified. Unless otherwise specified, the date on which the period begins shall not count, but the date on which the period ends shall count as one day.

(10) “Detail” means to order a person to perform a specific temporary duty, unless the context indicates otherwise.

(11) “Explosive” means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or grenade, fire bomb, or similar device, and any other compound, mixture, or device which is an explosive within the meaning of 18 U.S.C. § 232(5) or 844(j).

(12) “Firearm” means any weapon which is designed to or may be readily converted to expel any projectile by the action of an explosive.

(13) “Joint” in connection with military organization

## R.C.M. 103(13)

connotes activities, operations, organizations, and the like in which elements of more than one military service of the same nation participate.

(14) “Members.” The members of a court-martial are the voting members detailed by the convening authority.

(15) “Military judge” means a judge advocate designated under Article 26(c) who is detailed under Article 26(a) or Article 30a to preside over a general or special court-martial or proceeding before referral. In the context of a summary court-martial, “military judge” means the summary court-martial officer. In the context of a pre-referral proceeding or a special court-martial consisting of a military judge alone, “military judge” includes a military magistrate designated under Article 19 or Article 30a.

(16) “Military magistrate” means a commissioned officer of the armed forces certified under Article 26a who is performing duties under Article 19 or 30a.

(17) “Party.” in the context of parties to a court-martial or other proceeding under these rules, means:

(A) The accused and any defense or associate or assistant defense counsel and agents of the defense counsel when acting on behalf of the accused with respect to the court-martial or proceeding in question; and

(B) Any trial or assistant trial counsel representing the United States, and agents of the trial counsel or such counsel when acting on behalf of the United States with respect to the court-martial or proceeding in question.

(18) “Staff judge advocate” means a judge advocate so designated in the Army, Air Force, or Marine Corps, and means the principal legal advisor of a command in the Navy and Coast Guard who is a judge advocate.

(19) “*Sua sponte*” means that the person involved acts on that person’s initiative, without the need for a request, motion, or application.

(20) “UCMJ” refers to the Uniform Code of Military Justice.

### Discussion

The Uniform Code of Military Justice is set forth at Appendix 2.

(21) “War, time of.” For purpose of R.C.M. 1004(c)(6) and of implementing the applicable para-

graphs of Parts IV and V of this Manual only, “time of war” means a period of war declared by Congress, or the factual determination by the President that the existence of hostilities warrants a finding that a “time of war” exists for purposes of R.C.M. 1004(c)(6) and Parts IV and V of this Manual.

(22) The terms “writings” and “recordings” have the same meaning as in Mil. R. Evid. 1001.

### Discussion

The definition of “writing” includes letters, words, or numbers set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or any other form of data compilation. This section makes it clear that computers and other modern reproduction systems are included in this definition, and consistent with the definition of “writing” in Military Rule of Evidence 1001. The definition is comprehensive, covering all forms of writing or recording of words or word-substitutes.

(23) The definitions and rules of construction in 1 U.S.C. §§ 1 through 5 and in 10 U.S.C. §§ 101 and 801.

### Discussion

The following provisions are set forth below:

- (1) 1 U.S.C. §§ 1 through 5.
- (2) 10 U.S.C. § 101.
- (3) 10 U.S.C. § 801 (Article 1).

#### (1) 1 U.S.C. §1 through §5

##### §1. Words denoting number, gender, and so forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise—

words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

words importing the masculine gender include the feminine as well;

words used in the present tense include the future as well as the present;

the words “insane” and “insane person” shall include every idiot, insane person, and person non compos mentis;

the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

“officer” includes any person authorized by law to perform the duties of the office;

“signature” or “subscription” includes a mark when the person making the same intended it as such;

“oath” includes affirmation, and “sworn” includes

affirmed;

“writing” includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise

**§2. “County” as including “parish”, and so forth**

The word “county” includes a parish, or any other equivalent subdivision of a State or Territory of the United States.

**§3. “Vessel” as including all means of water transportation**

The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

**§4. “Vehicle” as including all means of land transportation**

The word “vehicle” includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

**§5. “Company” or “association” as including successors and assigns**

The word “company” or “association”, when used in reference to a corporation, shall be deemed to embrace the words “successors and assigns of such company or association”, in like manner as if these last-named words, or words of similar import, were expressed.

**(2) 10 U.S.C. § 101**

**§101. Definitions**

(a) IN GENERAL.—The following definitions apply in this title:

(1) The term “United States”, in a geographic sense, means the States and the District of Columbia.

[(2) Repealed. Pub. L. 109–163, div. A, title X, §1057(a)(1), Jan. 6, 2006, 119 Stat. 3440.]

(3) The term “possessions” includes the Virgin Islands, Guam, American Samoa, and the Guano Islands, so long as they remain possessions, but does not include any Commonwealth.

(4) The term “armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) The term “uniformed services” means—

(A) the armed forces;

(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and

(C) the commissioned corps of the Public Health Service.

(6) The term “department”, when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, such term means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(7) The term “executive part of the department” means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(8) The term “military departments” means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(9) The term “Secretary concerned” means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

(10) The term “service acquisition executive” means the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations and procedures providing for a service acquisition executive for that military department.

(11) The term “Defense Agency” means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

(12) The term “Department of Defense Field Activity” means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department; and

(B) that is designated by the Secretary of Defense as a Department of Defense Field Activity.

(13) The term “contingency operation” means a military operation that—

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 15 of this title, section 712 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.

(14) The term “supplies” includes material, equipment, and stores of all kinds.

(15) The term “pay” includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(16) The term “congressional defense committees” means—

## R.C.M. 103(23)

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(17) The term “base closure law” means the following:

(A) Section 2687 of this title.

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(18) The term “acquisition workforce” means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.

(b) PERSONNEL GENERALLY.—The following definitions relating to military personnel apply in this title:

(1) The term “officer” means a commissioned or warrant officer.

(2) The term “commissioned officer” includes a commissioned warrant officer.

(3) The term “warrant officer” means a person who holds a commission or warrant in a warrant officer grade.

(4) The term “general officer” means an officer of the Army, Air Force, or Marine Corps serving in or having the grade of general, lieutenant general, major general, or brigadier general.

(5) The term “flag officer” means an officer of the Navy or Coast Guard serving in or having the grade of admiral, vice admiral, rear admiral, or rear admiral (lower half).

(6) The term “enlisted member” means a person in an enlisted grade.

(7) The term “grade” means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) The term “rank” means the order of precedence among members of the armed forces.

(9) The term “rating” means the name (such as “boatswain’s mate”) prescribed for members of an armed force in an occupational field. The term “rate” means the name (such as “chief boatswain’s mate”) prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(10) The term “original”, with respect to the appointment of a member of the armed forces in a regular or reserve component, refers to that member’s most recent appointment in that component that is neither a promotion nor a demotion.

(11) The term “authorized strength” means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(12) The term “regular”, with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(13) The term “active-duty list” means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 620 of this title) which contains the names of all officers of that armed force, other than officers described in section 641 of this title, who are serving on active duty.

(14) The term “medical officer” means an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer.

(15) The term “dental officer” means an officer of the Dental Corps of the Army, an officer of the Dental Corps of the Navy, or an officer of the Air Force designated as a dental officer.

(16) The term “Active Guard and Reserve” means a member of a reserve component who is on active duty pursuant to section 12301(d) of this title or, if a member of the Army National Guard or Air National Guard, is on full-time National Guard duty pursuant to section 502(f) of title 32, and who is performing Active Guard and Reserve duty.

(c) RESERVE COMPONENTS.—The following definitions relating to the reserve components apply in this title:

(1) The term “National Guard” means the Army National Guard and the Air National Guard.

(2) The term “Army National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(3) The term “Army National Guard of the United States” means the reserve component of the Army all of whose members are members of the Army National Guard.

(4) The term “Air National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) The term “Air National Guard of the United States” means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(6) The term “reserve”, with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of one of the armed forces.

(7) The term “reserve active-status list” means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 14002 of this title) that contains the names of all officers of that armed force except warrant officers (including commissioned warrant officers) who are in an active status in a reserve component of the Army, Navy, Air Force, or Marine Corps and are not on an active-duty list.

(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term “active duty” means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term “active duty for a period of more than 30 days” means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term “active service” means service on active duty or full-time National Guard duty.

(4) The term “active status” means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term “full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(6) The term “active Guard and Reserve duty” means—

(A) active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).

(7) The term “inactive-duty training” means—

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

(e) FACILITIES AND OPERATIONS.—The following definitions relating to facilities and operations apply in this title:

(1) RANGE.—The term “range”, when used in a geographic sense, means a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. Such term includes the following:

(A) Firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas.

(B) Airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration.

(2) RANGE ACTIVITIES.—The term “range activities” means—

(A) research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and

(B) the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems.

(3) OPERATIONAL RANGE.—The term “operational range” means a range that is under the jurisdiction, custody, or control of the Secretary of a military department and—

(A) that is used for range activities, or

(B) although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities.

(4) MILITARY MUNITIONS.—

(A) The term “military munitions” means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard.

(B) Such term includes the following:

(i) Confined gaseous, liquid, and solid propellants.

(ii) Explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents.

(iii) Chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges.

(iv) Devices and components of any item specified in clauses (i) through (iii).

(C) Such term does not include the following:

(i) Wholly inert items.

(ii) Improvised explosive devices.

(iii) Nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

(5) Unexploded ordnance.—The term “unexploded ordnance” means military munitions that—

(A) have been primed, fused, armed, or otherwise prepared for action;

(B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(C) remain unexploded, whether by malfunction, design, or any other cause.

(f) RULES OF CONSTRUCTION.—In this title—

(1) “shall” is used in an imperative sense;

(2) “may” is used in a permissive sense;

## R.C.M. 103(23)

(3) “no person may \* \* \*” means that no person is required, authorized, or permitted to do the act prescribed;

(4) “includes” means “includes but is not limited to”; and

(5) “spouse” means husband or wife, as the case may be.

(g) REFERENCE TO TITLE 1 DEFINITIONS.—For other definitions applicable to this title, see sections 1 through 5 of title 1.

### (3) 10 U.S.C. § 801 (Article 1)

#### §801. Article 1. Definitions

In this chapter (the Uniform Code of Military Justice):

(1) The term “Judge Advocate General” means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term “commanding officer” includes only commissioned officers.

(4) The term “officer in charge” means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term “superior commissioned officer” means a commissioned officer superior in rank or command.

(6) The term “cadet” means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term “midshipman” means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term “military” refers to any or all of the armed forces.

(9) The term “accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term “military judge” means a judge advocate designated under section 826(c) of this title (article 26(c)) who is detailed under section 826(a) or section 830a of this title (article 26(a) or 30a)).

[(11) Repealed. Pub. L. 109–241, title II, §218(a)(1), July 11, 2006, 120 Stat. 526.]

(12) The term “legal officer” means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term “judge advocate” means—

(A) an officer of the Judge Advocate General’s Corps of the Army, the Navy, or the Air Force;

(B) an officer of the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term “record”, when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term “classified information” means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term “national security” means the national defense and foreign relations of the United States.

## Rule 104. Unlawful command influence

### (a) General prohibitions.

(1) *Convening authorities and commanders.* No convening authority or commander may censure, reprimand, or admonish a court-martial or other military tribunal or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court-martial or tribunal, or with respect to any other exercise of the functions of the court-martial or tribunal or such persons in the conduct of the proceedings.

(2) *All persons subject to the UCMJ.* No person subject to the UCMJ may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to such authority’s judicial acts.

### (3) Scope.

(A) *Instructions.* Paragraphs (a)(1) and (2) of this rule do not prohibit general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial.

(B) *Court-martial statements.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements and instructions given in open session by the military judge or counsel.

(C) *Professional supervision.* Paragraphs (a)(1) and (2) of this rule do not prohibit action by the Judge Advocate General concerned under R.C.M. 109.

(D) *Offense.* Paragraphs (a)(1) and (2) of this rule do not prohibit appropriate action against a person for an offense committed while detailed as a military judge, counsel, or member of a court-martial, or while serving as individual counsel.

(b) *Prohibitions concerning evaluations.*

(1) *Evaluation of member or defense counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims' Counsel.

**Discussion**

This rule applies when the counsel in question has been detailed, assigned, or authorized to represent the client as a defense or special victims' counsel. Nothing in this rule prohibits supervisors from taking appropriate action for violations of ethical, procedural, or other rules, or for conduct outside the scope of representation.

"Special Victims' Counsel," as used in this rule, includes Victims' Legal Counsel within the Navy and Marine Corps.

(2) *Evaluation of military judge.*

(A) *General courts-martial.* Unless the general court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of the convening authority's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed to a general court-martial, which relates to the performance of duty as a military judge.

(B) *Special courts-martial.* The convening authority may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to a special court-martial which

relates to the performance of duty as a military judge. When the military judge is normally rated or the military judge's report is reviewed by the convening authority, the manner in which such military judge will be rated or evaluated upon the performance of duty as a military judge may be as prescribed in regulations of the Secretary concerned which shall ensure the absence of any command influence in the rating or evaluation of the military judge's judicial performance.

**Discussion**

See paragraph 87 of Part IV concerning prosecuting violations of Article 37 under Article 131f.

**Rule 105. Direct communications: convening authorities and staff judge advocates; among staff judge advocates**

(a) *Convening authorities and staff judge advocates.* Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice.

(b) *Among staff judge advocates and with the Judge Advocate General.* The staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, or with the Judge Advocate General.

**Discussion**

See R.C.M. 103(18) for a definition of staff judge advocate.

**Rule 106. Delivery of military offenders to civilian authorities**

Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civilian authority may be delivered, upon request, to the civilian authority for trial. A member may be placed in restraint by military authorities for this purpose only upon receipt of a duly issued warrant for the apprehension of the member or upon receipt of information establishing probable cause that the member committed an offense, and upon reasonable belief that such restraint is necessary. Such restraint may continue only for such time as is reasonably necessary to effect the delivery.



## R.C.M. 106

### Discussion

See R.C.M. 1102(b)(2)(C)(ii) for the effect of such delivery on the execution of a court-martial sentence.

---

### Rule 107. Dismissed officer's right to request trial by court-martial

If a commissioned officer of any armed force is dismissed by order of the President under 10 U.S.C. § 1161(a)(3), that officer may apply for trial by general court-martial within a reasonable time.

### Discussion

See Article 4 for the procedures to be followed. See also Article 75(c).

---

### Rule 108. Rules of court

The Judge Advocate General concerned and persons designated by the Judge Advocate General may make rules of court not inconsistent with these rules for the conduct of court-martial proceedings. Such rules shall be disseminated in accordance with procedures prescribed by the Judge Advocate General concerned or a person to whom this authority has been delegated. Noncompliance with such procedures shall not affect the validity of any rule of court with respect to a party who has received actual and timely notice of the rule or who has not been prejudiced under Article 59 by the absence of such notice. Copies of all rules of court issued under this rule shall be forwarded to the Judge Advocate General concerned.

### Rule 109. Professional supervision of military judges and counsel

(a) *In general.* Each Judge Advocate General is responsible for the professional supervision and discipline of appellate military judges, military judges, military magistrates, judge advocates, and other lawyers who practice in proceedings governed by the UCMJ and this Manual. To discharge this responsibility each Judge Advocate General may prescribe rules of professional conduct not inconsistent with this rule or this Manual. Rules of professional conduct promulgated pursuant to this rule may include sanctions for violations of such rules. Sanctions may include but are not limited to indefinite suspension from practice in courts-martial and in the Courts of Criminal Appeals. Such suspensions may only be

imposed by the Judge Advocate General of the armed service of such courts. Prior to imposing any discipline under this rule, the subject of the proposed action must be provided notice and an opportunity to be heard. The Judge Advocate General concerned may upon good cause shown modify or revoke suspension. Procedures to investigate complaints against appellate military judges, military judges, and military magistrates are contained in subsection (c) of this rule.

(b) *Action after suspension or disbarment.* When a Judge Advocate General suspends a person from practice or the Court of Appeals for the Armed Forces disbars a person, any Judge Advocate General may suspend that person from practice upon written notice and opportunity to be heard in writing.

(c) *Investigation of judges.*

(1) *In general.* These rules and procedures promulgated pursuant to Article 6a are established to investigate and dispose of charges, allegations, or information pertaining to the fitness of an appellate military judge, military judge, or military magistrate to perform the duties of the judge's or magistrate's office.

(2) *Policy.* Allegations of judicial misconduct or unfitness shall be investigated pursuant to the procedures of this rule and appropriate action shall be taken. Judicial misconduct includes any act or omission that may serve to demonstrate unfitness for further duty as a judge or magistrate, including, but not limited to violations of applicable ethical standards.

### Discussion

The term "unfitness" should be construed broadly, including, for example, matters relating to the incompetence, impartiality, and misconduct of the appellate military judge, military judge, or military magistrate. Erroneous decisions of a judge are not subject to investigation under this rule. Challenges to these decisions are more appropriately left to the appellate process.

---

(3) *Complaints.* Complaints concerning an appellate military judge, military judge, or military magistrate will be forwarded to the Judge Advocate General of the Service concerned or to a person designated by the Judge Advocate General concerned to receive such complaints.

### Discussion

Complaints need not be made in any specific form, but if possible complaints should be made under oath. Complaints may be made by judges, lawyers, a party, court personnel, members of the general public or members of the military community. Reports in the news

media relating to the conduct of an appellate military judge, military judge, or military magistrate may also form the basis of a complaint.

An individual designated to receive complaints under this paragraph should have judicial experience. The chief trial judge of a Service may be designated to receive complaints against military judges and military magistrates. Military magistrates who perform other duties may be investigated in their capacity other than as a magistrate through the process established by the Judge Advocate General concerned in accordance with R.C.M. 109(a).

---

(4) *Initial action upon receipt of a complaint.* Upon receipt, a complaint will be screened by the Judge Advocate General concerned or by the individual designated in paragraph (c)(3) of this rule to receive complaints. An initial inquiry is necessary if the complaint, taken as true, would constitute judicial misconduct or unfitness for further service as an appellate military judge, a military judge, or military magistrate. Prior to the commencement of an initial inquiry, the Judge Advocate General concerned shall be notified that a complaint has been filed and that an initial inquiry will be conducted. The Judge Advocate General concerned may temporarily suspend the subject of a complaint from performing judicial duties pending the outcome of any inquiry or investigation conducted pursuant to this rule. Such inquiries or investigations shall be conducted with reasonable promptness.

#### Discussion

Complaints under this paragraph will be treated with confidentiality. Confidentiality protects the subject appellate military judge, military judge, or military magistrate and the judiciary when a complaint is not substantiated. Confidentiality also encourages the reporting of allegations of judicial misconduct or unfitness and permits complaints to be screened with the full cooperation of others.

Complaints containing allegations of criminality should be referred to the appropriate criminal investigative agency in accordance with Appendix 3 of this Manual.

---

(5) *Initial inquiry.*

(A) *In general.* An initial inquiry is necessary to determine if the complaint is substantiated. A complaint is substantiated upon finding that it is more likely than not that the subject appellate military judge, military judge, or military magistrate has engaged in judicial misconduct or is otherwise unfit for further service as a judge or magistrate.

(B) *Responsibility to conduct initial inquiry.* The Judge Advocate General concerned, or the person designated to receive complaints under paragraph

(c)(3) of this rule will conduct or order an initial inquiry. The individual designated to conduct the inquiry should, if practicable, be senior to the subject of the complaint. If the subject of the complaint is a military judge or military magistrate, the individual designated to conduct the initial inquiry should, if practicable, be a military judge or an individual with experience as a military judge. If the subject of the complaint is an appellate military judge, the individual designated to conduct the inquiry should, if practicable, have experience as an appellate judge.

#### Discussion

To avoid the type of conflict prohibited in Article 66(i), the Judge Advocate General's designee should not ordinarily be a member of the same Court of Criminal Appeals as the subject of the complaint. If practicable, a former appellate military judge should be designated.

---

(C) *Due process.* During the initial inquiry, the subject of the complaint will, at a minimum, be given notice and an opportunity to be heard.

(D) *Action following the initial inquiry.* If the complaint is not substantiated pursuant to subsection (c)(5)(A) of this rule, the complaint shall be dismissed as unfounded. If the complaint is substantiated, minor professional disciplinary action may be taken or the complaint may be forwarded, with findings and recommendations, to the Judge Advocate General concerned. Minor professional disciplinary action is defined as counseling or the issuance of an oral or written admonition or reprimand. The Judge Advocate General concerned will be notified prior to taking minor professional disciplinary action or dismissing a complaint as unfounded.

(6) *Action by the Judge Advocate General.*

(A) *In general.* The Judge Advocates General are responsible for the professional supervision and discipline of appellate military judges, military judges, and military magistrates under their jurisdiction. Upon receipt of findings and recommendations required by paragraph (c)(5) of this rule the Judge Advocate General concerned will take appropriate action.

(B) *Appropriate actions.* The Judge Advocate General concerned may dismiss the complaint, order an additional inquiry, appoint an ethics commission to consider the complaint, refer the matter to another appropriate investigative agency or take appropriate professional disciplinary action pursuant to the rules of professional conduct prescribed by the Judge Advocate

**R.C.M. 109(c)(6)(C)**

General under subsection (a) of this rule. Any decision of the Judge Advocate General, under this rule, is final and is not subject to appeal.

**Discussion**

Reassignment of appellate military judges, military judges, and military magistrates in accordance with Service regulations is not professional disciplinary action.

---

(C) *Standard of proof.* Prior to taking professional disciplinary action, other than minor professional disciplinary action as defined in subparagraph (c)(5)(D) of this rule, the Judge Advocate General concerned shall find, in writing, that the subject of the complaint engaged in judicial misconduct or is otherwise unfit for continued service as an appellate military judge, military judge, or military magistrate, and that such misconduct or unfitness is established by clear and convincing evidence.

(D) *Due process.* Prior to taking final action on the complaint, the Judge Advocate General concerned will ensure that the subject of the complaint is, at a minimum, given notice and an opportunity to be heard.

(7) *The Ethics Commission.*

(A) *Membership.* If appointed pursuant to subparagraph (c)(6)(B) of this rule, an ethics commission shall consist of at least three members. If the subject of the complaint is a military judge or military magistrate, the commission should include one or more military judges or individuals with experience as a military judge. If the subject of the complaint is an appellate military judge, the commission should include one or more individuals with experience as an appellate military judge. Members of the commission should, if practicable, be senior to the subject of the complaint.

(B) *Duties.* The commission will perform those duties assigned by the Judge Advocate General concerned. Normally, the commission will provide an opinion as to whether the subject's acts or omissions constitute judicial misconduct or unfitness. If the commission determines that the affected appellate military judge, military judge, or military magistrate engaged in judicial misconduct or is unfit for continued judicial service, the commission may be required to recommend an appropriate disposition to the Judge Advocate General concerned.

**Discussion**

The Judge Advocate General concerned may appoint an ad hoc or a standing commission.

---

(8) *Rules of procedure.* The Secretary of Defense or the Secretary of the service concerned may establish additional procedures consistent with this rule and Article 6a.

## CHAPTER II. JURISDICTION

### Rule 201. Jurisdiction in general

#### (a) *Nature of courts-martial jurisdiction.*

(1) The jurisdiction of courts-martial is entirely penal or disciplinary.

#### Discussion

“Jurisdiction” means the power to hear a case and to render a legally competent decision. A court-martial has no power to adjudge civil remedies. For example, a court-martial may not adjudge the payment of damages, collect private debts, order the return of property, or order a criminal forfeiture of seized property. A summary court-martial appointed under 10 U.S.C. §§ 4712 or 9712 to dispose of the effects of a deceased person is not affected by these Rules or this Manual.

(2) The UCMJ applies in all places.

#### Discussion

Except insofar as required by the Constitution, the UCMJ, or the Manual, such as jurisdiction over persons listed under Article 2(a)(10), jurisdiction of courts-martial does not depend on where the offense was committed.

(3) The jurisdiction of a court-martial with respect to offenses under the UCMJ is not affected by the place where the court-martial sits. The jurisdiction of a court-martial with respect to military government or the law of war is not affected by the place where the court-martial sits except as otherwise expressly required by this Manual or applicable rule of international law.

#### Discussion

In addition to the power to try persons for offenses under the UCMJ, general courts-martial have power to try certain persons for violations of the law of war and for crimes or offenses against the law of the territory occupied as an incident of war or belligerency whenever the local civil authority is superseded in whole or part by the military authority of the occupying power. See R.C.M. 201(f)(1)(B). In cases where a person is tried by general court-martial for offenses against the law of an occupied territory, the court-martial normally sits in the country where the offense is committed, and must do so under certain circumstances. See Articles 4, 64, and 66, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, arts. 4, 64, and 66, 6 U.S.T. 3516, 3559-60 T.I.A.S. No. 3365.

(b) *Requisites of court-martial jurisdiction.* A court-

martial always has jurisdiction to determine whether it has jurisdiction. Otherwise for a court-martial to have jurisdiction:

(1) The court-martial must be convened by an official empowered to convene it;

#### Discussion

See R.C.M. 504; 1302.

(2) The court-martial must be composed in accordance with these rules with respect to number and qualifications of its personnel. As used here “personnel” includes only the military judge, the members, and the summary court-martial;

#### Discussion

See R.C.M. 501-504; 1301.

(3) Each charge before the court-martial must be referred to it by competent authority;

#### Discussion

See R.C.M. 601.

(4) The accused must be a person subject to court-martial jurisdiction; and

#### Discussion

See R.C.M. 202.

(5) The offense must be subject to court-martial jurisdiction.

#### Discussion

See R.C.M. 203. The judgment of a court-martial without jurisdiction is void and is entitled to no legal effect. See R.C.M. 907(b)(2)(C)(iv). *But see* R.C.M. 810(d) concerning the effect of certain decisions by courts-martial without jurisdiction.

## R.C.M. 201(d)

(c) [Reserved].

(d) *Exclusive and nonexclusive jurisdiction.*

(1) Courts-martial have exclusive jurisdiction of purely military offenses.

(2) An act or omission which violates both the UCMJ and local criminal law, foreign or domestic, may be tried by a court-martial, or by a proper civilian tribunal, foreign or domestic, or, subject to R.C.M. 907(b)(2)(C) and regulations of the Secretary concerned, by both.

(3) Where an act or omission is subject to trial by court-martial and by one or more civil tribunals, foreign or domestic, the determination which nation, state, or agency will exercise jurisdiction is a matter for the nations, states, and agencies concerned, and is not a right of the suspect or accused.

### Discussion

In the case of an act or omission which violates the UCMJ and a criminal law of a State, the United States, or both, the determination which agency shall exercise jurisdiction should normally be made through consultation or prior agreement between appropriate military officials (ordinarily the staff judge advocate) and appropriate civilian authorities (United States Attorney, or equivalent). *See also* Memorandum of Understanding Between Departments of Justice and Defense Relating to the Investigation and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction at Appendix 3.

Under the Constitution, a person may not be tried for the same misconduct by both a court-martial and another federal court. *See* R.C.M. 907(b)(2)(C). Although it is constitutionally permissible to try a person by court-martial and by a State court for the same act, as a matter of policy a person who is pending trial or has been tried by a State court should not ordinarily be tried by court-martial for the same act. Overseas, international agreements might preclude trial by one state of a person acquitted or finally convicted of a given act by the other state.

Under international law, a friendly foreign nation has jurisdiction to punish offenses committed within its borders by members of a visiting force, unless it expressly or impliedly consents to relinquish its jurisdiction to the visiting sovereign. The procedures and standards for determining which nation will exercise jurisdiction are normally established by treaty. *See, e.g.,* NATO Status of Forces Agreement, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. No. 2846. As a matter of policy, efforts should be made to maximize the exercise of court-martial jurisdiction over persons subject to the UCMJ to the extent possible under applicable agreements.

*See* R.C.M. 106 concerning delivery of offenders to civilian authorities.

*See also* R.C.M. 201(g) concerning the jurisdiction of other military tribunals.

---

(e) *Reciprocal jurisdiction.*

(1) Each armed force has court-martial jurisdiction over all persons subject to the UCMJ.

(2)(A) A commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces.

(B) So much of the authority vested in the President under Article 22(a)(9) to empower any commanding officer of a joint command or joint task force to convene courts-martial is delegated to the Secretary of Defense, and such a commanding officer may convene general courts-martial for the trial of members of any of the armed forces assigned or attached to a combatant command or joint command.

(C) A commander who is empowered to convene a court-martial under subparagraphs (e)(2)(A) or (e)(2)(B) of this rule may expressly authorize a commanding officer of a subordinate joint command or subordinate joint task force who is authorized to convene special and summary courts-martial to convene such courts-martial for the trial of members of other armed forces assigned or attached to a joint command or joint task force, under regulations which the superior command may prescribe.

(3) A member of one armed force may be tried by a court-martial convened by a member of another armed force, using the implementing regulations and procedures prescribed by the Secretary concerned of the military service of the accused, when:

(A) The court-martial is convened by a commander authorized to convene courts-martial under paragraph (e)(2) of this rule; or

(B) The accused cannot be delivered to the armed force of which the accused is a member without manifest injury to the armed forces.

An accused should not ordinarily be tried by a court-martial convened by a member of a different armed force except when the circumstances described in (A) or (B) exist. However, failure to comply with this policy does not affect an otherwise valid referral.

(4) Nothing in this rule prohibits detailing to a court-martial a military judge, member, or counsel who is a member of an armed force different from that of the accused or the convening authority, or both.

(5) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required by the UCMJ, shall be carried out by the department that includes the armed force of which the accused is a member.

(6) When there is a disagreement between the Secretaries of two military departments or between the

Secretary of a military department and the commander of a unified or specified combatant command or other joint command or joint task force as to which organization should exercise jurisdiction over a particular case or class of cases, the Secretary of Defense or an official acting under the authority of the Secretary of Defense shall designate which organization will exercise jurisdiction.

(7) Except as provided in paragraphs (5) and (6) or as otherwise directed by the President or Secretary of Defense, whenever action under this Manual is required or authorized to be taken by a person superior to—

(A) a commander of a unified or specified combatant command; or

(B) a commander of any other joint command or joint task force that is not part of a unified or specified combatant command, the matter shall be referred to the Secretary of the armed force of which the accused is a member. The Secretary may convene a court-martial, take other appropriate action, or, subject to R.C.M. 504(c), refer the matter to any person authorized to convene a court-martial of the accused.

#### Discussion

As to the authority to convene courts-martial, see R.C.M. 504. “Manifest injury” does not mean minor inconvenience or expense. Examples of manifest injury include direct and substantial effect on morale, discipline, or military operations, substantial expense or delay, or loss of essential witnesses.

As to the composition of a court-martial for the trial of an accused who is a member of another armed force, see R.C.M. 503(a)(3) Discussion. Cases involving two or more accused who are members of different armed forces should not be referred to a court-martial for a common trial.

---

(f) *Types of courts-martial.*

**[Note: R.C.M. 201(f)(1)(D) and (f)(2)(D) apply to offenses committed on or after 24 June 2014.]**

(1) *General courts-martial.*

(A) *Cases under the UCMJ.*

(i) Except as otherwise expressly provided, general courts-martial may try any person subject to the UCMJ for any offense made punishable under the UCMJ. General courts-martial also may try any person for a violation of Article 103, 103b, or 104a.

(ii) Upon a finding of guilty of an offense made punishable by the UCMJ, general courts-martial may, within limits prescribed by this Manual, adjudge any

punishment authorized under R.C.M. 1003.

(iii) Notwithstanding any other rule, the death penalty may not be adjudged if:

(a) Not specifically authorized for the offense by the UCMJ and Part IV of this Manual; or

(b) The case has not been referred with a special instruction that the case is to be tried as capital.

(B) *Cases under the law of war.*

(i) General courts-martial may try any person who by the law of war is subject to trial by military tribunal for any crime or offense against:

(a) The law of war; or

(b) The law of the territory occupied as an incident of war or belligerency whenever the local civil authority is superseded in whole or part by the military authority of the occupying power. The law of the occupied territory includes the local criminal law as adopted or modified by competent authority, and the proclamations, ordinances, regulations, or orders promulgated by competent authority of the occupying power.

#### Discussion

R.C.M. (f)(1)(B)(i)(b) is an exercise of the power of military government.

---

(ii) When a general court-martial exercises jurisdiction under the law of war, it may adjudge any punishment permitted by the law of war.

#### Discussion

Certain limitations on the discretion of military tribunals to adjudge punishment under the law of war are prescribed in international conventions. See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 68, 6 U.S.T. 3516, T.I.A.S. No. 3365.

---

(C) *Limitations in judge alone cases.* A general court-martial composed only of a military judge does not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been referred to trial as noncapital.

#### Discussion

See R.C.M. 103(4) for the definition of the term “capital offense.”

## R.C.M. 201(f)(1)(D)

(D) *Jurisdiction for Certain Sexual Offenses.* Only a general court-martial has jurisdiction to try offenses under Article 120(a), 120(b), 120b(a), and 120b(b), and attempts thereof under Article 80.

### (2) *Special courts-martial.*

(A) *In general.* Except as otherwise expressly provided, special courts-martial may try any person subject to the UCMJ for any noncapital offense made punishable by the UCMJ and, as provided in this rule, for capital offenses.

### (B) *Punishments*

(i) Upon a finding of guilty, special courts-martial may adjudge, under limitations prescribed by this Manual, any punishment authorized under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than 1 year.

(ii) A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged by a special court-martial when the case is referred as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

### (C) *Capital offenses*

(i) A capital offense for which there is prescribed a mandatory punishment beyond the punitive power of a special court-martial shall not be referred to such a court-martial.

(ii) An officer exercising general court-martial jurisdiction over the command which includes the accused may permit any capital offense other than one described in clause (C)(i) to be referred to a special court-martial for trial.

(iii) The Secretary concerned may authorize, by regulation, officers exercising special court-martial jurisdiction to refer capital offenses, other than those described in clause (C)(i), to trial by special court-martial without first obtaining the consent of the officer exercising general court-martial jurisdiction over the command.

(D) *Certain Offenses under Articles 120 and 120b.* Notwithstanding subparagraph (f)(2)(A), special courts-martial do not have jurisdiction over offenses under Articles 120(a), 120(b), 120b(a), and 120b(b), and attempts thereof under Article 80. Such offenses shall not be referred to a special court-martial.

## Discussion

Only a general court-martial has jurisdiction over penetrative sex offenses under subsections (a) and (b) of Article 120, subsections (a) and (b) of Article 120b, and attempts to commit such penetrative sex offenses under Article 80. *See* UCMJ, Art. 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### (E) *Limitations on trial by special court-martial consisting of a military judge alone.*

(i) No specification may be tried by a special court-martial consisting of a military judge alone under Article 16(c)(2)(A) if, before arraignment, the accused objects on the grounds provided in subclause (I) or (II) of this subparagraph and the military judge determines that:

(I) the maximum authorized confinement for the offense it alleges would be greater than two years if the offense were tried by a general court-martial, with the exception of a specification alleging wrongful use or possession of a controlled substance in violation of Article 112a(b) or an attempt thereof under Article 80; or

(II) the specification alleges an offense for which sex offender notification would be required under regulations issued by the Secretary of Defense.

## Discussion

*See* Department of Defense Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority, for offenses requiring sex offender notification.

(ii) If the accused objects to trial by a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), and the military judge makes a determination under clause (i), trial may be ordered by a special court-martial under Article 16(c)(1) or a general court-martial as may be appropriate.

(3) *Summary courts-martial.* *See* R.C.M. 1301(c) and (d)(1).

(g) *Concurrent jurisdiction of other military tribunals.* The provisions of the UCMJ and this Manual conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with

respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

### Discussion

See Articles 103 and 103b for some instances of concurrent jurisdiction.

## Rule 202. Persons subject to the jurisdiction of courts-martial

(a) *In general.* Courts-martial may try any person when authorized to do so under the UCMJ.

### Discussion

(1) *Authority under the UCMJ.* Article 2 lists classes of persons who are subject to the UCMJ. These include active duty personnel (Article 2(a)(1)); cadets, aviation cadets, and midshipmen (Article 2(a)(2)); certain retired personnel (Article 2(a)(4) and (5)); members of Reserve components not on active duty under some circumstances (Article 2(a)(3) and (6)); persons in the custody of the armed forces serving a sentence imposed by court-martial (Article 2(a)(7)); and, under some circumstances, specified categories of civilians (Article 2(a)(8), (9), (10), (11), and (12); see paragraphs (3) and (4) of this discussion). In addition, certain persons whose status as members of the armed forces or as persons otherwise subject to the UCMJ apparently has ended may, nevertheless, be amendable to trial by court-martial. See Article 3, 4, and 73. A person need not be subject to the UCMJ to be subject to trial by court-martial under Articles 103, 103b, and 104a. See also Article 48 and R.C.M. 809 concerning who may be subject to the contempt powers of a court-martial.

(2) *Active duty personnel.* Court-martial jurisdiction is most commonly exercised over active duty personnel. In general, a person becomes subject to court-martial jurisdiction upon enlistment in or induction into the armed forces, acceptance of a commission, or entry onto active duty pursuant to orders. Court-martial jurisdiction over active duty personnel ordinarily ends on delivery of a discharge certificate or its equivalent to the person concerned issued pursuant to competent orders. Orders transferring a person to the inactive reserve are the equivalent of a discharge certificate for purposes of jurisdiction. These are several important qualifications and exceptions to these general guidelines.

(A) *Inception of court-martial jurisdiction over active duty personnel.*

(i) *Enlistment.* “The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under [Article 2(a)] and a change of status from civilian to member of the armed forces shall be effective upon taking the oath of enlistment.” Article 2(b). A person who is, at the time of enlistment, insane, intoxicated, or under the age of 17 does not have the capacity to enlist by law. No court-martial jurisdiction over such a person may exist as long as the incapacity continues. If the incapacity ceases to exist, a “constructive enlistment” may result under Article 2(c). See discussion of “constructive enlistment” of this rule. Similarly, if the enlistment was involuntary, court-martial jurisdiction will exist only when the coercion is removed and a “constructive enlistment” under Article 2(c) is established.

Persons age 17 (but not yet 18) may not enlist without parental consent. A parent or guardian may, within 90 days of its inception, terminate the enlistment of a 17-year-old who enlisted without parental consent, if the person has not yet reached the age of 18. 10 U.S.C. § 1170. See also DOD Instruction 1332.14 and Service regulations for specific rules on separation of persons 17 years of age on the basis of a parental request. Absent effective action by a parent or guardian to terminate such an enlistment, court-martial jurisdiction exists over the person. An application by a parent for release does not deprive a court-martial of jurisdiction to try a person for offenses committed before action is completed on such an application.

Even if a person lacked capacity to understand the effect of enlistment or did not enlist voluntarily, a “constructive enlistment” may be established under Article 2(c).

Even if a person never underwent an enlistment or induction proceeding of any kind, court-martial jurisdiction could be established under this provision.

(ii) *Induction.* Court-martial jurisdiction does not extend to a draftee until: the draftee has completed an induction ceremony which was in substantial compliance with the requirements prescribed by statute and regulations; the draftee, by conduct after an apparent induction, has waived objection to substantive defects in it; or a “constructive enlistment” under Article 2(c) exists.

The fact that a person was improperly inducted (for example, because of incorrect classification or erroneous denial of exemption) does not of itself negate court-martial jurisdiction. When a person has made timely and persistent efforts to correct such an error, court-martial jurisdiction may be defeated if improper induction is found, depending on all the circumstances of the case.

(iii) *Call to active duty.* A member of a reserve component may be called or ordered to active duty for a variety of reasons, including training, service in time of war or national emergency, discipline, or as a result of failure to participate satisfactorily in unit activities.

When a person is ordered to active duty for failure to satisfactorily participate in unit activities, the order must substantially comply with procedures prescribed by regulations, to the extent due process requires, for court-martial jurisdiction to exist. Generally, the person must be given notice of the activation and the reasons therefor, and an opportunity to object to the activation. A person waives the right to contest involuntary activation by failure to exercise this right within a reasonable time after notice of the right to do so.

(B) *Termination of jurisdiction over active duty personnel.* As indicated in this rule, the delivery of a valid discharge certificate or its equivalent ordinarily serves to terminate court-martial jurisdiction.

(i) *Effect of completion of term of service.* Completion of an enlistment or term of service does not by itself terminate court-martial jurisdiction. An original term of enlistment may be adjusted for a variety of reasons, such as making up time lost for unauthorized absence. Even after such adjustments are considered, court-martial jurisdiction normally continues past the time of scheduled separation until a discharge certificate or its equivalent is delivered or until the Government fails to act within a reasonable time after the person objects to continued retention. As indicated in subsection (c) of this rule, Servicemembers may be retained past their scheduled time of separation, over protest, by action with a view to trial while they are still subject to the UCMJ. Thus, if action with a view to trial is initiated before discharge or the effective terminal date of self-executing orders, a person may be retained beyond the date that the



## R.C.M. 202(a)

period of service would otherwise have expired or the terminal date of such orders.

(ii) *Effect of discharge and reenlistment.* For offenses occurring on or after 23 October 1992, under the 1992 Amendment to Article 3(a), a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service. For offenses occurring prior to 23 October 1992, a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service only if the offense was punishable by confinement for five (5) years or more and could not be tried in the courts of the United States or of a State, a Territory, or the District of Columbia. However, see (iii)(a) of this discussion.

(iii) *Exceptions.* There are several exceptions to the general principle that court-martial jurisdiction terminates on discharge or its equivalent.

(a) A person who was subject to the UCMJ at the time an offense was committed may be tried by court-martial for that offense despite a later discharge or other termination of that status if:

(1) For offenses occurring on or after 23 October 1992, the person is, at the time of the court-martial, subject to the UCMJ, by reentry into the armed forces or otherwise. See Article 3(a), as amended by the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315, 2505 (1992);

(2) For offenses occurring before 23 October 1992,

(A) The offense is one for which a court-martial may adjudge confinement for five (5) or more years;

(B) The person cannot be tried in the courts of the United States or of a State, Territory, or the District of Columbia; and

(C) The person is, at the time of the court-martial, subject to the UCMJ, by reentry into the armed forces or otherwise. See Article 3(a) prior to the 1992 amendment.

(b) A person who was subject to the UCMJ at the time the offense was committed is subject to trial by court-martial despite a later discharge if—

(1) The discharge was issued before the end of the accused's term of enlistment for the purpose of reenlisting;

(2) The person remains, at the time of the court-martial, subject to the UCMJ; and

(3) The reenlistment occurred after 26 July 1982.

(c) Persons in the custody of the armed forces serving a sentence imposed by a court-martial remain subject to the UCMJ and court-martial jurisdiction. A prisoner who has received a discharge and who remains in the custody of an armed force may be tried for an offense committed while a member of the armed forces and before the execution of the discharge as well as for offenses committed after it.

(d) A person discharged from the armed forces who is later charged with having fraudulently obtained that discharge is, subject to the statute of limitations, subject to trial by court-martial on that charge, and is after apprehension subject to the UCMJ while in the custody of the armed forces for trial. Upon conviction of that charge such a person is subject to trial by court-martial for any offenses under the UCMJ committed before the fraudulent discharge.

(e) No person who has deserted from the armed forces is relieved from court-martial jurisdiction by a separation from any later period of service.

(f) When a person's discharge or other separation does

not interrupt the status as a person belonging to the general category of persons subject to the UCMJ, court-martial jurisdiction over that person does not end. For example, when an officer holding a commission in a Reserve component of an armed force is discharged from that commission while on active duty because of acceptance of a commission in a Regular component of that armed force, without an interval between the periods of service under the two commissions, that officer's military status does not end. There is merely a change in personnel status from temporary to permanent officer, and court-martial jurisdiction over an offense committed before the discharge is not affected.

(3) *Public Health Service and National Oceanic and Atmospheric Administration.* Members of the Public Health Service and the National Oceanic and Atmospheric Administration become subject to the UCMJ when assigned to and serving with the armed forces.

(4) *Limitations on jurisdiction over civilians.* Court-martial jurisdiction over civilians under the UCMJ is limited by the Constitution and other applicable laws, including as construed in judicial decisions. The exercise of jurisdiction under Article 2(a)(11) in peace time has been held unconstitutional by the Supreme Court of the United States. Before initiating court-martial proceedings against a civilian, relevant statutes, decisions, Service regulations, and policy memoranda should be carefully examined.

(5) *Members of a Reserve Component.* Members of a reserve component in federal service on active duty, as well as those in federal service on inactive-duty training or during any of the periods specified in Article 2(a)(3)(B), are subject to the UCMJ. Moreover, members of a reserve component are amenable to the jurisdiction of courts-martial notwithstanding the termination of a period of such duty. See R.C.M. 204.

(b) *Offenses under the law of war.* Nothing in this rule limits the power of general courts-martial to try persons under the law of war. See R.C.M. 201(f)(1)(B).

(c) *Attachment of jurisdiction over the person.*

(1) *In general.* Court-martial jurisdiction attaches over a person when action with a view to trial of that person is taken. Once court-martial jurisdiction over a person attaches, such jurisdiction shall continue for all purposes of trial, sentence, and punishment, notwithstanding the expiration of that person's term of service or other period in which that person was subject to the UCMJ or trial by court-martial. When jurisdiction attaches over a Servicemember on active duty, the Servicemember may be held on active duty over objection pending disposition of any offense for which held and shall remain subject to the UCMJ during the entire period.

## Discussion

Court-martial jurisdiction exists to try a person as long as that person occupies a status as a person subject to the UCMJ. Articles 103, 103b, and 104a set forth offenses with expanded jurisdictional reach. Thus, a Servicemember is subject to court-martial jurisdiction until lawfully discharged or, when the

Servicemember's term of service has expired, the government fails to act within a reasonable time on objection by the Servicemember to continued retention.

Court-martial jurisdiction attaches over a person upon action with a view to trial. Once court-martial jurisdiction attaches, it continues throughout the trial and appellate process, and for purposes of punishment.

If jurisdiction has attached before the effective terminal date of self-executing orders, the person may be held for trial by court-martial beyond the effective terminal date.

---

(2) *Procedure.* Actions by which court-martial jurisdiction attaches include: apprehension; imposition of restraint, such as restriction, arrest, or confinement; and preferral of charges.

### Rule 203. Jurisdiction over the offense

To the extent permitted by the Constitution, courts-martial may try any offense under the UCMJ and, in the case of general courts-martial, the law of war.

#### Discussion

(a) *In general.* Courts-martial have power to try any offense under the UCMJ except when prohibited from so doing by the Constitution. The rule enunciated in *Solorio v. United States*, 483 U.S. 435 (1987), is that jurisdiction of courts-martial depends solely on the accused's status as a person subject to the Uniform Code of Military Justice, and not on the "service-connection" of the offense charged.

(b) *Pleading and proof.* Normally, the inclusion of the accused's rank or grade will be sufficient to plead the service status of the accused. Ordinarily, no allegation of the accused's armed force or unit is necessary for military members on active duty. See R.C.M. 307 regarding required specificity of pleadings. For jurisdictional punishment limitations applicable for specific types of courts-martial, see R.C.M. 201(f).

---

### Rule 204. Jurisdiction over certain reserve component personnel

(a) *Service regulations.* The Secretary concerned shall prescribe regulations setting forth rules and procedures for the exercise of court-martial jurisdiction and nonjudicial punishment authority over reserve component personnel under Article 2(a)(3) and 2(d), subject to the limitations of this Manual and the UCMJ.

#### Discussion

Such regulations should describe procedures for ordering a reservist

to active duty for disciplinary action, preferral of charges, preliminary hearings, forwarding of charges, referral of charges, designation of convening authorities and commanders authorized to conduct nonjudicial punishment proceedings, and for other appropriate purposes.

See definitions in R.C.M. 103 (Discussion). See paragraph 5.e and f., Part V, concerning limitations on nonjudicial punishments imposed on reservists while on inactive-duty training.

Members of the Army National Guard and the Air National Guard are subject to federal court-martial jurisdiction only when the offense concerned is committed while the member is in federal service.

---

### (b) Courts-Martial

(1) *General and special court-martial proceedings.* A member of a reserve component must be on active duty prior to arraignment at a general or special court-martial. A member ordered to active duty pursuant to Article 2(d) may be retained on active duty to serve any adjudged confinement or other restriction on liberty if the order to active duty was approved in accordance with Article 2(d)(5), but such member may not be retained on active duty pursuant to Article 2(d) after service of the confinement or other restriction on liberty. All punishments remaining unserved at the time the member is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

#### Discussion

An accused ordered to active duty pursuant to Article 2(d) may be retained on active duty after service of the punishment if permitted by other authority. For example, an accused who commits another offense while on active duty ordered pursuant to Article 2(d) may be retained on active duty pursuant to R.C.M. 202(c)(1).

---

(2) *Summary courts-martial.* A member of a reserve component may be tried by summary court-martial either while on active duty or inactive-duty training. A summary court-martial conducted during inactive-duty training may be in session only during normal periods of such training. The accused may not be held beyond such periods of training for trial or service or any punishment. All punishments remaining unserved at the end of a period of active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive-duty training or active duty.

## R.C.M. 204(c)

### Discussion

A “normal period” of inactive-duty training does not include periods which are scheduled solely for the purpose of conducting court-martial proceedings.

---

(c) *Applicability.* This subsection is not applicable when a member is held on active duty pursuant to R.C.M. 202(c).

(d) *Changes in type of service.* A member of a reserve component at the time disciplinary action is initiated, who is alleged to have committed an offense while subject to the UCMJ, is subject to court-martial jurisdiction without regard to any change between active and reserve service or within different categories of reserve service subsequent to commission of the offense. This subsection does not apply to a person whose military status was completely terminated after commission of an offense.

### Discussion

A member of a regular or reserve component remains subject to court-martial jurisdiction after leaving active duty for offenses committed prior to such termination of active duty if the member retains military status in a reserve component without having been discharged from all obligations of military service.

See R.C.M. 202(a), Discussion, paragraph(2)(B)(ii) and (iii), regarding the jurisdictional effect of a discharge from military service. A “complete termination” of military status refers to a discharge relieving the Servicemember of any further military service. It does not include a discharge conditioned upon acceptance of further military service.

---

## CHAPTER III. INITIATION OF CHARGES; APPREHENSION; PRETRIAL RESTRAINT; RELATED MATTERS

### Rule 301. Report of offense

(a) *Who may report.* Any person may report an offense subject to trial by court-martial.

(b) *To whom reports conveyed for disposition.* Ordinarily, any military authority who receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. Competent authority superior to that commander may direct otherwise.

#### Discussion

Any military authority may receive a report of an offense. Typically such reports are made to law enforcement or investigative personnel, or to appropriate persons in the chain of command. A report may be made by any means, and no particular format is required. When a person who is not a law enforcement official receives a report of an offense, that person should forward the report to the immediate commander of the suspect unless that person believes it would be more appropriate to notify law enforcement or investigative authorities.

If the suspect is unidentified, the military authority who receives the report should refer it to a law enforcement or investigative agency.

Upon receipt of a report, the immediate commander of a suspect should refer to R.C.M. 306 (Initial disposition). *See also* R.C.M. 302 (Apprehension); R.C.M. 303 (Preliminary inquiry into reported offenses); R.C.M. 304, 305 (Pretrial restraint, confinement).

### Rule 302. Apprehension

(a) *Definition and scope.*

(1) *Definition.* Apprehension is the taking of a person into custody.

#### Discussion

Apprehension is the equivalent of “arrest” in civilian terminology. (In military terminology, “arrest” is a form of restraint. See Article 9; R.C.M. 304.) See subsection (c) of this rule concerning the bases for apprehension. An apprehension is not required in every case; the fact that an accused was never apprehended does not affect the jurisdiction of a court-martial to try the accused. However, see R.C.M. 202(c) concerning attachment of jurisdiction.

An apprehension is different from detention of a person for investigative purposes, although each involves the exercise of government control over the freedom of movement of a person. An apprehension must be based on probable cause, and the custody initiated in an apprehension may continue until proper authority is notified and acts under R.C.M. 304 or 305. An investigative detention may be made on less than probable cause (see Mil. R. Evid. 314(f)), and normally involves a relatively short period of custody. Furthermore, an extensive search of the person is not authorized

incident to an investigative detention, as it is with an apprehension. See Mil. R. Evid. 314(f) and (g). This rule does not affect any seizure of the person less severe than apprehension.

Evidence obtained as the result of an apprehension which is in violation of this rule may be challenged under Mil. R. Evid. 311(d). Evidence obtained as the result of an unlawful civilian arrest may be challenged under Mil. R. Evid. 311(d).

(2) *Scope.* This rule applies only to apprehensions made by persons authorized to do so under subsection (b) of this rule with respect to offenses subject to trial by court-martial. Nothing in this rule limits the authority of federal law enforcement officials to apprehend persons, whether or not subject to trial by court-martial, to the extent permitted by applicable enabling statutes and other law.

#### Discussion

R.C.M. 302 does not affect the authority of any official to detain, arrest, or apprehend persons not subject to trial under the UCMJ. The rule does not apply to actions taken by any person in a private capacity.

Several federal agencies have broad powers to apprehend persons for violations of federal laws, including the Uniform Code of Military Justice. For example, agents of the Federal Bureau of Investigation, United States Marshals, and Secret Service may apprehend persons for any offenses committed in their presence and for felonies. 18 U.S.C. §§ 3052, 3053, 3056. Other agencies with apprehension powers include the General Services Administration, 40 U.S.C. § 318 and the Veterans Administration, 38 U.S.C. § 902. The extent to which such agencies become involved in the apprehension of persons subject to trial by courts-martial may depend on the statutory authority of the agency and the agency’s formal or informal relationships with the Department of Defense.

(b) *Who may apprehend.* The following officials may apprehend any person subject to trial by court-martial:

(1) *Military law enforcement officials.* Security police, military police, master at arms personnel, members of the shore patrol, and persons designated by proper authorities to perform military criminal investigative, guard, or police duties, whether subject to the UCMJ or not, when in each of the foregoing instances, the official making the apprehension is in the execution of law enforcement duties;

#### Discussion

Whenever enlisted persons, including police and guards, and civilian police and guards apprehend any commissioned or warrant officer,

## R.C.M. 302(b)(2)

such persons should make an immediate report to the commissioned officer to whom the apprehending person is responsible.

The phrase "persons designated by proper authority to perform military criminal investigative, guard or police duties" includes special agents of the Defense Criminal Investigative Service.

---

(2) *Commissioned, warrant, petty, and noncommissioned officers.* All commissioned, warrant, petty, and noncommissioned officers on active duty or inactive duty training;

### Discussion

Noncommissioned and petty officers not otherwise performing law enforcement duties should not apprehend a commissioned officer unless directed to do so by a commissioned officer or in order to prevent disgrace to the Service or the escape of one who has committed a serious offense.

---

(3) *Civilians authorized to apprehend deserters.* Under Article 8, any civilian officer having authority to apprehend offenders under laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia, when the apprehension is of a deserter from the armed forces.

### Discussion

The UCMJ specifically provides that any civil officer with the authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, passion, or the District of Columbia may summarily apprehend a deserter. Article 8. However, this authority does not permit state and local law enforcement officers to apprehend persons for other violations of the UCMJ.

---

(c) *Grounds for apprehension.* A person subject to the UCMJ or trial thereunder may be apprehended for an offense triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exists when there are reasonable grounds to believe that an offense has been or is being committed and the person to be apprehended committed or is committing it. Persons authorized to apprehend under paragraph (b)(2) of this rule may also apprehend persons subject to the UCMJ who take part in quarrels, frays, or disorders, wherever they occur.

### Discussion

"Reasonable grounds" means that there must be the kind of reliable information that a reasonable, prudent person would rely on which makes it more likely than not that something is true. A mere

suspicion is not enough but proof which would support a conviction is not necessary. A person who determines probable cause may rely on the reports of others.

---

(d) *How an apprehension may be made.*

(1) *In general.* An apprehension is made by clearly notifying the person to be apprehended that person is in custody. This notice should be given orally or in writing, but it may be implied by the circumstances.

(2) *Warrants.* Neither warrants nor any other authorizations shall be required for an apprehension under these rules except as required in paragraph (e)(2) of this rule.

(3) *Use of force.* Any person authorized under these rules to make an apprehension may use such force and means as reasonably necessary under the circumstances to effect the apprehension.

### Discussion

In addition to any other action required by law or regulation or proper military officials, any person making an apprehension under these rules should maintain custody of the person apprehended and inform as promptly as possible the immediate commander of the person apprehended, or any official higher in the chain of command of the person apprehended if it is impractical to inform the immediate commander.

---

(e) *Where an apprehension may be made.*

(1) *In general.* An apprehension may be made at any place, except as provided in paragraph (e)(2) of this rule.

(2) *Private dwellings.* A private dwelling includes dwellings, on or off a military installation, such as single family houses, duplexes, and apartments. The quarters may be owned, leased, or rented by the residents, or assigned, and may be occupied on a temporary or permanent basis. "Private dwelling" does not include the following, whether or not subdivided into individual units: living areas in military barracks, vessels, aircraft, vehicles, tents, bunkers, field encampments, and similar places. No person may enter a private dwelling for the purpose of making an apprehension under these rules unless:

(A) Pursuant to consent under Mil. R. Evid. 314(e) or 316(c)(3);

(B) There is a reasonable belief that the delay necessary to obtain a search warrant or search

authorization would result in the person sought to be taken into custody evading apprehension;

(C) In the case of a private dwelling which is military property or under military control, or nonmilitary property in a foreign country

(i) if the person to be apprehended is a resident of the private dwelling, there exists, at the time of the entry, reason to believe that the person to be apprehended is present in the dwelling, and the apprehension has been authorized by an official listed in Mil. R. Evid. 315(d) upon a determination that probable cause to apprehend the person exists; or

(ii) if the person to be apprehended is not a resident of the private dwelling, the entry has been authorized by an official listed in Mil. R. Evid. 315(d) upon a determination that probable cause exists to apprehend the person and to believe that the person to be apprehended is or will be present at the time of the entry.

(D) In the case of a private dwelling not included in subparagraph (e)(2)(C) of this rule,

(i) if the person to be apprehended is a resident of the private dwelling, there exists at the time of the entry, reason to believe that the person to be apprehended is present and the apprehension is authorized by an arrest warrant issued by competent civilian authority; or

(ii) if the person to be apprehended is not a resident of the private dwelling, the apprehension is authorized by an arrest warrant and the entry is authorized by a search warrant, each issued by competent civilian authority. A person who is not a resident of the private dwelling entered may not challenge the legality of an apprehension of that person on the basis of failure to secure a warrant or authorization to enter that dwelling, or on the basis of the sufficiency of such a warrant or authorization. Nothing in paragraph (e)(2)) affects the legality of an apprehension which is incident to otherwise lawful presence in a private dwelling.

#### Discussion

For example, if law enforcement officials enter a private dwelling pursuant to a valid search warrant or search authorization, they may apprehend persons therein if grounds for an apprehension exist. This subsection is not intended to be an independent grant of authority to execute civilian arrest or search warrants. The authority must derive from an appropriate federal or state procedure. *See, e.g., Fed. R. Crim. P. 41 and 28 C.F.R. 60.1.*

#### Rule 303. Preliminary inquiry into reported offenses

Upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.

#### Discussion

The preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report or other summary of expected evidence. In other cases a more extensive investigation may be necessary. Although the commander may conduct the investigation personally or with members of the command, in serious or complex cases the commander should consider whether to seek the assistance of law enforcement personnel in conducting any inquiry or further investigation. The inquiry should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation. Investigations, including those performed by a law enforcement agency, fulfill the requirement for a preliminary inquiry under this rule. A commander who receives a report of a sex-related offense involving a member of the Armed Forces in the chain of command of such officer shall refer the report to the military criminal investigative organization with responsibility for investigating that offense of the military department concerned or such other investigative service of the military department concerned as the Secretary concerned may specify.

The Military Rules of Evidence should be consulted when conducting interrogations (*see* Mil. R. Evid. 301-306), searches (*see* Mil. R. Evid. 311-317), and eyewitness identifications (*see* Mil. R. Evid. 321).

If the offense is one for which the Department of Justice has investigative responsibilities, appropriate coordination should be made under the Memorandum of Understanding, *see* Appendix 3, and any implementing regulations.

If it appears that any witness may not be available for later proceedings in the case, this should be brought to the attention of appropriate authorities. *See also* R.C.M. 702 (depositions).

A person who is an accuser (*see* Article 1(9)) is disqualified from convening a general or special court-martial in that case. *See* R.C.M. 504(c)(1). Therefore, when the immediate commander is a general or special court-martial convening authority, the preliminary inquiry should be conducted by another officer of the command. That officer may be informed that charges may be preferred if the officer determines that prefferal is warranted.

#### Rule 304. Pretrial restraint

(a) *Types of pretrial restraint.* Pretrial restraint is moral or physical restraint on a person's liberty which is imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest, or confinement.

## R.C.M. 304(a)(1)

(1) *Conditions on liberty.* Conditions on liberty are imposed by orders directing a person to do or refrain from doing specified acts. Such conditions may be imposed in conjunction with other forms of restraint or separately.

(2) *Restriction in lieu of arrest.* Restriction in lieu of arrest is the restraint of a person by oral or written orders directing the person to remain within specified limits; a restricted person shall, unless otherwise directed, perform full military duties while restricted.

(3) *Arrest.* Arrest is the restraint of a person by oral or written order not imposed as punishment, directing the person to remain within specified limits; a person in the status of arrest may not be required to perform full military duties such as commanding or supervising personnel, serving as guard, or bearing arms. The status of arrest automatically ends when the person is placed, by the authority who ordered the arrest or a superior authority, on duty inconsistent with the status of arrest, but this shall not prevent requiring the person arrested to do ordinary cleaning or policing, or to take part in routine training and duties.

(4) *Confinement.* Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of offenses. See R.C.M. 305.

### Discussion

Conditions on liberty include orders to report periodically to a specified official, orders not to go to a certain place (such as the scene of the alleged offense), and orders not to associate with specified persons (such as the alleged victim or potential witnesses). Conditions on liberty must not hinder pretrial preparation, however. Thus, when such conditions are imposed, they must be sufficiently flexible to permit pretrial preparation.

Restriction in lieu of arrest is a less severe restraint on liberty than is arrest. Arrest includes suspension from performing full military duties and the limits of arrest are normally narrower than those of restriction in lieu of arrest. The actual nature of the restraint imposed, and not the characterization of it by the officer imposing it, will determine whether it is technically an arrest or restriction in lieu of arrest.

Breach of arrest or restriction in lieu of arrest or violation of conditions on liberty are offenses under the UCMJ. See paragraphs 12, 13 and 18, Part IV. When such an offense occurs, it may warrant appropriate action such as nonjudicial punishment or court-martial. See R.C.M. 306. In addition, such a breach or violation may provide a basis for the imposition of a more severe form of restraint.

R.C.M. 707(a) requires that the accused be brought to trial within 120 days of preferral of charges or imposition of restraint under R.C.M. 304(a)(2)-(4).

---

(b) *Who may order pretrial restraint.*

(1) *Of civilians and officers.* Only a commanding officer to whose authority the civilian or officer is subject may order pretrial restraint of that civilian or officer.

### Discussion

Civilians may be restrained under these rules only when they are subject to trial by court-martial. See R.C.M. 202.

(2) *Of enlisted persons.* Any commissioned officer may order pretrial restraint of any enlisted person.

(3) *Delegation of authority.* The authority to order pretrial restraint of civilians and commissioned and warrant officers may not be delegated. A commanding officer may delegate to warrant, petty, and noncommissioned officers authority to order pretrial restraint of enlisted persons of the commanding officer's command or subject to the authority of that commanding officer.

(4) *Authority to withhold.* A superior competent authority may withhold from a subordinate the authority to order pretrial restraint.

(c) *When a person may be restrained.* No person may be ordered into restraint before trial except for probable cause. Probable cause to order pretrial restraint exists when there is a reasonable belief that:

(1) An offense triable by court-martial has been committed;

(2) The person to be restrained committed it; and

(3) The restraint ordered is required by the circumstances.

### Discussion

The decision whether to impose pretrial restraint, and, if so, what type or types, should be made on a case-by-case basis. The factors listed in the Discussion of R.C.M. 305(h)(2)(B) should be considered. The restraint should not be more rigorous than the circumstances require to ensure the presence of the person restrained or to prevent foreseeable serious criminal misconduct.

Restraint is not required in every case. The absence of pretrial restraint does not affect the jurisdiction of a court-martial. However, see R.C.M. 202(c) concerning attachment of jurisdiction. See R.C.M. 305 concerning the standards and procedures governing pretrial confinement.

---

(d) *Procedures for ordering pretrial restraint.* Pretrial restraint other than confinement is imposed by notifying the person orally or in writing of the restraint,

including its terms or limits. The order to an enlisted person shall be delivered personally by the authority who issues it or through other persons subject to the UCMJ. The order to an officer or a civilian shall be delivered personally by the authority who issues it or by another commissioned officer. Pretrial confinement is imposed pursuant to orders by a competent authority by the delivery of a person to a place of confinement.

(e) *Notice of basis for restraint.* When a person is placed under restraint, the person shall be informed of the nature of the offense which is the basis for such restraint.

**Discussion**

See R.C.M. 305(e) concerning additional information which must be given to a person who is confined. If the person ordering the restraint is not the commander of the person restrained, that officer should be notified.



(f) *Punishment prohibited.* Pretrial restraint is not punishment and shall not be used as such. No person who is restrained pending trial may be subjected to punishment or penalty for the offense which is the basis for that restraint. Prisoners being held for trial shall not be required to undergo punitive duty hours or training, perform punitive labor, or wear special uniforms prescribed only for post-trial prisoners. This rule does not prohibit minor punishment during pretrial confinement for infractions of the rules of the place of confinement. Prisoners shall be afforded facilities and treatment under regulations of the Secretary concerned.

**Discussion**

Offenses under the UCMJ by a person under restraint may be disposed of in the same manner as any other offenses.



(g) *Release.* Except as otherwise provided in R.C.M. 305, a person may be released from pretrial restraint by a person authorized to impose it. Pretrial restraint shall terminate when a sentence is adjudged, the accused is acquitted of all charges, or all charges are dismissed.

**Discussion**

Pretrial restraint may be imposed (or reimposed) if charges are to be reinstated or a rehearing or "other" trial is to be ordered.

(h) *Administrative restraint.* Nothing in this rule prohibits limitations on a Servicemember imposed for operational or other military purposes independent of military justice, including administrative hold or medical reasons.

**Discussion**

See R.C.M. 306.



**Rule 305. Pretrial confinement**

(a) *In general.* Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of charges.

**Discussion**

See Article 12 regarding the limitations on confinement of members of the armed forces of the United States in immediate association with enemy prisoners or other foreign nationals detained under the law of war.



(b) *Who may be confined.* Any person who is subject to trial by court-martial may be confined if the requirements of this rule are met.

**Discussion**

See R.C.M. 201 and 202 and the discussions therein concerning persons who are subject to trial by courts-martial.



(c) *Who may order confinement.* See R.C.M. 304(b).

**Discussion**

No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any confinee committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the confinee. See Article 11(a).



(d) *When a person may be confined.* No person may be ordered into pretrial confinement except for probable cause. Probable cause to order pretrial confinement exists when there is a reasonable belief that:

(1) An offense triable by court-martial has been committed;



**R.C.M. 305(d)(2)**

- (2) The person confined committed it; and
- (3) Confinement is required by the circumstances.

**Discussion**

The person who directs confinement should consider the matters discussed under subparagraph (h)(2)(B) of this rule before ordering confinement. However, the person who initially orders confinement is not required to make a detailed analysis of the necessity for confinement. It is often not possible to review a person's background and character or even the details of an offense before physically detaining the person. For example, until additional information can be secured, it may be necessary to confine a person apprehended in the course of a violent crime.

"When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered in confinement." Article 10(a)(2).

Confinement should be distinguished from custody. Custody is restraint which is imposed by apprehension and which may be, but is not necessarily, physical. Custody may be imposed by anyone authorized to apprehend (see R.C.M. 302(b)), and may continue until a proper authority under R.C.M. 304(b) is notified and takes action. Thus, a person who has been apprehended could be physically restrained, but this would not be pretrial confinement in the sense of this rule until a person authorized to do so under R.C.M. 304(b) directed confinement.

---

(e) *Advice to the accused upon confinement.* Each person confined shall be promptly informed of:

- (1) The nature of the offenses for which held;
- (2) The right to remain silent and that any statement made by the person may be used against the person;
- (3) The right to retain civilian counsel at no expense to the United States, and the right to request assignment of military counsel; and
- (4) The procedures by which pretrial confinement will be reviewed.

(f) *Military counsel.* If requested by the confinee and such request is made known to military authorities, military counsel shall be provided to the confinee before the initial review under subsection (i) of this rule or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the confinee shall be so informed. Unless otherwise provided by regulations of the Secretary concerned, a confinee does not have a right under this rule to have military counsel of the confinee's own selection.

(g) *Who may direct release from confinement.* Any

commander of a confinee, an officer appointed under regulations of the Secretary concerned to conduct the review under subsection (i) or (j) of this rule, or, once charges have been referred, a military judge detailed to the court-martial to which the charges against the accused have been referred, may direct release from pretrial confinement. For purposes of this subsection, "any commander" includes the immediate or higher commander of the confinee and the commander of the installation on which the confinement facility is located.

(h) *Notification and action by commander.*

(1) *Report.* Unless the commander of the confinee ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer into whose charge the confinee was committed shall, within 24 hours after that commitment, cause a report to be made to the commander that shall contain the name of the confinee, the offenses charged against the confinee, and the name of the person who ordered or authorized confinement.

**Discussion**

This report may be made by any means. Ordinarily, the immediate commander of the confinee should be notified. In unusual cases any commander to whose authority the confinee is subject, such as the commander of the confinement facility, may be notified. In the latter case, the commander so notified must ensure compliance with R.C.M. 305(h)(2).

---

(2) *Action by commander.*

(A) *Decision.* Not later than 72 hours after the commander's ordering of a confinee into pretrial confinement or, after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander's compliance with this subparagraph may also satisfy the 48-hour probable cause determination of paragraph (i)(1) of this rule, provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under military control. Nothing in subsection (d), paragraph (i)(1), or this subparagraph prevents a neutral and detached commander from completing the 48-hour probable cause determination and the 72-hour commander's decision immediately after an accused is ordered into pretrial confinement.

(B) *Requirements for confinement.* The commander shall direct the confinee's release from

pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

- (i) An offense triable by a court-martial has been committed;
- (ii) The confinee committed it;
- (iii) Confinement is necessary because it is foreseeable that:

- (a) The confinee will not appear at trial, pretrial hearing, or preliminary hearing, or

- (b) The confinee will engage in serious criminal misconduct; and

- (iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, serious injury of others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, "national security" means the national defense and foreign relations of the United States and specifically includes: a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

### Discussion

A person should not be confined as a mere matter of convenience or expedience.

Some of the factors which should be considered under this subsection are:

- (1) The nature and circumstances of the offenses charged or suspected, including extenuating circumstances;
- (2) The weight of the evidence against the confinee;
- (3) The confinee's ties to the locale, including family, off-duty employment, financial resources, and length of residence;
- (4) The confinee's character and mental condition;
- (5) The confinee's service record, including any record of previous misconduct;
- (6) The confinee's record of appearance at or flight from other pretrial investigations, trials, and similar proceedings; and
- (7) The likelihood that the confinee can and will commit further serious criminal misconduct if allowed to remain at liberty.

Although the Military Rules of Evidence are not applicable, the commander should judge the reliability of the information available. Before relying on the reports of others, the commander must have a reasonable belief that the information is believable and has a factual basis. The information may be received orally or in writing.

Information need not be received under oath, but an oath may add to its reliability. A commander may examine the confinee's personnel records and police records, and may consider the recommendations of others.

Less serious forms of restraint must always be considered before pretrial confinement may be approved. Thus the commander should consider whether the confinee could be safely returned to the confinee's unit, placed on restriction, placed under arrest, or placed under conditions on liberty. See R.C.M. 304.

(C) *72-hour memorandum.* If continued pretrial confinement is approved, the commander shall prepare a written memorandum that states the reasons for the conclusion that the requirements for confinement in subparagraph (h)(2)(B) of this rule have been met. This memorandum may include hearsay and may incorporate by reference other documents, such as witness statements, investigative reports, or official records. This memorandum shall be forwarded to the 7-day reviewing officer under paragraph (i)(2) of this rule. If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared; however, additional information may be added to the memorandum at any time.

(i) *Procedures for review of pretrial confinement.*

(1) *48-hour probable cause determination.* Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control. If the confinee is apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the confinee under military control in a timely fashion.

(2) *7-day review of pretrial confinement.* Within 7 days of the imposition of confinement, a neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned shall review the probable cause determination and necessity for continued pretrial confinement. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement under military control shall count as one day and the date of the review shall also count as one day.

(A) *Nature of the 7-day review.*

(i) *Matters considered.* The review under this subsection shall include a review of the memorandum submitted by the confinee's commander under subparagraph (h)(2)(C) of this

**R.C.M. 305(i)(2)(A)(ii)**

rule. Additional written matters may be considered, including any submitted by the confinee. The confinee and the confinee's counsel, if any, shall be allowed to appear before the 7-day reviewing officer and make a statement, if practicable. A representative of the command may also appear before the reviewing officer to make a statement.

(ii) *Rules of evidence.* Except for Mil. R. Evid., Section V (Privileges) and Mil. R. Evid. 302 and 305, the Military Rules of Evidence shall not apply to the matters considered.

(iii) *Standard of proof.* The requirements for confinement under subparagraph (h)(2)(B) of this rule must be proved by a preponderance of the evidence.

(iv) *Victim's right to be reasonably heard.* A victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the 7-day review; the right to confer with the representative of the command and counsel for the government, if any; and the right to be reasonably heard during the review. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel and the right to be reasonably protected from the confinee during the 7-day review. The victim of an alleged offense shall be notified of these rights in accordance with regulations of the Secretary concerned.

**Discussion**

Personal appearance by the victim is not required. A victim's right to be reasonably heard at a 7-day review may also be accomplished telephonically, by video conference, or by written statement. The right to be heard under this rule includes the right to be heard through counsel.

---

(B) *Extension of time limit.* The 7-day reviewing officer may, for good cause, extend the time limit for completion of the review to 10 days after the imposition of pretrial confinement.

(C) *Action by 7-day reviewing officer.* Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release. If the reviewing officer orders immediate release, a victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the release, unless such notice may endanger the safety of any person.

(D) *Memorandum.* The 7-day reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. The memorandum shall also state whether the victim was notified of the review, was given the opportunity to confer with the representative of the command or counsel for the government, and was given a reasonable opportunity to be heard. A copy of the memorandum and all documents considered by the 7-day reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request.

(E) *Reconsideration of approval of continued confinement.* The 7-day reviewing officer shall upon request, and after notice to the parties, reconsider the decision to confine the confinee based upon any significant information not previously considered.

(j) *Review by military judge.* Once the charges for which the accused has been confined are referred to trial, the military judge shall review the propriety of pretrial confinement upon motion for appropriate relief.

(1) *Release.* The military judge shall order release from pretrial confinement only if:

(A) The 7-day reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to the military judge justifying continuation of pretrial confinement under subparagraph (h)(2)(B) of this rule;

(B) Information not presented to the 7-day reviewing officer establishes that the confinee should be released under subparagraph (h)(2)(B) of this rule; or

(C) The provisions of paragraph (i)(1) or (2) of this rule have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under subparagraph (h)(2)(B) of this rule.

**Discussion**

Upon a motion for release from pretrial confinement, a victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the motion and any hearing, the right to confer with counsel representing the Government, and the right to be reasonably heard. Inability to reasonably afford the victim these rights shall not delay the proceedings. The right to be heard under this rule includes the right to be heard through counsel. See R.C.M. 906(b)(8).

(2) *Credit*. The military judge shall order administrative credit under subsection (k) of this rule for any pretrial confinement served as a result of an abuse of discretion or failure to comply with the provisions of subsections (f), (h), or (i) of this rule.

(k) *Remedy*. The remedy for noncompliance with subsections (f), (h), (i), or (j) of this rule shall be an administrative credit against the sentence adjudged for any confinement served as the result of such noncompliance. Such credit shall be computed at the rate of 1 day credit for each day of confinement served as a result of such noncompliance. The military judge may order additional credit for each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances. This credit is to be applied in addition to any other credit the accused may be entitled as a result of pretrial confinement served. This credit shall be applied first against any confinement adjudged. If no confinement is adjudged, or if the confinement adjudged is insufficient to offset all the credit to which the accused is entitled, the credit shall be applied against hard labor without confinement using the conversion formula under R.C.M. 1003(b)(6), restriction using the conversion formula under R.C.M. 1003(b)(5), fine, and forfeiture of pay, in that order. For purposes of this subsection, 1 day of confinement shall be equal to 1 day of total forfeiture or a like amount of fine. The credit shall not be applied against any other form of punishment.

(l) *Confinement after release*. No person whose release from pretrial confinement has been directed by a person authorized in subsection (g) of this rule may be confined again before completion of trial except upon discovery, after the order of release, of evidence or of misconduct which, either alone or in conjunction with all other available evidence, justifies confinement.

#### Discussion

See R.C.M. 304(b) concerning who may order confinement.

(m) *Exceptions*.

(1) *Operational necessity*. The Secretary of Defense may suspend application of paragraphs (e)(3), (e)(4), subsection (f), subparagraphs (h)(2)(A) and (C), and subsection (i) of this rule to specific units or in specified areas when operational requirements of such units or in such areas would make application of such provisions impracticable.

(2) *At sea*. Paragraphs (e)(3) and (e)(4), subsection

(f), subparagraph (h)(2)(C), and subsection (i) of this rule shall not apply in the case of a person on board a vessel at sea. In such situations, confinement on board the vessel at sea may continue only until the person can be transferred to a confinement facility ashore. Such transfer shall be accomplished at the earliest opportunity permitted by the operational requirements and mission of the vessel. Upon such transfer the memorandum required by subparagraph (h)(2)(C) of this rule shall be transmitted to the reviewing officer under subsection (i) of this rule and shall include an explanation of any delay in the transfer.

#### Discussion

Under this paragraph, the standards for confinement remain the same (although the circumstances giving rise to the exception could bear on the application of those standards). Also, pretrial confinement remains subject to judicial review. The confinee's commander still must determine whether confinement will continue under R.C.M. 305 (h)(2)(B). The suspension of R.C.M. 305(h)(2)(A) removes the 72-hour requirement because, in a combat environment, the commander may not be available to comply with it. The commander must make the pretrial confinement decision as soon as reasonably possible, however. (This provision is not suspended under paragraph (2) since the commander of a vessel is always available.)

Operational exceptions to the requirements under R.C.M. 305 (e)(3) and (4) do not constitute exceptions to the notice requirements under Article 31(b).

(n) *Notice to victim of escaped confinee*. A victim of an alleged offense committed by the confinee for which the confinee has been placed in pretrial confinement has the right to reasonable, accurate, and timely notice of the escape of the prisoner, unless such notice may endanger the safety of any person.

#### Discussion

For purposes of this rule, the term "victim of an alleged offense" has the same meaning as the term "victim of an offense under this chapter" in Article 6b.

#### Rule 306. Initial disposition

(a) *Who may dispose of offenses*. Each commander has discretion to dispose of offenses by members of that command. Ordinarily the immediate commander of a person accused or suspected of committing an offense triable by court-martial initially determines how to dispose of that offense. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. A

## R.C.M. 306(a)(1)

superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld.

### Discussion

Each commander in the chain of command has independent, yet overlapping discretion to dispose of offenses within the limits of that officer's authority. Normally, in keeping with the policy in subsection (b) of this rule, the initial disposition decision is made by the official at the lowest echelon with the power to make it. A decision by a commander ordinarily does not bar a different disposition by a superior authority. See R.C.M. 401(c); 601(f). Once charges are referred to a court-martial by a convening authority competent to do so, they may be withdrawn from that court-martial only in accordance with R.C.M. 604.

The initial disposition authority for certain sex-related offenses is withheld from all commanders who do not possess at least special court-martial convening authority and who are not in the grade of O-6 or higher. See DoD Instruction 6495.02, "Sexual Assault Prevention and Response (SAPR) Program Procedures," March 28, 2013, as amended. Military Justice Manual, COMDTINST M5810.1 (series) as amended; COMDTNOTE 5811 "Higher Level Review of Cases Involving Certain Sex-Related Offenses," Sept 4, 2014.

See Appendix 3 with respect to offenses for which coordination with the Department of Justice is required.

---

(b) *Policy.* Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition listed in subsection (c) of this rule.

### Discussion

In deciding how an offense should be disposed of, the commander should review and consider the disposition factors set forth in Appendix 2.1 (Non-binding disposition guidance).

---

(c) *How offenses may be disposed of.* Within the limits of the commander's authority, a commander may take the actions set forth in this subsection to initially dispose of a charge or suspected offense.

### Discussion

Prompt disposition of charges is essential. See R.C.M. 707 (speedy trial requirements).

Before determining an appropriate disposition, a commander should ensure that a preliminary inquiry under R.C.M. 303 has been conducted. If charges have not already been preferred, the commander may, if appropriate, prefer them and dispose of them under this rule. But see R.C.M. 601(e) regarding disqualification of an accuser.

If charges have been preferred, the commander should ensure that the accused has been notified in accordance with R.C.M. 308, and that charges are in proper form. See R.C.M. 307. Each

commander who forwards or disposes of charges may make minor changes therein. See R.C.M. 603(a) and (b). If major changes are necessary, the affected charge should be preferred anew. See R.C.M. 603(d).

When charges are brought against two or more accused with a view to a joint or common trial, see R.C.M. 307(c)(5); 601(e)(3). If it appears that the accused may lack mental capacity to stand trial or may not have been mentally responsible at the times of the offenses, see R.C.M. 706; 909; 916(k).

---

(1) *No action.* A commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed.

### Discussion

A decision to take no action or dismissal of charges at this stage does not bar later disposition of the offenses under R.C.M. 306(c)(2) through (5).

See R.C.M. 401(a) concerning who may dismiss charges, and R.C.M. 401(c)(1) concerning dismissal of charges.

When a decision is made to take no action, the accused should be informed.

---

(2) *Administrative action.* A commander may take or initiate administrative action, in addition to or instead of other action taken under this rule, subject to regulations of the Secretary concerned. Administrative actions include corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above.

### Discussion

Other administrative measures, which are subject to regulations of the Secretary concerned, include matters related to efficiency reports, academic reports, and other ratings; rehabilitation and reassignment; career field reclassification; administrative reduction for inefficiency; bar to reenlistment; personnel reliability program reclassification; security classification changes; pecuniary liability for negligence or misconduct; and administrative separation.

---

(3) *Nonjudicial punishment.* A commander may consider the matter pursuant to Article 15, nonjudicial punishment. See Part V.

(4) *Disposition of charges.* Charges may be disposed of in accordance with R.C.M. 401.

### Discussion

If charges have not been preferred, they may be preferred. See R.C.M. 307 concerning preferral of charges. But see R.C.M. 601(c) concerning disqualification of an accuser.

Charges may be disposed of by dismissing them, forwarding them to another commander for disposition, or referring them to a summary, special, or general court-martial. Before charges may be referred to a general court-martial, compliance with R.C.M. 405 and 406 is necessary. Therefore, if appropriate, a preliminary hearing under R.C.M. 405 may be directed. Additional guidance on these matters is found in R.C.M. 401-407.

---

(5) *Forwarding for disposition.* A commander may forward a matter concerning an offense, or charges, to a superior or subordinate authority for disposition.

### Discussion

The immediate commander may lack authority to take action which that commander believes is an appropriate disposition. In such cases, the matter should be forwarded to a superior officer with a recommendation as to disposition. *See also* R.C.M. 401(c)(2) concerning forwarding charges. If allegations are forwarded to a higher authority for disposition, because of lack of authority or otherwise, the disposition decision becomes a matter within the discretion of the higher authority.

A matter may be forwarded for other reasons, such as for investigation of allegations and preferral of charges, if warranted (see R.C.M. 303, 307), or so that a subordinate can dispose of the matter.

---

(d) *National security matters.* If a commander not authorized to convene general courts-martial finds that an offense warrants trial by court-martial, but believes that trial would be detrimental to the prosecution of a war or harmful to national security, the matter shall be forwarded to the general court-martial convening authority for action under R.C.M. 407(b).

(e) *Sex-related offenses.*

(1) For purposes of this subsection, a “sex-related offense” means any allegation of a violation of Article 120, 120b, 120c, or 130, or any attempt thereof under Article 80, UCMJ.

(2) Under such regulations as the Secretary concerned may prescribe, for alleged sex-related offenses committed in the United States, the victim of the sex-related offense shall be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. The commander, and if charges are preferred, the

convening authority, shall consider such views as to the victim’s preference for jurisdiction, if available, prior to making an initial disposition decision. For purposes of this rule, “victim” is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an alleged sex-related offense as defined in paragraph (e)(1) of this rule.

(3) Under such regulations as the Secretary concerned may prescribe, if the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the commander, and if charges are preferred, the convening authority, shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim’s preference for civilian prosecution. If the commander and, if charges are preferred, the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court, the commander or convening authority shall ensure the victim is notified.

### Rule 307. Preferral of charges

(a) *Who may prefer charges.* Any person subject to the UCMJ may prefer charges.

### Discussion

No person may be ordered to prefer charges to which that person is unable to make truthfully the required oath. *See* Article 30(a) and R.C.M. 307 (b). A person who has been the accuser or nominal accuser (*see* Article 1(9)) may not also serve as the convening authority of a general or special court-martial to which the charges are later referred. *See* Articles 22(b) and 23(b); R.C.M. 601; *but see* R.C.M. 1302(b) (summary court-martial convening authority is not disqualified by being the accuser). A person authorized to dispose of offenses (*see* R.C.M. 306(a); 401-404 and 407) should not be ordered to prefer charges when this would disqualify that person from exercising that person’s authority or would improperly restrict that person’s discretion to act on the case. *See* R.C.M. 104 and 504(c).

Charges may be preferred against a person subject to trial by court-martial at any time but should be preferred without unnecessary delay. *See* the statute of limitations prescribed by Article 43. Preferral of charges should not be unnecessarily delayed. When a good reason exists—as when a person is permitted to continue a course of conduct so that a ringleader or other conspirators may also be discovered or when a suspected counterfeiter goes uncharged until guilty knowledge becomes apparent—a reasonable delay is permissible. However, *see* R.C.M. 707 concerning speedy trial requirements.

---

(b) *How charges are preferred; oath.* In preferring charges and specifications—

## R.C.M. 307(b)(1)

(1) The person preferring the charges and specifications must sign them under oath before a commissioned officer of the armed forces authorized to administer oaths; and

(2) The writing under paragraph (1) must state that—

(A) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

(B) the matters set forth in the charges and specifications are true to the best of the knowledge and belief of the signer.

### Discussion

See Article 136 for authority to administer oaths. The following form may be used to administer the oath:

“You (swear) (affirm) that you are a person subject to the Uniform Code of Military Justice, that you have personal knowledge of or have investigated the matters set forth in the foregoing charge(s) and specification(s), and that the same are true to the best of your knowledge and belief. (So help you God.)”

The accuser’s belief may be based upon reports of others in whole or in part.

(c) *How to allege offenses.*

(1) *In general.* The format of charge and specification is used to allege violations of the UCMJ.

### Discussion

See Appendix 5 for a sample of a Charge Sheet (DD Form 458).

(2) *Charge.* A charge states the article of the UCMJ, law of war, or local penal law of an occupied territory which the accused is alleged to have violated.

### Discussion

The particular subdivision of an article of the UCMJ (for example, Article 118(1)) should not be included in the charge. When there are numerous infractions of the same article, there will be only one charge, but several specifications thereunder. There may also be several charges, but each must allege a violation of a different article of the UCMJ. For violations of the law of war, see (D) of this Discussion.

(A) *Numbering charges.* If there is only one charge, it is not numbered. When there is more than one charge, each charge is numbered by a Roman numeral.

(B) *Additional charges.* Charges preferred after others have been preferred are labeled “additional charges” and are also numbered with Roman numerals, beginning with “I” if there is more

than one additional charge. These ordinarily relate to offenses not known at the time or committed after the original charges were preferred. Additional charges do not require a separate trial if incorporated in the trial of the original charges before arraignment. See R.C.M. 601(e)(2).

(C) *Preemption.* An offense specifically defined by Articles 81 through 132 may not be alleged as a violation of Article 134. See paragraph 91.c.(5)(a) of Part IV. *But see* R.C.M. 307(d).

(D) *Charges under the law of war.* In the case of a person subject to trial by general court-martial for violations of the law of war (see Article 18), the charge should be: “Violation of the Law of War”; or “Violation of \_\_\_\_\_, \_\_\_\_\_” referring to the local penal law of the occupied territory.

See R.C.M. 201(f)(1)(B). *But see* R.C.M. 307(d). Ordinarily persons subject to the UCMJ should be charged with a specific violation of the UCMJ rather than a violation of the law of war.

(3) *Specification.* A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication; however, specifications under Article 134 must expressly allege the terminal element. Except for aggravating factors under R.C.M. 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required.

### Discussion

How to draft specifications.

(A) *Sample specifications.* Before drafting a specification, the drafter should read the pertinent provisions of Part IV, where the elements of proof of various offenses and forms for specifications appear.

(B) *Numbering specifications.* If there is only one specification under a charge it is not numbered. When there is more than one specification under any charge, the specifications are numbered in Arabic numerals. The term “additional” is not used in connection with the specifications under an additional charge.

(C) *Name and description of the accused.*

(i) *Name.* The specification should state the accused’s full name: first name, middle name or initial, last name. If the accused is known by more than one name, the name acknowledged by the accused should be used. If there is no such acknowledgment, the name believed to be the true name should be listed first, followed by all known aliases. For example: Seaman John P. Smith, U.S. Navy, alias Lt. Robert R. Brown, U.S. Navy.

(ii) *Military association.* The specification should state the accused’s rank or grade. If the rank or grade of the accused has changed since the date of an alleged offense, and the change is pertinent to the offense charged, the accused should be identified by the present rank or grade followed by rank or grade on the date of the alleged offense. For example: In that Seaman \_\_\_\_\_ then Seaman Apprentice \_\_\_\_\_, etc.

(iii) *Social security number or service number.* The social

security number or service number of an accused should not be stated in the specification.

(iv) *Basis of personal jurisdiction.*

(a) *Military members on active duty.* Ordinarily, no allegation of the accused's armed force or unit or organization is necessary for military members on active duty.

(b) *Persons subject to the UCMJ under Article 2(a), subsections (3) through (12), or subject to trial by court-martial under Articles 3 or 4.* The specification should describe the accused's armed force, unit or organization, position, or status which will indicate the basis of jurisdiction. For example: John Jones, (a person employed by and serving with the U.S. Army in the field in time of war) (a person convicted of having obtained a fraudulent discharge), etc.

(D) *Date and time of offense*

(i) *In general.* The date of the commission of the offense charged should be stated in the specification with sufficient precision to identify the offense and enable the accused to understand what particular act or omission to defend against.

(ii) *Use of "on or about."* In alleging the date of the offense it is proper to allege it as "on or about" a specified day.

(iii) *Hour.* The exact hour of the offense is ordinarily not alleged except in certain absence offenses. When the exact time is alleged, the 24-hour clock should be used. The use of "at or about" is proper.

(iv) *Extended periods.* When the acts specified extend(s) over a considerable period of time it is proper to allege it (or them) as having occurred, for example, "from about 15 June 1983 to about 4 November 1983," or "did on divers occasions between 15 June 1983 and 4 November 1983."

(E) *Place of offense.* The place of the commission of the offense charged should be stated in the specification with sufficient precision to identify the offense and enable the accused to understand the particular act or omission to defend against. In alleging the place of the offense, it is proper to allege it as "at or near" a certain place if the exact place is uncertain.

(F) *Subject-matter jurisdiction allegations.* Pleading the accused's rank or grade along with the proper elements of the offense normally will be sufficient to establish subject-matter jurisdiction.

(G) *Description of offense.*

(i) *Elements.* The elements of the offense must be expressly alleged. If a specific intent, knowledge, or state of mind is an element of the offense, it must be alleged. To state an offense under Article 134, practitioners must expressly allege the terminal element. All offenses under Article 134 require proof of a single terminal element, but the terminal element is charged and proven differently for offenses charged under Clause (1) and (2) of Article 134, in contrast to those charged under Clause (3). For elements of offenses charged under Article 134, Clause (1), (2), or (3), see paragraph 91.b. in Part IV of this Manual.

(ii) *Words indicating criminality.* If the alleged act is not itself an offense but is made an offense either by applicable statute (including Articles 133 and 134), or regulation or custom having the effect of law, then words indicating criminality such as "wrongfully," "unlawfully," or "without authority" (depending upon the nature of the offense) should be used to describe the accused's acts.

(iii) *Specificity.* The specification should be sufficiently specific to inform the accused of the conduct charged, to enable the accused to prepare a defense, and to protect the accused against

double jeopardy. Only those facts that make the accused's conduct criminal ordinarily should be alleged. Specific evidence supporting the allegations ordinarily should not be included in the specifications.

(iv) *Dupliciousness.* One specification should not allege more than one offense, either conjunctively (the accused "lost and destroyed") or alternatively (the accused "lost or destroyed"). However, if two acts or a series of acts constitute one offense, they may be alleged conjunctively. See R.C.M. 906(b)(5).

(v) *Lesser included offenses.* Article 79 contains two provisions concerning notice of lesser included offenses: (1) offenses that are "necessarily included" in the charged offense in accordance with Article 79(b)(1); and (2) offenses designated as lesser included offenses by the President under Article 79(b)(2). See Appendix 12A. Each provision sets forth an independent basis for providing notice of a lesser included offense. Where there is doubt as to whether an offense is a lesser included offense or whether a particular offense should be charged in the alternative, preferral of a separate charge or specification may be warranted. If the accused is convicted of two or more offenses, the trial counsel should consider asking the military judge to determine whether any convictions that were charged in the alternative or as potential lesser included offenses should be dismissed or conditionally dismissed subject to appellate review.

(H) *Other considerations in drafting specifications.*

(i) *Principals.* All principals are charged as if each was the perpetrator. See paragraph 1 of Part IV for a discussion of principals.

(ii) *Victim.* In the case of an offense against the person or property of a person, the first name, middle initial and last name of such person should be alleged, if known. If the name of the victim is unknown, a general physical description may be used. If this cannot be done, the victim may be described as "a person whose name is unknown." Military rank or grade should be alleged, and must be alleged if an element of the offense, as in an allegation of disobedience of the command of a superior officer. If the person has no military position, it may otherwise be necessary to allege the status as in an allegation of using provoking words toward a person subject to the UCMJ. See paragraph 55 of Part IV.

(iii) *Property.* In describing property generic terms should be used, such as "a watch" or "a knife," and descriptive details such as make, model, color, and serial number should ordinarily be omitted. In some instances, however, details may be essential to the offense, so they must be alleged. For example: the length of a knife blade may be important when alleging a violation of general regulation prohibiting carrying a knife with a blade that exceeds a certain length.

(iv) *Value.* When the value of property or other amount determines the maximum punishment which may be adjudged for an offense, the value or amount should be alleged, for in such a case increased punishments that are contingent upon value may not be adjudged unless there is an allegation, as well as proof, of a value which will support the punishment. If several articles of different kinds are the subject of the offense, the value of each article should be stated followed by a statement of the aggregate value. Exact value should be stated, if known. For ease of proof an allegation may be "of a value not less than \_\_\_\_\_." If only an approximate value is known, it may be alleged as "of a value of about \_\_\_\_\_." If the value of an item is unknown but obviously minimal, the term "of some value" may be used. These principles apply to allegations of amounts.

(v) *Documents.* When documents other than regulations or orders must be alleged (for example, bad checks in violation of Article 123a), the document may be set forth verbatim (including



## R.C.M. 307(c)(4)

photocopies and similar reproductions) or may be described, in which case the description must be sufficient to inform the accused of the offense charged.

(vi) *Orders.*

(a) *General orders.* A specification alleging a violation of a general order or regulation (Article 92(1)) must clearly identify the specific order or regulation allegedly violated. The general order or regulation should be cited by its identifying title or number, section or paragraph, and date. It is not necessary to recite the text of the general order or regulation verbatim.

(b) *Other orders.* If the order allegedly violated is an “other lawful order” (Article 92(2)), it should be set forth verbatim or described in the specification. When the order is oral, see clause (H)(vii) of this discussion.

(c) *Negating exceptions.* If the order contains exceptions, it is not necessary that the specification contain a specific allegation negating the exceptions. However, words of criminality may be required if the alleged act is not necessarily criminal. See clause (G)(ii) of this discussion.

(vii) *Oral statements.* When alleging oral statements the phrase “or words to that effect” should be added.

(viii) *Joint offense.* In the case of a joint offense each accused may be charged separately as if each accused acted alone or all may be charged together in a single specification. For example:

(a) If Doe and Roe are joint perpetrators of an offense and it is intended to charge and try both at the same trial, they should be charged in a single specification as follows:

“In that Doe and Roe, acting jointly and pursuant to a common intent, did. . . .”

(b) If it is intended that Roe will be tried alone or that Roe will be tried with Doe at a common trial, Roe may be charged in the same manner as if Roe alone had committed the offense. However, to show in the specification that Doe was a joint actor with Roe, even though Doe is not to be tried with Roe, Roe may be charged as follows:

“In that Roe did, in conjunction with Doe, . . . .”

(ix) *Matters in aggravation.* Matters in aggravation that do not increase the maximum authorized punishment ordinarily should not be alleged in the specification. Prior convictions need not be alleged in the specification to permit increased punishment.

(x) *Abbreviations.* Commonly used and understood abbreviations may be used, particularly abbreviations for ranks, grades, units and organizations, components, and geographic or political entities, such as the names of states or countries.

---

(4) *Multiple offenses.* Charges and specifications alleging all known offenses by an accused may be preferred at the same time. Each specification shall state only one offense. What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.

### Discussion

Unreasonable multiplication of charges should not be confused with multiplicity, a double jeopardy concept. See R.C.M. 1003(c)(1)(C).

Accordingly, the phrase “multiplicity in sentencing” is confusing and should be avoided. Unreasonable multiplication of charges is addressed in R.C.M. 906(b)(12); multiplicity is addressed in R.C.M. 907(b)(3)(B); and punishment limitations are addressed in R.C.M. 1003(c)(1)(C).

For example, a person should not be charged with both failure to report for a routine scheduled duty (e.g., reveille) and absence without leave if the failure to report occurred during the period for which the accused is charged with absence without leave. There are times, however, when sufficient doubt as to the facts or the law exists to warrant making one transaction the basis for charging two or more offenses. In no case should both an offense and a lesser included offense thereof be separately charged.

See also R.C.M. 601(e)(2) concerning referral of several offenses.

---

(5) *Multiple offenders.* A specification may name more than one person as an accused if each person so named is believed by the accuser to be a principal in the offense which is the subject of the specification.

### Discussion

See also R.C.M. 601(e)(3) concerning joinder of accused.

A joint offense is one committed by two or more persons acting together with a common intent. Principals may be charged jointly with the commission of the same offense, but an accessory after the fact cannot be charged jointly with the principal whom the accused is alleged to have received, comforted, or assisted. Offenders are properly joined only if there is a common unlawful design or purpose; the mere fact that several persons happen to have committed the same kinds of offenses at the time, although material as tending to show concert of purpose, does not necessarily establish this. The fact that several persons happen to have absented themselves without leave at about the same time will not, in the absence of evidence indicating a joint design, purpose, or plan, justify joining them in one specification, for they may merely have been availing themselves of the same opportunity. In joint offenses the participants may be separately or jointly charged. However, if the participants are members of different armed forces, they must be charged separately because their trials must be separately reviewed. The preparation of joint charges is discussed in R.C.M. 307 (c)(3), Discussion (H)(viii)(a). The advantage of a joint charge is that all accused will be tried at one trial, thereby saving time, labor, and expense. This must be weighed against the possible unfairness to the accused which may result if their defenses are inconsistent or antagonistic. An accused cannot be called as a witness except upon that accused’s own request. If the testimony of an accomplice is necessary, the accomplice should not be tried jointly with those against whom the accomplice is expected to testify. See also Mil. R. Evid. 306.

See R.C.M. 603 concerning amending specifications.

See R.C.M. 906(b)(4) and (6) concerning motions to amend specifications and bills of particulars.

See R.C.M. 906(b)(5) and (6) concerning motions to amend specifications and bills of particulars.

---

(d) *Harmless error in citation.* Error in or omission of the designation of the article of the UCMJ or other statute, law of war, or regulation violated shall not be ground for dismissal of a charge or reversal of a conviction if the error or omission did not prejudicially mislead the accused.

**Rule 308. Notification to accused of charges**

(a) *Immediate commander.* The immediate commander of the accused shall cause the accused to be informed of the charges preferred against the accused, and the name of the person who preferred the charges and of any person who ordered the charges to be preferred, if known, as soon as practicable.

**Discussion**

When notice is given, a certificate to that effect on the Charge Sheet should be completed. See Appendix 5.

However, in cases where charges are immediately referred after referral, service of referred charges under R.C.M. 602 fulfills the notice requirement of this rule. In those cases, the notice certificate on the Charge Sheet need not be completed and should be lined out.

---

(b) *Commanders at higher echelons.* When the accused has not been informed of the charges, commanders at higher echelons to whom the preferred charges are forwarded shall cause the accused to be informed of the matters required under subsection (a) of this rule as soon as practicable.

(c) *Remedy.* The sole remedy for violation of this rule is a continuance or recess of sufficient length to permit the accused to adequately prepare a defense, and no relief shall be granted upon a failure to comply with this rule unless the accused demonstrates that the accused has been hindered in the preparation of a defense.

**Rule 309. Pre-referral judicial proceedings**

(a) *In general.*

(1) A military judge detailed under regulations of the Secretary concerned may conduct proceedings under Article 30a before referral of charges and specifications to court-martial for trial, and may issue such rulings and orders as necessary to further the purpose of the proceedings.

(2) The matters that may be considered and ruled

upon by a military judge in proceeding under this rule are limited to those matters specified in subsection (b).

(3) If any matter in a proceeding under this rule becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter, to include any motions, related papers, and the record of the hearing, if any, shall be provided to the military judge detailed to the court-martial.

(b) *Pre-referral matters.*

(1) *Pre-referral investigative subpoenas.* A military judge may, upon application by the Government, consider whether to issue a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C). The proceeding may be conducted ex parte and may be conducted in camera.

(2) *Pre-referral warrants or orders for wire or electronic communications.* A military judge may, upon written application by a federal law enforcement officer or authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, consider whether to issue a warrant or order for wire or electronic communications and related information as provided under R.C.M. 703A. The proceeding may be conducted ex parte and may be conducted in camera.

**Discussion**

The defense may request that the trial counsel or other counsel for the Government make an application under R.C.M. 309 (b)(1) or (b)(2) of this rule. The military judge may, as a matter of discretion, afford the defense an opportunity to be heard.

---

(3) *Requests for relief from subpoena or other process.* A person in receipt of a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C) or a service provider in receipt of an order to disclose information about wire or electronic communications under R.C.M. 703A may request relief on grounds that compliance with the subpoena or order is unreasonable, oppressive or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena or order, or modify or quash the subpoena or order as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government.

**R.C.M. 309(b)(4)**

**Discussion**

See Article 46; R.C.M. 703(g)(3)(G); R.C.M. 703A(c)(2).

---

(4) *Pre-referral matters referred by an appellate court.* When a Court of Criminal Appeals or the Court of Appeals for the Armed Forces, in the course of exercising the jurisdiction of such court, remands the case for a pre-referral judicial proceeding, a military judge may conduct such a proceeding under this rule.

(c) *Procedure for submissions.* The Secretary concerned shall prescribe the procedures for receiving requests for proceedings under this rule and for detailing military judges to such proceedings.

(d) *Hearings.* Any hearing conducted under this rule shall be conducted in accordance with the procedures generally applicable to sessions conducted under Article 39(a) and R.C.M. 803.

(e) *Record.* A separate record of any proceeding under this rule shall be prepared and forwarded to the convening authority or commander with authority to dispose of the charges or offenses in the case. If charges are referred to trial in the case, such record shall be included in the record of trial.

(f) *Military magistrate.* If authorized under regulations of the Secretary concerned, a military judge detailed to a proceeding under this rule, other than a proceeding under paragraph (b)(2), may designate a military magistrate to preside and exercise the authority of the military judge over the proceeding

## CHAPTER IV. FORWARDING AND DISPOSITION OF CHARGES

### Rule 401. Forwarding and disposition of charges in general

(a) *Who may dispose of charges.* Only persons authorized to convene courts-martial or to administer nonjudicial punishment under Article 15 may dispose of charges. A superior competent authority may withhold the authority of a subordinate to dispose of charges in individual cases, types of cases, or generally.

#### Discussion

See R.C.M. 504 as to who may convene courts-martial and paragraph 2 of Part V as to who may administer nonjudicial punishment. If the power to convene courts-martial and to administer nonjudicial punishment has been withheld, a commander may not dispose of charges under this rule.

Ordinarily charges should be forwarded to the accused's immediate commander for initial consideration as to disposition. Each commander has independent discretion to determine how charges will be disposed of, except to the extent that the commander's authority has been withheld by superior competent authority. *See also* R.C.M. 104.

See R.C.M. 603 if major or minor changes to the charges are necessary after referral. If a commander is an accuser (see Article 1(9); R.C.M. 307(a)) that commander is ineligible to refer such charges to a general or special court-martial. See R.C.M. 601(c). But see R.C.M. 1302(b) (accuser may refer charges to a summary court-martial)

---

(b) *Prompt determination.* When a commander with authority to dispose of charges receives charges, that commander shall promptly determine what disposition will be made in the interest of justice and discipline.

#### Discussion

In determining what level of disposition is appropriate, see R.C.M. 306(b) and (c) and Appendix 2.1 (Non-binding disposition guidance). When charges are brought against two or more accused with a view to a joint or common trial, see R.C.M. 307(c)(5) and 601(e)(3). If it appears that the accused may lack mental capacity to stand trial or may not have been mentally responsible at the times of the offenses, see R.C.M. 706, 909, and 916(k).

As to the rules concerning speedy trial, see R.C.M. 707. See also Articles 10, 30, and 131f.

Before determining an appropriate disposition, a commander who receives charges should ensure that: (1) a preliminary inquiry under R.C.M. 303 has been conducted; (2) the accused has been notified in accordance with R.C.M. 308; and (3) the charges are in proper form.

(c) *How charges may be disposed of.* Unless the authority to do so has been limited or withheld by superior competent authority, a commander may dispose of charges by dismissing any or all of them, forwarding any or all of them to another commander for disposition, or referring any or all of them to a court-martial which the commander is empowered to convene. Charges should be disposed of in accordance with the policy in R.C.M. 306(b).

#### Discussion

A commander may dispose of charges individually or collectively. If charges are referred to a court-martial, ordinarily all known charges should be referred to a single court-martial. But see R.C.M. 902A.

*See* Appendix 3 when the charges may involve matters in which the Department of Justice has an interest.

*See* the Discussion to R.C.M. 306(b) and Appendix 2.1 (Non-binding disposition guidance).

---

(1) *Dismissal.* When a commander dismisses charges further disposition under R.C.M. 306(c) of the offenses is not barred.

#### Discussion

Charges are ordinarily dismissed by lining out and initialing the deleted specifications or otherwise recording that a specification is dismissed. When all charges and specifications are dismissed, the accuser and the accused ordinarily should be informed.

A charge should be dismissed when it fails to state an offense, when it is unsupported by available evidence, or when there are other sound reasons why trial by court-martial is not appropriate. Before dismissing charges because trial would be detrimental to the prosecution of a war or harmful to national security, see R.C.M. 401(d); 407(b).

If the accused has already refused nonjudicial punishment, charges should not be dismissed with a view to offering nonjudicial punishment unless the accused has indicated willingness to accept nonjudicial punishment if again offered. The decision whether to dismiss charges in such circumstances is within the sole discretion of the commander concerned.

Charges may be amended in accordance with R.C.M. 603. It is appropriate to dismiss a charge and prefer another charge anew when, for example, the original charge failed to state an offense, or was so defective that a major amendment was required (see R.C.M. 603(d)), or did not adequately reflect the nature or seriousness of the offense.

*See* R.C.M. 907(b)(2)(C) concerning the effect of dismissing charges after the court-martial has begun.

**R.C.M. 401(c)(2)**

*(2) Forwarding charges.*

*(A) Forwarding to a superior commander.*

When charges are forwarded to a superior commander for disposition, the forwarding commander shall make a personal recommendation as to disposition. If the forwarding commander is disqualified from acting as convening authority in the case, the basis for the disqualification shall be noted.

**Discussion**

A commander’s recommendation is within that commander’s sole discretion. No authority may direct a commander to make a specific recommendation as to disposition. However, in making a disposition recommendation, the forwarding commander should review Appendix 2.1 (Non-binding disposition guidance).

When charges are forwarded to a superior commander with a view to trial by general or special court-martial, they should be forwarded by a letter of transmittal or indorsement. To the extent practicable without unduly delaying forwarding the charges, the letter should include or carry as enclosures: a summary of the available evidence relating to each offense; evidence of previous convictions and nonjudicial punishments of the accused; an indication that the accused has been offered and refused nonjudicial punishment, if applicable; and any other matters required by superior authority or deemed appropriate by the forwarding commander. Other matters which may be appropriate include information concerning the accused’s background and military service, and a description of any unusual circumstances in the case. The summary of evidence should include available witness statements, documentary evidence, and exhibits. When practicable, copies of signed statements of the witnesses should be forwarded, as should copies of any investigative or laboratory reports. Forwarding charges should not be delayed, however, solely to obtain such statements or reports when it otherwise appears that sufficient evidence to warrant trial is or will be available in time for trial. If because of the bulk of documents or exhibits, it is impracticable to forward them with the letter of transmittal, they should be properly preserved and should be referred to in the letter of transmittal.

When it appears that any witness may not be available for later proceedings in the case or that a deposition may be appropriate, that matter should be brought to the attention of the convening authority promptly and should be noted in the letter of transmittal.

When charges are forwarded with a view to disposition other than trial by general or special court-martial, they should be accompanied by sufficient information to enable the authority receiving them to dispose of them without further investigation.

*(B) Other cases.* When charges are forwarded to a commander who is not a superior of the forwarding commander, no recommendation as to disposition may be made.

**Discussion**

Except when directed to forward charges, a subordinate commander may not be required to take any specific action

to dispose of charges. See R.C.M. 104. See also paragraph 1.d.(2) of Part V. When appropriate, charges may be sent or returned to a subordinate commander for compliance with procedural requirements. See, e.g., R.C.M. 303 (preliminary inquiry); R.C.M. 308 (notification to accused of charges).

*(3) Referral of charges.* See R.C.M. 403, 404, 407, 601.

*(d) National security matters.* If a commander who is not a general court-martial convening authority finds that the charges warrant trial by court-martial but believes that trial would probably be detrimental to the prosecution of a war or harmful to national security, the charges shall be forwarded to the officer exercising general court-martial convening authority.

**Discussion**

See R.C.M. 407(b).

**Rule 402. Action by commander not authorized to convene courts-martial**

When in receipt of charges, a commander authorized to administer nonjudicial punishment but not authorized to convene courts-martial may:

- (1) Dismiss any charges; or

**Discussion**

See R.C.M. 401(c)(1) concerning dismissal of charges, the effect of dismissal, and options for further action.

- (2) Forward them to a superior commander for disposition.

**Discussion**

See R.C.M. 401(c)(2) for additional guidance concerning forwarding charges. See generally R.C.M. 303 (preliminary inquiry); 308 (notification to accused of charges) concerning other duties of the immediate commander when in receipt of charges.

When the immediate commander is authorized to convene courts-martial, see R.C.M. 403, 404, or 407, as appropriate.

**Rule 403. Action by commander exercising summary court-martial jurisdiction**

- (a) *Recording receipt.* Immediately upon receipt of

sworn charges, an officer exercising summary court-martial jurisdiction over the command shall cause the hour and date of receipt to be entered on the charge sheet.

**Discussion**

See Article 24 and R.C.M. 1302(a) concerning who may exercise summary court-martial jurisdiction.

The entry indicating receipt is important because it stops the running of the statute of limitations. See Article 43; R.C.M. 907(b)(2)(B). Charges may be preferred and forwarded to an officer exercising summary court-martial jurisdiction over the command to stop the running of the statute of limitations even though the accused is absent without authority.

(b) *Disposition.* When in receipt of charges a commander exercising summary court-martial jurisdiction may:

- (1) Dismiss any charges;

**Discussion**

See R.C.M. 401(c) concerning dismissal of charges, the effect of dismissing charges, and options for further action.

(2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

**Discussion**

See R.C.M. 401(c)(2)(B) concerning forwarding charges to a subordinate. When appropriate, charges may be forwarded to a subordinate even if the subordinate previously considered them.

(3) Forward any charges to a superior commander for disposition;

**Discussion**

See R.C.M. 401(c)(2)(A) for guidance concerning forwarding charges to a superior.

(4) Subject to R.C.M. 601(d) and 1301(c), refer charges to a summary court-martial for trial; or

**Discussion**

See R.C.M. 1302(c) concerning referral of charges to a summary

court-martial.

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition.

**Discussion**

A preliminary hearing should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. See R.C.M. 405. If a preliminary hearing of the subject matter already has been conducted, see R.C.M. 405

**Rule 404. Action by commander exercising special court-martial jurisdiction**

When in receipt of charges, a commander exercising special court-martial jurisdiction may:

- (1) Dismiss any charges;

**Discussion**

See R.C.M. 401(c) concerning dismissal of charges, the effect of dismissing charges, and options for further action.

(2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

**Discussion**

See R.C.M. 401(c)(2)(B) concerning forwarding charges to a subordinate. When appropriate, charges may be forwarded to a subordinate even if the subordinate previously considered them.

(3) Forward any charges to a superior commander for disposition;

**Discussion**

See R.C.M. 401(c)(2)(A) for guidance concerning forwarding charges to a superior.

(4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer charges to a summary court-

## R.C.M. 404(5)

martial or to a special court-martial for trial; or

### Discussion

See Article 23 and R.C.M. 504(b)(2) concerning who may convene special courts-martial.

See R.C.M. 601 concerning referral of charges to a special court-martial. See R.C.M. 1302(c) concerning referral of charges to a summary court-martial.

See R.C.M. 201(f)(2)(D) and (E) and 1301(c) for limitations on the referral of certain offenses to special and summary courts-martial.

---

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition.

### Discussion

A preliminary hearing should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. See R.C.M. 405. If a preliminary hearing of the subject matter already has been conducted, see R.C.M. 405(b) and 405(e)(2).

## Rule 404A. Initial Disclosures

(a) *Generally.* Except as otherwise provided in subsections (b)–(d), counsel for the Government shall provide the following information, matters, and disclosures to the defense:

(1) *After referral of charges.* As soon as practicable after notification to the accused of preferred charges under R.C.M. 308, counsel for the Government shall provide the defense with copies of, or if impracticable, permit the defense to inspect the charges and any matters that accompanied the charges when they were preferred.

(2) *After direction of a preliminary hearing.* As soon as practicable but no later than five days after direction of an Article 32 preliminary hearing, counsel for the Government shall provide the defense with copies of, or if impracticable, permit the defense to inspect:

(A) the order directing the Article 32 preliminary hearing pursuant to R.C.M. 405;

(B) statements, within the control of military authorities, of witnesses that counsel for the Government intends to call at the preliminary hearing;

(C) evidence counsel for the Government intends to present at the preliminary hearing; and

(D) any matters provided to the convening authority when deciding to direct the preliminary hearing.

### Discussion

Rule 404A(a) is not intended to limit or discourage counsel for the Government from providing additional materials to the defense.

(b) *Contraband.* If items covered by subsection (a) of this rule are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the preliminary hearing.

(c) *Privilege.* If items covered by subsection (a) of this rule are privileged, classified, or otherwise protected under Section V of Part III, the Military Rules of Evidence, no disclosure of those items is required under this rule. However, counsel for the Government may disclose privileged, classified, or otherwise protected information covered by subsection (a) of this rule if authorized by the holder of the privilege, or in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(d) *Protective order if privileged information is disclosed.* If the Government agrees to disclose to the accused information to which the protections afforded by Section V of Part III may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)–(6) or 506(g)(2)–(5).

### Discussion

The purpose of this rule is to provide the accused with the documents used to make the determination to prefer charges and direct a preliminary hearing, and to allow the accused to prepare for the preliminary hearing. This rule is not intended to be a tool for discovery and does not impose the same discovery obligations found in R.C.M. 405 prior to amendments required by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 980 (2013), as amended by Section 531 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, 128 Stat. 3371 (2014), or R.C.M. 701. Additional rules for disclosure of witnesses and other evidence in the preliminary hearing are provided

in R.C.M. 405(h).

**Rule 405. Preliminary hearing**

(a) *In general.* Except as provided in subsection (m), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and to recommend the disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court-martial.

**Discussion**

The function of the preliminary hearing is to ascertain and impartially weigh the facts needed for the limited scope and purpose of the preliminary hearing. The preliminary hearing is not intended to perfect a case against the accused and is not intended to serve as a means of discovery or to provide a right of confrontation required at trial. Determinations and recommendations of the preliminary hearing officer are advisory.

Failure to substantially comply with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. *See* R.C.M. 905(b)(1) and 906(b)(3) concerning motions for appropriate relief relating to the preliminary hearing.

The accused may waive the preliminary hearing. *See* R.C.M. 405(m). In such case, no preliminary hearing need be held. However, the convening authority authorized to direct the preliminary hearing may direct that it be conducted notwithstanding the waiver.

(b) *Earlier preliminary hearing.* If a preliminary hearing on the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the preliminary hearing and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further preliminary hearing is required.

(c) *Who may direct a preliminary hearing.* Unless prohibited by regulations of the Secretary concerned, a preliminary hearing may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent

with these rules.

(d) *Personnel.*

(1) *Preliminary hearing officer.*

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(B) Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(C) The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(D) The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity.

**Discussion**

The preliminary hearing officer, if not a judge advocate, should be an officer in the grade of O-4 or higher. The preliminary hearing officer may seek legal advice concerning the preliminary hearing officer's responsibilities from an impartial source, but may not obtain such advice from counsel for any party or counsel for a victim.

Because this is a preliminary hearing and not a trial, the requirement for the preliminary hearing officer to remain impartial does not preclude the preliminary hearing officer from identifying matters or sources of information that may warrant further inquiry. *See* R.C.M. 405(j)(1). The responsibility for requesting and producing such information, however, rests with the parties.

(2) *Counsel for the Government.* A judge advocate, not the accuser, shall serve as counsel to represent the Government.

(3) *Defense counsel.*

(A) *Detailed counsel.* Military counsel certified in accordance with Article 27(b) shall be detailed to represent the accused.



**R.C.M. 405(d)(3)(B)**

(B) *Individual military counsel.* The accused may request to be represented by individual military counsel. Such requests shall be acted on in accordance with R.C.M. 506(b).

(C) *Civilian counsel.* The accused may be represented by civilian counsel at no expense to the Government. Upon request, the accused is entitled to a reasonable time to obtain civilian counsel and to have such counsel present for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for this purpose. Representation by civilian counsel shall not limit the rights to military counsel under subparagraphs (A) and (B).

(4) *Others.* The convening authority who directed the preliminary hearing may also detail or request an appropriate authority to detail a reporter, an interpreter, or both.

(e) *Scope of preliminary hearing.*

(1) The preliminary hearing officer shall limit the inquiry to the examination of evidence, including witnesses, relevant to the issues for determination under subsection (a).

(2) If evidence adduced during the preliminary hearing indicates that the accused committed any uncharged offense, the preliminary hearing officer may examine evidence and hear witnesses presented by the parties relating to the subject matter of such offense and make the determinations specified in subsection (a) regarding such offense without the accused first having been charged with the offense. The rights of the accused under subsection (f), and, where it would not cause undue delay to the proceedings, the procedure applicable for production of witnesses and other evidence under subsection (h), are the same with regard to both charged and uncharged offenses. When considering uncharged offenses identified during the preliminary hearing, the preliminary hearing officer shall inform the accused of the general nature of each uncharged offense considered, and otherwise afford the accused the same opportunity for representation, cross examination, and presentation afforded during the preliminary hearing of any charged offense.

**Discussion**

Except as set forth in R.C.M. 405(i), the Military Rules of Evidence do not apply at a preliminary hearing. Except as prohibited elsewhere in this rule, a preliminary hearing officer may consider evidence, including hearsay, which would not be admissible at trial.

(f) *Rights of the accused.* At any preliminary hearing under this rule the accused shall have the right to:

(1) Be advised of the charges under consideration;

(2) Be represented by counsel;

(3) Be informed of the purpose of the preliminary hearing;

(4) Be informed of the right against self-incrimination under Article 31;

(5) Except in the circumstances described in R.C.M. 804(c)(2), be present throughout the taking of evidence;

(6) Cross-examine witnesses on matters relevant to the issues for determination under subsection (a);

(7) Present matters relevant to the issues for determination under subsection (a); and

(8) Make a sworn or unsworn statement relevant to the issues for determination under subsection (a).

(g) *Notice to and presence of victim.*

(1) For the purposes of this rule, a “victim” is an individual who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.

(2) A victim of an offense under the UCMJ has the right to reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense and the reasonable right to confer with counsel for the Government.

(3) A victim has the right not to be excluded from any public proceeding of the preliminary hearing, except to the extent a similarly situated victim would be excluded at trial.

**Discussion**

See Article 6b, UCMJ.

(h) *Notice, Production of Witnesses, and Production of Other Evidence.*

(1) *Notice.* Prior to any preliminary hearing under this rule the parties shall, in accordance with timelines set by the preliminary hearing officer, provide to the preliminary hearing officer and the opposing party the following notices:

(A) Notice of the name and contact information for each witness the party intends to call at the preliminary hearing; and

(B) Notice of any other evidence that the party

intends to offer at the preliminary hearing; and

(C) Notice of any additional information the party intends to submit under subsection (k).

(2) *Production of Witnesses.*

(A) *Military Witnesses.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government the names of proposed military witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under subsection (a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under subsection (a).

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available, and if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final. A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing.

**Discussion**

A commanding officer's determination of whether an individual is available, as well as the means by which the individual is available, is a balancing test. The more important the testimony of the witness, the greater the difficulty, expense, delay, or effect on military operations must be to deny production of the witness. Based on operational necessity and mission requirements, the witness' commanding officer may authorize the witness to testify by video teleconference, telephone, or similar means of remote testimony. Factors to be considered in making this determination include the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by the production of the witness; and the likelihood of significant interference with operational deployment, mission accomplishment, or essential training. Before determining that a witness is unavailable, the witness' commanding officer should give due consideration to the alternative forms of testimony noted above, which generally can be facilitated with minimal impact on command operations.

---

(B) *Civilian Witnesses.*

(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under subsection (a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under subsection (a).

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness' testimony is relevant, not cumulative, and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for that witness' testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by

### **R.C.M. 405(h)(3)**

video teleconference, by telephone, or by similar means of remote testimony.

#### **Discussion**

Factors to be considered in making this determination include the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by the production of the witness; the willingness of the witness to testify in person; and, for child witnesses, the traumatic effect of providing in person testimony. Civilian witnesses may not be compelled to provide testimony at a preliminary hearing. Civilian witnesses may be paid for travel and associated expenses to testify at a preliminary hearing. *See generally* Department of Defense Joint Travel Regulations.

#### *(3) Production of other evidence.*

*(A) Evidence under the control of the Government.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence under the control of the Government the accused requests the Government produce to the defense for introduction at the preliminary hearing. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) and shall make reasonable efforts to obtain the evidence; or (2) the Government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary to a determination of the issues under subsection (a).

(ii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a). If the preliminary hearing officer determines that the evidence shall be produced, counsel for the Government shall make reasonable efforts to obtain the evidence.

(iii) The preliminary hearing officer may not order the production of any privileged matters, however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

*(B) Evidence not under the control of the Government.*

(i) Evidence not under the control of the Government may be obtained through noncompulsory means or by a pre-referral investigative subpoena issued by a military judge under R.C.M. 309 or counsel for the Government in accordance with the process established by R.C.M. 703(g)(3)(C).

(ii) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence not under the control of the Government that the accused requests the Government obtain. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) and shall issue a pre-referral investigative subpoena for the evidence; or (2) the Government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary to a determination of the issues under subsection (a).

(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to issue a pre-referral investigative subpoena for the defense-requested evidence. If counsel for the Government refuses, the counsel shall set forth the reasons for such refusal in a written statement that shall be included in the preliminary hearing report under subsection (1).

#### **Discussion**

A pre-referral investigative subpoena to produce books, papers, documents, data, electronically stored information, or other objects for a preliminary hearing may be issued by counsel for the Government when authorized by the general court-martial convening authority or by a military judge under R.C.M. 309. The preliminary hearing officer has no authority to issue a pre-referral investigative subpoena.

(iv) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

(iv) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

**Discussion**

A preliminary hearing officer may not order the production of any privileged matters. See R.C.M. 405(h)(3).

(i) *Military Rules of Evidence.*

(1) *In general.*

(A) Only the following Military Rules of Evidence apply to preliminary hearings:

(i) Mil. R. Evid. 301–303 and 305.

(ii) Mil. R. Evid. 412(a), except as provided in paragraph (2) of this subsection.

(iii) Mil. R. Evid., Section V, Privileges, except that Mil. R. Evid. 505(f)–(h) and (j); 506(f)–(h), (j), (k), and (m); and 514(d)(6) shall not apply.

(B) In applying the rules to a preliminary hearing in accordance with subparagraph (A), the term “military judge,” as used in such rules, means the preliminary hearing officer, who shall assume the military judge’s authority to exclude evidence from the preliminary hearing, and who shall, in discharging this duty, follow the procedures set forth in such rules. Evidence offered in violation of the procedural requirements of the rules in subparagraph (A) shall be excluded from the preliminary hearing, unless good cause is shown.

(2) *Sex-offense cases.*

(A) *Inadmissibility of certain evidence.* In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that any alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim’s sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(1)(A) or (B); and

(ii) the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) of this rule.

(B) *Initial procedure to determine admissibility.* A

party intending to offer evidence under subparagraph (A) shall, no later than five days before the preliminary hearing begins, submit a written motion specifically describing the evidence and stating why the evidence is admissible. The preliminary hearing officer may permit a different filing time, but any motion shall be filed prior to the beginning of the preliminary hearing. The moving party shall serve the motion on the opposing party, who shall have the opportunity to respond in writing. Counsel for the Government shall cause the motion and any written responses to be served on the victim, or victim’s counsel, if any, or, when appropriate, the victim’s guardian or representative. After reviewing the motion and any written responses, the preliminary hearing officer shall either—

(i) deny the motion on the grounds that the evidence does not meet the criteria specified in clauses (i)(2)(A)(i) or (ii); or

(ii) conduct a hearing to determine the admissibility of the evidence.

(C) *Admissibility hearing.* If the preliminary hearing officer conducts a hearing to determine the admissibility of the evidence, the admissibility hearing shall be closed and should ordinarily be conducted at the end of the preliminary hearing, after all other evidence offered by the parties has been admitted. At the admissibility hearing, the parties may call witnesses and offer relevant evidence. The victim shall be afforded a reasonable opportunity to attend and be heard, to include being heard through counsel. If the preliminary hearing officer determines that the evidence should be admitted, the victim may directly petition the Court of Criminal Appeals for a writ of mandamus pursuant to Article 6b.

**Discussion**

The preliminary hearing may be abated pending action by the Court of Criminal Appeals.

(D) *Sealing.* The motions, related papers, and the record of an admissibility hearing shall be sealed and remain under seal in accordance with R.C.M. 1113.

**Discussion**

When ordering an exhibit or proceeding sealed in accordance with R.C.M. 1113, the preliminary hearing officer should consider the purpose for which the exhibit or proceeding is to be sealed and determine if the person or entity whose interests are being protected

## R.C.M. 405(j)

should be permitted access to the sealed materials. The preliminary hearing officer should include language in the sealing order identifying the purpose for which the exhibit or proceeding is being sealed and, if applicable, provide parameters for examination by or disclosure to those persons or entities whose interests are being protected. See R.C.M. 1113(b)(4)-(5) for definitions of the terms “examination” and “disclosure.”

---

### (j) *Preliminary hearing procedure.*

(1) *Generally.* The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused’s rights under subsection (f). Counsel for the Government will then present evidence. Upon the conclusion of counsel for the Government’s presentation of evidence, defense counsel may present matters. Both counsel for the Government and defense counsel shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is necessary for a determination of the issues under subsection (a), the preliminary hearing officer may provide the parties an opportunity to present additional testimony or evidence. Except as provided in subparagraph (1)(2)(J), the preliminary hearing officer shall not consider evidence not presented at the preliminary hearing in making the determinations under subsection (a). The preliminary hearing officer shall not call witnesses sua sponte.

#### **Discussion**

When the preliminary hearing officer finds that evidence offered by either party is not within the scope of the hearing, the preliminary hearing officer shall inform the parties and halt the presentation of that information.

---

### (2) *Presentation of evidence.*

(A) *Testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the accused may make an unsworn statement. The preliminary hearing officer shall only consider testimony that is relevant to the issues for determination under subsection (a).

#### **Discussion**

The following oath may be given to witnesses:

“Do you (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth (so help you God)?”

All preliminary hearing officer notes of testimony and recordings of testimony should be preserved until the end of trial.

If during the preliminary hearing any witness subject to the UCMJ is suspected of an offense under the UCMJ, the preliminary hearing officer should comply with the warning requirements of Mil. R. Evid. 305(c), (d), and, if necessary, (e).

Bearing in mind that counsel are responsible for preparing and presenting their cases, the preliminary hearing officer may ask a witness questions relevant to the issues for determination under subsection (a). When questioning a witness, the preliminary hearing officer may not depart from an impartial role and become an advocate for either side.

---

(B) *Other evidence.* If relevant to the issues for determination under subsection (a) and not cumulative, a preliminary hearing officer may consider other evidence offered by either counsel for the Government or defense counsel, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, that the preliminary hearing officer determines is reliable. This other evidence need not be sworn.

(3) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report.

#### **Discussion**

Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, and circumstance-by-circumstance analysis of whether restriction or closure is necessary. Examples of overriding interests include: preventing psychological harm or trauma to a child witness or to an alleged victim of a sexual crime, protecting the safety or privacy of a witness or an alleged victim, protecting classified material, and receiving evidence where

a witness is incapable of testifying in an open setting.

(4) *Presence of accused.* The accused shall be considered to have waived the right to be present at the preliminary hearing, if the accused:

(A) After being notified of the time and place of the proceeding is voluntarily absent; or

(B) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct which is such as to justify exclusion from the proceeding.

(5) *Recording of the preliminary hearing.* Counsel for the Government shall ensure that the preliminary hearing is recorded by a suitable recording device. A victim named in one of the specifications under consideration may request access to, or a copy of, the recording of the proceedings. Upon request, counsel for the Government shall provide the requested access to, or a copy of, the recording or, at the Government’s discretion, a transcript, to the victim not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of referral, or court-martial adjournment. This rule does not entitle the victim to classified information or sealed materials consistent with an order issued in accordance with R.C.M. 1113(a).

**Discussion**

See Article 32(e)-(h), UCMJ.

(6) *Recording and broadcasting prohibited.* Video and audio recording, broadcasting, and the taking of photographs—except as required in paragraph (j)(5) of this rule—are prohibited. The convening authority may, as a matter of discretion permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed under paragraph (j)(4) of this rule or by spectators when the facilities are inadequate to accommodate a reasonable number of spectators.

(7) *Objections.* Any objection alleging a failure to comply with this rule, other than an objection under subsection (l), shall be made to the preliminary hearing officer promptly upon discovery of the alleged error. The preliminary hearing officer is not required to rule on any objection. An objection shall be noted in the preliminary hearing report if the person objecting so

requests. The preliminary hearing officer may require a party to file any objection in writing.

(8) *Sealed exhibits and proceedings.* The preliminary hearing officer has the authority to order exhibits, recordings of proceedings, or other matters sealed as described in R.C.M. 1113.

**Discussion**

When ordering an exhibit or proceeding sealed in accordance with R.C.M. 1113, the preliminary hearing officer should consider the purpose for which the exhibit or proceeding is to be sealed and determine if the person or entity whose interests are being protected should be permitted access to the sealed materials. The preliminary hearing officer should include language in the sealing order identifying the purpose for which the exhibit or proceeding is being sealed and, if applicable, provide parameters for examination by or disclosure to those persons or entities whose interests are being protected. See R.C.M. 1113(b)(4)-(5) for definitions of the terms “examination” and “disclosure.”

(k) *Supplementary information for the convening authority.*

(1) No later than 24 hours from the closure of the preliminary hearing, counsel for the Government, defense counsel, and any victim named in one of the specifications under consideration (or, if applicable, counsel for such a victim) may submit to the preliminary hearing officer, counsel for the Government, and defense counsel additional information that the submitter deems relevant to the convening authority’s disposition of the charges and specifications.

(2) Defense counsel may submit additional matters that rebut the submissions of counsel for the Government or any victim provided under paragraph (k)(1). Such matters must be provided to the preliminary hearing officer and to the counsel for the Government within 5 days of the closure of the preliminary hearing.

**Discussion**

The Military Rules of Evidence and other regulations may require the preliminary hearing officer to seal certain materials. Preliminary hearing officers have the discretion to seal other supplementary information that they determine should be protected from disclosure. Such information may include personally identifiable information, medical information, financial information, and any other information that may cause unnecessary harm to an individual or entity if released. When ordering an exhibit or proceeding sealed in accordance with R.C.M. 1113, the preliminary hearing officer should consider the purpose for which the exhibit or proceeding is to be sealed and determine if the person or entity whose interests are being

### R.C.M. 405(k)(3)

protected should be permitted access to the sealed materials. The preliminary hearing officer should include language in the sealing order identifying the purpose for which the exhibit or proceeding is being sealed and, if applicable, provide parameters for examination by or disclosure to those persons or entities whose interests are being protected. *See* R.C.M. 1113(b)(4)-(5) for definitions of the terms “examination” and “disclosure.”

(3) The preliminary hearing officer shall examine all supplementary information submitted under subsection (k) and shall seal, in accordance with R.C.M. 1113, any matters the preliminary hearing officer deems privileged or otherwise not subject to disclosure.

(A) The preliminary hearing officer shall provide a written summary and an analysis of the supplementary information submitted under subsection (k) that is not sealed and is relevant to disposition for inclusion in the report to the convening authority under subsection (l).

(B) If the preliminary hearing officer seals any supplementary information submitted under subsection (k), the preliminary hearing officer shall provide an analysis of those materials. The analysis of the sealed materials shall be sealed. Additionally, the preliminary hearing officer shall generally describe those matters and detail the basis for sealing them in a separate cover sheet. This cover sheet shall accompany the sealed matters and shall not contain privileged information or be sealed.

(4) The supplementary information and any summary and analysis provided by the preliminary hearing officer, and any sealed matters and cover sheets, as applicable, shall be forwarded to the convening authority for consideration in making a disposition determination.

(5) Submissions under subsection (k) shall be maintained as an attachment to the preliminary hearing report provided under subsection (l).

#### (l) *Preliminary hearing report.*

(1) *In general.* The preliminary hearing officer shall make a timely written report of the preliminary hearing to the convening authority. This report is advisory and does not bind the staff judge advocate or convening authority.

#### **Discussion**

As soon as practicable after receipt of supplementary information under R.C.M. 405(k), the charges and the report of preliminary hearing should be forwarded to the general court-martial convening

authority. *See* Article 10.

(2) *Contents.* The preliminary hearing report shall include:

(A) A statement of names and organizations or addresses of counsel for the Government and defense counsel and, if applicable, a statement of why either counsel was not present at any time during the proceedings;

(B) The recording of the preliminary hearing under paragraph (j)(5);

(C) For each specification, the preliminary hearing officer’s reasoning and conclusions with respect to the issues for determination under subsection (a), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(D) If applicable, a statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the Government refused to issue a pre-referral investigative subpoena that was directed by the preliminary hearing officer and the counsel’s statement of the reasons for such refusal;

(G) Recommendations for any necessary modifications to the form of the charges and specifications;

(H) A statement of whether the preliminary hearing officer examined evidence or heard witnesses relating to any uncharged offenses in accordance with paragraph (e)(2), and, for each such offense, the preliminary hearing officer’s reasoning and conclusions as to whether there is probable cause to believe that the accused committed the offense and whether the convening authority would have court-martial jurisdiction over the offense if it were charged;

(I) A notation of any objections if required under paragraph (j)(7);

(J) The recommendation of the preliminary hearing officer as to the disposition that should be made of the charges and specifications in the interest of justice and discipline. In making this disposition recommendation, the preliminary hearing officer may consider any evidence admitted during the preliminary hearing and matters submitted under subsection (k);

and

(K) The written summary and analysis required by subparagraph (k)(3)(A).

**Discussion**

The preliminary hearing officer may include any additional matters useful to the convening authority in determining disposition. For guidance concerning disposition of offenses, see Appendix 2.1 (Non-binding disposition guidance). The preliminary hearing officer may recommend that the charges and specifications be amended or that additional charges be preferred. See R.C.M. 306 and 401 concerning other possible dispositions

(3) *Sealed exhibits and proceedings.* If the preliminary hearing report contains exhibits, proceedings, or other matters ordered sealed by the preliminary hearing officer in accordance with R.C.M. 1113, counsel for the Government shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure.

(4) *Distribution of preliminary hearing report.* The preliminary hearing officer shall promptly cause the preliminary hearing report to be delivered to the convening authority. That convening authority shall promptly cause a copy of the report to be delivered to each accused and, in accordance with R.C.M. 401(b), shall promptly determine what disposition will be made in the interest of justice and discipline. If applicable, the convening authority shall promptly forward the report, together with the charges, to a superior commander for disposition.

(5) *Objections.* Any objection to the preliminary hearing report shall be made to the convening authority who directed the preliminary hearing, via the preliminary hearing officer. Upon receipt of the report, the accused has 5 days to submit objections to the preliminary hearing officer. The preliminary hearing officer will forward the objections to the convening authority as soon as practicable. This paragraph does not prohibit a convening authority from referring any charge or taking other action within the 5-day period.

(m) *Waiver.* The accused may waive a preliminary hearing. However, the convening authority authorized to direct the preliminary hearing may direct that a preliminary hearing be conducted notwithstanding the waiver. Failure to make a timely objection under this rule, including an objection to the report, shall constitute forfeiture of the objection. Relief from the waiver or forfeiture may be granted by the convening authority who directed the preliminary hearing, a

superior convening authority, or the military judge, as appropriate, for good cause shown.

**Discussion**

See also R.C.M. 905(b)(1); 906(b)(3).

The convening authority who receives an objection may direct that the preliminary hearing be reopened or take other action, as appropriate.

**Rule 406. Pretrial advice**

(a) *In general.* Before any charge may be referred for trial by a general court-martial, it shall be referred to the staff judge advocate of the convening authority for consideration and advice.

**Discussion**

A pretrial advice need not be prepared in cases referred to special or summary courts-martial. A convening authority is required to consult with a judge advocate before referring charges to a special court-martial (see R.C.M. 406A) and may seek the advice of a lawyer before referring charges to a summary court-martial. When charges have been withdrawn from a general court-martial (see R.C.M. 604) or when a mistrial has been declared in a general court-martial (see R.C.M. 915), supplementary advice is necessary before the charges may be referred to another general court-martial.

The staff judge advocate may make changes in the charges and specifications in accordance with R.C.M. 603.

For guidance concerning the disposition of charges and specifications, see Appendix 2.1 (Non-binding disposition guidance).

(b) *Contents.* The advice of the staff judge advocate shall include a written and signed statement which sets forth that person's:

- (1) Conclusion with respect to whether each specification alleges an offense under the UCMJ;
- (2) Conclusion with respect to whether there is probable cause to believe that the accused committed the offense charged in the specification;
- (3) Conclusion with respect to whether a court-martial would have jurisdiction over the accused and the offense; and
- (4) Recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline.



**R.C.M. 406A(a)**

**Discussion**

The staff judge advocate is personally responsible for the pretrial advice and must make an independent and informed appraisal of the charges and evidence in order to render the advice. While the staff judge advocate may use a preliminary hearing officer's report in preparing pretrial advice, and another person may prepare the advice, the staff judge advocate is, unless disqualified, responsible for it and must sign it personally. Grounds for disqualification in a case include previous action in the case as preliminary hearing officer, military judge, trial counsel, defense counsel, or member.

The advice need not set forth the underlying analysis or rationale for its conclusions. Ordinarily, the charge sheet, forwarding letter, endorsements, and report of preliminary hearing are forwarded with the pretrial advice. In addition, the pretrial advice should include, when appropriate: a brief summary of the evidence; discussion of significant aggravating, extenuating, or mitigating factors; any recommendations for disposition of the case by commanders or others who have forwarded the charges; and any recommendations of the Article 32 preliminary hearing officer. However, there is no legal requirement to include such information, and failure to do so is not error.

Information which is incorrect or so incomplete as to be misleading may result in a determination that the advice is defective, necessitating appropriate relief. *See* R.C.M. 905(b)(1); 906(b)(3).

Defects in the pretrial advice are not jurisdictional and are raised by pretrial motion. *See* R.C.M. 905(b)(1) and its Discussion..

\_\_\_\_\_

**Rule 406A. Pretrial advice before referral to special court-martial**

(a) *In general.* Before any charge may be referred for trial by special court-martial, the convening authority shall consult a judge advocate on relevant legal issues. Such issues may include:

- (1) Whether each specification alleges an offense under the UCMJ;
- (2) Whether there is probable cause to believe the accused committed the offense(s) charged;
- (3) Whether a court-martial would have jurisdiction over the accused and the offense;
- (4) The form of the charges and specifications and any necessary modifications; and
- (5) Any other factors relating to disposition of the charges and specifications in the interest of justice and discipline.

**Discussion**

For guidance concerning disposition of charges and specifications, *see* Appendix 2.1 (Non-binding disposition guidance).

\_\_\_\_\_

**Rule 407. Action by commander exercising general court-martial jurisdiction**

(a) *Disposition.* When in receipt of charges, a commander exercising general court-martial jurisdiction may:

- (1) Dismiss any charges;

**Discussion**

*See* R.C.M. 401(c)(1) concerning dismissal of charges and the effect of dismissing charges.

\_\_\_\_\_

(2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

**Discussion**

*See* R.C.M. 401(c)(2)(B) concerning forwarding charges to a subordinate.

A subordinate commander may not be required to take any specific action or to dispose of charges. *See* R.C.M. 104. *See also* paragraph 1.d.(2) of Part V. When appropriate, charges may be sent or returned to a subordinate commander for compliance with procedural requirements. *See, e.g.,* R.C.M. 303 (preliminary inquiry); R.C.M. 308 (notification to accused of charges).

\_\_\_\_\_

(3) Forward any charges to a superior commander for disposition;

**Discussion**

*See* R.C.M. 401 (c)(2)(A) for guidance concerning forwarding charges to a superior.

\_\_\_\_\_

(4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer charges to a summary court-martial or to a special court-martial for trial;

**Discussion**

*See* R.C.M. 201(f)(2)(D) and (E) and 1301(c) for limitations on the referral of certain offenses to special and summary courts-martial.

\_\_\_\_\_

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, after which additional action under this rule may be taken;

**Discussion**

A preliminary hearing should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. *See* R.C.M. 405. If a preliminary hearing of the subject matter has already been conducted, *see* R.C.M. 405(b).

---

(6) Subject to R.C.M. 601(d), refer charges to a general court-martial.

**Discussion**

See Article 22 and R.C.M. 504(b)(1) concerning who may exercise general court-martial jurisdiction.

See R.C.M. 601 concerning referral of charges. See R.C.M. 306 and 401 concerning other dispositions.

See Section 1744 (b)-(d) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 980 (2013), as amended by Section 541 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, 128 Stat. 3371 (2014) and Service regulations for possible higher-level review requirements for decisions not to refer charges of certain sex-related offenses for trial by court-martial.

---

(b) *National security matters.* When in receipt of charges the trial of which the commander exercising general court-martial jurisdiction finds would probably be inimical to the prosecution of a war or harmful to national security, that commander, unless otherwise prescribed by regulations of the Secretary concerned, shall determine whether trial is warranted and, if so, whether the security considerations involved are paramount to trial. As the commander finds appropriate, the commander may dismiss the charges, authorize trial of them, or forward them to a superior authority.

**Discussion**

In time of war, charges may be forwarded to the Secretary concerned for disposition under Article 43(e). Under Article 43(e), the Secretary may take action suspending the statute of limitations in time of war.

---

## CHAPTER V. COURT-MARTIAL COMPOSITION AND PERSONNEL; CONVENING COURTS-MARTIAL

### **Rule 501. Composition and personnel of courts-martial**

#### (a) *Composition of courts-martial.*

##### (1) *General courts-martial.*

(A) *Non-capital cases.* In non-capital cases, a general court-martial shall consist of:

- (i) A military judge and eight members;
- (ii) A military judge, eight members, and any alternate members authorized by the convening authority;
- (iii) A military judge alone if trial by a military judge is requested and approved under R.C.M. 903; or
- (iv) A military judge and six or seven members, but only if, after impanelment, the panel is reduced below eight members as a result of challenges or excusals.

(B) *Capital cases.* In capital cases, a general court-martial shall consist of:

- (i) A military judge and twelve members; or
- (ii) A military judge, twelve members, and any alternate members authorized by the convening authority.

(2) *Special courts-martial.* Special courts-martial shall consist of:

- (A) A military judge and four members;
- (B) A military judge, four members, and any alternate members authorized by the convening authority;
- (C) A military judge alone if trial by a military judge is requested and approved under R.C.M. 903; or
- (D) A military judge alone if the case is referred for trial by a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

### **Discussion**

See R.C.M. 903 regarding the right of an enlisted accused to request a panel of at least one-third enlisted members or an all-officer panel.

See R.C.M. 912A regarding the impaneling of members and alternate members.

See R.C.M. 1301(a) concerning composition of summary courts-martial.

---

(b) *Counsel in general and special courts-martial.* Military trial and defense counsel shall be detailed to general and special courts-martial. Assistant trial and associate or assistant defense counsel may be detailed.

(c) *Other personnel.* Other personnel, such as interpreters, bailiffs, clerks, escorts, and orderlies, may be detailed or employed as appropriate but need not be detailed by the convening authority personally.

### **Rule 502. Qualifications and duties of personnel of courts-martial**

#### (a) *Members.*

(1) *Qualifications.* The members detailed to a court-martial shall be those persons who in the opinion of the convening authority are best qualified for the duty by reason of their age, education, training, experience, length of service, and judicial temperament. Each member shall be on active duty with the armed forces and shall be:

- (A) A commissioned officer;
- (B) A warrant officer, except when the accused is a commissioned officer; or
- (C) An enlisted person, except when the accused is either a commissioned or warrant officer.

### **Discussion**

Retired members of any Regular component and members of Reserve components of the armed forces are eligible to serve as members if they are on active duty.

Members of the National Oceanic and Atmospheric Administration and of the Public Health Service are eligible to serve as members when assigned to and serving with an armed force. The Public Health Service includes both commissioned and warrant officers. The National Oceanic and Atmospheric Administration includes only commissioned officers.

---

#### (2) *Duties.*

(A) *Members.* The members of a court-martial shall determine whether the accused is proved guilty and, in a capital case in which the accused is found guilty of a capital offense, or in a non-capital case when the accused elects sentencing by members in accordance with R.C.M. 1002, the members shall determine an appropriate sentence, based on the evidence and in accordance with the instructions of the

military judge. Each member has an equal voice and vote with other members in deliberating upon and deciding all matters submitted to them. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Manual, reports of decided cases, or any other reference material.

(B) *Alternate members.* Members impaneled as alternate members shall have the same duties as members under subparagraph (A). However, an alternate member shall not vote or participate in deliberations on findings or sentencing unless the alternate member has become a member by replacing a member who was excused after impanelment under R.C.M. 912B.

### Discussion

Members and alternate members should avoid any conduct or communication with the military judge, witnesses, or other trial personnel during the trial which might present an appearance of partiality. Except as provided in these rules, members and alternate members should not discuss any part of a case with anyone until the matter is submitted to them for determination. Members and alternate members should not on their own visit or conduct a view of the scene of the crime and should not investigate or gather evidence of the offense. Members and alternate members should not form an opinion on any matter in connection with a case until that matter has been submitted to them for determination.

---

(b) *President.*

(1) *Qualifications.* The president of a court-martial shall be the detailed member senior in rank then serving.

(2) *Duties.* The president shall have the same duties as the other members and shall also:

(A) Preside over closed sessions of the members of the court-martial during their deliberations; and

(B) Speak for the members of the court-martial when announcing the decision of the members or requesting instructions from the military judge

(c) *Qualifications of military judge and military magistrate.*

(1) *Military judge.* A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a federal court or a member of the bar of the highest court of a State and who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by the Judge Advocate General of the armed force of which such military

judge is a member. In addition, the military judge of a general court-martial shall be designated for such duties by the Judge Advocate General or the Judge Advocate General's designee, certified to be qualified for duty as a military judge of a general court-martial, and assigned and directly responsible to the Judge Advocate General or the Judge Advocate General's designee. The Secretary concerned may prescribe additional qualifications for military judges in special courts-martial.

(2) *Military magistrate.* The Secretary concerned may establish a military magistrate program. A military magistrate shall be a commissioned officer of the armed forces who is a member of the bar of a federal court or a member of the bar of highest court of a State and who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the Judge Advocate General of the armed force of which such military magistrate is a member.

### Discussion

See R.C.M. 801 for description of some of the general duties of the military judge and military magistrate.

Military judges assigned as general court-martial judges may perform duties in addition to the primary duty of judge of a general court-martial only when such duties are assigned or approved by the Judge Advocate General, or a designee, of the Department or Service of which the military judge is a member. Similar restrictions on other duties which a military judge in special courts-martial may perform may be prescribed in regulations of the Secretary concerned.

---

(3) *Minimum tour lengths.* A person assigned for duty as a military judge shall serve as a military judge for a term of not less than three years, subject to such provisions for reassignment as may be prescribed in regulations issued by the Secretary concerned.

(d) *Counsel.*

(1) *Qualifications of trial counsel.*

(A) *General courts-martial.* Only persons certified under Article 27(b) as competent to perform duties as counsel in courts-martial by the Judge Advocate General of the armed force of which the counsel is a member may be detailed as trial counsel in general courts-martial.

(B) *Trial counsel in special courts-martial and assistant trial counsel in general or special courts-martial.* Any commissioned officer may be detailed as trial counsel in special courts-martial, or as assistant

**R.C.M. 502(d)(2)**

trial counsel in general or special courts-martial if that person—

(i) is determined to be competent to perform such duties by the Judge Advocate General; and

(ii) takes an oath in accordance with Article 42(a), certifies to the court that the person has read and is familiar with the applicable rules of procedure, evidence, and professional responsibility, and meets any additional qualifications the Secretary concerned may establish.

(2) *Qualifications of defense counsel.*

(A) *Detailed military counsel.* Only persons certified under Article 27(b) as competent to perform duties as counsel in courts-martial by the Judge Advocate General of the armed force of which the counsel is a member may be detailed as defense counsel, assistant defense counsel, or associate defense counsel in general or special courts-martial.

**Discussion**

When the accused has individual military or civilian defense counsel, the detailed counsel is “associate counsel” unless excused from the case. *See* R.C.M. 506(b)(3).

(B) *Individual military counsel and civilian defense counsel.* Individual military or civilian defense counsel who represents an accused in accordance with Article 38(b) in a court-martial shall be:

(i) a member of the bar of a federal court or of the bar of the highest court of a State; or

(ii) if not a member of such a bar, a lawyer who is authorized by a recognized licensing authority to practice law and is found by the military judge to be qualified to represent the accused upon a showing to the satisfaction of the military judge that the counsel has appropriate training and familiarity with the general principles of criminal law which apply in a court-martial.

**Discussion**

In making such a determination—particularly in the case of civilian defense counsel who are members only of a foreign bar—the military judge also should inquire into:

(i) the availability of the counsel at times at which sessions of the court-martial have been scheduled;

(ii) whether the accused wants the counsel to appear with military defense counsel;

(iii) the familiarity of the counsel with spoken English;

(iv) practical alternatives for discipline of the counsel in the event of misconduct;

(v) whether foreign witnesses are expected to testify with whom the counsel may more readily communicate than might military counsel; and

(vi) whether ethnic or other similarity between the accused and the counsel may facilitate communication and confidence between the accused and civilian defense counsel.

(C) *Counsel in capital cases.*

(i) *In general.* In any capital case, to the greatest extent practicable, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(ii) *Qualifications.* A counsel learned in the law applicable to capital cases is an attorney whose background, knowledge, or experience would enable him or her to competently represent an accused in a capital case, with due consideration of the seriousness of the possible penalty and the unique and complex nature of the litigation.

**Discussion**

*See* Article 27(d). There exists no bright line or *per se* rule to determine the qualifications necessary for capital cases and unlike 18 U.S.C. § 3005 (2012), Article 27(d) requires detailing of at least one defense counsel learned in the law of capital cases to the greatest extent practicable and the Service Judge Advocate General determines whether the defense counsel is so qualified. Although the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003), and federal civilian law, 18 U.S.C. § 3005 (2012), are instructive on the issue of whether counsel are qualified, neither authority, either individually or collectively, is dispositive of the issue.

(3) *Disqualifications.* No person shall act as trial counsel or assistant trial counsel or, except when expressly requested by the accused, as defense counsel or associate or assistant defense counsel in any case in which that person is or has been:

(A) The accuser;

(B) An investigating or preliminary hearing officer;

(C) A military judge or appellate military judge;

or

(D) A member.

### Discussion

In the absence of evidence to the contrary, it is presumed that a person who, between referral and trial of a case, has been detailed as counsel for any party to the court-martial to which the case has been referred, has acted in that capacity. When a person has acted as counsel for a witness or victim, the issue of disqualification to serve as counsel for a party in the case is governed by the applicable rules of professional conduct.

---

(4) *Duties of trial and assistant trial counsel.* Trial counsel shall prosecute cases on behalf of the United States. Under the supervision of trial counsel an assistant trial counsel may perform any act or duty which trial counsel may perform under law, regulation, or custom of the Service.

### Discussion

(A) *General duties before trial.* Immediately upon receipt of referred charges, trial counsel should cause a copy of the charges to be served upon accused. *See* R.C.M. 602.

Trial counsel should: examine the charge sheet and allied papers for completeness and correctness; correct (and initial) minor errors or obvious mistakes in the charges but may not without authority make any substantial changes (*see* R.C.M. 603); and assure that the information about the accused on the charge sheet and any evidence of previous convictions are accurate.

(B) *Relationship with convening authority.* Trial counsel should: report to the convening authority any substantial irregularity in the convening orders, charges, or allied papers; report an actual or anticipated reduction of the number of members required under R.C.M. 501(a) to the convening authority; and bring to the attention of the convening authority any case in which trial counsel finds trial inadvisable for lack of evidence or other reasons.

(C) *Relationship with the accused and defense counsel.* Trial counsel must communicate with a represented accused only through the accused's defense counsel. *But see* R.C.M. 602. Trial counsel may not attempt to induce an accused to plead guilty or surrender other important rights.

(D) *Victim rights.* The trial counsel should ensure that the Government's responsibilities under Article 6b are fulfilled.

(E) *Preparation for trial.* Trial counsel should: ensure that a suitable room, a reporter (if authorized), and necessary equipment and supplies are provided for the court-martial; obtain copies of the charges and specifications and convening orders for each member and all personnel of the court-martial; give timely notice to the members, other parties, other personnel of the court-martial, and witnesses for the prosecution and (if known) defense of the date, time, place, and uniform of the meetings of the court-martial; ensure that any person having custody of the accused is also informed; comply with applicable disclosure and discovery rules (*see* R.C.M. 404A and 701); prepare to make a prompt, full, and orderly presentation of the evidence at trial; consider the elements of proof of each offense charged, the burden of proof of guilt and the burdens of proof on motions which may be anticipated, and the Military Rules of Evidence; secure for use at trial such legal texts as may be available and necessary to sustain the prosecution's contentions;

arrange for the presence of witnesses and evidence in accordance with R.C.M. 703; prepare to make an opening statement of the prosecution's case (*see* R.C.M. 913); prepare to conduct the examination and cross-examination of witnesses; and prepare to make final argument on the findings and, if necessary, on sentencing (*see* R.C.M. 919; 1001(h)).

(F) *Trial.* Trial counsel should bring to the attention of the military judge any substantial irregularity in the proceedings. Trial counsel should not allude to or disclose to the members any evidence not yet admitted or reasonably expected to be admitted in evidence or intimate, transmit, or purport to transmit to the military judge or members the views of the convening authority or others as to the guilt or innocence of the accused, an appropriate sentence, or any other matter within the discretion of the court-martial.

(G) *Post-trial duties.* Trial counsel should promptly provide written notice of the Statement of Trial Results to the convening authority or a designee, the accused's immediate commander, and (if applicable) the officer in charge of the confinement facility (*see* R.C.M. 1101(e)), and supervise the preparation, and distribution of copies of the record as required by these rules and regulations of the Secretary concerned (*see* R.C.M. 1112).

(H) *Assistant trial counsel.* An assistant trial counsel may act in that capacity only under the supervision of the detailed trial counsel. Responsibility for trial of a case may not devolve to an assistant not qualified to serve as trial counsel. Unless the contrary appears, all acts of an assistant trial counsel are presumed to have been done by the direction of the trial counsel. An assistant trial counsel may not act in the absence of trial counsel at trial in a general court-martial unless the assistant has the qualifications required of a trial counsel. *See* R.C.M. 805(c).

---

(5) *Duties of defense and associate or assistant defense counsel.* Defense counsel shall represent the accused in matters under the UCMJ and these rules arising from the offenses of which the accused is then suspected or charged. Under the supervision of defense counsel an associate or assistant defense counsel may perform any act or duty which a defense counsel may perform under law, regulation, or custom of the Service.

### Discussion

(A) *Initial advice by military defense counsel.* Defense counsel should promptly explain to the accused the general duties of the defense counsel and inform the accused of the rights to request individual military counsel of the accused's own selection, and of the effect of such a request, and to retain civilian counsel. If the accused wants to request individual military counsel, the defense counsel should immediately inform the convening authority through trial counsel and, if the request is approved, serve as associate counsel if the accused requests and the request is approved. Unless the accused directs otherwise, military counsel will begin preparation of the defense immediately after being detailed without waiting for approval of a request for individual military counsel or retention of civilian counsel. *See* R.C.M. 506.

(B) *General duties of defense counsel.* Defense counsel must: guard the interests of the accused zealously within the bounds of the law without regard to personal opinion as to the guilt of the accused;

## R.C.M. 502(e)

disclose to the accused any interest defense counsel may have in connection with the case, any disqualification, and any other matter which might influence the accused in the selection of counsel; represent the accused with undivided fidelity and may not disclose the accused's secrets or confidences except as the accused may authorize (*see also* Mil. R. Evid. 502). A defense counsel designated to represent two or more co-accused in a joint or common trial or in allied cases must be particularly alert to conflicting interests of those accused. Defense counsel should bring such matters to the attention of the military judge so that the accused's understanding and choice may be made a matter of record. *See* R.C.M. 901(d)(4)(D).

Defense counsel must explain to the accused: the elections available as to composition of the court-martial and assist the accused to make any request necessary to effect the election (*see* R.C.M. 903); the right to plead guilty or not guilty and the meaning and effect of a plea of guilty; the rights to introduce evidence, to testify or remain silent, and to assert any available defense; and the rights to present evidence during presentencing proceedings and the rights of the accused to testify under oath, make an unsworn statement, and have counsel make a statement on behalf of the accused. These explanations must be made regardless of the intentions of the accused as to testifying and pleading.

Defense counsel should try to obtain complete knowledge of the facts of the case before advising the accused, and should give the accused a candid opinion of the merits of the case.

(C) *Preparation for trial.* Defense counsel may have the assistance of trial counsel in obtaining the presence of witnesses and evidence for the defense. *See* R.C.M. 703.

Defense counsel should consider the elements of proof of the offenses alleged and the pertinent rules of evidence to ensure that evidence that the defense plans to introduce is admissible and to be prepared to object to inadmissible evidence offered by the prosecution.

Defense counsel should: prepare to make an opening statement of the defense case (*see* R.C.M. 913(b)); and prepare to examine and cross-examine witnesses, and to make final argument on the findings and, if necessary, on sentencing (*see* R.C.M. 919; 1001(h)).

(D) *Trial.* Defense counsel should represent and protect the interests of the accused at trial.

(E) *Post-trial duties.*

(i) *Deferment of confinement.* If the accused is sentenced to confinement, the defense counsel must explain to the accused the right to request the convening authority to defer service of the sentence to confinement and assist the accused in making such a request if the accused chooses to make one. *See* R.C.M. 1103.

(ii) *Post-trial motions.* The defense counsel should file post-trial motions for any issue that is reasonably raised, to include corrections of the record and motions to set aside the findings based on legally insufficient evidence.

(iii) *Submission of matters.* If the accused is convicted, the defense counsel may submit to the convening authority matters for consideration in deciding whether to modify the findings or sentence, if authorized. *See* R.C.M. 1109-10. Defense counsel should discuss with the accused the right to submit matters to the convening authority and the powers of the convening authority in taking action on the case. *See* R.C.M. 1106. Defense counsel may also submit a brief of any matters counsel believes should be considered on further review.

(iv) *Appellate advice.* Defense counsel must explain to the accused the rights to appellate review that apply in the case, and advise the accused concerning the exercise of those rights. Defense

counsel should explain the review authority of the Court of Criminal Appeals, advise the accused of the right to be represented by counsel before it, and if applicable, the time period allowed to file an appeal of right. *See* R.C.M. 1202 and 1203. Defense counsel should also explain the possibility of further review by the Court of Appeals for the Armed Forces and the Supreme Court. *See* R.C.M. 1204 and 1205.

If the case may be examined in the office of the Judge Advocate General under Article 65, defense counsel should explain the nature of such review to the accused. *See* R.C.M. 1201(d)(1) and (e).

Defense counsel must explain the consequences of waiver of appellate review, when applicable, and, if the accused elects to waive appellate review, defense counsel will assist in preparing the waiver. *See* R.C.M. 1115. If the accused waives appellate review, or if it is not available, defense counsel should explain that the case will be reviewed by an attorney designated by the Judge Advocate General. *See* R.C.M. 1201.

The accused should be advised of the right to apply to the Judge Advocate General for relief after final review under Article 69 when such review is available, the applicable time period for making such an application, and the opportunity for further review by the Court of Criminal Appeals. *See* R.C.M. 1201

(F) *Associate or assistant defense counsel.* Associate or assistant counsel may act in that capacity only under the supervision and by the general direction of the defense counsel. A detailed defense counsel becomes associate defense counsel when the accused has individual military or civilian counsel and detailed counsel is not excused. Although assistant and associate counsel act under the general supervision of the defense counsel, subject to R.C.M. 805(c), assistant and associate defense counsel may act without such supervision when circumstances require. *See, e.g.,* R.C.M. 805(c). Unless the contrary appears, all acts of an assistant or associate defense counsel are presumed to have been done under the supervision of the defense counsel.

---

(e) *Interpreters, reporters, escorts, bailiffs, clerks, guards, and orderlies.*

(1) *Qualifications.* The qualifications of interpreters and reporters may be prescribed by the Secretary concerned. Any person who is not disqualified under paragraph (e)(2) of this rule may serve as escort, bailiff, clerk, guard, or orderly, subject to removal by the military judge.

(2) *Disqualifications.* In addition to any disqualifications which may be prescribed by the Secretary concerned, no person shall act as interpreter, reporter, escort, bailiff, clerk, guard, or orderly in any case in which that person is or has been in the same case:

- (A) The accuser;
- (B) A witness;
- (C) An investigating or preliminary hearing officer;
- (D) Counsel for any party; or

(E) A member of the court-martial or of any earlier court-martial of which the trial is a rehearing or new or other trial.

(3) *Duties.* In addition to such other duties as the Secretary concerned may prescribe, the following persons may perform the following duties.

(A) *Interpreters.* Interpreters shall interpret for the court-martial or for an accused who does not speak or understand English.

**Discussion**

The accused also may retain an unofficial interpreter without expense to the United States.

(B) *Reporters.* Reporters shall record the proceedings and testimony and shall transcribe them so as to comply with the requirements for the record of trial as prescribed in these rules.

(C) *Others.* Other personnel detailed for the assistance of the court-martial shall have such duties as may be imposed by the military judge.

(4) *Payment of reporters, interpreters.* The Secretary concerned may prescribe regulations for the payment of allowances, expenses, per diem, and compensation of reporters and interpreters.

**Discussion**

See R.C.M. 807 regarding oaths for reporters, interpreters, and escorts.

(f) *Action upon discovery of disqualification or lack of qualifications.* Any person who discovers that a person detailed to a court-martial is disqualified or lacks the qualifications specified by this rule shall cause a report of the matter to be made before the court-martial is first in session to the convening authority or, if discovered later, to the military judge.

**Rule 503. Detailing members, military judge, and counsel, and designating military magistrates**

(a) *Members.*

(1) *In general.* The convening authority shall—

(A) detail qualified persons as members for courts-martial;

(B) detail not fewer than the number of members required under R.C.M. 501(a), as applicable; and

(C) state whether the military judge is—

(i) authorized to impanel a specified number of alternate members; or

(ii) authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain.

**Discussion**

The following persons are subject to challenge under R.C.M. 912(f) and should not be detailed as members: any person who is, in the same case, an accuser, witness, preliminary hearing officer, or counsel for any party or witness; any person who, in the case of a new trial, other trial, or rehearing, was a member of any court-martial which previously heard the case; any person who is junior to the accused, unless this is unavoidable; or any person who is in arrest or confinement.

A military judge may not impanel alternate members unless expressly authorized by the convening authority. See Article 29. The procedure to be used by the military judge to impanel members and alternate members is specified in R.C.M. 912A.

(2) *Member election by enlisted accused.* An enlisted accused may, before assembly, request orally on the record or in writing that the membership of the court-martial to which that accused's case has been referred be comprised entirely of officers or of at least one-third enlisted members. If such a request is made, the court-martial membership must be consistent with the accused's request unless eligible members cannot be obtained because of physical conditions or military exigencies. If the appropriate number of members cannot be obtained, the court-martial may be assembled and the members impaneled, and the trial may proceed without them, but the convening authority shall make a detailed written explanation why such members could not be obtained which must be appended to the record of trial.

**Discussion**

When an enlisted accused makes a request for either all-officer members or at least one-third enlisted members, the convening authority may need to:

(1) Detail an additional number of officers or enlisted members to the court-martial and, if appropriate, relieve an appropriate number of officers or enlisted persons previously detailed;

(2) Withdraw the charges from the court-martial to which they were originally referred and refer them to a court-martial which includes the proper proportion of officers or enlisted members; or

(3) Advise the court-martial before which the charges are then pending to proceed in the absence of officers or enlisted members if eligible officers or enlisted members cannot be detailed because of physical conditions or military exigencies.



### R.C.M. 503(a)(3)

When the accused elects one-third enlisted members, the military judge must ensure there are at least two enlisted members for a special court-martial and at least three enlisted members for a non-capital general court-martial. There must be at least two enlisted members in a general court-martial where the number of members falls to six as a result of excusals after impanelment. *See* Article 29.

If an accused elects for the membership of the court-martial to which that accused's case has been referred be comprised of a military judge and members and the members return a finding of guilty to at least one charge and specification, the accused may, after announcement of findings, elect to have an appropriate sentence determined by either the members or the military judge alone. *See* R.C.M. 1002.

---

(3) *Members from another command or armed force.* A convening authority may detail as members of general and special courts-martial persons under that convening authority's command or made available by their commander, even if those persons are members of an armed force different from that of the convening authority or accused.

#### Discussion

Concurrence of the proper commander may be oral and need not be shown by the record of trial.

Members should ordinarily be of the same armed force as the accused. When a court-martial composed of members of different armed forces is selected, at least a majority of the members should be of the same armed force as the accused unless exigent circumstances make it impractical to do so without manifest injury to the Service.

---

(4) This subsection does not apply to charges referred to a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

(b) *Military judge.*

(1) *By whom detailed.* The military judge shall be detailed, in accordance with regulations of the Secretary concerned, by a person assigned as a military judge and directly responsible to the Judge Advocate General or the Judge Advocate General's designee. The authority to detail military judges may be delegated to persons assigned as military judges. If authority to detail military judges has been delegated to a military judge, that military judge may detail himself or herself as military judge for a court-martial.

(2) *Record of detail.* The order detailing a military judge shall be reduced to writing and included in the record of trial or announced orally on the record at the court-martial. The writing or announcement shall

indicate by whom the military judge was detailed. The Secretary concerned may require that the order be reduced to writing.

(3) *Military judge from a different armed force.* A military judge from one armed force may be detailed to a court-martial convened in a different armed force, a combatant command or joint command when permitted by the Judge Advocate General of the armed force of which the military judge is a member. The Judge Advocate General may delegate authority to make military judges available for this purpose.

(4) *Military magistrate.* If authorized under regulations of the Secretary concerned, a detailed military judge may designate a military magistrate to perform pre-referral duties under R.C.M. 309, and, with the consent of the parties, to preside over a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

(c) *Counsel.*

(1) *By whom detailed.* Trial and defense counsel, assistant trial and defense counsel, and associate defense counsel shall be detailed in accordance with regulations of the Secretary concerned. If authority to detail counsel has been delegated to a person that person may detail himself or herself as counsel for a court-martial. In a capital case, counsel learned in the law applicable to such cases under R.C.M. 502(d)(2)(C) shall be assigned in accordance with regulations of the Secretary concerned.

(2) *Record of detail.* The order detailing a counsel shall be reduced to writing and included in the record of trial or announced orally on the record at the court-martial. The writing or announcement shall indicate by whom the counsel was detailed. The Secretary concerned may require that the order be reduced to writing.

(3) *Counsel from a different armed force.* A person from one armed force may be detailed to serve as counsel in a court-martial in a different armed force, a combatant command or joint command when permitted by the Judge Advocate General of the armed force of which the counsel is a member. The Judge Advocate General may delegate authority to make persons available for this purpose.

#### Rule 504. Convening courts-martial

(a) *In general.* A court-martial is created by a convening order of the convening authority.

(b) *Who may convene courts-martial.*

(1) *General courts-martial.* Unless otherwise limited by superior competent authority, general courts-martial may be convened by persons occupying positions designated in Article 22(a) and by any commander designated by the Secretary concerned or empowered by the President.

**Discussion**

The authority to convene courts-martial is independent of rank and is retained as long as the convening authority remains a commander in one of the designated positions. The rules by which command devolves are found in regulations of the Secretary concerned.

---

(2) *Special courts-martial.* Unless otherwise limited by superior competent authority, special courts-martial may be convened by persons occupying positions designated in Article 23(a) and by commanders designated by the Secretary concerned.

**Discussion**

See the discussion accompanying R.C.M. 504(b)(1). Persons authorized to convene general courts-martial may also convene special courts-martial.

---

(A) *Definition.* For purposes of Articles 23 and 24, a command or unit is “separate or detached” when isolated or removed from the immediate disciplinary control of a superior in such manner as to make its commander the person held by superior commanders primarily responsible for discipline. “Separate or detached” is used in a disciplinary sense and not necessarily in a tactical or physical sense. A subordinate joint command or joint task force is ordinarily considered to be “separate or detached.”

**Discussion**

The power of a commander of a separate or detached unit to convene courts-martial, like that of any other commander, may be limited by superior competent authority.

---

(B) *Determination.* If a commander is in doubt whether the command is separate or detached, the matter shall be determined:

(i) In the Army or the Air Force, by the officer exercising general court-martial jurisdiction over the command; or

(ii) In the Naval Service or Coast Guard, by the flag or general officer in command or the senior officer present who designated the detachment; or

(iii) In a combatant command or joint command, by the officer exercising general court-martial jurisdiction over the command.

(3) *Summary courts-martial.* See R.C.M. 1302(a).

**Discussion**

See the discussion accompanying R.C.M. 504(b)(1).

---

4) *Delegation prohibited.* The power to convene courts-martial may not be delegated.

(c) *Disqualification.*

(1) *Accuser.* An accuser may not convene a general or special court-martial for the trial of the person accused.

**Discussion**

See also Article 1(9); 307(a); 601(c). But see R.C.M. 1302(b) (accuser may convene a summary court-martial).

---

(2) *Other.* A convening authority junior in rank to an accuser may not convene a general or special court-martial for the trial of the accused unless that convening authority is superior in command to the accuser. A convening authority junior in command to an accuser may not convene a general or special court-martial for the trial of the accused.

(3) *Action when disqualified.* When a commander who would otherwise convene a general or special court-martial is disqualified in a case, the charges shall be forwarded to a superior competent authority for disposition. That authority may personally dispose of the charges or forward the charges to another convening authority who is superior in rank to the accuser, or, if in the same chain of command, who is superior in command to the accuser.

**Discussion**

See also R.C.M. 401(c).

---

(d) *Convening orders.*

(1) *General and special courts-martial.*

**R.C.M. 504(d)(1)(A)**

(A) A convening order for a general or special court-martial shall—

- (i) designate the type of court-martial; and
- (ii) detail the members, if any, in accordance with R.C.M. 503(a);

(B) A convening order may designate where the court-martial will meet.

(C) If the convening authority has been designated by the Secretary concerned, the convening order shall so state.

(2) *Summary courts-martial.* A convening order for a summary court-martial shall designate that it is a summary court-martial and detail the summary court-martial, and may designate where the court-martial will meet. If the convening authority has been designated by the Secretary concerned, the convening order shall so state.

**Discussion**

See also R.C.M. 1302(c).

(3) *Additional matters.* Additional matters to be included in convening orders may be prescribed by the Secretary concerned.

(e) *Place.* The convening authority shall ensure that an appropriate location and facilities for courts-martial are provided.

**Rule 505. Changes of members, military judge, and counsel**

(a) *In general.* Subject to this rule, the members, military judge, military magistrate, and counsel may be changed by an authority competent to detail or designate such persons. Members also may be excused as provided in clause (c)(1)(B)(ii) and subparagraph (c)(2)(A).

**Discussion**

Changes of the members of the court-martial should be kept to a minimum. If extensive changes are necessary and no session of the court-martial has begun, it may be appropriate to withdraw the charges from one court-martial and refer them to another. See R.C.M. 604

(b) *Procedure.* When new persons are added as members or counsel or when substitutions are made

as to any members or counsel or the military judge or military magistrate, such persons shall be detailed or designated in accordance with R.C.M. 503. An order changing the members of the court-martial, except one which excuses members without replacement, shall be reduced to writing before certification of the record of trial.

**Discussion**

When members or counsel have been excused and the excusal is not reduced to writing, the excusal should be announced on the record. A member who has been temporarily excused need not be formally reappointed to the court-martial.

(c) *Changes of members.*

(1) *Before assembly.*

(A) *By convening authority.* Before the court-martial is assembled, the convening authority may change the members of the court-martial without showing cause.

(B) *By convening authority's delegate.*

(i) *Delegation.* The convening authority may delegate, under regulations of the Secretary concerned, authority to excuse individual members to the staff judge advocate or legal officer or other principal assistant to the convening authority.

(ii) *Limitations.* Before the court-martial is assembled, the convening authority's delegate may excuse members without cause shown; however, no more than one-third of the total number of members detailed by the convening authority may be excused by the convening authority's delegate in any one court-martial. After assembly the convening authority's delegate may not excuse members.

(2) *After assembly.*

(A) *Excusal.* After assembly no member may be excused, except:

(i) By the convening authority for good cause shown on the record;

(ii) By the military judge for good cause shown on the record;

(iii) As a result of challenge under R.C.M. 912; or

(iv) By the military judge when the number of members is in excess of the number of members required for impanelment.

### Discussion

R.C.M. 912A sets forth the procedures for excusing excess members.

---

(B) *New members.* New members may be detailed after assembly only when, as a result of excusals under subparagraph (c)(2)(A), the number of members of the court-martial is reduced below the number of members required under R.C.M. 501(a), or the number of enlisted members, when the accused has made a timely written request for enlisted members, is reduced below one-third of the total membership.

(d) *Changes of detailed counsel.*

(1) *Trial counsel.* An authority competent to detail trial counsel may change trial counsel and any assistant trial counsel at any time without showing cause.

(2) *Defense counsel.*

(A) *Before formation of attorney-client relationship.* Before an attorney-client relationship has been formed between the accused and detailed defense counsel or associate or assistant defense counsel, an authority competent to detail defense counsel may excuse or change such counsel without showing cause.

(B) *After formation of attorney-client relationship.* After an attorney-client relationship has been formed between the accused and detailed defense counsel or associate or assistant defense counsel, an authority competent to detail such counsel may excuse or change such counsel only:

(i) Under R.C.M. 506(b)(3);

(ii) Upon request of the accused or application for withdrawal by such counsel under R.C.M. 506(c); or

(iii) For other good cause shown on the record

(e) *Change of military judge or military magistrate*

(1) *Before assembly.* Before the court-martial is assembled, the military judge or military magistrate may be changed by an authority competent to detail the military judge or to designate the military magistrate, without cause shown on the record.

(2) *After assembly.* After the court-martial is assembled, the military judge or military magistrate may be changed by an authority competent to detail the military judge or to designate the military magistrate only when, as a result of disqualification under R.C.M. 902 or for good cause shown, the previously detailed military judge or previously designated military magistrate is unable to proceed.

### Discussion

A change in the military magistrate after assembly does not require the consent of the parties. *See* R.C.M. 503.

---

(f) *Good cause.* For purposes of this rule, “good cause” includes physical disability, military exigency, and other extraordinary circumstances which render the member, counsel, or military judge or military magistrate unable to proceed with the court-martial within a reasonable time. “Good cause” does not include temporary inconveniences which are incident to normal conditions of military life.

### Rule 506. Accused’s rights to counsel

(a) *In general.*

(1) *Non-capital courts-martial.* The accused has the right to be represented before a non-capital general court-martial or a special court-martial by civilian counsel if retained by the accused at no expense to the Government, and either by the military counsel detailed under Article 27 or military counsel of the accused’s own selection, if reasonably available. The accused is not entitled to be represented by more than one military counsel.

(2) *Capital courts-martial.* In a case referred with a special instruction that the case is to be tried as capital, the accused may be represented by more than one counsel. To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases under R.C.M. 502(d)(2)(C). If necessary, this counsel may be a civilian, and if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

### Discussion

The requirements of Article 27 are satisfied where an accused retains civilian counsel who is determined by the Judge Advocate General to be learned in the law applicable to capital cases in accordance with R.C.M. 502(d)(2)(C). Counsel learned in the law applicable to capital cases may be assigned prior to referral and should be considered for such assignment in a case in which a capital referral appears likely

*See* R.C.M. 601(d) and 1004(b)(1) regarding special instructions for referral of capital cases.

---

**R.C.M. 506(b)**

*(b) Individual military counsel.*

(1) *Reasonably available.* Subject to this subsection, the Secretary concerned shall define “reasonably available.” While so assigned, the following persons are not reasonably available to serve as individual military counsel because of the nature of their duties or positions:

- (A) A general or flag officer;
- (B) A trial or appellate military judge;
- (C) A trial counsel;
- (D) An appellate defense or government counsel;
- (E) A principal legal advisor to a command, organization, or agency and, when such command, organization, or agency has general court-martial jurisdiction, the principal assistant of such an advisor;
- (F) An instructor or student at a Service school or academy;
- (G) A student at a college or university;
- (H) A member of the staff of the Judge Advocate General of the Army, Navy, Air Force, Coast Guard, or the Staff Judge Advocate to the Commandant of the Marine Corps.

The Secretary concerned may determine other persons to be not reasonably available because of the nature or responsibilities of their assignments, geographic considerations, exigent circumstances, or military necessity. A person who is a member of an armed force different from that of which the accused is a member shall be reasonably available to serve as individual military counsel for such accused to the same extent as that person is available to serve as individual military counsel for an accused in the same armed force as the person requested. The Secretary concerned may prescribe circumstances under which exceptions may be made to the prohibitions in this subsection when merited by the existence of an attorney-client relationship regarding matters relating to a charge in question. However, if the attorney-client relationship arose solely because the counsel represented the accused on review under Article 70, this exception shall not apply.

(2) *Procedure.* Subject to this subsection, the Secretary concerned shall prescribe procedures for determining whether a requested person is “reasonably available” to act as individual military counsel. Requests for an individual military counsel shall be made by the accused or the detailed defense counsel through trial counsel to the convening authority. If the requested person is among those not reasonably

available under paragraph (b)(1) of this rule or under regulations of the Secretary concerned, the convening authority shall deny the request and notify the accused, unless the accused asserts that there is an existing attorney-client relationship regarding a charge in question or that the person requested will not, at the time of the trial or preliminary hearing for which requested, be among those so listed as not reasonably available. If the accused’s request makes such a claim, or if the person is not among those so listed as not reasonably available, the convening authority shall forward the request to the commander or head of the organization, activity, or agency to which the requested person is assigned. That authority shall make an administrative determination whether the requested person is reasonably available in accordance with the procedure prescribed by the Secretary concerned. This determination is a matter within the sole discretion of that authority. An adverse determination may be reviewed upon request of the accused through that authority to the next higher commander or level of supervision, but no administrative review may be made which requires action at the departmental or higher level.

(3) *Excusal of detailed counsel.* If the accused is represented by individual military counsel, detailed defense counsel shall normally be excused. The authority who detailed defense counsel, as a matter of discretion, may approve a request from the accused that detailed defense counsel shall act as associate counsel. The action of the authority who detailed the counsel is subject to review only for abuse of discretion..

**Discussion**

A request under R.C.M. 506(b)(3) should be considered in light of the general statutory policy that the accused is not entitled to be represented by more than one military counsel. Among the factors that may be considered in the exercise of discretion are the seriousness of the case, retention of civilian defense counsel, complexity of legal or factual issues, and the detail of additional trial counsel.

See R.C.M. 905(b)(6) and 906(b)(2) as to motions concerning denial of a request for individual military counsel or retention of detailed counsel as associate counsel.

---

(c) *Excusal or withdrawal.* Except as otherwise provided in R.C.M. 505(d)(2) and paragraph (b)(3) of this rule, defense counsel may be excused only with the express consent of the accused, or by the military judge upon application for withdrawal by defense counsel for

good cause shown.

(d) *Waiver*. The accused may expressly waive the right to be represented by counsel and may thereafter conduct the defense personally. Such waiver shall be accepted by the military judge only if the military judge finds that the accused is competent to understand the disadvantages of self-representation and that the waiver is voluntary and understanding. The military judge may require that a defense counsel remain present even if the accused waives counsel and conducts the defense personally. The right of the accused to conduct the defense personally may be revoked if the accused is disruptive or fails to follow basic rules of decorum and procedure.

(e) *Nonlawyer present*. Subject to the discretion of the military judge, the accused may have present and seated at the counsel table for purpose of consultation persons not qualified to serve as counsel under R.C.M. 502.

#### **Discussion**

See also Mil. R. Evid. 615 if the person is a potential witness in the case.

---

## CHAPTER VI. REFERRAL, SERVICE, AMENDMENT, AND WITHDRAWAL OF CHARGES

### Rule 601. Referral

(a) *In general.* Referral is the order of a convening authority that charges and specifications against an accused will be tried by a specified court-martial.

#### Discussion

Referral of charges requires three elements: a convening authority who is authorized to convene the court-martial and is not disqualified (see R.C.M. 601(b) and (c)); preferred charges which have been received by the convening authority for disposition (see R.C.M. 307 as to preferred charges and Chapter IV as to disposition); and a court-martial convened by that convening authority or a predecessor (see R.C.M. 504).

If trial would be warranted but would be detrimental to the prosecution of a war or inimical to national security, see R.C.M. 401(d) and 407(b).

---

(b) *Who may refer.* Any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do so has been withheld by superior competent authority.

#### Discussion

See R.C.M. 306(a), 403, 404, 407, and 504.

The convening authority may be of any command, including a command different from that of the accused, but as a practical matter the accused must be subject to the orders of the convening authority or otherwise under the convening authority's control to assure the appearance of the accused at trial. The convening authority's power over the accused may be based upon agreements between the commanders concerned.

---

(c) *Disqualification.* An accuser may not refer charges to a general or special court-martial.

#### Discussion

Convening authorities are not disqualified from referring charges by prior participation in the same case except when they have acted as accuser. For a definition of "accuser," see Article 1(9). A convening authority who is disqualified may forward the charges and allied papers for disposition by competent authority superior in rank or command. See R.C.M. 401(c) concerning actions which the superior may take.

See R.C.M. 1302 for rules relating to convening summary courts-martial.

---

(d) *When charges may be referred.*

(1) *Basis for referral.* If the convening authority finds or is advised by a judge advocate that there is probable cause to believe that an offense triable by a court-martial has been committed and that the accused committed it, and that the specification alleges an offense, the convening authority may refer it. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general or special court-martial except in compliance with paragraph (d)(2) or (d)(3) of this rule. The convening authority or judge advocate shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.

#### Discussion

For a discussion of selection among alternative dispositions, see R.C.M. 306. The convening authority is not obliged to refer all charges which the evidence might support. The convening authority should consider the options and considerations under R.C.M. 306 and Appendix 2.1 (Non-binding disposition guidance) in exercising the discretion to refer charges and specifications to court-martial.

---

(2) *General courts-martial.* The convening authority may not refer a specification under a charge to a general court-martial unless —

(A) There has been substantial compliance with the preliminary hearing requirements of R.C.M. 405; and

(B) The convening authority has received the advice of the staff judge advocate required under R.C.M. 406 and Article 34(a).

#### Discussion

Compliance with R.C.M. 405 includes the opportunity for the accused to waive the preliminary hearing. See R.C.M. 405.

A specification under a charge may not be referred to a general court-martial unless the advice of the staff judge advocate concludes the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charged, and a court-martial would have jurisdiction over the accused and the offense. See Article 34 and R.C.M. 406.

---

(3) *Special courts-martial.* The convening authority may not refer charges and specifications to a special

court-martial unless the convening authority has consulted with a judge advocate as required under R.C.M. 406A and Article 34(b).

**Discussion**

See R.C.M. 201(f)(2)(C) concerning limitations on referral of capital offenses to special courts-martial.

See R.C.M. 103(4) for the definition of the term “capital offense.”

See R.C.M. 201(f)(2)(D) and (E) and R.C.M. 1301(c) concerning limitations on the referral of certain cases to special and summary courts-martial.

See R.C.M. 905(b)(1) and (e) for the rule regarding forfeiture for failure to object to a defect under this rule.

*(e) How charges shall be referred.*

(1) *Order, instructions.* Referral shall be by the personal order of the convening authority.

(A) *Capital cases.* If a case is to be tried as a capital case, the convening authority shall so indicate by including a special instruction on the charge sheet in accordance with R.C.M. 1004(b)(1).

(B) *Special court-martial consisting of a military judge alone.* If a case is to be tried as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), the convening authority shall so indicate by including a special instruction on the charge sheet prior to arraignment.

(C) *Other instructions.* The convening authority may include any other additional instructions in the order as may be required.

**Discussion**

Referral is ordinarily evidenced by an indorsement on the charge sheet. Although the indorsement should be completed on all copies of the charge sheet, only the original must be signed. The signature may be that of a person acting by the order or direction of the convening authority. In such a case the signature element must reflect the signer’s authority.

If, for any reason, charges are referred to a court-martial different from that to which they were originally referred, the new referral is ordinarily made by a new indorsement attached to the original charge sheet. The previous indorsement should be lined out and initialed by the person signing the new referral. The original indorsement should not be obliterated. *See also* R.C.M. 604.

The failure to include a special instruction that a case is to be tried as a capital case at the time of the referral does not bar the convening authority from later adding the required special instruction, provided that the convening authority has otherwise complied with the applicable notice requirements. If the accused demonstrates specific prejudice from such failure to include the

special instruction, a continuance or a recess is an adequate remedy. *See* R.C.M. 1004(b)(1).

For limitations regarding offenses that may be referred to a special court-martial consisting of a military judge alone, see R.C.M. 201(f)(2)(E).

If the only officer present in a command refers the charges to a summary court-martial and serves as the summary court-martial under R.C.M. 1302, the indorsement should be completed with the additional comments, “only officer present in the command.”

The convening authority may instruct that the charges against the accused be tried with certain other charges against the accused. *See* R.C.M. 601(d)(2).

The convening authority may instruct that charges against one accused be referred for joint or common trial with another accused. *See* R.C.M. (e)(3).

Any special instructions must be stated in the referral indorsement.

When the charges have been referred to a court-martial, the indorsed charge sheet and allied papers should be promptly transmitted to the trial counsel.

(2) *Joinder of offenses.* In the discretion of the convening authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious or minor offenses or both, regardless whether related. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements concerning the additional charges have been complied with. After arraignment of the accused upon charges, no additional charges may be referred to the same trial without consent of the accused.

**Discussion**

Ordinarily all known charges should be referred to a single court-martial. *But see* R.C.M. 902A.

(3) *Joinder of accused.* Allegations against two or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such accused may be charged in one or more specifications together or separately, and every accused need not be charged in each specification. Related allegations against two or more accused which may be proved by substantially the same evidence may be referred to a common trial.



## R.C.M. 601(f)

### Discussion

A joint offense is one committed by two or more persons acting together with a common intent. Joint offenses may be referred for joint trial, along with all related offenses against each of the accused. A common trial may be used when the evidence of several offenses committed by several accused separately is essentially the same, even though the offenses were not jointly committed. See the Discussion accompanying R.C.M. 307(c)(5). Convening authorities should consider that joint and common trials may be complicated by procedural and evidentiary rules.

---

(f) *Superior convening authorities.* Except as otherwise provided in these rules, a superior competent authority may cause charges, whether or not referred, to be transmitted to the authority for further consideration, including, if appropriate, referral.

(g) *Parallel convening authorities.* If it is impracticable for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if referred, to be transmitted to a parallel convening authority. This transmittal must be in writing and in accordance with such regulations as the Secretary concerned may prescribe. Subsequent actions taken by the parallel convening authority are within the sole discretion of that convening authority.

### Discussion

Parallel convening authorities are those convening authorities that possess the same court-martial jurisdiction authority. Examples of permissible transmittal of charges under this rule include the transmittal from a general court-martial convening authority to another general court-martial convening authority, or from one special court-martial convening authority to another special court-martial convening authority. It would be impracticable for an original convening authority to continue exercising authority over the charges, for example, when a command is being decommissioned or inactivated, or when deploying or redeploying and the accused is remaining behind. If charges have been referred, there is no requirement that the charges be withdrawn or dismissed prior to transfer. See R.C.M. 604. In the event that the case has been referred, the receiving convening authority may adopt the original court-martial convening order, including the court-martial panel selected to hear the case as indicated in that convening order. When charges are transmitted under this rule, no recommendation as to disposition may be made.

---

## Rule 602. Service of charges

(a) *Service of charges.* Trial counsel detailed to the court-martial to which charges have been referred for trial shall cause to be served upon each accused a copy of the charge sheet.

### Discussion

Trial counsel should comply with this rule immediately upon receipt of the charges. Whenever after service the charges are amended or changed the trial counsel must give notice of the changes to the defense counsel. Whenever such amendments or changes add a new party, a new offense, or substantially new allegations, the charge sheet so amended or changed must be served anew. See R.C.M. 603.

Service may be made only upon the accused; substitute service upon defense counsel is insufficient. The trial counsel should promptly inform the defense counsel when charges have been served.

If the accused has questions when served with charges, the accused should be told to discuss the matter with defense counsel.

---

(b) *Commencement of trial.*

(1) Except in time of war, no person may, over objection, be brought to trial by general or special court-martial—including an Article 39(a) session—within the following time periods:

(A) In a general court-martial, from the time of service of charges under subsection (a) through the fifth day after the date of service.

(B) In a special court-martial, from the time of service of charges under subsection (a) through the third day after the date of service.

(2) If the first session of the court-martial occurs before the end of the applicable period under paragraph (1), the military judge shall, at the beginning of that session, inquire as to whether the defense objects to proceeding during the applicable period. If the defense objects, the trial may not proceed. If the defense does not object, the issue is waived.

## Rule 603. Changes to charges and specifications

(a) *In general.* Any person forwarding, acting upon, or prosecuting charges on behalf of the United States except a preliminary hearing officer appointed under R.C.M. 405 may make major and minor changes to charges or specifications in accordance with this rule.

(b) *Major and minor changes defined.*

(1) *Major changes.* A major change is one that adds a party, an offense, or a substantial matter not fairly included in the preferred charge or specification, or that is likely to mislead the accused as to the offense charged.

(2) *Minor changes.* A minor change in a charge or specification is any change other than a major change.

---

### Discussion

Minor changes include those necessary to correct inartfully drafted or redundant specifications; to correct a misnaming of the accused; to allege the proper article; or to correct other slight errors. Minor changes also include those which reduce the seriousness of an offense, as when the value of an allegedly stolen item in a larceny specification is reduced, or when a desertion specification is amended and alleges only unauthorized absence.

---

(c) *Major and minor changes before referral.* Before referral, subject to paragraph (d)(2), a major or minor change may be made to any charge or specification.

(d) *Major changes after referral or preliminary hearing.*

(1) After referral, a major change may not be made over the objection of the accused unless the charge or specification is withdrawn, amended, and referred anew.

(2) In the case of a general court-martial, a major change made to a charge or specification after the preliminary hearing may require reopening the preliminary hearing in accordance with R.C.M. 405.

### Discussion

In the case of a general court-martial, a preliminary hearing under R.C.M. 405 will be necessary if the charge as amended or changed was not covered in a prior preliminary hearing. If the substance of the charge or specification as amended or changed has not been referred or, in the case of a general court-martial, considered at a preliminary hearing, a new referral and, if appropriate, preliminary hearing are necessary. When charges are re-referred, they must be served anew under R.C.M. 602.

---

(e) *Minor changes after referral.* Minor changes may be made to the charges and specifications after referral and before arraignment. After arraignment, the military judge may, upon motion, permit minor changes in the charges and specifications at any time before findings are announced if no substantial right of the accused is prejudiced.

### Discussion

Charges and specifications forwarded or referred for trial should be free from defects of form and substance. Scriveners' errors may be corrected without the charge being sworn anew by the accuser. Other changes should be signed and sworn to by an accuser. All changes in the charges should be initialed by the person who makes the changes. A trial counsel acting under this provision ordinarily should consult with the convening authority before making any changes which, even though minor, change the nature or seriousness of the offense.

### Rule 604. Withdrawal of charges

(a) *Withdrawal.* The convening authority or a superior competent authority may for any reason cause any charges or specifications to be withdrawn from a court-martial at any time before findings are announced.

### Discussion

Charges that are withdrawn from a court-martial should be dismissed (*see* R.C.M. 401(c)(1)) unless it is intended to refer them anew promptly or to forward them to another authority for disposition.

Charges should not be withdrawn from a court-martial arbitrarily or unfairly to an accused. *See also* R.C.M. 604 (b).

Some or all charges and specifications may be withdrawn. In a joint or common trial the withdrawal may be limited to charges against one or some of the accused.

Charges that have been properly referred to a court-martial may be withdrawn only by the direction of the convening authority or a superior competent authority in the exercise of that officer's independent judgment. When directed to do so by the convening authority or a superior competent authority, trial counsel may withdraw charges or specifications by lining out the affected charges or specifications, renumbering remaining charges or specifications as necessary, and initialing the changes. Charges and specifications withdrawn before commencement of trial will not be brought to the attention of the members. When charges or specifications are withdrawn after they have come to the attention of the members, the military judge must instruct them that the withdrawn charges or specifications may not be considered for any reason.

---

(b) *Referral of withdrawn charges.* Charges that have been withdrawn from a court-martial may be referred to another court-martial unless the withdrawal was for an improper reason. Charges withdrawn after the introduction of evidence on the general issue of guilt may be referred to another court-martial only if the withdrawal was necessitated by urgent and unforeseen military necessity.

### Discussion

*See also* R.C.M. 915 (Mistrial).

When charges that have been withdrawn from a court-martial are referred to another court-martial, the reasons for the withdrawal and later referral should be included in the record of the later court-martial, if the later referral is more onerous to the accused. Therefore, if further prosecution is contemplated at the time of the withdrawal, the reasons for the withdrawal should be included in or attached to the record of the earlier proceeding.

Improper reasons for withdrawal include an intent to interfere with the free exercise by the accused of constitutional rights or rights provided under the UCMJ, or with the impartiality of a court-martial. A withdrawal is improper if it was not directed personally and independently by the convening authority or by a superior competent

**R.C.M. 604(b)**

authority.

Whether the reason for a withdrawal is proper, for purposes of the propriety of a later referral, depends in part on the stage in the proceedings at which the withdrawal takes place. Before arraignment, there are many reasons for a withdrawal that will not preclude another referral. These include receipt of additional charges, absence of the accused, reconsideration by the convening authority or by a superior competent authority of the seriousness of the offenses, questions concerning the mental capacity of the accused, and routine duty rotation of the personnel constituting the court-martial. Charges withdrawn after arraignment may be referred to another court-martial under some circumstances. For example, it is permissible to refer charges that were withdrawn pursuant to a pretrial agreement if the accused fails to fulfill the terms of the agreement. *See* R.C.M. 705. Charges withdrawn after some evidence on the general issue of guilt is introduced may be re-referred only under the narrow circumstances described in the rule.

---

## CHAPTER VII. PRETRIAL MATTERS

### Rule 701. Discovery

(a) *Disclosure by trial counsel.* Except as otherwise provided in subsection (f) and paragraph (g)(2) of this rule, and unless previously disclosed to the defense in accordance with R.C.M. 404A, trial counsel shall provide the following to the defense:

(1) *Papers accompanying charges; convening orders; statements.* As soon as practicable after service of charges under R.C.M. 602, trial counsel shall provide the defense with copies of, or, if extraordinary circumstances make it impracticable to provide copies, permit the defense to inspect:

#### Discussion

The purpose of this rule is to ensure the prompt, efficient, and fair administration of military justice by encouraging early and broad disclosure of information by the parties. Discovery in the military justice system is intended to eliminate pretrial gamesmanship, minimize pretrial litigation, and reduce the potential for surprise and delay at trial. Parties to a court-martial should consider these purposes when evaluating pretrial disclosure issues. In addition to this rule, other sources, to include other Rules for Courts-Martial, case law, and rules of professional conduct, may require disclosure of additional information or evidence.

---

(A) All papers that accompanied the charges when they were referred to the court-martial, including papers sent with charges upon a rehearing or new trial;

(B) The convening order and any amending orders; and

(C) Any sworn or signed statement relating to an offense charged in the case that is in the possession of trial counsel.

(2) *Documents, tangible objects, reports.*

(A) After service of charges, upon request of the defense, the Government shall permit the defense to inspect any books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies of portions of these items, if the item is within the possession, custody, or control of military authorities and—

(i) the item is relevant to defense preparation;

(ii) the government intends to use the item in the case-in-chief at trial;

(iii) the government anticipates using the item in rebuttal; or

(iv) the item was obtained from or belongs to the

accused.

(B) After service of charges, upon request of the defense, the Government shall permit the defense to inspect the results or reports of physical or mental examinations, and of any scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of military authorities, the existence of which is known or by the exercise of due diligence may become known to trial counsel if

(i) the item is relevant to defense preparation;

(ii) the government intends to use the item in the case-in-chief at trial; or

(iii) the government anticipates using the item in rebuttal.

#### Discussion

For specific rules concerning certain mental examinations of the accused or third party patients, see R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513.

---

(3) *Witnesses.* Before the beginning of trial on the merits, trial counsel shall notify the defense of the names and contact information of the witnesses trial counsel intends to call:

(A) In the prosecution case-in-chief; and

(B) To rebut a defense of alibi, innocent ingestion, or lack of mental responsibility, when trial counsel has received timely notice under paragraphs (b)(1) or (2) of this rule.

#### Discussion

Such notice should be in writing except when impracticable.

---

(4) *Prior convictions of accused offered on the merits.* Before arraignment, trial counsel shall notify the defense of any records of prior civilian or court-martial convictions of the accused of which trial counsel is aware and which trial counsel may offer on the merits for any purpose, including impeachment, and shall permit the defense to inspect such records when they are in trial counsel's possession.

(5) *Information to be offered at sentencing.* Upon request of the defense, trial counsel shall:

(A) Permit the defense to inspect such written material as will be presented by the prosecution at the presentencing proceedings; and

**R.C.M. 701(a)(5)(B)**

(B) Notify the defense of the names and contact information of the witnesses trial counsel intends to call at the presentencing proceedings under R.C.M. 1001(b).

(6) *Evidence favorable to the defense.* Trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence known to trial counsel which reasonably tends to—

(A) Negate the guilt of the accused of an offense charged;

(B) Reduce the degree of guilt of the accused of an offense charged;

(C) Reduce the punishment; or

(D) Adversely affect the credibility of any prosecution witness or evidence.

**Discussion**

Nothing in this rule prohibits trial counsel or other Government counsel from disclosing information earlier than required by this rule or in addition to that required by this rule.

In addition to the matters required to be disclosed under subsection (a) of this rule, the Government is required to notify the defense of or provide to the defense certain information under other rules. Mil. R. Evid. 506 covers the disclosure of unclassified information which is under the control of the Government. Mil. R. Evid. 505 covers disclosure of classified information.

Other Rules for Courts-Martial and Military Rules of Evidence concern disclosure of other specific matters. *See* R.C.M. 308 (identification of accuser), 405 (report of Article 32 preliminary hearing), 706(c)(3)(B) (mental examination of accused), 914 (production of certain statements), and 1004(b)(1) (aggravating factors in capital cases); Mil.R. Evid. 301(d)(2) (notification of immunity or leniency to witnesses), 302 (mental examination of accused), 304(d) (statements by accused), 311(d)(1) (evidence seized from accused), 321(d)(1) (evidence based on lineups), 507 (identity of informants), 612 (memoranda used to refresh recollection), and 613(a) (prior inconsistent statements).

Requirements for notice of intent to use certain evidence are found in: Mil. R. Evid. 202(b) (judicial notice of foreign law), 301(d)(2) (notification of immunity or leniency to witnesses), 304(d) (notice of intent to use undisclosed confessions), 304(f)(3) (testimony of accused for limited purpose on confession), 311(d) (notice of intent to use undisclosed evidence seized), 311(d)(6) (testimony of accused for limited purpose on seizures), 321(d)(3)(notice of intent to use undisclosed line-up evidence), 321(d)(5) (testimony of accused for limited purpose of line-ups), 404(b) (intent to use evidence of other crimes, wrongs, or acts), 412(c)(1) and (2) (intent of defense to use evidence of sexual behavior or sexual predisposition of a victim); 505(i) (intent to disclose classified information), 506(h) (intent to disclose privileged government information), and 609(b) (intent to impeach with conviction over 10 years old).

In accordance with R.C.M. 701(d), trial counsel have a continuing duty to identify and disclose information that is favorable to the defense throughout the prosecution of the alleged offenses against the accused. In general, trial counsel should

exercise due diligence and good faith in learning about any evidence favorable to the defense known to others acting on the Government's behalf in the case, including military, other governmental, and civilian law enforcement authorities.

In the spirit of eliminating "gamesmanship" from the discovery process, trial counsel should not avoid pursuit of information or evidence because the counsel believes it will damage the prosecution's case or aid the accused, nor should counsel intentionally attempt to obscure information identified pursuant to this subsection by disclosing it as part of a large volume of materials.

---

(b) *Disclosure by the defense.* Except as otherwise provided in subsection (f) and paragraph (g)(2) of this rule, the defense shall provide the following information to trial counsel:

(1) *Names of witnesses and statements.*

(A) Before the beginning of the trial on the merits, the defense shall notify trial counsel in writing of the names and contact information of all witnesses, other than the accused, whom the defense intends to call during the defense case in chief, and provide all sworn or signed statements known by the defense to have been made by such witnesses in connection with the case.

(B) Upon request of trial counsel, the defense shall also—

(i) Provide trial counsel with the names and contact information of any witnesses whom the defense intends to all at the presentencing proceedings under R.C.M. 1001(d); and

(ii) Permit trial counsel to inspect any written material that will be presented by the defense at the presentencing proceeding.

**Discussion**

See R.C.M. 701(f) for statements that would not be subject to disclosure.

---

(2) *Notice of certain defenses.* The defense shall notify trial counsel in writing before the beginning of trial on the merits of its intent to offer the defense of alibi, innocent ingestion, or lack of mental responsibility, or its intent to introduce expert testimony as to the accused's mental condition. Such notice by the defense shall disclose, in the case of an alibi defense, the place or places at which the defense claims the accused to have been at the time of the alleged offense, and, in the case of an innocent

ingestion defense, the place or places where, and the circumstances under which the defense claims the accused innocently ingested the substance in question, and the names and addresses of the witnesses upon whom the accused intends to rely to establish any such defenses.

### Discussion

See R.C.M. 916(k) concerning the defense of lack of mental responsibility. See R.C.M. 706 concerning inquiries into the mental responsibility of the accused. See Mil. R. Evid. 302 concerning statements by the accused during such inquiries. If the defense needs more detail as to the time, date, or place of the offense to comply with this rule, it should request a bill of particulars. See R.C.M. 906(b)(6).

---

(3) *Documents and tangible items.* If the defense requests disclosure under subparagraph (a)(2)(A) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall permit trial counsel to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, or copies or portions of any of these items, or, in the case of buildings or places or portions thereof, inspect or photograph, if—

(A) the item is within the possession, custody, or control of the defense; and

(B) the defense intends to use the item in the defense case-in-chief at trial.

(4) *Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302, and Mil. R. Evid. 513) permit trial counsel to inspect the results or reports of any physical or mental examinations and of any scientific tests or experiments made in connection with the particular case, or copies thereof, if the item is within the possession, custody, or control of the defense; and —

(A) the defense intends to use the item in the defense case-in-chief at trial; or

(B) the item was prepared by a witness who the defense intends to call at trial and the results or reports relate to that witness' testimony.

(5) *Inadmissibility of withdrawn defense.* If an intention to rely upon a defense under paragraph (b)(2) of this rule is withdrawn, evidence of such intention and disclosures by the accused or defense counsel

made in connection with such intention is not, in any court-martial, admissible against the accused who gave notice of the intention.

### Discussion

In addition to the matters covered in subsection (b) of this rule, defense counsel is required to give notice or disclose evidence under certain Military Rules of Evidence: Mil. R. Evid. 202(b) (judicial notice of foreign law), 304(f)(3) (testimony by the accused for a limited purpose in relation to a confession), 311(d)(6) (same, search), 321(d)(5) (same, lineup), 412(c)(1) and (2) (intent to offer evidence of sexual misconduct by a victim), 505(i) (intent to disclose classified information), 506(h) (intent to disclose privileged government information), 609(b) (intent to impeach a witness with a conviction older than 10 years), 612(a)(2) (writing used to refresh recollection), and 613(a) (prior inconsistent statements)

---

(c) *Failure to call witness.* The fact that a witness' name is on a list of expected or intended witnesses provided to an opposing party, whether required by this rule or not, shall not be ground for comment upon a failure to call the witness.

(d) *Continuing duty to disclose.* If, before or during the court-martial, a party discovers additional evidence or material previously requested or required to be produced, which is subject to discovery or inspection under this rule, that party shall promptly notify the other party or the military judge of the existence of the additional evidence or material.

### Discussion

Trial counsel are encouraged to advise military authorities or other governmental agencies involved in the case of their continuing duty to identify, preserve, and disclose to the trial counsel or other Government counsel the information required to be disclosed under this rule.

---

(e) *Access to witnesses and evidence.* Each party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence, subject to the limitations in paragraph (e)(1) of this rule. No party may unreasonably impede the access of another party to a witness or evidence.

(1) *Counsel for the Accused Interview of Victim of Alleged Offense.*

(A) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an offense whom counsel for the Government intends to call as a witness at a proceeding, counsel for

## R.C.M. 701(e)(1)(B)

the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b) (3), shall make any request to interview that victim through the special victims' counsel or other counsel for the victim, if applicable.

(B) If requested by an alleged victim who is subject to a request for interview under subparagraph (e)(1)(A) of this rule, any interview of the victim by counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall take place only in the presence of counsel for the Government, counsel for the victim, or if applicable, a victim advocate.

(2) [Reserved]

(f) *Information not subject to disclosure.* Nothing in this rule shall be construed to require the disclosure of information protected from disclosure by the Military Rules of Evidence. Nothing in this rule shall require the disclosure or production of notes, memoranda, or similar working papers prepared by counsel and counsel's assistants and representatives.

(g) *Regulation of discovery.*

(1) *Time, place, and manner.* The military judge may, consistent with this rule, specify the time, place, and manner of making discovery and may prescribe such terms and conditions as are just.

(2) *Protective and modifying orders.* Upon a sufficient showing, the military judge may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Subject to limitations in Part III of the Manual for Courts-Martial, if any rule requires, or upon motion by a party, the military judge may review any materials in camera, and permit the party to make such showing, in whole or in part, in writing to be inspected only by the military judge in camera. If the military judge reviews any materials in camera, the entirety of any materials examined by the military judge shall be attached to the record of trial as an appellate exhibit. The military judge shall seal any materials examined in camera and not disclosed and may seal other materials as appropriate. Such material may only be examined by reviewing or appellate authorities in accordance with R.C.M. 1113.

### Discussion

In reviewing a motion under this paragraph, the military judge should consider the following: protection of witnesses and others from substantial risk of physical harm, bribes, economic reprisals, and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal

activity; confidential information recognized by law, including protection of confidential relationships and privileges; and any other relevant considerations. If the military judge defers discovery or inspection, the military judge should ensure that all material and information to which a party is entitled are disclosed in sufficient time to permit counsel to make beneficial use of the disclosure. The terms of the sealing order may provide parameters for examination by or disclosure to those persons or entities whose interests are being protected.

---

(3) *Failure to comply.* If at any time during the court-martial it is brought to the attention of the military judge that a party has failed to comply with this rule, the military judge may take one or more of the following actions:

(A) Order the party to permit discovery;

(B) Grant a continuance;

(C) Prohibit the party from introducing evidence, calling a witness, or raising a defense not disclosed; and

(D) Enter such other order as is just under the circumstances. This rule shall not limit the right of the accused to testify in the accused's behalf.

### Discussion

Factors to be considered in determining whether to grant an exception to exclusion under subsection (3)(C) include: the extent of disadvantage that resulted from a failure to disclose; the reason for the failure to disclose; the extent to which later events mitigated the disadvantage caused by the failure to disclose; and any other relevant factors.

The sanction of excluding the testimony of a defense witness should be used only upon finding that the defense counsel's failure to comply with this rule was willful and motivated by a desire to obtain a tactical advantage or to conceal a plan to present fabricated testimony. Moreover, the sanction of excluding the testimony of a defense witness should only be used if alternative sanctions could not have minimized the prejudice to the Government. Before imposing this sanction, the military judge must weigh the defendant's right to compulsory process against the countervailing public interests, including (1) the integrity of the adversary process; (2) the interest in the fair and efficient administration of military justice; and (3) the potential prejudice to the truth-determining function of the trial process.

Procedures governing refusal to disclose classified information are in Mil. R. Evid. 505. Procedures governing refusal to disclose other government information are in Mil. R. Evid. 506. Procedures governing refusal to disclose an informant's identity are in Mil. R. Evid. 507.

---

(h) *Inspect.* As used in this rule "inspect" includes the right to photograph and copy.

**Rule 702. Depositions**

(a) *In general.*

(1) A deposition may be ordered at the request of any party if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial.

(2) “Exceptional circumstances” under this rule includes circumstances under which the deponent is likely to be unavailable to testify at the time of trial.

(3) A victim’s declination to testify at a preliminary hearing or a victim’s declination to submit to pretrial interviews shall not, by themselves, be considered “exceptional circumstances” under this rule.

(4) A request for a written deposition may not be approved without the consent of the opposing party except when the deposition is ordered solely in lieu of producing a witness for sentencing under R.C.M. 1001 and the authority ordering the deposition determines that the interests of the parties and the court-martial can be adequately served by a written deposition.

(5) A request for an oral deposition may be approved without the consent of the opposing party.

**Discussion**

A deposition is the out-of-court testimony of a witness under oath in response to questions by the parties, which is reduced to writing or recorded on videotape or audiotape or similar material. A deposition taken on oral examination is an oral deposition, and a deposition taken on written interrogatories is a written deposition. Written interrogatories are questions, prepared by the prosecution, defense, or both, which are reduced to writing before submission to a witness whose testimony is to be taken by deposition. The answers, reduced to writing and properly sworn to, constitute the deposition testimony of the witness.

Note that under R.C.M. 702(j) a deposition may be taken by agreement of the parties without the necessity of an order.

Part or all of a deposition, so far as otherwise admissible under the Military Rules of Evidence, may be used on the merits or on an interlocutory question as substantive evidence if the witness is unavailable under Mil. R. Evid. 804(a) except that a deposition may be admitted in a capital case only upon offer by the defense. *See* Mil. R. Evid. 804(b)(1). In any case, a deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. *See* Mil. R. Evid. 613. If only a part of a deposition is offered in evidence by a party, an adverse party may require the proponent to offer all which is relevant to the part offered, and any party may offer other parts. *See* Mil. R. Evid. 106.

A deposition which is transcribed is ordinarily read to the court-martial by the party offering it. *See also* R.C.M. 702(i)(1)(B). The transcript of a deposition may not be inspected by the members. Objections may be made to testimony in a written deposition in the same way that they would be if the testimony were offered through the personal appearance of a witness.

Part or all of a deposition so far as otherwise admissible under the Military Rules of Evidence may be used in presentencing proceedings as substantive evidence as provided in R.C.M. 1001.

DD Form 456 (Interrogatories and Deposition) may be used in conjunction with this rule.

*See* Article 6b(e)(2) concerning a victim’s right to petition a Court of Criminal Appeals to quash an order to submit to a deposition.

---

(b) *Who may order.* A convening authority who has the charges for disposition or, after referral, the convening authority or the military judge may order that a deposition be taken on request of a party.

(c) *Request to take deposition.* A party requesting a deposition shall do so in writing, and shall include in such written request—

(1) The name and contact information of the person whose deposition is requested, or, if the name of the person is unknown, a description of the office or position of the person;

(2) A statement of the matters on which the person is to be examined;

(3) A statement of the reasons for needing to preserve the testimony of the prospective witness; and

(4) Whether an oral or written deposition is requested.

**Discussion**

A copy of the request and any accompanying papers ordinarily should be served on the other party when the request is submitted.

---

(d) *Action on request.*

(1) *Prompt notification.* The authority under subsection (b) who acts on a request for deposition shall promptly inform the requesting party of the action on the request and, if the request is denied, the reasons for denial.

(2) *Action when request is denied.* If a request for deposition is denied by the convening authority, the requesting party may seek review of the decision by the military judge after referral.

(3) *Action when request is approved.*

(A) *Detail of deposition officer.* When a request for a deposition is approved, the convening authority shall detail a judge advocate certified under Article 27(b) to serve as deposition officer. In exceptional circumstances, when the appointment of a judge



**R.C.M. 702(d)(3)(B)**

advocate as deposition officer is not practicable, the convening authority may detail an impartial commissioned officer or appropriate civil officer authorized to administer oaths, other than the accuser, to serve as deposition officer. If the deposition officer is not a judge advocate certified under Article 27(b), an impartial judge advocate so certified shall be made available to provide legal advice to the deposition officer.

**Discussion**

See Article 49(a)(4).

When a deposition will be at a point distant from the command, an appropriate authority may be requested to make available an officer to serve as deposition officer.

---

(B) *Assignment of counsel.* If charges have not yet been referred to a court-martial when a request to take a deposition is approved, the convening authority shall ensure that counsel qualified as required under R.C.M. 502(d) are assigned to represent each party.

**Discussion**

The counsel who represents the accused at a deposition ordinarily will form an attorney-client relationship with the accused, which will continue through a later court-martial. See R.C.M. 506.

If the accused has formed an attorney-client relationship with military counsel concerning the charges in question, ordinarily that counsel should be appointed to represent the accused.

---

(C) *Instructions.* The convening authority may give instructions not inconsistent with this rule to the deposition officer.

**Discussion**

Such instruction may include the time and place for taking the deposition.

---

(D) *Notice to other parties.* The requesting party shall give to every other party reasonable written notice of the time and place for the deposition and the name and address of each person to be examined. On motion of a party upon whom the notice is served, the deposition officer may for cause shown extend or shorten the time or change the place for taking the deposition, consistent with any instructions from the convening authority.

(e) *Duties of the deposition officer.* In accordance with this rule, and subject to any instructions under subparagraph (d)(3)(C), the deposition officer shall—

(1) Arrange a time and place for taking the deposition and, in the case of an oral deposition, notify the party who requested the deposition accordingly;

(2) Arrange for the presence of any witness whose deposition is to be taken in accordance with the procedures for production of witnesses and evidence under R.C.M. 703;

(3) Maintain order during the deposition and protect the parties and witnesses from annoyance, embarrassment, or oppression;

(4) Administer the oath to each witness, the reporter, and interpreter, if any;

(5) In the case of a written deposition, ask the questions submitted by counsel to the witness;

(6) Cause the proceedings to be recorded so that a verbatim transcript may be prepared;

(7) Record, but not rule upon, objections or motions and the testimony to which they relate;

(8) Certify the record of the deposition and forward it to the authority who ordered the deposition; and

(9) Report to the convening authority any substantial irregularity in the proceeding.

**Discussion**

When any unusual problem, such as improper conduct by counsel or a witness, prevents an orderly and fair proceeding, the deposition officer should adjourn the proceedings and inform the convening authority.

The authority who ordered the deposition should forward copies to the parties.

---

(f) *Rights of accused.*

(1) *Oral depositions.*

(A) At an oral deposition, the accused shall have the following rights:

(i) Except as provided in subparagraph (B), the right to be present.

(ii) The right to be represented by counsel as provided in R.C.M. 506.

(B) At an oral deposition, the accused shall not have the right to be present when—

(i) the accused, absent good cause shown, fails to appear after notice of time and place of the

deposition;

(ii) the accused is disruptive within the meaning of R.C.M. 804(c)(2); or

(iii) the deposition is ordered in lieu of production of a witness on sentencing under R.C.M. 1001 and the authority ordering the deposition determines that the interests of the parties and the court-martial can be served adequately by an oral deposition without the presence of the accused.

(2) *Written depositions.* The accused shall have the right to be represented by counsel as provided in R.C.M. 506 for the purpose of taking a written deposition, except when the deposition is taken for use at a summary court-martial unless otherwise provided by the Secretary concerned.

(g) *Procedure.*

(1) *Oral depositions.*

(A) *Examination of witnesses.* Each witness giving an oral deposition shall be examined under oath. The scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The Government shall make available to each accused for examination and use at the taking of the deposition any statement of the witness which is in the possession of the United States and to which the accused would be entitled at the trial.

**Discussion**

As to objections, see R.C.M. 702(e)(7) and (h). As to production of prior statements of witnesses, see R.C.M. 914; Mil. R. Evid. 612, 613.

A sample oath for a deposition follows:

“Do you (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth (so help you God)?”

(B) *How recorded.* In the discretion of the authority who ordered the deposition, a deposition may be recorded by a reporter or by other means including video and audio recording.

(2) *Written depositions.*

(A) *Presence of parties.* No party has a right to be present at a written deposition.

(B) *Submission of interrogatories to opponent.* The party requesting a written deposition shall submit to opposing counsel a list of written questions to be asked of the witness. Opposing counsel may examine the questions and shall be allowed a reasonable time to

prepare cross-interrogatories and objections, if any.

**Discussion**

The interrogatories and cross-interrogatories should be sent to the deposition officer by the party who requested the deposition. See R.C.M. 702(h)(3) concerning objections.

(C) *Examination of witnesses.* The deposition officer shall swear the witness, read each question presented by the parties to the witness, and record each response. The testimony of the witness shall be recorded on videotape, audiotape, or similar material or shall be transcribed. When the testimony is transcribed, the deposition shall, except when impracticable, be submitted to the witness for examination. The deposition officer may enter additional matters then stated by the witness under oath. The deposition shall be signed by the witness if the witness is available. If the deposition is not signed by the witness, the deposition officer shall record the reason. The certificate of authentication shall then be executed.

(h) *Objections.*

(1) *In general.* A failure to object prior to the deposition to the taking of the deposition on grounds which may be corrected if the objection is made prior to the deposition forfeits such objection unless the objection is affirmatively waived.

(2) *Oral depositions.* Objections to questions, testimony, or evidence at an oral deposition and the grounds for such objection shall be stated at the time of taking such deposition. If an objection relates to a matter which could have been corrected if the objection had been made during the deposition, the objection is forfeited if not made at the deposition.

**Discussion**

A party may show that an objection was made during the deposition but not recorded, but, in the absence of such evidence, the transcript of the deposition governs.

(3) *Written depositions.* Objections to any question in written interrogatories shall be served on the party who proposed the question before the interrogatories are sent to the deposition officer or the objection is forfeited. Objections to answers in a written deposition may be made at trial.

**R.C.M. 702(i)**

(i) *Admissibility and use as evidence.*

(1) *In general.*

(A) The ordering of a deposition under paragraph (a)(1) does not control the admissibility of the deposition at court-martial. Except as provided in paragraph (2), a party may use all or part of a deposition as provided by the rules of evidence.

(B) In the discretion of the military judge, audio or video recorded depositions may be played for the court-martial or may be transcribed and read to the court-martial.

(2) *Capital cases.* Testimony by deposition may be presented in capital cases only by the defense.

**Discussion**

A deposition read into evidence or one that is played during a court-martial is recorded and transcribed by the reporter in the same way as any other testimony. Such a deposition need not be included in the record of trial.

(j) *Deposition by agreement not precluded.*

(1) *Taking deposition.* Nothing in this rule shall preclude the taking of a deposition without cost to the United States, orally or upon written questions, by agreement of the parties.

(2) *Use of deposition.* Subject to Article 49, nothing in this rule shall preclude the use of a deposition at the court-martial by agreement of the parties unless the military judge forbids its use for good cause.

**Rule 703. Production of witnesses and evidence**

(a) *In general.* The prosecution and defense and the court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in R.C.M. 701, including the benefit of compulsory process.

**Discussion**

See also R.C.M. 801(c) concerning the opportunity of the court-martial to obtain witnesses and evidence.

(b) *Right to witnesses.*

(1) *On the merits or on interlocutory questions.* Each party is entitled to the production of any witness whose testimony on a matter in issue on the merits or on an interlocutory question would be relevant and

necessary. With the consent of both the accused and Government, the military judge may authorize any witness to testify via remote means. Over a party's objection, the military judge may authorize any witness to testify on interlocutory questions via remote means or similar technology if the practical difficulties of producing the witness outweigh the significance of the witness' personal appearance (although such testimony will not be admissible over the accused's objection as evidence on the ultimate issue of guilt). Factors to be considered include, but are not limited to: the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the interlocutory proceeding that may be caused by the production of the witness; the willingness of the witness to testify in person; the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training; and, for child witnesses, the traumatic effect of providing in-court testimony

**Discussion**

See Mil. R. Evid. 401 concerning relevance.

Relevant testimony is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue. A matter is not in issue when it is stipulated as a fact.

The procedures for receiving testimony via remote means and the definition thereof are contained in R.C.M. 914B. An issue may arise as both an interlocutory question and a question that bears on the ultimate issue of guilt. See R.C.M. 801(e)(5). In such circumstances, this rule authorizes the admission of testimony by remote means or similar technology over the accused's objection only as evidence on the interlocutory question. In most instances, testimony taken over a party's objection will not be admissible as evidence on the question that bears on the ultimate issue of guilt; however, there may be certain limited circumstances where the testimony is admissible on the ultimate issue of guilt. Such determinations must be made based upon the relevant rules of evidence.

(2) *On sentencing.* Each party is entitled to the production of a witness whose testimony on sentencing is required under R.C.M. 1001(f).

(3) *Unavailable witness.* Notwithstanding paragraphs (b)(1) and (2) of this rule, a party is not entitled to the presence of a witness who is unavailable within the meaning of Mil. R. Evid. 804(a). However, if the testimony of a witness who is unavailable is of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such testimony, the military judge shall grant a

continuance or other relief in order to attempt to secure the witness' presence or shall abate the proceedings, unless the unavailability of the witness is the fault of or could have been prevented by the requesting party.

(c) *Determining which witnesses will be produced.*

(1) *Witnesses for the prosecution.* Trial counsel shall obtain the presence of witnesses whose testimony trial counsel considers relevant and necessary for the prosecution.

(2) *Witnesses for the defense.*

(A) *Request.* The defense shall submit to trial counsel a written list of witnesses whose production by the Government the defense requests.

(B) *Contents of request.*

(i) *Witnesses on merits or interlocutory questions.* A list of witnesses whose testimony the defense considers relevant and necessary on the merits or on an interlocutory question shall include the name, telephone number, if known, and address or location of the witness such that the witness can be found upon the exercise of due diligence and a synopsis of the expected testimony sufficient to show its relevance and necessity.

(ii) *Witnesses on sentencing.* A list of witnesses wanted for presentencing proceedings shall include the name, telephone number, if known, and address or location of the witness such that the witness can be found upon the exercise of due diligence, a synopsis of the testimony that it is expected the witness will give, and the reasons why the witness' personal appearance will be necessary under the standards set forth in R.C.M. 1001(f).

(C) *Time of request.* A list of witnesses under this subsection shall be submitted in time reasonably to allow production of each witness on the date when the witness' presence will be necessary. The military judge may set a specific date by which such lists must be submitted. Failure to submit the name of a witness in a timely manner shall permit denial of a motion for production of the witness, but relief from such denial may be granted for good cause shown.

(D) *Determination.* Trial counsel shall arrange for the presence of any witness listed by the defense unless trial counsel contends that the witness' production is not required under this rule. If trial counsel contends that the witness' production is not required by this rule, the matter may be submitted to the military judge. If the military judge grants a motion for a witness, trial counsel shall produce the witness or the proceedings

shall be abated.

### Discussion

When significant or unusual costs would be involved in producing witnesses, the trial counsel should inform the convening authority, as the convening authority may elect to dispose of the matter by means other than a court-martial. See R.C.M. 906(b)(7). See also R.C.M. 905(j).

(d) *Employment of expert witnesses and consultants.*

(1) *In general.* When the employment at Government expense of an expert witness or consultant is considered necessary by a party, the party shall, in advance of employment of the expert, and with notice to the opposing party, submit a request to the convening authority to authorize the employment and to fix the compensation for the expert. The request shall include a complete statement of reasons why employment of the expert is necessary and the estimated cost of employment.

### Discussion

See Mil. R. Evid. 702; 706.

(2) *Review by military judge.*

(A) A request for an expert witness or consultant denied by the convening authority may be renewed after referral of the charges before the military judge who shall determine—

(i) in the case of an expert witness, whether the testimony of the expert is relevant and necessary, and, if so, whether the Government has provided or will provide an adequate substitute; or

(ii) in the case of an expert consultant, whether the assistance of the expert is necessary for an adequate defense.

(B) If the military judge grants a motion for employment of an expert or finds that the Government is required to provide a substitute, the proceedings shall be abated if the Government fails to comply with the ruling. In the absence of advance authorization, an expert witness may not be paid fees other than those to which they are entitled under subparagraph (g)(3)(E).

(e) *Right to evidence.*

(1) *In general.* Each party is entitled to the production of evidence which is relevant and necessary.

---

**Discussion**

Relevance is defined by Mil. R. Evid. 401. Relevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue. A matter is not in issue when it is stipulated as a fact. The discovery and introduction of classified or other government information is controlled by Mil. R. Evid. 505 and 506.

---

(2) *Unavailable evidence.* Notwithstanding paragraph (e)(1), a party is not entitled to the production of evidence which is destroyed, lost, or otherwise not subject to compulsory process. However, if such evidence is of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such evidence, the military judge shall grant a continuance or other relief in order to attempt to produce the evidence or shall abate the proceedings, unless the unavailability of the evidence is the fault of or could have been prevented by the requesting party.

(f) *Determining what evidence will be produced.* The procedures in subsection (c) shall apply to a determination of what evidence will be produced, except that any defense request for the production of evidence shall list the items of evidence to be produced and shall include a description of each item sufficient to show its relevance and necessity, a statement where it can be obtained, and, if known, the name, address, and telephone number of the custodian of the evidence.

(g) *Procedures for production of witnesses and evidence.*

(1) *Military witnesses.* The attendance of a military witness may be obtained by notifying the commander of the witness of the time, place, and date the presence of the witness is required and requesting the commander to issue any necessary orders to the witness.

**Discussion**

When military witnesses are located near the court-martial, their presence can usually be obtained through informal coordination with them and their commander. If the witness is not near the court-martial and attendance would involve travel at government expense, or if informal coordination is inadequate, the appropriate superior should be requested to issue the necessary order.

If practicable, a request for the attendance of a military witness should be made so that the witness will have at least 48 hours' notice before starting to travel to attend the court-martial.

The attendance of persons not on active duty should be obtained in the manner prescribed in R.C.M. 703(g)(3).

---

(2) *Evidence under the control of the Government.* Evidence under the control of the Government may be obtained by notifying the custodian of the evidence of the time, place, and date the evidence is required and requesting the custodian to send or deliver the evidence.

(3) *Civilian witnesses and evidence not under the control of the Government—subpoenas.*

(A) *In general.* The presence of witnesses not on active duty and evidence not under control of the Government may be obtained by subpoena.

**Discussion**

A subpoena is not necessary if the witness appears voluntarily at no expense to the United States.

Civilian employees of the Department of Defense may be directed by appropriate authorities to appear as witnesses in court-martial as an incident of their employment. Appropriate travel orders may be issued for this purpose.

A subpoena may not be used to compel a civilian to travel outside the United States and its territories.

A witness must be subject to United States jurisdiction to be subject to a subpoena. Foreign nationals in a foreign country are not subject to subpoena. Their presence may be obtained through cooperation of the host nation.

---

(B) *Contents.* A subpoena shall state the command by which the proceeding or investigation is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein, or to produce evidence—including books, papers, documents, data, writings, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena shall not command any person to attend or give testimony at an Article 32 preliminary hearing.

**Discussion**

A subpoena normally is prepared, signed, and issued in duplicate on the official forms. See Appendix 7 for an example of a subpoena with certificate of service and a Travel Order.

---

(C) *Investigative subpoenas.*

(i) *In general.* In the case of a subpoena issued before referral for the production of evidence for use in

an investigation, the subpoena shall command each person to whom it is directed to produce the evidence requested for inspection by the Government counsel who issued the subpoena or for inspection in accordance with an order issued by the military judge under R.C.M. 309(b).

#### Discussion

A pre-referral investigative subpoena may be issued in accordance with R.C.M. 309 or subsection (g)(3)(D)(v) of this rule for the production of evidence not under control of the government for use at an Article 32 preliminary hearing. *See also* R.C.M. 405.

---

(ii) *Subpoenas for personal or confidential information about a victim.* After prefferal, a subpoena requiring the production of personal or confidential information about a victim named in a specification may be served on an individual or organization by those authorized to issue a subpoena under subparagraph (D) or with the consent of the victim. Before issuing a subpoena under this subparagraph and unless there are exceptional circumstances, the victim must be given notice so that the victim can move for relief under subparagraph (g)(3)(G) or otherwise object.

#### Discussion

The term “victim” has the same meaning as the term “victim of an offense under this chapter” in Article 6b. A subpoena requiring the production of personal or confidential information of a named victim may be served on individuals, such as medical professionals, counselors, employers, or journalists, or upon an organization, such as a medical facility, school, treatment center, financial institution, news organization, or insurance company. Subpoenas to which R.C.M. 703(g)(3)(C) applies may also be subject to additional statutory requirements, e.g., the Right to Financial Privacy Act, 12 USC §§ 3401-3422, which applies to financial records. Notice may be given to the victim or to a victim’s representative such as a representative under R.C.M. 801(a)(6) or legal counsel. This provision is drawn from Fed. R. Crim. P. 17(c)(3) with differences to account for military justice circumstances. For a discussion of “exceptional circumstances,” see Fed. R. Crim. P. 17 (Advisory Committee Notes, 2008 Amendments).

- 
- (D) *Who may issue.* A subpoena may be issued by
- (i) the summary court-martial;
  - (ii) the trial counsel of a general or special court-martial;
  - (iii) the president of a court of inquiry;
  - (iv) an officer detailed to take a deposition; or

(v) in the case of a pre-referral investigative subpoena, a military judge or, when issuance of the subpoena is authorized by a general court-martial convening authority, the detailed trial counsel or counsel for the Government.

(E) *Service.* A subpoena may be served by the person authorized by this rule to issue it, a United States Marshal, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and, in the case of a subpoena of an individual to provide testimony, by providing to the person named travel orders and a means for reimbursement for fees and mileage as may be prescribed by the Secretary concerned, or in the case of hardship resulting in the subpoenaed witness’ inability to comply with the subpoena absent initial Government payment, by providing to the person named travel orders, fees, and mileage sufficient to comply with the subpoena in rules prescribed by the Secretary concerned.

#### Discussion

If practicable, a subpoena should be issued in time to permit service at least 24 hours before the time the witness will have to travel to comply with the subpoena.

*Informal service.* Unless formal service is advisable, the person who issued the subpoena may mail it to the witness in duplicate, enclosing a postage-paid envelope bearing a return address, with the request that the witness sign the acceptance of service on the copy and return it in the envelope provided. The return envelope should be addressed to the person who issued the subpoena. The person who issued the subpoena should include with it a statement to the effect that the rights of the witness to fees and mileage will not be impaired by voluntary compliance with the request and that a voucher for fees and mileage will be delivered to the witness promptly on being discharged from attendance.

*Formal service.* Formal service is advisable whenever it is anticipated that the witness will not comply voluntarily with the subpoena. Appropriate fees and mileage must be paid or tendered. *See* Article 47. If formal service is advisable, the person who issued the subpoena must assure timely and economical service. That person may do so by serving the subpoena personally when the witness is in the vicinity. When the witness is not in the vicinity, the subpoena may be sent in duplicate to the commander of a military installation near the witness. Such commanders should give prompt and effective assistance, issuing travel orders for their personnel to serve the subpoena when necessary.

Service should ordinarily be made by a person subject to the UCMJ. The duplicate copy of the subpoena must have entered upon it proof of service as indicated on the form and must be promptly returned to the person who issued the subpoena. If service cannot be made, the person who issued the subpoena must be informed promptly. A stamped, addressed envelope should be provided for these purposes.

Hardship means any situation which would substantially preclude reasonable efforts to appear that could be solved by

## R.C.M. 703(g)(3)(F)

providing transportation or fees and mileage to which the witness is entitled for appearing at the hearing in question.

---

### (F) *Place of service.*

(i) *In general.* A subpoena may be served at any place within the United States, its Territories, Commonwealths, or possessions.

(ii) *Foreign territory.* In foreign territory, the attendance of civilian witnesses and evidence not under the control of the Government may be obtained in accordance with existing agreements or, in the absence of agreements, with principles of international law.

(iii) *Occupied territory.* In occupied enemy territory, the appropriate commander may compel the attendance of civilian witnesses located within the occupied territory.

(G) *Relief.* If a person subpoenaed requests relief on grounds that compliance is unreasonable, oppressive, or prohibited by law, the military judge or, if before referral, a military judge detailed under Article 30a shall review the request and shall—

(i) order that the subpoena be modified or quashed, as appropriate; or

(ii) order the person to comply with the subpoena.

(H) *Neglect or refusal to appear or produce evidence.*

(i) *Issuance of warrant of attachment.* If the person subpoenaed neglects or refuses to appear or produce evidence, the military judge or, if before referral, a military judge detailed under Article 30a or a general court-martial convening authority, may issue a warrant of attachment to compel the attendance of a witness or the production of evidence, as appropriate.

### **Discussion**

A warrant of attachment (DD Form 454) may be used when necessary to compel a witness to appear or produce evidence under this rule. A warrant of attachment is a legal order addressed to an official directing that official to have the person named in the order brought before a court.

Subpoenas issued under R.C.M. 703 are federal process and a person not subject to the UCMJ may be prosecuted in a federal civilian court under Article 47 for failure to comply with a subpoena issued in compliance with this rule and formally served.

Failing to comply with such a subpoena is a felony offense, and may result in a fine or imprisonment, or both, at the discretion of the district court. The different purposes of the warrant of attachment and criminal complaint under Article 47 should be borne in mind.

The warrant of attachment, available without the intervention of civilian judicial proceedings, has as its purpose the obtaining of the witness' presence, testimony, or documents. The criminal complaint, prosecuted through the federal civilian courts, has as its purpose punishment for failing to comply with process issued by military authority. It serves to vindicate the military interest in obtaining compliance with its lawful process.

A general court-martial convening authority may only issue a warrant of attachment to compel compliance with an investigative subpoena issued prior to referral. *See* Article 46(d).

---

(ii) *Requirements.* A warrant of attachment may be issued only upon probable cause to believe that the witness or evidence custodian was duly served with a subpoena, that the subpoena was issued in accordance with these rules, that a means of reimbursement of fees and mileage, if applicable, was provided to the witness or advanced to the witness in cases of hardship, that the witness or evidence is material, that the witness or evidence custodian refused or willfully neglected to appear or produce the subpoenaed evidence at the time and place specified on the subpoena, and that no valid excuse is reasonably apparent for the witness' failure to appear or produce the subpoenaed evidence.

(iii) *Form.* A warrant of attachment shall be written. All documents in support of the warrant of attachment shall be attached to the warrant, together with the charge sheet and convening orders.

(iv) *Execution.* A warrant of attachment may be executed by a United States Marshal or such other person who is not less than 18 years of age as the authority issuing the warrant may direct. Only such non-deadly force as may be necessary to bring the witness before the court-martial or other proceeding or to compel production of the subpoenaed evidence may be used to execute the warrant. A witness attached under this rule shall be brought before the court-martial or proceeding without delay and shall testify or provide the subpoenaed evidence as soon as practicable and be released.

### **Discussion**

In executing a warrant of attachment, no more force than necessary to bring the witness to the court-martial, deposition, or court of inquiry may be used.

---

(v) *Definition.* For purposes of clause (g)(3)(H)(i) "military judge" does not include a summary court-martial.

(4) *Preservation requests.* In the case of evidence

under control of the Government as well as evidence not under control of the Government, the person seeking production of the evidence may include with any request for evidence or subpoena a request that the custodian of the evidence take all necessary steps to preserve specifically described records and other evidence in its possession until such time as they may be produced or inspected by the parties.

**Rule 703A. Warrant or order for wire or electronic communications**

(a) *In general.* A military judge detailed in accordance with Article 26 or Article 30a may, upon written application by a federal law enforcement officer, trial counsel, or other authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, issue one or more of the following:

(1) A warrant for the disclosure by a provider of electronic communication service of the contents of any wire or electronic communication that is in electronic storage in an electronic communications system for 180 days or less.

(2) A warrant or order for the disclosure by a provider of electronic communication service of the contents of any wire or electronic communication that is in electronic storage in an electronic communications system for more than 180 days.

(3) A warrant or order for the disclosure by a provider of remote computing service of the contents of any wire or electronic communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(4) A warrant or order for the disclosure by a provider of electronic communication service or remote computing service of a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications), to include the subscriber or

customer's—

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number).

**Discussion**

See Article 46(d)(3) and 18 U.S.C. § 2703 concerning the authority for, and U.S. district court procedures concerning, warrants and court orders for electronically stored information.

(b) *Warrant procedures.*

(1) *Probable cause required.* A military judge shall issue a warrant authorizing the search for and seizure of information specified in subsection (a) if—

(A) The federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for the warrant presents an affidavit or sworn testimony, subject to examination by the military judge, in support of the application; and

(B) Based on the affidavit or sworn testimony, the military judge determines that there is probable cause to believe that the information sought contains evidence of a crime.

(2) *Issuing the warrant.* The military judge shall issue the warrant to the federal law enforcement officer, trial counsel, or other authorized Government counsel who applied for the warrant.

(3) *Contents of the warrant.* The warrant shall identify the property to be searched, identify any property or other information to be seized, and designate the military judge to whom the warrant must be returned.

(4) *Executing the warrant.* The presence of the federal law enforcement officer, trial counsel, or other authorized Government counsel identified in the warrant shall not be required for service or execution of a search warrant issued in accordance with this rule requiring disclosure by a provider of electronic communications service or remote computing service



## R.C.M. 703A(c)

of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

### (c) *Order procedures.*

(1) A military judge shall issue an order authorizing the disclosure of information specified in paragraph (a)(2), (3), or (4) if the federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for the order—

(A) Offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation; and

(B) Except in the case of information specified in paragraph (a)(4), has provided prior notice to the subscriber or customer of the application for the order, unless the military judge approves a request for delayed notice under subsection (d).

(2) *Quashing or modifying order.* A military judge issuing an order under paragraph (c)(1), on a motion made promptly by the service provider, may quash or modify such order, if the order is determined to be unreasonable, oppressive, or prohibited by law.

### **Discussion**

An order may be unreasonable or oppressive if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on a provider.

### (d) *Delayed notice of order.*

(1) A federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for an order to obtain information specified in paragraph (a)(2) or (3) may include in the application a request for an order delaying the notification required under subparagraph (c)(1)(B) for a period not to exceed 90 days. The military judge reviewing the application and the request shall grant the request and issue the order for delayed notification if the military judge determines that there is reason to believe that notification of the existence of the order may have an adverse result described in paragraph (4). Extensions of the delay of notification required under subparagraph (c)(1)(B) of up to 90 days each may be granted by the military judge upon application, but only in accordance with paragraph (2).

(2) A federal law enforcement officer, trial counsel, or other authorized counsel for the Government acting under this rule, when not required to notify the subscriber or customer under subparagraph (c)(1)(B), or to the extent that delayed notification has been ordered under paragraph (1), may apply to a military judge for an order commanding a provider of electronic communications service or remote computing service to whom a warrant or order under this rule is directed, for such period as the military judge deems appropriate, not to notify any other person of the existence of the warrant or order. The military judge shall issue the order for delayed notification if the military judge determines that there is reason to believe that notification of the existence of the warrant or order will result in an adverse result described in paragraph (4).

(3) Upon expiration of the applicable period of delay of notification under paragraph (2), the federal law enforcement officer, trial counsel, or other authorized Government counsel shall serve upon, or deliver by registered first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

(A) states with reasonable specificity the nature of the law enforcement inquiry; and

(B) informs such customer or subscriber—

(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

(ii) that notification of such customer or subscriber was delayed;

(iii) which military judge made the determination pursuant to which that delay was made; and

(iv) which provision of this rule allowed such delay.

(4) An adverse result for the purposes of paragraphs (1) and (2) is—

(A) endangering the life or physical safety of an individual;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(e) *No cause of action against a provider disclosing information under this rule.* As provided under 18 U.S.C. § 2703(e), no cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a warrant or order under this rule.

(f) *Requirement to preserve evidence.* To the same extent as provided in 18 U.S.C. § 2703(f)—

(1) A provider of wire or electronic communication services or a remote computing service, upon the request of a federal law enforcement officer, trial counsel, or other authorized Government counsel, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of an order or other process; and

(2) Shall retain such records and other evidence for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) *Definition.* As used in this rule, the term “federal law enforcement officer” includes an employee of the Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, or the Coast Guard Investigative Service, who has authority to request a search warrant.

#### **Rule 704. Immunity**

(a) *Types of immunity.* Two types of immunity may be granted under this rule.

(1) *Transactional immunity.* A person may be granted transactional immunity from trial by court-martial for one or more offenses under the UCMJ.

(2) *Testimonial immunity.* A person may be granted immunity from the use of testimony, statements, and any information directly or indirectly derived from such testimony or statements by that person in a later court-martial.

#### **Discussion**

“Testimonial” immunity is also called “use” immunity.

Immunity ordinarily should be granted only when testimony or other information from the person is necessary to the public interest, including the needs of good order and discipline, and when the person has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Testimonial immunity is preferred because it does not bar prosecution of the person for the offenses about which testimony or information is given under the grant of immunity.

In any trial of a person granted testimonial immunity after the testimony or information is given, the Government must meet a heavy burden to show that it has not used in any way for the prosecution of that person the person’s statements, testimony, or information derived from them. In many cases this burden makes difficult a later prosecution of such a person for any offense that was the subject of that person’s testimony or statements. Therefore, if it is intended to prosecute a person to whom testimonial immunity has been or will be granted for offenses about which that person may testify or make statements, it may be necessary to try that person before the testimony or statements are given.

(b) *Scope.* Nothing in this rule bars:

(1) A later court-martial for perjury, false swearing, making a false official statement, or failure to comply with an order to testify; or

(2) Use in a court-martial under paragraph (b)(1) of this rule of testimony or statements derived from such testimony or statements.

(c) *Authority to grant immunity.* A general court-martial convening authority, or designee, may grant immunity, and may do so only in accordance with this rule.

#### **Discussion**

Only general court-martial convening authorities or their designees are authorized to grant immunity. However, in some circumstances, when a person testifies or makes statements pursuant to a promise of immunity, or a similar promise, by a person with apparent authority to make it, such testimony or statements and evidence derived from them may be inadmissible in a later trial. Under some circumstances a promise of immunity by someone other than a general court-martial convening authority or designee may bar prosecution altogether. Persons not authorized to grant immunity should exercise care when dealing with accused or suspects to avoid inadvertently causing statements to be inadmissible or prosecution to be barred.

When the victim of an alleged offense requests an expedited response to a request for immunity for misconduct that is collateral to the underlying offense, the convening authority should respond to the request as soon as practicable.

A convening authority who grants immunity to a prosecution witness in a court-martial may be disqualified from taking post-trial action in the case under some circumstances.

(1) *Persons subject to the UCMJ.* A general court-martial convening authority, or designee, may grant immunity to a person subject to the UCMJ. However, a general court-martial convening authority, or designee, may grant immunity to a person subject to the UCMJ extending to a prosecution in a United States

## R.C.M. 704(c)(2)

District Court only when specifically authorized to do so by the Attorney General of the United States or other authority designated under chapter 601 of title 18 of the U.S. Code.

### Discussion

When testimony or a statement for which a person subject to the UCMJ may be granted immunity may relate to an offense for which that person could be prosecuted in a United States District Court, immunity should not be granted without prior coordination with the Department of Justice. Ordinarily, coordination with the local United States Attorney is appropriate. Unless the Department of Justice indicates it has no interest in the case, authorization for the grant of immunity should be sought from the Attorney General. A request for such authorization should be forwarded through the office of the Judge Advocate General concerned. Service regulations may provide additional guidance. Even if the Department of Justice expresses no interest in the case, authorization by the Attorney General for the grant of immunity may be necessary to compel the person to testify or make a statement if such testimony or statement would make the person liable for a federal civilian offense.

---

(2) *Persons not subject to the UCMJ.* A general court-martial convening authority, or designee, may grant immunity to persons not subject to the UCMJ only when specifically authorized to do so by the Attorney General of the United States or other authority designated chapter 601 of title 18 of the U.S. Code.

### Discussion

See the discussion accompanying R.C.M. 704(c)(1) concerning forwarding a request for authorization to grant immunity to the Attorney General.

---

(3) *Other limitations.* Subject to Service regulations, the authority to grant immunity under this rule may be delegated in writing at the discretion of the general court-martial convening authority to a subordinate special court-martial convening authority. Further delegation is not permitted. The authority to grant or delegate the authority to grant immunity may be limited by superior authority.

### Discussion

A general court-martial convening authority has wide latitude under this section to exercise his or her discretion in delegating immunity authority. For example, a general court-martial convening authority may decide to delegate only the authority for a designee to grant immunity for certain offenses, such as a list of specific offenses or

any offense not warranting a punitive discharge, while withholding authority to grant immunity for all others. A general court-martial convening authority may also delegate only authority for certain categories of grantees, such as victims of alleged sex-related offenses.

Department of Defense Instruction 5525.07 (18 June 2007) provides: "A proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the Department of Justice. The General Counsel shall obtain the view of other appropriate elements of the Department of Defense in furtherance of such consultation."

---

(d) *Procedure.* A grant of immunity shall be written and signed by the convening authority who issues it. The grant shall include a statement of the authority under which it is made and shall identify the matters to which it extends.

### Discussion

A person who has received a valid grant of immunity from a proper authority may be ordered to testify. In addition, a Servicemember who has received a valid grant of immunity may be ordered to answer questions by investigators or counsel pursuant to that grant. *Cf.* Mil. R. Evid. 301(d). A person who refuses to testify despite a valid grant of immunity may be prosecuted for such refusal. Persons subject to the UCMJ may be charged under Article 131d. A grant of immunity removes the right to refuse to testify or make a statement on self-incrimination grounds. It does not, however, remove other privileges against disclosure of information. *See* Mil. R. Evid., Section V.

An immunity order or grant must not specify the contents of the testimony it is expected the witness will give.

When immunity is granted to a prosecution witness, the accused must be notified in accordance with Mil. R. Evid. 301(d)(2).

---

(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the general court-martial convening authority or designee. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion by the defense, grant appropriate relief directing that either an appropriate convening authority grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses.

**Rule 705. Plea agreements**

(a) *In general.* Subject to such limitations as the Secretary concerned may prescribe, an accused and the convening authority may enter into a plea agreement in accordance with this rule.

**Discussion**

The authority of convening authorities to refer cases to trial and approve plea agreements extends only to trials by court-martial. To ensure that such actions do not preclude appropriate action by federal civilian authorities in cases likely to be prosecuted in the United States District Courts, convening authorities shall ensure that appropriate consultation under the "Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction" has taken place prior to trial by court-martial or approval of a plea agreement in cases where such consultation is required. *See* Appendix 3. Convening authorities should also review and consider Appendix 2.1 (Non-binding disposition guidance) for guidance concerning the disposition of charges and specifications through plea agreements.

(b) *Nature of agreement.* A plea agreement may include:

(1) A promise by the accused to plead guilty to, or to enter a confessional stipulation as to one or more charges and specifications, and to fulfill such additional terms or conditions that may be included in the agreement and that are not prohibited under this rule; and

(2) A promise by the convening authority to do one or more of the following:

(A) Refer the charges to a certain type of court-martial;

(B) Refer a capital offense as noncapital;

(C) Withdraw one or more charges or specifications from the court-martial;

**Discussion**

A convening authority may withdraw certain specifications and/or charges from a court-martial and dismiss them if the accused fulfills the accused's promises in the agreement. Except when jeopardy has attached (*see* R.C.M. 907(b)(2)(C)), such withdrawal and dismissal does not bar later reinstatement of the charges by the same or a different convening authority. A judicial determination that the accused breached the plea agreement is not required prior to reinstatement of withdrawn or dismissed specifications and/or charges. If the defense moves to dismiss the reinstated specifications and/or charges on the grounds that the government remains bound by the terms of the plea agreement, the government will be required to prove, by a preponderance of the evidence that the accused has breached the terms of the plea agreement. If the agreement is intended to grant immunity to an accused, *see* R.C.M. 704.

(D) Have trial counsel present no evidence as to one or more specifications or portions thereof; and

(E) Limit the sentence that may be adjudged by the court-martial for one or more charges and specifications in accordance with subsection (d).

(c) *Terms and conditions.*

(1) *Prohibited terms and conditions.*

(A) *Not voluntary.* A term or condition in a plea agreement shall not be enforced if the accused did not freely and voluntarily agree to it.

(B) *Deprivation of certain rights.* A term or condition in a plea agreement shall not be enforced if it deprives the accused of: the right to counsel; the right to due process; the right to challenge the jurisdiction of the court-martial; the right to a speedy trial; the right to complete presentencing proceedings; the complete and effective exercise of post-trial and appellate rights.

**Discussion**

A plea agreement provision which prohibits the accused from making certain pretrial motions, such as for issues that are not waivable (*see* R.C.M. 905-907), is improper.

(2) *Permissible terms and conditions.* Subject to subparagraph (1)(A), subparagraph (1)(B) does not prohibit either party from proposing the following additional conditions:

(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty to or which a confessional stipulation will be entered;

(B) A promise to testify as a witness in the trial of another person;

**R.C.M. 705(c)(2)(C)**

(C) A promise to provide restitution;

(D) A promise to conform the accused's conduct to certain conditions of probation before action by the convening authority in a summary court-martial or before entry of judgment in a general or special court-martial as well as during any period of suspension of the sentence, provided that the requirements of R.C.M. 1108 must be complied with before an alleged violation of such terms may relieve the convening authority of the obligation to fulfill the agreement;

(E) A promise to waive procedural requirements such as the Article 32 preliminary hearing, the right to trial by court-martial composed of members, the right to request trial by military judge alone, the right to elect sentencing by members, or the opportunity to obtain the personal appearance of witnesses at presentencing proceedings;

**Discussion**

A plea agreement that includes a waiver of the accused's right to request trial by a court-martial composed of members necessarily waives the right to elect sentencing by members. *See* R.C.M. 1002.

A plea agreement that permits the accused to request trial by a court-martial composed of members necessarily preserves the accused's right to elect sentencing by military judge alone or members. In such cases, the accused will be sentenced for all offenses for which the accused was found guilty in accordance with the accused's election. *See* R.C.M. 1002.

---

(F) When applicable, a provision requiring that the sentences to confinement adjudged by the military judge for two or more charges or specifications be served concurrently or consecutively. Such an agreement shall identify the charges or specifications that will be served concurrently or consecutively; and

**Discussion**

A provision requiring the sentences to confinement be served concurrently or consecutively is applicable only to plea agreements in which the military judge determines the sentence under R.C.M. 1002(d)(2).

---

(G) Any other term or condition that is not contrary to or inconsistent with this rule.

(d) *Sentence limitations.*

(1) *In general.* A plea agreement that limits the sentence that can be adjudged by the court-martial for one or more charges and specifications may contain:

(A) a limitation on the maximum punishment that can be imposed by the court-martial;

(B) a limitation on the minimum punishment that can be imposed by the court-martial; or,

(C) limitations on the maximum and minimum punishments that can be imposed by the court-martial.

(2) *Confinement and fines.*

(A) *General or special courts-martial.*

(i) In a plea agreement in which the accused waives the right to elect sentencing by members and agrees to a limitation on the confinement or the amount of a fine that may be imposed by the military judge for more than one charge or specification under paragraph (1), the agreement shall include separate limitations, as applicable, for each charge or specification.

(ii) In a plea agreement in which the convening authority and accused agree to sentencing by members, limitations on the sentence that may be adjudged shall be expressed as limitations on the total punishment that may be imposed by the members.

(B) *Summary court-martial.* A plea agreement involving limitations on the sentence that may be adjudged shall be expressed as limitations on the total punishment that may be imposed by the court-martial.

(3) *Other punishments.* A plea agreement may include a limitation as to other authorized punishments as set forth in R.C.M. 1003.

(4) *Capital cases.* A sentence limitation under paragraph (1) may not include the possibility of a sentence of death.

(5) *Mandatory minimum punishments for certain offenses.* A sentence limitation under paragraph (1) may not provide for a sentence less than the applicable mandatory minimum sentence for an offense referred to in Article 56(b)(2), except as follows:

(A) If the accused pleads guilty to the offense, the agreement may have the effect of reducing a mandatory dishonorable discharge to a bad-conduct discharge.

(B) Upon recommendation of trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, a plea agreement may provide for a sentence that is less than the mandatory minimum sentence for the offense charged.

(c) *Procedure.*

(1) *Negotiation.* Plea agreement negotiations may be initiated by the accused, defense counsel, trial counsel,

the staff judge advocate, convening authority, or their duly authorized representatives. Either the defense or the Government may propose any term or condition not prohibited by law or public policy. Government representatives shall negotiate with defense counsel unless the accused has waived the right to counsel.

(2) *Formal submission.* After negotiation, if any, under paragraph (1), if the accused elects to propose a plea agreement, the defense shall submit a written offer. All terms, conditions, and promises between the parties shall be written. The proposed agreement shall be signed by the accused and defense counsel, if any.

**Discussion**

The plea agreement ordinarily contains an offer to plead guilty and a description of the offenses to which the offer extends. It must also contain a complete and accurate statement of any other agreed terms or conditions. For example, if the convening authority agrees to withdraw certain specifications, or if the accused agrees to waive the right to an Article 32 preliminary hearing or the right to elect sentencing by members, this should be stated. The written agreement should contain a statement by the accused that the accused enters it freely and voluntarily and may contain a statement that the accused has been advised of certain rights in connection with the agreement.

---

(3) *Acceptance by the convening authority.*

(A) *In general.* The convening authority may either accept or reject an offer of the accused to enter into a plea agreement or may propose by counteroffer any terms or conditions not prohibited by law or public policy. The decision whether to accept or reject an offer is within the sole discretion of the convening authority. When the convening authority has accepted a plea agreement, the agreement shall be signed by the convening authority or by a person, such as the staff judge advocate or trial counsel, who has been authorized by the convening authority to sign.

**Discussion**

The convening authority should consult with the staff judge advocate or trial counsel and should review the applicable sections of Appendix 2.1 (Non-binding disposition guidance) before acting on an offer to enter into a plea agreement.

---

(B) *Victim consultation.* Whenever practicable, prior to the convening authority accepting a plea agreement the victim shall be provided an opportunity to submit views concerning the plea agreement terms and conditions in accordance with regulations

prescribed by the Secretary concerned. The convening authority shall consider any such views provided prior to accepting a plea agreement. For purposes of this rule, a “victim” is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.

(4) *Withdrawal.*

(A) *By accused.* The accused may withdraw from a plea agreement at any time prior to the sentence being announced. If the accused elects to withdraw from the plea agreement after the acceptance of the plea agreement but before the sentence is announced, the military judge shall permit the accused to withdraw only for good cause shown. Additionally, the accused may withdraw a plea of guilty or a confessional stipulation entered pursuant to a plea agreement only as provided in R.C.M. 910(h) or 811(d).

(B) *By convening authority.* The convening authority may withdraw from a plea agreement at any time before substantial performance by the accused of promises contained in the agreement, upon the failure by the accused to fulfill any material promise or condition in the agreement, when inquiry by the military judge discloses a disagreement as to a material term in the agreement, or if findings are set aside because a plea of guilty entered pursuant to the agreement is held improvident on appellate review.

(f) *Nondisclosure of existence of a plea agreement.* No court-martial member shall be informed of the existence of a plea agreement, except upon request of the accused or when the military judge finds that disclosure of the existence of the plea agreement is manifestly necessary in the interest of justice because of circumstances arising during the proceeding. In addition, except as provided in Mil. R. Evid. 410, the fact that an accused offered to enter into a plea agreement, and any statements made by an accused in connection therewith, whether during negotiations or during a providence inquiry, shall not be otherwise disclosed to the members.

**Discussion**

See R.C.M. 1002 and 1005.

---

**R.C.M. 706(a)**

**Rule 706. Inquiry into the mental capacity or mental responsibility of the accused**

(a) *Initial action.* If it appears to any commander who considers the disposition of charges, or to any preliminary hearing officer, trial counsel, defense counsel, military judge, or member that there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial, that fact and the basis of the belief or observation shall be transmitted through appropriate channels to the officer authorized to order an inquiry into the mental condition of the accused. The submission may be accompanied by an application for a mental examination under this rule.

**Discussion**

See R.C.M. 909 concerning the capacity of the accused to stand trial and R.C.M. 916(k) concerning mental responsibility of the accused.

(b) *Ordering an inquiry.*

(1) *Before referral.* Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the convening authority before whom the charges are pending for disposition.

(2) *After referral.* After referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the military judge. The convening authority may order such an inquiry after referral of charges but before beginning of the first session of the court-martial (including any Article 39(a) session) when the military judge is not reasonably available. The military judge may order a mental examination of the accused regardless of any earlier determination by the convening authority.

(c) *Inquiry.*

(1) *By whom conducted.* When a mental examination is ordered under subsection (b) of this rule, the matter shall be referred to a board consisting of one or more persons. Each member of the board shall be either a physician or a clinical psychologist. Normally, at least one member of the board shall be either a psychiatrist or a clinical psychologist. The board shall report as to the mental capacity or mental responsibility or both of the accused.

(2) *Matters in inquiry.* When a mental examination is ordered under this rule, the order shall contain the

reasons for doubting the mental capacity or mental responsibility, or both, of the accused, or other reasons for requesting the examination. In addition to other requirements, the order shall require the board to make separate and distinct findings as to each of the following questions:

(A) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? (The term "severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)

(B) What is the clinical psychiatric diagnosis?

(C) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?

(D) Is the accused presently suffering from a mental disease or defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense?

Other appropriate questions may also be included.

(3) *Directions to board.* In addition to the requirements specified in paragraph (c)(2) of this rule, the order to the board shall specify:

(A) That upon completion of the board's investigation, a statement consisting only of the board's ultimate conclusions as to all questions specified in the order shall be submitted to the officer ordering the examination, the accused's commanding officer, the preliminary hearing officer, if any, appointed pursuant to Article 32 and to all counsel in the case, the convening authority, and, after referral, to the military judge;

(B) That the full report of the board may be released by the board or other medical personnel only to other medical personnel for medical purposes, unless otherwise authorized by the convening authority or, after referral of charges, by the military judge, except that a copy of the full report shall be furnished to the defense and, upon request, to the commanding officer of the accused; and

(C) That neither the contents of the full report nor any matter considered by the board during its investigation shall be released by the board or other medical personnel to any person not authorized to

receive the full report, except pursuant to an order by the military judge.

**Discussion**

Based on the report, further action in the case may be suspended, the charges may be dismissed by the convening authority, administrative action may be taken to discharge the accused from the service or, subject to Mil. R. Evid. 302, the charges may be tried by court-martial.

---

(4) *Additional examinations.* Additional examinations may be directed under this rule at any stage of the proceedings as circumstances may require.

(5) *Disclosure to trial counsel.* No person, other than defense counsel, the accused, or, after referral of charges, the military judge may disclose to trial counsel any statement made by the accused to the board or any evidence derived from such statement.

**Discussion**

See Mil. R. Evid. 302.

**Rule 707. Speedy trial**

(a) *In general.* The accused shall be brought to trial within 120 days after the earlier of:

- (1) Preferral of charges;

**Discussion**

Delay from the time of an offense to preferral of charges or the imposition of pretrial restraint is not considered for speedy trial purposes. See also Article 43 (statute of limitations). In some circumstances such delay may prejudice the accused and may result in dismissal of the charges or other relief.

---

(2) The imposition of restraint under R.C.M. 304(a)(2)-(4); or

- (3) Entry on active duty under R.C.M. 204.

(b) *Accountability.*

(1) *In general.* The date of preferral of charges, the date on which pretrial restraint under R.C.M. 304(a)(2)-(4) is imposed, or the date of entry on active duty under R.C.M. 204 shall not count for purpose of computing time under subsection (a) of this rule. The date on which the accused is brought to trial shall count. The accused is brought to trial within the

meaning of this rule at the time of arraignment under R.C.M. 904.

(2) *Multiple Charges.* When charges are preferred at different times, accountability for each charge shall be determined from the appropriate date under subsection (a) of this rule for that charge.

(3) *Events which affect time periods.*

(A) *Dismissal or mistrial.* In the event of dismissal of charges or mistrial, a new 120-day period begins as follows:

- (i) For an accused under pretrial restraint under R.C.M. 304(a)(2)-(4) at the time of the dismissal or mistrial, a new 120-day period begins on the date of the dismissal or mistrial.

- (ii) For an accused not under pretrial restraint at the time of dismissal or mistrial, a new 120-day period begins on the earliest of:

  - (I) the date on which charges are preferred anew;

  - (II) the date of imposition of restraint under R.C.M. 304(a)(2)-(4); or

  - (III) in the case of a mistrial in which charges are not dismissed or preferred anew, the date of the mistrial.

  - (iii) In a case in which it is determined that charges were dismissed for an improper purpose or for subterfuge, the time period determined under subsection (a) shall continue to run.

(B) *Release from restraint.* If the accused is released from pretrial restraint for a significant period, the 120-day time period under this rule shall begin on the earlier of

- (i) the date of preferral of charges;

- (ii) the date on which restraint under R.C.M. 304(a)(2)-(4) is reimposed; or

- (iii) date of entry on active duty under R.C.M. 204.

(C) *Government appeals.* If notice of appeal under R.C.M. 908 is filed, a new 120-day time period under this rule shall begin, for all charges neither proceeded on nor severed under R.C.M. 908(b)(4), on the date of notice to the parties under R.C.M. 908(b)(8) or 908(c)(3), unless it is determined that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. After the decision of the Court of Criminal Appeals under R.C.M. 908, if there is a further appeal to the Court of Appeals for the Armed Forces or,



## R.C.M. 707(b)(3)(D)

subsequently, to the Supreme Court, a new 120-day time period under this rule shall begin on the date the parties are notified of the final decision of the Court of Appeals for the Armed Forces, or, if appropriate, the Supreme Court.

(D) *Rehearings.* If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803.

(E) *Commitment of the incompetent accused.* If the accused is committed to the custody of the Attorney General for hospitalization as provided in R.C.M. 909(f), all periods of such commitment shall be excluded when determining whether the period in subsection (a) of this rule has run. If, at the end of the period of commitment, the accused is returned to the custody of the general court-martial convening authority, a new 120-day time period under this rule shall begin on the date of such return to custody.

(c) *Excludable delay.* All periods of time during which appellate courts have issued stays in the proceedings, or the accused is absent without authority, or the accused is hospitalized due to incompetence, or is otherwise in the custody of the Attorney General, shall be excluded when determining whether the period in subsection (a) of this rule has run. All other pretrial delays approved by a military judge or the convening authority shall be similarly excluded.

(1) *Procedure.* Prior to referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority or, if authorized under regulations prescribed by the Secretary concerned, to a military judge for resolution. After referral, such requests for pretrial delay will be submitted to the military judge for resolution.

### Discussion

The decision to grant or deny a reasonable delay is a matter within the sole discretion of the convening authority or a military judge. This decision should be based on the facts and circumstances then and there existing. Reasons to grant a delay might include, for example, the need for: time to enable counsel to prepare for trial in complex cases; time to allow examination into the mental capacity of the accused; time to process a member of the reserve component to active duty for disciplinary action; time to complete other proceedings related to the case; time requested by the defense; time

to secure the availability of the accused, substantial witnesses, or other evidence; time to obtain appropriate security clearances for access to classified information or time to declassify evidence; or additional time for other good cause. Pretrial delays should not be granted ex parte, and when practicable, the decision granting the delay, together with supporting reasons and the dates covering the delay, should be reduced to writing.

Prior to referral, the convening authority may delegate the authority to grant continuances to an Article 32 preliminary hearing officer.

---

(2) *Motions.* Upon accused's timely motion to a military judge under R.C.M. 905 for speedy trial relief, counsel should provide the court a chronology detailing the processing of the case. This chronology should be made a part of the appellate record.

(d) *Remedy.* A failure to comply with this rule will result in dismissal of the affected charges, or, in a sentence-only rehearing, sentence relief as appropriate.

(1) *Dismissal.* Dismissal will be with or without prejudice to the government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a re-prosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.

(2) *Sentence relief.* In determining whether or how much sentence relief is appropriate, the military judge shall consider, among others, each of the following factors: the length of the delay, the reasons for the delay, the accused's demand for speedy trial, and any prejudice to the accused from the delay. Any sentence relief granted will be applied against the sentence approved by the convening authority.

### Discussion

See R.C.M. 707(c)(1) and the accompanying Discussion concerning reasons for delay and procedures for parties to request delay.

---

(e) *Forfeiture.* Except as provided in R.C.M. 910(a)(2), a plea of guilty which results in a finding of guilty forfeits any speedy trial issue as to that offense, unless affirmatively waived.

**Discussion**

Speedy trial issues may also be forfeited by a failure to raise the issue at trial. *See* R.C.M. 905(e) and 907(b)(2).

---

(f) *Priority.* When considering the disposition of charges and the ordering of trials, a convening authority shall give priority to cases in which the accused is held under those forms of pretrial restraint defined by R.C.M. 304(a)(3)-(4). Trial of or other disposition of charges against any accused held in arrest or confinement pending trial shall be given priority.

## CHAPTER VIII. TRIAL PROCEDURE GENERALLY

### **Rule 801. Military judge's responsibilities; other matters**

(a) *Responsibilities of military judge.* The military judge is the presiding officer in a court-martial. The military judge shall:

#### **Discussion**

The military judge is responsible for ensuring that court-martial proceedings are conducted in a fair and orderly manner, without unnecessary delay or waste of time or resources.

---

(1) Determine the time and uniform for each session of a court-martial;

#### **Discussion**

The military judge should consult with counsel concerning the scheduling of sessions and the uniform to be worn. The military judge recesses or adjourns the court-martial as appropriate. Subject to R.C.M. 504(d)(1), the military judge may also determine the place of trial. *See also* R.C.M. 906(b)(11).

---

(2) Ensure that the dignity and decorum of the proceedings are maintained;

#### **Discussion**

*See generally* R.C.M. 804 and 806. Courts-martial should be conducted in an atmosphere which is conducive to calm and detached deliberation and determination of the issues presented and which reflects the seriousness of the proceedings.

---

(3) Subject to the UCMJ and this Manual, exercise reasonable control over the proceedings to promote the purposes of these rules and this Manual;

#### **Discussion**

*See* R.C.M. 102. The military judge may, within the framework established by the code and this Manual, prescribe the manner and order in which the proceedings may take place. Thus, the military judge may determine: when, and in what order, motions will be litigated (*see* R.C.M. 905); the manner in which voir dire will be conducted and challenges made (*see* R.C.M. 902(d) and 912); the order in which witnesses may testify (*see* R.C.M. 913; Mil. R. Evid. 611); the order in which the parties may argue on a motion or objection; and the time limits for argument (*see* R.C.M. 905; 919; 1001(h)).

The military judge should prevent unnecessary waste of time and promote the ascertainment of truth, but must avoid undue

interference with the parties' presentations or the appearance of partiality. The parties are entitled to a reasonable opportunity to properly present and support their contentions on any relevant matter.

---

(4) Rule on all interlocutory questions and all questions of law raised during the court-martial as provided under subsection (e);

(5) Instruct the members on questions of law and procedure which may arise; and

#### **Discussion**

The military judge instructs the members concerning findings (*see* R.C.M. 920) and, when applicable, sentence (*see* R.C.M. 1005), and when otherwise appropriate. For example, preliminary instructions to the members concerning their duties and the duties of other trial participants and other matters are normally appropriate. *See* R.C.M. 913. Other instructions (for example, instructions on the limited purpose for which evidence has been introduced, *see* Mil. R. Evid. 105) may be given whenever the need arises.

---

(6) At the military judge's discretion, in the case of a victim of an offense under the UCMJ who is under 18 years of age and not a member of the armed forces, or who is incompetent, incapacitated, or deceased, designate the legal guardian(s) of the victim or the representative(s) of the victim's estate, family members, or any other person deemed as suitable by the military judge to assume the victim's rights under the UCMJ.

(A) The military judge is not required to hold a hearing before determining whether a designation is required or before making such a designation under this rule.

(B) If the military judge determines a hearing under Article 39(a), UCMJ, is necessary, the victim shall be notified of the hearing and afforded the right to be present at the hearing.

(C) The individual designated shall not be the accused.

(D) At any time after appointment, a designee shall be excused upon request by the designee or a finding of good cause by the military judge.

(E) If the individual appointed to assume the victim's rights is excused, the military may designate a successor consistent with this rule.

**Discussion**

The term “victim of an offense under the UCMJ” has the same meaning as the term “victim of an offense under this chapter” in Article 6b.

(b) *Rules of court; contempt.* The military judge may:  
(1) Subject to R.C.M. 108, promulgate and enforce rules of court.

(2) Subject to R.C.M. 809, exercise contempt power.  
(c) *Obtaining evidence.* The court-martial may act to obtain evidence in addition to that presented by the parties. The right of the members to have additional evidence obtained is subject to an interlocutory ruling by the military judge.

**Discussion**

The members may request and the military judge may require that a witness be recalled, or that a new witness be summoned, or other evidence produced. The members or military judge may direct trial counsel to make an inquiry along certain lines to discover and produce additional evidence. *See also* Mil. R. Evid. 614. In taking such action, the court-martial must not depart from an impartial role.

(d) *Uncharged offenses.* If during the trial there is evidence that the accused may be guilty of an untried offense not alleged in any specification before the court-martial, the court-martial shall proceed with the trial of the offense charged.

**Discussion**

A report of the matter may be made to the convening authority after trial. If charges are preferred for an offense indicated by the evidence referred to in this subsection, no member of the court-martial who participated in the first trial should sit in any later trial. Such a member would ordinarily be subject to a challenge for cause. *See* R.C.M. 912. *See also* Mil. R. Evid. 105 concerning instructing the members on evidence of uncharged misconduct.

(e) *Interlocutory questions and questions of law.*

(1) *Rulings by the military judge.*  
(A) *Finality of rulings.* Any ruling by the military judge upon a question of law, including a motion for a finding of not guilty, or upon any interlocutory question is final.

(B) *Changing a ruling.* The military judge may change a ruling made by that or another military judge

in the case except a previously granted motion for a finding of not guilty, at any time during the trial.

(C) *Article 39(a) sessions.* When required by this Manual or otherwise deemed appropriate by the military judge, interlocutory questions or questions of law shall be presented and decided at sessions held without members under R.C.M. 803.

**Discussion**

Sessions without members are appropriate for interlocutory questions, questions of law, and instructions. *See also* Mil. R. Evid. 103, 304, 311, 321. Such sessions should be used to the extent possible consistent with the orderly, expeditious progress of the proceedings.

- (2) [Reserved]
- (3) [Reserved]

(4) *Standard of proof.* Questions of fact in an interlocutory question shall be determined by a preponderance of the evidence, unless otherwise stated in this Manual. In the absence of a rule in this Manual assigning the burden of persuasion, the party making the motion or raising the objection shall bear the burden of persuasion.

**Discussion**

A ruling on an interlocutory question should be preceded by any necessary inquiry into the pertinent facts and law. For example, the party making the objection, motion, or request may be required to furnish evidence or legal authority in support of the contention. An interlocutory issue may have a different standard of proof. *See, for example,* Mil. R. Evid. 314(e)(5), which requires consent for a search to be proved by clear and convincing evidence.

Most of the common motions are discussed in specific rules in this Manual, and the burden of persuasion is assigned therein. The prosecution usually bears the burden of persuasion (*see* Mil. R. Evid. 304(f)(6); 311(d)(5); *see also* R.C.M. 905 through 907) once an issue has been raised. What “raises” an issue may vary with the issue. Some issues may be raised by a timely motion or objection. *See, e.g.,* Mil. R. Evid. 304(f). Others may not be raised until the defense has made an offer of proof or presented evidence in support of its position. *See, e.g.,* Mil. R. Evid. 311(d)(4)(B). The rules in this Manual and relevant decisions should be consulted when a question arises as to whether an issue is raised, as well as which side has the burden of persuasion. The military judge may require a party to clarify a motion or objection or to make an offer of proof, regardless of the burden of persuasion, when it appears that the motion or objection is vague, inapposite, irrelevant, or spurious.

(5) *Scope.* Subsection (e) of this rule applies to the disposition of questions of law and interlocutory questions arising during trial except the question

## R.C.M. 801(f)

whether a challenge should be sustained.

### Discussion

Questions of law and interlocutory questions include all issues which arise during trial other than the findings (that is, guilty or not guilty), sentence, and administrative matters such as declaring recesses and adjournments. A question may be both interlocutory and a question of law. Challenges are specifically covered in R.C.M. 902 and 912.

Questions of the applicability of a rule of law to an undisputed set of facts are normally questions of law. Similarly, the legality of an act is normally a question of law. For example, the legality of an order when disobedience of an order is charged, the legality of restraint when there is a prosecution for breach of arrest, or the sufficiency of warnings before interrogation are normally questions of law. It is possible, however, for such questions to be decided solely upon some factual issue, in which case they would be questions of fact. For example, the question of what warnings, if any, were given by an interrogator to a suspect would be a factual question.

A question is interlocutory unless the ruling on it would finally decide whether the accused is guilty. Questions which may determine the ultimate issue of guilt are not interlocutory. An issue may arise as both an interlocutory question and a question which may determine the ultimate issue of guilt. An issue is not purely interlocutory if an accused raises a defense or objection and the disputed facts involved determine the ultimate question of guilt. For example, if during a trial for desertion the accused moves to dismiss for lack of jurisdiction and presents some evidence that the accused is not a member of an armed force, the accused's status as a military person may determine the ultimate question of guilt because status is an element of the offense. If the motion is denied, the disputed facts must be resolved by each member in deliberation upon the findings. (The accused's status as a Servicemember would have to be proved by a preponderance of the evidence to uphold jurisdiction, *see* R.C.M. 907, but beyond a reasonable doubt to permit a finding of guilty.) If, on the other hand, the accused was charged with larceny and presented the same evidence as to military status, the evidence would bear only upon amenability to trial and the issue would be disposed of solely as an interlocutory question.

Interlocutory questions may be questions of fact or questions of law.

---

(f) *Rulings on record.* All sessions involving rulings or instructions made or given by the military judge shall be made a part of the record. All rulings and instructions shall be made or given in open session in the presence of the parties and the members, except as otherwise may be determined in the discretion of the military judge.

### Discussion

See R.C.M. 808 and 1112 concerning preparation of the record of trial.

---

(g) *Effect of failure to raise defenses or objections.* Failure by a party to raise defenses or objections or to make requests or motions which must be made at the time set by this Manual or by the military judge under authority of this Manual, or prior to any extension thereof made by the military judge, shall constitute forfeiture unless the applicable rule provides that failure to raise the defense or objection constitutes waiver.

## Rule 802. Conferences

(a) *In general.* The military judge may, upon request of any party or *sua sponte*, order one or more conferences with the parties to consider such matters as will promote a fair and expeditious trial. Such conferences may take place before or after referral, as applicable.

### Discussion

The military judge may hold a conference when detailed to the court-martial following referral as well as after being detailed to conduct any pre-referral proceeding pursuant to Article 30a. *See* R.C.M. 309.

Conferences between the military judge and counsel may be held when necessary before or during trial. The purpose of such conference is to inform the military judge of anticipated issues and to expeditiously resolve matters on which the parties can agree, not to litigate or decide contested issues. No party may be compelled to resolve any matter at a conference. *See* R.C.M. 802(c).

A conference may be appropriate in order to resolve scheduling difficulties, so that witnesses and members are not unnecessarily inconvenienced. Matters which will ultimately be in the military judge's discretion, such as conduct of voir dire, seating arrangements in the courtroom, or procedures when there are multiple accused may be resolved at a conference. Conferences may be used to advise the military judge of issues or problems, such as unusual motions or objections, which are likely to arise during trial.

Occasionally it may be appropriate to resolve certain issues, in addition to routine or administrative matters, if this can be done with the consent of the parties. For example, a request for a witness which, if litigated and approved at trial, would delay the proceedings and cause expense or inconvenience, might be resolved at a conference. Note, however, that this could only be done by an agreement of the parties and not by a binding ruling of the military judge. Such a resolution must be included in the record. *See* R.C.M. 802(b).

A military judge may not participate in negotiations relating to pleas. *See* R.C.M. 705 and Mil. R. Evid. 410.

No place or method is prescribed for conducting a conference. A conference may be conducted by remote means or similar technology consistent with the definition in R.C.M. 914B.

---

(b) *Matters on record.* Conferences need not be made part of the record, but matters agreed upon at a conference shall be included in the record orally or in

writing. Failure of a party to object at trial to failure to comply with this subsection shall waive this requirement.

(c) *Rights of parties.* No party may be prevented under this rule from presenting evidence or from making any argument, objection, or motion at trial.

(d) *Accused's presence.* The presence of the accused is neither required nor prohibited at a conference.

### Discussion

Normally the defense counsel may be presumed to speak for the accused.

(e) *Admission.* No admissions made by the accused or defense counsel at a conference shall be used against the accused unless the admissions are reduced to writing and signed by the accused and defense counsel.

(f) *Limitations.* This rule shall not be invoked in the case of an accused who is not represented by counsel.

### Rule 803. Court-martial sessions without members under Article 39(a)

A military judge who has been detailed to the court-martial may, under Article 39(a), after service of charges, call the court-martial into session without the presence of members. Such sessions may be held before and after assembly of the court-martial, and when authorized in these rules, after adjournment and before entry of the judgment in the record. All such sessions are a part of the trial and shall be conducted in the presence of the accused, defense counsel, and trial counsel, in accordance with R.C.M. 804 and 805, and shall be made a part of the record.

### Discussion

The purpose of Article 39(a) is "to give statutory sanction to pretrial and other hearings without the presence of the members concerning those matters which are amenable to disposition on either a tentative or final basis by the military judge." The military judge may, and ordinarily should, call the court-martial into session without members to ascertain the accused's understanding of the right to counsel and forum selection, and the accused's choices with respect to these matters; dispose of interlocutory matters; hear objections and motions; rule upon other matters that may legally be ruled upon by the military judge, such as admitting evidence; and perform other procedural functions which do not require the presence of members. See, e.g., R.C.M. 901-910. The military judge may hold the arraignment, receive pleas, enter findings of guilty upon an accepted plea of guilty, and conduct presentencing proceedings under R.C.M. 1001 without the members present.

Evidence may be admitted and process, including a subpoena, may be issued to compel attendance of witnesses and production of evidence at such sessions. See R.C.M. 703.

Article 39(a) authorizes sessions only after charges have been referred to trial and served on the accused, but the accused has an absolute right to object, in time of peace, to any session until the period prescribed by Article 35 has run.

See R.C.M. 804 concerning waiver by the accused of the right to be present. See also R.C.M. 802 concerning conferences.

See R.C.M. 309 concerning proceedings conducted before referral under Article 30a.

### Rule 804. Presence of the accused at trial proceedings

(a) *Presence required.* The accused shall be present at the arraignment, the time of the plea, every stage of the trial including sessions conducted under Article 39(a), voir dire and challenges of members, the return of the findings, presentencing proceedings, and post-trial sessions, if any, except as otherwise provided by this rule. Attendance at these proceedings shall constitute the accused's appointed place of duty and, with respect to the accused's travel allowances, none of these proceedings shall constitute disciplinary action. This does not in any way limit authority to implement restriction, up to and including confinement, as necessary in accordance with R.C.M. 304 or R.C.M. 305.

### Discussion

An accused travelling to attend any military justice proceeding listed in R.C.M. 804(a) is not travelling for "disciplinary action" as used in paragraph 030706 of the Joint Travel Regulations Uniformed Service Members and DoD Civilian Employees, dated 1 August 2017. An accused attending these sessions shall be deemed to be travelling for "official business" and entitled to the same travel allowances as any other military member required to execute the same travel.

(b) *Presence by remote means.* The military judge may order the use of audiovisual technology, such as video teleconferencing technology, between the parties and the military judge for purposes of Article 39(a) sessions. Use of such audiovisual technology will satisfy the 'presence' requirement of the accused only when the accused has a defense counsel physically present at his location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear

## R.C.M. 804(c)

each other. Defense counsel must be physically present at the accused's location during an inquiry prior to the acceptance of a plea under R.C.M. 910(d), (e) and (f). Presence by remote means is not authorized during presentencing proceedings under R.C.M. 1001.

(c) *Continued presence not required.* The further progress of the trial to and including the return of the findings and, if necessary, determination of a sentence shall not be prevented and the accused shall be considered to have waived the right to be present whenever an accused, initially present:

(1) Is voluntarily absent after arraignment (whether or not informed by the military judge of the obligation to remain during the trial); or

(2) After being warned by the military judge that disruptive conduct will cause the accused to be removed from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

### Discussion

*Express waiver.* The accused may expressly waive the right to be present at trial proceedings. There is no right to be absent, however, and the accused may be required to be present over objection. Thus, an accused cannot frustrate efforts to identify the accused at trial by waiving the right to be present. The right to be present is so fundamental, and the Government's interest in the attendance of the accused so substantial, that the accused should be permitted to waive the right to be present only for good cause, and only after the military judge explains to the accused the right, and the consequences of forgoing it, and secures the accused's personal consent to proceeding without the accused.

*Voluntary absence.* In any case the accused may forfeit the right to be present by being voluntarily absent after arraignment.

"Voluntary absence" means voluntary absence from trial. For an absence from court-martial proceedings to be voluntary, the accused must have known of the scheduled proceedings and intentionally missed them. For example, although an accused Servicemember might voluntarily be absent without authority, this would not justify proceeding with a court-martial in the accused's absence unless the accused was aware that the court-martial would be held during the period of the absence.

An accused who is in military custody or otherwise subject to military control at the time of trial or other proceeding may not properly be absent from the trial or proceeding without securing the permission of the military judge on the record.

The prosecution has the burden to establish by a preponderance of the evidence that the accused's absence from trial is voluntary. Voluntariness may not be presumed, but it may be inferred, depending on the circumstances. For example, it may be inferred, in the absence of evidence to the contrary, that an accused who was present when the trial recessed and who knew when the proceedings were scheduled to resume, but who nonetheless is not present when court reconvenes at the designated time, is absent voluntarily.

Where there is some evidence that an accused who is absent for a hearing or trial may lack mental capacity to stand trial, capacity to

voluntarily waive the right to be present for trial must be shown. *See* R.C.M. 909.

Subsection (1) authorizes but does not require trial to proceed in the absence of the accused upon the accused's voluntary absence. When an accused is absent from trial after arraignment, a continuance or a recess may be appropriate, depending on all the circumstances.

Presence of the accused by remote means does not require the consent of the accused.

*Removal for disruption.* Trial may proceed without the presence of an accused who has disrupted the proceedings, but only after at least one warning by the military judge that such behavior may result in removal from the courtroom. In order to justify removal from the proceedings, the accused's behavior should be of such a nature as to materially interfere with the conduct of the proceedings.

The military judge should consider alternatives to removal of a disruptive accused. Such alternatives include physical restraint (such as binding, shackling, and gagging) of the accused, or physically segregating the accused in the courtroom. Such alternatives need not be tried before removing a disruptive accused under subsection (2). Removal may be preferable to such an alternative as binding and gagging, which can be an affront to the dignity and decorum of the proceedings.

Disruptive behavior of the accused may also constitute contempt. *See* R.C.M. 809. When the accused is removed from the courtroom for disruptive behavior, the military judge should—

(A) Afford the accused and defense counsel ample opportunity to consult throughout the proceedings. To this end, the accused should be held or otherwise required to remain in the vicinity of the trial, and frequent recesses permitted to allow counsel to confer with the accused.

(B) Take such additional steps as may be reasonably practicable to enable the accused to be informed about the proceedings. Although not required, technological aids, such as closed-circuit television or audio transmissions, may be used for this purpose.

(C) Afford the accused a continuing opportunity to return to the courtroom upon assurance of good behavior. To this end, the accused should be brought to the courtroom at appropriate intervals, and offered the opportunity to remain upon good behavior.

(D) Ensure that the reasons for removal appear in the record.

---

(d) *Voluntary absence for limited purpose of child testimony.*

(1) *Election by accused.* Following a determination by the military judge that remote live testimony of a child is appropriate pursuant to Mil. R. Evid. 611(d)(3), the accused may elect to voluntarily absent himself from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(2) *Procedure.* The accused's absence will be conditional upon his being able to view the witness' testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused's image and voice into the

courtroom from a remote location as well as transmission of the child's testimony from the courtroom to the accused's location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(3) *Effect on accused's rights generally.* An election by the accused to be absent pursuant to paragraph (c)(1) shall not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule.

(e) *Appearance and security of accused.*

(1) *Appearance.* The accused shall be properly attired in the uniform or dress prescribed by the military judge. An accused servicemember shall wear the insignia of grade and may wear any decorations, emblems, or ribbons to which entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused's commander shall render such assistance as may be reasonably necessary to ensure that the accused is properly attired.

#### Discussion

This subsection recognizes the right, as well as the obligation, of an accused Servicemember to present a good military appearance at trial. An accused Servicemember who refuses to present a proper military appearance before a court-martial may be compelled to do so.

(2) *Custody.* Responsibility for maintaining custody or control of an accused before and during trial may be assigned, subject to R.C.M. 304 and 305, and paragraph (c)(3) of this rule, under such regulations as the Secretary concerned may prescribe.

(3) *Restraint.* Physical restraint shall not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge.

#### Rule 805. Presence of military judge, members, and counsel

(a) *Military judge.* No court-martial proceeding, except the deliberations of the members, may take place in the absence of the military judge. For purposes of Article 39(a) sessions solely, the presence of the military judge may be satisfied by the use of audiovisual technology,

such as video conferencing technology.

(b) *Members.* Unless the accused is tried or sentenced by military judge alone, no court-martial proceeding may take place in the absence of any detailed member except: Article 39(a) sessions under R.C.M. 803; examination of members under R.C.M. 912(d); when the member has been excused under R.C.M. 505, 912(f), or 912A; or as otherwise provided in R.C.M. 1104(d)(1).

#### Discussion

See R.C.M. 501 and R.C.M. 505 concerning the minimum number of members and the procedures to follow when members are dismissed.

See R.C.M. 1002 concerning the accused's right to elect sentencing by members, except where the court-martial is composed of a military judge alone.

(c) *Counsel.* As long as at least one qualified counsel for each party is present, other counsel for each party may be absent from a court-martial session. An assistant counsel who lacks the qualifications necessary to serve as counsel for a party may not act at a session in the absence of such qualified counsel. For purposes of Article 39(a) sessions, other than presentencing proceedings under R.C.M. 1001, the presence of counsel may be satisfied by the use of audiovisual technology, such as video conferencing technology.

#### Discussion

See R.C.M. 502(d) concerning qualifications of counsel.

Ordinarily, no court-martial proceeding should take place if any defense or assistant defense counsel is absent unless the accused expressly consents to the absence. The military judge may, however proceed in the absence of one or more defense counsel, without the consent of the accused, if the military judge finds that, under the circumstances, a continuance is not warranted and that the accused's right to be adequately represented would not be impaired.

See R.C.M. 502(d)(5), 505(d)(2), and 506(c) concerning withdrawal or substitution of counsel. See R.C.M. 506(d) concerning the right of the accused to proceed without counsel.

(d) *Effect of replacement of member or military judge.*

(1) *Members.* When after presentation of evidence on the merits has begun, a new member is impaneled under R.C.M. 912A, trial may not proceed unless the testimony and evidence previously admitted on the merits, if recorded verbatim, is read to or played for the new member in the presence of the military judge, the accused, and counsel for both sides, or, if not recorded



## R.C.M. 805(d)(2)

verbatim, and in the absence of a stipulation as to such testimony and evidence, the trial proceeds as if no evidence has been presented.

### Discussion

When a new member is detailed, the military judge should give such instructions as may be appropriate. *See also* R.C.M. 912 concerning voir dire and challenges.

---

(2) *Military judge.* When, after the presentation of evidence on the merits has begun in trial before military judge alone, a new military judge is detailed under R.C.M. 505(e)(2) trial may not proceed unless the accused requests, and the military judge approves, trial by military judge alone, and a verbatim record of the testimony and evidence or a stipulation thereof is read to or played for the military judge in the presence of the accused and counsel for both sides, or the trial proceeds as if no evidence had been presented.

## Rule 806. Public trial

(a) *In general.* Except as otherwise provided in this rule, courts-martial shall be open to the public. For purposes of this rule, “public” includes members of both the military and civilian communities.

### Discussion

Because of the requirement for public trials, courts-martial must be conducted in facilities which can accommodate a reasonable number of spectators. Military exigencies may occasionally make attendance at courts-martial difficult or impracticable, as, for example, when a court-martial is conducted on a ship at sea or in a unit in a combat zone. This does not violate this rule. However, such exigencies should not be manipulated to prevent attendance at a court-martial. The requirements of this rule may be met even though only Servicemembers are able to attend a court-martial. Although not required, Servicemembers should be encouraged to attend courts-martial.

When public access to a court-martial is limited for some reason, including lack of space, special care must be taken to avoid arbitrary exclusion of specific groups or persons. This may include allocating a reasonable number of seats to members of the press and to relatives of the accused, and establishing procedures for entering and exiting from the courtroom. *See also* R.C.M. 806(b). There is no requirement that there actually be spectators at a court-martial.

The fact that a trial is conducted with members does not make it a public trial.

---

(b) *Control of spectators and closure.*

(1) *Limitation on number of spectators.* In order to

maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, and exclude specific persons from the courtroom.

### Discussion

The military judge must ensure that the dignity and decorum of the proceedings are maintained and that the other rights and interests of the parties and society are protected. Public access to a session may be limited, specific persons may be excluded from the courtroom, and, under unusual circumstances, a session may be closed.

Exclusion of specific persons, if unreasonable under the circumstances, may violate the accused’s right to a public trial, even though other spectators remain. Whenever specific persons or some members of the public are excluded, exclusion must be limited in time and scope to the minimum extent necessary to achieve the purpose for which it is ordered. Prevention of over crowding or noise may justify limiting access to the courtroom. Disruptive or distracting appearance or conduct may justify excluding specific persons. Specific persons may be excluded when necessary to protect witnesses from harm or intimidation. Access may be reduced when no other means is available to relieve a witness’ inability to testify due to embarrassment or extreme nervousness. Witnesses will ordinarily be excluded from the courtroom so that they cannot hear the testimony of other witnesses. *See* Mil. R. Evid. 615.

---

(2) *Exclusion of spectators.* When excluding specific persons, the military judge must make findings on the record establishing the reason for the exclusion, the basis for the military judge’s belief that exclusion is necessary, and that the exclusion is as narrowly tailored as possible.

(3) *Right of victim not to be excluded.* A victim of an alleged offense committed by the accused may not be excluded from any public hearing or proceeding in a court-martial relating to the offense unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.

### Discussion

Victims are also entitled to notice of all such proceedings, the right to confer with counsel for the Government, and the right to be reasonably protected from the accused. *See* Article 6b. For purposes of this rule, the term “victim of an alleged offense” has the same meaning as the term “victim of an offense under this chapter” in Article 6b.

---

(4) *Closure.* Courts-martial shall be open to the public unless (A) there is a substantial probability that

an overriding interest will be prejudiced if the proceedings remain open; (B) closure is no broader than necessary to protect the overriding interest; (C) reasonable alternatives to closure were considered and found inadequate; and (D) the military judge makes case-specific findings on the record justifying closure.

**Discussion**

The military judge is responsible for protecting both the accused’s right to, and the public’s interest in, a public trial. A court-martial session is “closed” when no member of the public is permitted to attend. A court-martial is not “closed” merely because the exclusion of certain individuals results in there being no spectators present, as long as the exclusion is not so broad as to effectively bar everyone who might attend the sessions and is put into place for a proper purpose.

A session may be closed over the objection of the accused or the public upon meeting the constitutional standard set forth in this Rule. *See also* Mil. R. Evid. 412(c)(2), 505(k)(3), and 513(e)(2).

The accused may waive his right to a public trial. The fact that the prosecution and defense jointly seek to have a session closed does not, however, automatically justify closure, for the public has a right in attending courts-martial. Opening trials to public scrutiny reduces the chance of arbitrary and capricious decisions and enhances public confidence in the court-martial process.

The most likely reason for a defense request to close court-martial proceedings is to minimize the potentially adverse effect of publicity on the trial. For example, a pretrial Article 39(a) hearing at which the admissibility of a confession will be litigated may, under some circumstances, be closed, in accordance with this Rule, in order to prevent disclosure to the public (and hence to potential members) of the very evidence that may be excluded. When such publicity may be a problem, a session should be closed only as a last resort.

There are alternative means of protecting the proceedings from harmful effects of publicity, including a thorough *voir dire* (*see* R.C.M. 912), and, if necessary, a continuance to allow the harmful effects of publicity to dissipate (*see* R.C.M. 906(b)(1)). Alternatives that may occasionally be appropriate and are usually preferable to closing a session include: directing members not to read, listen to, or watch any accounts concerning the case; issuing a protective order (*see* R.C.M. 806(d)); selecting members from recent arrivals in the command, or from outside the immediate area (*see* R.C.M. 503(a)(3)); changing the place of trial (*see* R.C.M. 906(b)(11)); or sequestering the members.

---

(c) *Photography and broadcasting prohibited.* Video and audio recording and the taking of photographs—except for the purpose of preparing the record of trial—in the courtroom during the proceedings and radio or television broadcasting of proceedings from the courtroom shall not be permitted. However, the military judge may, as a matter of discretion permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed under R.C.M. 804 or by spectators when courtroom facilities are inadequate to

accommodate a reasonable number of spectators.

(d) *Protective orders.* The military judge may, upon request of any party or *sua sponte*, issue an appropriate protective order, in writing, to prevent parties and witnesses from making extrajudicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members.

**Discussion**

A protective order may proscribe extrajudicial statements by counsel, parties, and witnesses that might divulge prejudicial matter not of public record in the case. Other appropriate matters may also be addressed by such a protective order. Before issuing a protective order, the military judge must consider whether other available remedies would effectively mitigate the adverse effects that any publicity might create, and consider such an order’s likely effectiveness in ensuring an impartial court-martial panel. A military judge should not issue a protective order without first providing notice to the parties and an opportunity to be heard. The military judge must state on the record the reasons for issuing the protective order. If the reasons for issuing the order change, the military judge may reconsider the continued necessity for a protective order

---

**Rule 807. Oaths**

(a) *Definition.* “Oath” includes “affirmation.”

(b) *Oaths in courts-martial.*

(1) *Who must be sworn.*

(A) *Court-martial personnel.* The military judge, members of a general or special court-martial, trial counsel, assistant trial counsel, defense counsel, associate defense counsel, assistant defense counsel, reporter, interpreter, and escort shall take an oath to perform their duties faithfully. For purposes of this rule, “defense counsel,” “associate defense counsel,” and “assistant defense counsel,” include detailed and individual military and civilian counsel.

**Discussion**

Article 42(a) provides that regulations of the Secretary concerned shall prescribe: the form of the oath; the time and place of the taking thereof; the manner of recording it; and whether the oath shall be taken for all cases in which the duties are to be performed or in each case separately. In the case of certified legal personnel (Article 26(b); Article 27(b)), these regulations may provide for the administration of an oath on a one-time basis. *See also* R.C.M. 813 and 901 concerning the point in the proceedings at which it is ordinarily determined whether the required oaths have been taken or are then administered.

---

(B) *Witnesses.* Each witness before a court-martial shall be examined on oath.

## R.C.M. 807(b)(2)

### Discussion

See R.C.M. 307 concerning the requirement for an oath in preferral of charges. See R.C.M. 405 and 702 concerning the requirements for an oath in Article 32 preliminary hearings and depositions.

An accused making an unsworn statement is not a “witness.” See R.C.M. 1001(d)(2)(C).

A victim of an offense for which the accused has been found guilty is not a “witness” when making an unsworn statement during the presentencing phase of a court-martial. See R.C.M. 1001(c).

---

(2) *Procedure for administering oaths.* Any procedure which appeals to the conscience of the person to whom the oath is administered and which binds that person to speak the truth, or, in the case of one other than a witness, properly to perform certain duties, is sufficient.

### Discussion

See Article 136 concerning persons authorized to administer oaths.

When the oath is administered in a session to the military judge, members, or any counsel, all persons in the courtroom should stand. In those rare circumstances in which the trial counsel testifies as a witness, the military judge administers the oath.

Unless otherwise prescribed by the Secretary concerned the forms in this Discussion may be used, as appropriate, to administer an oath.

(A) *Oath for military judge.* When the military judge is not previously sworn, the trial counsel will administer the following oath to the military judge:

“Do you (swear) (affirm) that you will faithfully and impartially perform, according to your conscience and the laws applicable to trial by court-martial, all the duties incumbent upon you as military judge of this court-martial (, so help you God)?”

(B) *Oath for members.* The following oath, as appropriate, will be administered to the members by the trial counsel:

“Do you (swear) (affirm) that you will answer truthfully the questions concerning whether you should serve as a member of this court-martial; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws applicable to trial by court-martial, the case of the accused now before this court; and that you will not disclose or discover the vote or opinion of any particular member of the court (upon a challenge or) upon the findings or sentence unless required to do so in due course of law (, so help you God)?”

(C) *Oaths for counsel.* When counsel for either side, including any associate or assistant, is not previously sworn the following oath, as appropriate, will be administered by the military judge:

“Do you (swear) (affirm) that you will faithfully perform all the duties of (trial) (assistant trial) (defense) (associate defense) (assistant defense) counsel in the case now in hearing (, so help you God)?”

(D) *Oath for reporter.* The trial counsel will administer the following oath to every reporter of a court-martial who has not been

previously sworn:

“Do you (swear) (affirm) that you will faithfully perform the duties of reporter to this court-martial (, so help you God)?”

(E) *Oath for interpreter.* The trial counsel or the summary court-martial shall administer the following oath to every interpreter in the trial of any case before a court-martial:

“Do you (swear) (affirm) that in the case now in hearing you will interpret truly the testimony you are called upon to interpret (, so help you God)?”

(F) *Oath for witnesses.* The trial counsel or the summary court-martial will administer the following oath to each witness before the witness first testifies in a case:

“Do you (swear) (affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (, so help you God)?”

(G) *Oath for escort.* The escort on views or inspections by the court-martial will, before serving, take the following oath, which will be administered by the trial counsel:

“Do you (swear) (affirm) that you will escort the court-martial and will well and truly point out to them (the place in which the offense charged in this case is alleged to have been committed) (\_\_\_\_); and that you will not speak to the members concerning (the alleged offense) (\_\_\_\_), except to describe (the place aforesaid) (\_\_\_\_) (, so help you God)?”

### Rule 808. Record of trial

Trial counsel of a general or special court-martial shall take such action as may be necessary to ensure that a record that will meet the requirements of R.C.M. 1112 can be prepared.

### Rule 809. Contempt proceedings

(a) *In general.* The contempt power under Article 48 may be exercised by a judicial officer specified under subsection (a) of that article.

### Discussion

Under Article 48, the contempt power may be exercised by the following judicial officers: any judge of the Court of Appeals for the Armed Forces and any judge of a Court of Criminal Appeals under Article 66; any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under the UCMJ; any military magistrate designated to preside under Article 19; and the president of a court of inquiry.

Article 48 makes punishable “direct” contempt, as well as “indirect” or “constructive” contempt. “Direct” contempt is that which is committed in the presence of the judicial officer during the proceeding or in the immediate proximity. “Presence” includes those places outside the courtroom itself, such as waiting areas, deliberation rooms, and other places set aside for the use of the court-martial or other proceeding while it is in session. “Indirect” or “constructive” contempt is non-compliance with lawful writs, processes, orders, rules, decrees, or commands of the judicial officer. A “direct” or “indirect” contempt may be actually seen or

heard by the judicial officer, in which case it may be punished summarily. *See* subsection (b)(1) of this rule. A “direct” or “indirect” contempt may also be a contempt not actually observed by the judicial officer, for example, when an unseen person makes loud noises, whether inside or outside the courtroom, which impede the orderly progress of the proceedings. In such a case the procedures for punishing for contempt are more extensive. *See* R.C.M. 809(b)(2).

The words “any person,” as used in Article 48, include all persons, whether or not subject to military law, except the military judge, members, and foreign nationals outside the territorial limits of the United States who are not subject to the UCMJ. The military judge may order the offender removed whether or not contempt proceedings are held. It may be appropriate to warn a person whose conduct is improper that persistence in a course of behavior may result in removal or punishment for contempt. *See* R.C.M. 804, 806.

Each contempt may be separately punished.

A person subject to the UCMJ who commits contempt may be tried by court-martial or otherwise disciplined under Article 134 for such misconduct in addition to or instead of punishment for contempt. *See* paragraph 85, Part IV; *see also* Article 131d. The 2011 amendment of Article 48 expanded the contempt power of military courts to enable them to enforce orders, such as discovery orders or protective orders regarding evidence, against military or civilian attorneys. Persons not subject to military jurisdiction under Article 2, having been duly subpoenaed, may be prosecuted in federal civilian court under Article 47 for neglect or refusal to appear or refusal to qualify as a witness or to testify or to produce evidence.

---

(b) *Method of disposition.*

(1) *Summary disposition.* When conduct constituting contempt is directly witnessed by the judicial officer during the proceeding, the conduct may be punished summarily; otherwise, the provisions of paragraph (b)(2) shall apply. If a contempt is punished summarily, the judicial officer shall ensure that the record accurately reflects the misconduct that was directly witnessed by the judicial officer during the proceeding.

(2) *Disposition upon notice and hearing.* When the conduct apparently constituting contempt is not directly witnessed by the judicial officer, the alleged offender shall be brought before the judicial officer outside the presence of any members and informed orally or in writing of the alleged contempt. The alleged offender shall be given a reasonable opportunity to present evidence, including calling witnesses. The alleged offender shall have the right to be represented by counsel and shall be so advised. The contempt must be proved beyond a reasonable doubt before it may be punished.

(c) *Procedure.* The judicial officer shall in all cases determine whether to punish for contempt and, if so,

what the punishment shall be. The judicial officer shall also determine when during the court-martial or other proceeding the contempt proceedings shall be conducted. In the case of a court of inquiry, the judicial officer shall consult with the appointed legal advisor or a judge advocate before imposing punishment for contempt.

(d) *Record; review.*

(1) *Record.* A record of the contempt proceedings shall be part of the record of the court-martial or other proceeding during which it occurred. If the person was held in contempt, then a separate record of the contempt proceedings shall be prepared and forwarded for review in accordance with paragraph (2) or (3), as applicable.

(2) *Review by convening authority.* If the contempt punishment was imposed by a court of inquiry, the contempt proceedings shall be forwarded to the convening authority for review. The convening authority may approve or disapprove the contempt finding and all or part of the sentence. The action of the convening authority is not subject to further review or appeal.

(3) *Review by Court of Criminal Appeals.* If the contempt punishment was imposed by a military judge or military magistrate, the alleged offender may file an appeal to the Court of Criminal Appeals in accordance with the uniform rules of procedure for the Courts of Criminal Appeals. The Court of Criminal Appeals may set aside the finding or the sentence, in whole or in part.

### Discussion

The appeal and defense of a contempt punishment will normally be handled by the Service appellate divisions. In unusual circumstances, the Judge Advocate General may appoint counsel to appeal and defend a contempt punishment.

Decisions of the Court of Criminal Appeals may be reviewed by the Court of Appeals for the Armed Forces and the Supreme Court of the United States in accordance with the rules of appellate procedure for each respective Court.

---

(e) *Sentence.*

(1) *In general.* The place of confinement for a civilian or military person who is held in contempt and is to be punished by confinement shall be designated by the judicial officer who imposed punishment for contempt, in accordance with regulations prescribed by the Secretary concerned. A judicial officer who imposes punishment for contempt may delay

**R.C.M. 809(e)(2)**

announcing the sentence after a finding of contempt to permit the person involved to continue to participate in the proceedings.

(2) *Maximum punishment.* If imposed by a court of inquiry, the maximum punishment that may be imposed for contempt is a fine of \$500. Otherwise the maximum punishment that may be imposed for contempt is confinement for 30 days, a fine of \$1,000, or both.

(3) *Execution of sentence when imposed by court of inquiry.* A sentence of a fine pursuant to a finding of contempt by a court of inquiry shall not become effective until approved by the convening authority.

(4) *Execution of sentence when imposed by military judge or magistrate.*

(A) A sentence of confinement pursuant to a finding of contempt by a military judge or military magistrate shall begin to run when it is announced unless—

(i) the person held in contempt notifies the judicial officer of an intent to file an appeal; and

(ii) the judicial officer, in the exercise of the judicial officer’s discretion, defers the sentence pending action by the Court of Criminal Appeals under paragraph (d)(3).

(B) A sentence of a fine pursuant to a finding of contempt by a military judge or military magistrate shall become effective when it is announced.

**Discussion**

The immediate commander of the person held in contempt, or, in the case of a civilian, the convening authority should be notified immediately so that the necessary action on the sentence may be taken. See R.C.M. 1102.

(f) *Informing person held in contempt.* The person held in contempt shall be informed by the judicial officer in writing of the holding and sentence, if any, of the judicial officer, and of the applicable procedures and regulations concerning execution and review of the contempt punishment. The reviewing authority shall notify the person held in contempt and of the action of the reviewing authority upon the sentence.

**Rule 810. Procedures for rehearings, new trials, other trials, and remands**

(a) *In general.*

(1) *Rehearings in full and new or other trials.* In rehearings which require findings on all charges and specifications referred to a court-martial and in new or other trials, the procedure shall be the same as in an original trial except as otherwise provided in this rule.

(2) *Rehearings on sentence only.* In a rehearing on sentence only, the procedure shall be the same as in an original trial, except that the portion of the procedure which ordinarily occurs after challenges and through and including the findings is omitted, and except as otherwise provided in this rule.

(A) *Contents of the record.* The contents of the record of the original trial consisting of evidence properly admitted on the merits relating to each offense of which the accused stands convicted but not sentenced may be established by any party whether or not testimony so read is otherwise admissible under Mil. R. Evid. 804(b)(1) and whether or not it was given through an interpreter.

**Discussion**

The terms “rehearings,” “new trials,” “other trials,” and “remands” generally have the following meanings: “rehearings” refers to a proceeding ordered by an appellate or reviewing authority on the findings and the sentence or on the sentence only; “new trials” refers to proceedings under Article 73 because of newly discovered evidence or fraud committed on the court; “other trials” refers to a proceeding ordered to consider new charges and specifications when the original proceedings are declared invalid because of a lack of jurisdiction or failure of a charge to state an offense; and “remands” connotes proceedings for determining issues raised on appeal which require additional inquiry. Matters excluded from the record of the original trial on the merits or improperly admitted on the merits must not be brought to the attention of the members as a part of the original record of trial

(B) *Plea.* The accused at a rehearing only on sentence may not withdraw any plea of guilty upon which findings of guilty are based.

(3) *Combined rehearings.* When a rehearing on sentence is combined with a trial on the merits of one or more specifications referred to the court-martial, whether or not such specifications are being tried for the first time or reheard, the trial will proceed first on the merits. Reference to the offenses being reheard on sentence is permissible only as provided for by the Military Rules of Evidence. The presentencing proceedings procedure shall be the same as at an original trial, except as otherwise provided in this rule.

(4) *Additional charges.* A convening authority may refer additional charges for trial together with charges

as to which a rehearing has been directed.

(5) *Rehearing impracticable.* If a rehearing was authorized on one or more findings, the convening authority may dismiss the affected charges if the convening authority determines that a rehearing is impracticable. If the convening authority dismisses such charges, a rehearing may proceed on any remaining charges not dismissed by the convening authority.

(6) *Forwarding.* When a rehearing, new trial, other trial, or remand is ordered, a military judge shall be detailed to the proceeding, and the matter forwarded to the military judge. In the case of a summary court-martial, when any proceeding is ordered, a new summary court-martial officer shall be detailed.

(b) *Composition.*

(1) *Members.* No member of the court-martial which previously heard the case may sit as a member of the court-martial at any rehearing, new trial, or other trial of the same case.

(2) *Military judge.* The military judge at a rehearing may be the same military judge who presided over a previous trial of the same case. The existence or absence of a request for trial by military judge alone at a previous hearing shall have no effect on the composition of a court-martial on rehearing.

(3) *Accused's election.* The accused at a rehearing or new or other trial shall have the same right to request enlisted members, an all-officer panel, or trial by military judge alone as the accused would have at an original trial.

### Discussion

See R.C.M. 902; 903; and 1002(b).

(c) *Examination of record of former proceedings.* No member may, upon a rehearing or upon a new or other trial, examine the record of any former proceedings in the same case except when permitted to do so by the military judge after such matters have been received in evidence.

(d) *Sentence limitations.*

(1) *In general.* Sentences at rehearings, new trials, or other trials shall be adjudged within the limitations set forth in R.C.M. 1003. Except as otherwise provided in paragraph (d)(2), the new adjudged sentence for offenses on which a rehearing, new trial, or other trial

has been ordered shall not exceed or be more severe than the original sentence as set forth in the judgment under R.C.M. 1111. When a rehearing or sentencing is combined with trial on new charges, the maximum punishment that may be imposed shall be the maximum punishment under R.C.M. 1003 for the offenses being reheard as limited in this rule, plus the total maximum punishment under R.C.M. 1003 for any new charges of which the accused has been found guilty.

(2) *Exceptions.* A rehearing, new trial, or other trial may adjudge any lawful sentence, without regard to the sentence of the previous hearing or trial when, as to any offense—

(A) the sentence prescribed for the offense is mandatory;

(B) in the case of an “other trial,” the original trial was invalid because a summary or special court-martial tried an offense involving mandatory punishment, an offense for which only a general court-martial has jurisdiction, or one otherwise considered capital;

(C) the rehearing was ordered or authorized for any charge or specification for which a plea of guilty was entered at the first hearing or trial and a plea of not guilty was entered at the second hearing or trial to that same charge or specification;

(D) the rehearing was ordered or authorized for any charge or specification for which the sentence announced or adjudged by the first court-martial was in accordance with a plea agreement and, at the rehearing, the accused does not comply with the terms of the agreement; or

(E) the rehearing was ordered or authorized after an appeal by the Government under R.C.M. 1117.

(e) *Definition.* “Other trial” means another trial of a case in which the original proceedings were declared invalid because of lack of jurisdiction or failure of a charge to state an offense. The authority ordering an “other trial” shall state in the action the basis for declaring the proceedings invalid.

(f) *Remands.*

(1) *In general.* A Court of Criminal Appeals may order a remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. A remand under this subsection is generally not appropriate to determine facts or investigate matters which could, through a party’s exercise of reasonable diligence, have been investigated or

**R.C.M. 810(f)(2)**

considered at trial. Such orders shall be directed to the Chief Trial Judge. The Judge Advocate General, or his or her delegate, shall designate a general court-martial convening authority who shall provide support for the hearing.

(2) *Detailing of military judge.* When the Court of Criminal Appeals orders a remand, the Chief Trial Judge shall detail an appropriate military judge to the matter and shall notify the commanding officer exercising general court-martial convening authority over the accused of the remand.

(3) *Remand impracticable.* If the general court-martial convening authority designated under paragraph (1) determines that the remand is impractical due to military exigencies or other reasons, a Government appellate attorney shall so notify the Court of Criminal Appeals. Upon receipt of such notification, the Court of Criminal Appeals may take any action authorized by law that does not materially prejudice the substantial rights of the accused.

**Discussion**

The Court of Criminal Appeals may direct that the remand proceed, or it may rescind the remand order and take any other appropriate action that resolves the issue that was to be settled at the remand. Such action may include modifying the findings or sentence. *See* Article 66(f).

---

**Rule 811. Stipulations**

(a) *In general.* The parties may make an oral or written stipulation to any fact, the contents of a document, or the expected testimony of a witness.

(b) *Authority to reject.* The military judge may, in the interest of justice, decline to accept a stipulation.

**Discussion**

Although the decision to stipulate should ordinarily be left to the parties, the military judge should not accept a stipulation if there is any doubt of the accused's or any other party's understanding of the nature and effect of the stipulation. The military judge should also refuse to accept a stipulation which is unclear or ambiguous. A stipulation of fact which amounts to a complete defense to any offense charged should not be accepted nor, if a plea of not guilty is outstanding, should one which practically amounts to a confession, except as described in the discussion under R.C.M. 811(c). If a stipulation is rejected, the parties may be entitled to a continuance.

(c) *Requirements.* Before accepting a stipulation in evidence, the military judge must be satisfied that the parties consent to its admission.

**Discussion**

Ordinarily, before accepting any stipulation the military judge should inquire to ensure that the accused understands the right not to stipulate, understands the stipulation, and consents to it.

If the stipulation practically amounts to a confession to an offense to which a not guilty plea is outstanding, it may not be accepted unless the military judge ascertains: (A) from the accused that the accused understands the right not to stipulate and that the stipulation will not be accepted without the accused's consent; that the accused understands the contents and effect of the stipulation; that a factual basis exists for the stipulation; and that the accused, after consulting with counsel, consents to the stipulation; and (B) from the accused and counsel for each party whether there are any agreements between the parties in connection with the stipulation, and, if so, what the terms of such agreements are.

A stipulation practically amounts to a confession when it is the equivalent of a guilty plea, that is, when it establishes, directly or by reasonable inference, every element of a charged offense and when the defense does not present evidence to contest any potential remaining issue of the merits. Thus, a stipulation which tends to establish, by reasonable inference, every element of a charged offense does not practically amount to a confession if the defense contests an issue going to guilt which is not foreclosed by the stipulation. For example, a stipulation of fact that contraband drugs were discovered in a vehicle owned by the accused would normally practically amount to a confession if no other evidence were presented on the issue, but would not if the defense presented evidence to show that the accused was unaware of the presence of the drugs. Whenever a stipulation establishes the elements of a charged offense, the military judge should conduct an inquiry as described in this rule.

If, during an inquiry into a confessional stipulation the military judge discovers that there is a plea agreement, the military judge must conduct an inquiry into the pretrial agreement. *See* R.C.M. 910(f). *See also* R.C.M. 705.

---

(d) *Withdrawal.* A party may withdraw from an agreement to stipulate or from a stipulation at any time before a stipulation is accepted; the stipulation may not then be accepted. After a stipulation has been accepted a party may withdraw from it only if permitted to do so in the discretion of the military judge.

**Discussion**

If a party withdraws from an agreement to stipulate or from a stipulation, before or after it has been accepted, the opposing party may be entitled to a continuance to obtain proof of the matters which were to have been stipulated.

If a party is permitted to withdraw from a stipulation previously accepted, the stipulation must be disregarded by the court-martial, and an instruction to that effect should be given.

(e) *Effect of stipulation.* Unless properly withdrawn or ordered stricken from the record, a stipulation of fact that has been accepted is binding on the court-martial and may not be contradicted by the parties thereto. The contents of a stipulation of expected testimony or of a document's contents may be attacked, contradicted, or explained in the same way as if the witness had actually so testified or the document had been actually admitted. The fact that the parties so stipulated does not admit the truth of the indicated testimony or document's contents, nor does it add anything to the evidentiary nature of the testimony or document. The Military Rules of Evidence apply to the contents of stipulations.

(f) *Procedure.* When offered, a written stipulation shall be presented to the military judge and shall be included in the record whether accepted or not. Once accepted, a written stipulation of expected testimony shall be read to the members, if any, but shall not be presented to them; a written stipulation of fact or of a document's contents may be read to the members, if any, presented to them, or both. Once accepted, an oral stipulation shall be announced to the members, if any.

#### **Rule 812. Joint and common trials**

In joint trials and in common trials, each accused shall be accorded the rights and privileges as if tried separately.

#### **Discussion**

A "joint trial" is one in which two or more accused are charged with a joint offense, that is, one in which they acted together with a common purpose. The offense is stated in a single specification and the accused are joined by the pleading. A "common trial" is one in which two or more accused are tried for an offense or offenses which, although not jointly committed, were committed at the same time and place and are provable by the same evidence. The common trial is ordered in the discretion of the convening authority by endorsement on the charge sheet. See R.C.M. 307(c)(5) concerning preparing charges and specifications for joint trials. See R.C.M. 601(e)(3) concerning referral of charges for joint or common trials, and the distinction between the two. See R.C.M. 906(b)(9) concerning motions to sever and other appropriate motions in joint or common trials.

In a joint or common trial, each accused may be represented by separate counsel; make challenges for cause; make peremptory challenges (*see* R.C.M. 912); cross-examine witnesses; elect whether to testify; introduce evidence; request that the membership of the court include enlisted persons or be limited to officer members, if an enlisted accused; and request trial by military judge alone.

In a joint or common trial, evidence which is admissible against only one or some of the joint or several accused may be considered

only against the accused concerned. For example, when a stipulation is accepted which was made by only one or some of the accused, the stipulation does not apply to those accused who did not join it. *See also* Mil. R. Evid. 306. In such instances the members must be instructed that the stipulation or evidence may be considered only with respect to the accused with respect to whom it is accepted.

---

#### **Rule 813. Announcing personnel of the court-martial and the accused**

(a) *Opening sessions.* When the court-martial is called to order for the first time in a case, the military judge shall ensure that the following is announced:

(1) The order, including any amendment, by which the court is convened;

(2) The name, rank, and unit or address of the accused;

(3) The name and rank of the military judge presiding;

(4) The names and ranks of the members, if any, who are present;

(5) The names and ranks of members who are absent, if presence of members is required

(6) The names and ranks (if any) of counsel who are present;

(7) The names and ranks (if any) of counsel who are absent; and

(8) The name and rank (if any) of any detailed court reporter.

(b) *Later proceedings.* When the court-martial is called to order after a recess or adjournment or after it has been closed for any reason, the military judge shall ensure that the record reflects whether all parties and members who were present at the time of the adjournment or recess, or at the time the court-martial closed, are present.

(c) *Additions, replacement, and absences of personnel.* Whenever there is a replacement of the military judge, any member, or counsel, either through the appearance of new personnel or personnel previously absent or through the absence of personnel previously present, the military judge shall ensure the record reflects the change and the reason for it.



## CHAPTER IX. TRIAL PROCEDURES THROUGH FINDINGS

### Rule 901. Opening session

(a) *Call to order.* A court-martial is in session when the military judge so declares.

#### Discussion

The military judge should examine the charge sheet, convening order, and any amending orders before calling the initial session to order.

See also R.C.M. 602(b)(1) concerning the waiting periods applicable after service of charges in general and special courts-martial.

---

(b) *Announcement of parties.* After the court-martial is called to order, the presence or absence of the parties, military judge, and members shall be announced.

#### Discussion

If the orders detailing the military judge and counsel have not been reduced to writing, an oral announcement of such detailing is required. See R.C.M. 503(b) and (c).

---

(c) *Swearing reporter and interpreter.* After the personnel have been accounted for as required in subsection (b) of this rule, trial counsel shall announce whether the reporter and interpreter, if any is present, have been properly sworn. If not sworn, the reporter and interpreter, if any, shall be sworn.

#### Discussion

See R.C.M. 807 concerning the oath to be administered to a court reporter or interpreter. If a reporter or interpreter is replaced at any time during trial, this should be noted for the record, and the procedures in this subsection should be repeated.

---

(d) *Counsel.*

(1) *Trial counsel.* Trial counsel shall announce the legal qualifications and status as to oaths of the members of the prosecution and whether any member of the prosecution has acted in any manner which might tend to disqualify that counsel.

(2) *Defense counsel.*

(A) *In general.* The detailed defense counsel shall announce the legal qualifications and status as to oaths of the detailed members of the defense and whether

any member of the defense has acted in any manner that might tend to disqualify that counsel. Any defense counsel not detailed shall state that counsel's legal qualifications and whether that counsel has acted in any manner that might tend to disqualify the counsel.

(B) *Capital cases.* A defense counsel who has been detailed to a capital case as a counsel learned in the law applicable to such cases shall, in addition to the requirements of subparagraph (A), state such qualifications and assignment.

(3) *Disqualification.* If it appears that any counsel may be disqualified, the military judge shall decide the matter and take appropriate action.

#### Discussion

Counsel may be disqualified because of lack of necessary qualifications, or because of duties or actions which are inconsistent with the role of counsel. See R.C.M. 502(d) concerning qualifications of counsel.

If it appears that any counsel may be disqualified, the military judge should conduct an inquiry or hearing. If any detailed counsel is disqualified, the appropriate authority should be informed. If any defense counsel is disqualified, the accused should be so informed.

If the disqualification of trial or defense counsel is one which the accused may waive, the accused should be so informed by the military judge, and given the opportunity to decide whether to waive the disqualification. In the case of defense counsel, if the disqualification is not waivable or if the accused elects not to waive the disqualification, the accused should be informed of the choices available and given the opportunity to exercise such options.

If any counsel is disqualified, the military judge should ensure that the accused is not prejudiced by any actions of the disqualified counsel or any break in representation of the accused.

Disqualification of counsel is not a jurisdictional defect; such error must be tested for prejudice.

If the membership of the prosecution or defense changes at any time during the proceedings, the procedures in this subsection should be repeated as to the new counsel. In addition, the military judge should ascertain on the record whether the accused objects to a change of defense counsel. See R.C.M. 505(d)(2) and 506(c).

See R.C.M. 502(d)(2)(C) regarding qualifications of counsel learned in the law applicable to capital cases.

---

(4) *Inquiry.* The military judge shall, in open session:

(A) Inform the accused of the rights to be represented by military counsel detailed to the defense; or by individual military counsel requested by the accused, if such military counsel is reasonably available; and by civilian counsel, either alone or in association with military counsel, if such civilian counsel is provided at no expense to the United States;

(B) Inform the accused that, if afforded individual military counsel, the accused may request retention of detailed counsel as associate counsel, which request may be granted or denied in the sole discretion of the authority who detailed the counsel;

(C) Ascertain from the accused whether the accused understands these rights;

(D) Promptly inquire, whenever two or more accused in a joint or common trial are represented by the same detailed or individual military or civilian counsel, or by civilian counsel who are associated in the practice of law, with respect to such joint representation and shall personally advise each accused of the right to effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the military judge shall take appropriate measures to protect each accused’s right to counsel; and

**Discussion**

Whenever it appears that any defense counsel may face a conflict of interest, the military judge should inquire into the matter, advise the accused of the right to effective assistance of counsel, and ascertain the accused’s choice of counsel. When defense counsel is aware of a potential conflict of interest, counsel should discuss the matter with the accused. If the accused elects to waive such conflict, counsel should inform the military judge of the matter at an Article 39(a) session so that an appropriate record can be made.

---

(E) Ascertain from the accused by whom the accused chooses to be represented.

(5) *Unsworn counsel.* The military judge shall administer the oath to any counsel not sworn.

**Discussion**

See R.C.M. 807.

---

(e) *Presence of members.* The procedures described in R.C.M. 901 through 910 shall be conducted without members present in accordance with the procedures set forth in R.C.M. 803.

**Rule 902. Disqualification of military judge**

(a) *In general.* Except as provided in subsection (e) of this rule, a military judge shall disqualify himself or herself in any proceeding in which that military judge’s

impartiality might reasonably be questioned.

(b) *Specific grounds.* A military judge shall also disqualify himself or herself in the following circumstances:

(1) Where the military judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.

(2) Where the military judge has acted as counsel, preliminary hearing officer, investigating officer, legal officer, staff judge advocate, or convening authority as to any offense charged or in the same case generally.

(3) Where the military judge has been or will be a witness in the same case, is the accuser, has forwarded charges in the case with a personal recommendation as to disposition, or, except in the performance of duties as military judge in a previous trial of the same or a related case, has expressed an opinion concerning the guilt or innocence of the accused.

(4) Where the military judge is not eligible to act because the military judge is not qualified under R.C.M. 502(c) or not detailed under R.C.M. 503(b).

(5) Where the military judge, the military judge’s spouse, or a person within the third degree of relationship to either of them or a spouse of such person:

(A) Is a party to the proceeding;

(B) Is known by the military judge to have an interest, financial or otherwise, that could be substantially affected by the outcome of the proceeding; or

(C) Is to the military judge’s knowledge likely to be a material witness in the proceeding.

**Discussion**

A military judge should inform himself or herself about his or her financial interests, and make a reasonable effort to inform himself or herself about the financial interests of his or her spouse and minor children living in his or her household.

---

(c) *Definitions.* For the purposes of this rule the following words or phrases shall have the meaning indicated—

(1) “Proceeding” includes pretrial (to include pre-referral), trial, post-trial, appellate review, or other stages of litigation.

(2) The “degree of relationship” is calculated according to the civil law system.

**R.C.M. 902(d)**

**Discussion**

Relatives within the third degree of relationship are children, grandchildren, great grandchildren, parents, grandparents, great grandparents, brothers, sisters, uncles, aunts, nephews, and nieces.

---

(d) *Procedure.*

(1) The military judge shall, upon motion of any party or *sua sponte*, decide whether the military judge is disqualified.

**Discussion**

There is no peremptory challenge against a military judge. A military judge should carefully consider whether any of the grounds for disqualification in this rule exist in each case. The military judge should broadly construe grounds for challenge but should not step down from a case unnecessarily.

Possible grounds for disqualification should be raised at the earliest reasonable opportunity. They may be raised at any time, and an earlier adverse ruling does not bar later consideration of the same issue, as, for example, when additional evidence is discovered.

---

(2) Each party shall be permitted to question the military judge and to present evidence regarding a possible ground for disqualification before the military judge decides the matter.

**Discussion**

Nothing in this rule prohibits the military judge from reasonably limiting the presentation of evidence, the scope of questioning, and argument on the subject so as to ensure that only matters material to the central issue of the military judge's possible disqualification are considered, thereby, preventing the proceedings from becoming a forum for unfounded opinion, speculation or innuendo.

---

(3) Except as provided under subsection (e) of this rule, if the military judge rules that the military judge is disqualified, the military judge shall recuse himself or herself.

(e) *Waiver.* No military judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b) of this rule. Where the ground for disqualification arises only under subsection (a) of this rule, waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

**Rule 902A. Application of sentencing rules**

(a) *Generally.* Only one sentencing system applies in a court-martial. The accused at a single court-martial with specifications alleging offenses committed before 1 January 2019 and on or after 1 January 2019 will not be sentenced under separate sets of rules. Accordingly, if an accused is facing court-martial for several specifications alleging offenses, at least one of which was committed before 1 January 2019 and at least one of which was committed on or after 1 January 2019, the convening authority may refer these offenses to either—

(1) a single court-martial where the applicable sentencing rules are the sentencing rules in effect prior to 1 January 2019 and these apply to all offenses regardless of the date of the alleged offense, unless the accused makes an election under subsection (b); or,

(2) separate courts-martial for the offenses alleged to have been committed before 1 January 2019 and the offenses alleged to have been committed on or after 1 January 2019.

(b) *Election of sentencing rules applicable at a single trial.* If the convening authority has referred specifications alleging offenses committed before 1 January 2019 and on or after 1 January 2019 to a single court-martial pursuant to paragraph (a)(1), before the accused is arraigned, the military judge shall ascertain, as applicable, whether the accused elects to be sentenced under the sentencing rules in effect on 1 January 2019, which shall apply to all offenses regardless of the date of the alleged offense.

(c) *Form of election.* The accused's election under subsection (b) shall be in writing and signed by the accused or shall be made orally on the record. The military judge shall ascertain whether the accused has consulted with defense counsel and has been informed of the right to make the election of the applicable sentencing rules under subsection (b).

(d) *Irrevocable Election.* Unless the military judge allows the accused to withdraw the election for good cause shown, the accused's election of the applicable sentencing rules under subsection (b) is irrevocable once made on the record and accepted by the military judge.

**Rule 903. Accused's elections on composition of court-martial**

(a) *In general.*

(1) Except in a special court-martial consisting of a

military judge alone under Article 16(c)(2)(A), before the end of the initial Article 39(a) session or, in the absence of such a session, before assembly, the military judge shall ascertain, as applicable:

(A) In the case of an enlisted accused, whether the accused elects to be tried by a court-martial composed of—

- (i) at least one-third enlisted members; or
- (ii) all officer members.

(B) In all noncapital cases, whether the accused requests trial by military judge alone.

(2) The accused may defer requesting trial by military judge alone until any time before assembly.

**Discussion**

Only an enlisted accused may request that enlisted members be detailed to a court-martial. Trial by military judge alone is not permitted in capital cases (see R.C.M. 201(f)(1)(C)).

If an accused makes no forum selection, the accused will be tried by a court-martial composed of a military judge and members, as specified in the convening order. When presenting the accused’s forum options, the military judge should inform the accused of the effect of not making an election.

(b) *Form of election.* The accused’s election or request, if any, under subsection (a), shall be in writing and signed by the accused or shall be made orally on the record.

(c) *Action on election.*

(1) *Request for specific panel composition.* If an enlisted accused makes a timely election under subparagraph (a)(1)(A), the convening authority, unless a sufficient number of members have already been detailed, shall detail a sufficient number of additional members to the court-martial in accordance with R.C.M. 503 or prepare a detailed written statement explaining why physical conditions or military exigencies prevented such detail. Proceedings that require the presence of members shall not proceed until either there is a sufficient number of additional members or the convening authority has prepared a written statement.

(2) *Request for military judge alone.* Upon receipt of a timely request for trial by military judge alone the military judge shall:

(A) Ascertain whether the accused has consulted with defense counsel and has been informed of the identity of the military judge and of the right to trial by

members; and

**Discussion**

Ordinarily the military judge should inquire personally of the accused to ensure that the accused’s waiver of the right to trial by members is knowing and understanding. The military judge should ensure the accused understands that the approval of a request for trial before military judge alone under Article 16(b)(3) or (c)(2)(B) means that the military judge will determine the findings and, if the accused is found guilty of any charge and specification, the sentence. See R.C.M. 1002. Failure to do so is not error, however, where such knowledge and understanding otherwise appear on the record.

DD Form 1722 (Request for Trial Before Military Judge Alone (Article 16, UCMJ)) should normally be used for the purpose of requesting trial by military judge alone under this rule, if a written request is used.

(B) Approve or disapprove the request, in the military judge’s discretion.

**Discussion**

A timely request for trial by military judge alone should be granted unless there is substantial reason why, in the interest of justice, the military judge should not sit as factfinder. The military judge may hear arguments from counsel before acting on the request. The basis for denial of a request must be made a matter of record.

(3) *Composition.* Trial shall be by a court-martial composed of the members in accordance with the convening order, unless the case is referred for trial by military judge alone under Article 16(c)(2)(A), the military judge grants a request for trial by judge alone, or there is a request for a specific panel composition under subparagraph (a)(1)(A).

(d) *Right to withdraw request.*

(1) *Specific panel composition.* An election by an enlisted accused under subparagraph (a)(1)(A) may be withdrawn by the accused as a matter of right any time before the end of the initial Article 39(a) session, or, in the absence of such a session, before assembly.

(2) *Military judge.* A request for trial by military judge alone may be withdrawn by the accused as a matter of right any time before it is approved, or even after approval, if there is a change of the military judge

**Discussion**

Withdrawal of a request for enlisted members, all officer members, or trial by military judge alone should be shown in the record. The effect of such withdrawal is that the accused will be tried by a court-martial composed of members as specified by the

## R.C.M. 903(e)

convening order. See R.C.M. 505(c) concerning changing members prior to assembly.

---

(e) *Untimely requests.* Failure to request, or failure to withdraw a request for a specific panel composition or trial by military judge alone in a timely manner shall waive the right to submit or to withdraw such a request. However, the military judge may, until the beginning of the introduction of evidence on the merits, as a matter of discretion, approve an untimely request or withdrawal of a request.

### Discussion

In exercising discretion whether to approve an untimely request or withdrawal of a request, the military judge should balance the reason for the request (for example, whether it is a mere change of tactics or results from a substantial change of circumstances) against any expense, delay, or inconvenience which would result from granting the request

---

## Rule 904. Arraignment

Arraignment shall be conducted in a court-martial session and shall consist of reading the charges and specifications to the accused and calling on the accused to plead. The accused may waive the reading.

### Discussion

Arraignment is complete when the accused is called upon to plead; the entry of pleas is not part of the arraignment.

The arraignment should be conducted at an Article 39(a) session. The accused may not be arraigned at a conference under R.C.M. 802.

Once the accused has been arraigned, no additional charges against that accused may be referred to that court-martial for trial with the previously referred charges. See R.C.M. 601(e)(2).

The defense should be asked whether it has any motions to make before pleas are entered. Some motions ordinarily must be made before a plea is entered. See R.C.M. 905(b).

---

## Rule 905. Motions generally

(a) *Definitions and form.* A motion is an application to the military judge for particular relief. Motions may be oral or, at the discretion of the military judge, written. A motion shall state the grounds upon which it is made and shall set forth the ruling or relief sought. The substance of a motion, not its form or designation, shall control.

(b) *Pretrial motions.* Any defense, objection, or request

which is capable of determination without the trial of the general issue of guilt may be raised before trial. The following must be raised before a plea is entered:

(1) Defenses or objections based on defects (other than jurisdictional defects) in the preferral, forwarding, or referral of charges, or in the preliminary hearing;

### Discussion

Such nonjurisdictional defects include unsworn charges, inadequate Article 32 preliminary hearing, and inadequate pretrial advice. See R.C.M. 307, 401–407, 601–604, 906(b)(3).

---

(2) Defenses or objections based on defects in the charges and specifications (other than any failure to show jurisdiction or to charge an offense, which objections shall be resolved by the military judge at any time during the pendency of the proceedings);

### Discussion

See R.C.M. 307, 906(b)(4).

---

(3) Motions to suppress evidence;

### Discussion

Mil. R. Evid. 304(f), 311(d), and 321(d) deal with the admissibility of confessions and admissions, evidence obtained from unlawful searches and seizures, and eyewitness identification, respectively. Questions concerning the admissibility of evidence on other grounds may be raised by objection at trial or by motions *in limine*. See R.C.M. 906(b)(13), Mil. R. Evid. 103, 104(a) and (c).

---

(4) Motions for discovery under R.C.M. 701 or for production of witnesses or evidence;

### Discussion

See R.C.M. 703, 1001(f).

---

(5) Motions for severance of charges or accused; or

### Discussion

See R.C.M. 812, 906(b)(9) and (10).

---

(6) Objections based on denial of request for individual military counsel or for retention of detailed defense counsel when individual military counsel has been granted.

**Discussion**

See R.C.M. 506(b), 906(b)(2).

---

(c) *Burden of proof.*

(1) *Standard.* Unless otherwise provided in this Manual, the burden of proof on any factual issue the resolution of which is necessary to decide a motion shall be by a preponderance of the evidence.

**Discussion**

See Mil. R. Evid. 104(a) concerning the applicability of the Military Rules of Evidence to certain preliminary questions.

---

(2) *Assignment.*

(A) Except as otherwise provided in this Manual the burden of persuasion on any factual issue the resolution of which is necessary to decide a motion shall be on the moving party.

**Discussion**

See, for example, R.C.M. 905(c)(2)(B), R.C.M. 908 and Mil. R. Evid. 304(f), 311(d)(5), and 321(d)(6) for provisions specifically assigning the burden of proof.

---

(B) In the case of a motion to dismiss for lack of jurisdiction, denial of the right to speedy trial under R.C.M. 707, or the running of the statute of limitations, the burden of persuasion shall be upon the prosecution.

(d) *Ruling on motions.* A motion made before pleas are entered shall be determined before pleas are entered unless, if otherwise not prohibited by this Manual, the military judge for good cause orders that determination be deferred until trial of the general issue or after findings, but no such determination shall be deferred if a party's right to review or appeal is adversely affected. Where factual issues are involved in determining a motion, the military judge shall state the essential findings on the record.

**Discussion**

When trial cannot proceed further as the result of dismissal or other rulings on motions, the court-martial should adjourn and a record of the proceedings should be prepared. See R.C.M. 908(b)(4) regarding automatic stay of certain rulings and orders subject to appeal under that rule. Notwithstanding the dismissal of some specifications, trial may proceed in the normal manner as long as one or more charges and specifications remain. The judgment entered into the record should reflect the action taken by the court-martial on each charge and specification, including any of which were dismissed by the military judge on a motion. See R.C.M. 1111.

---

(e) *Effect of failure to raise defenses or objections.*

(1) Failure by a party to raise defenses or objections or to make motions or requests which must be made before pleas are entered under subsection (b) of this rule forfeits the defenses or objections absent an affirmative waiver. The military judge for good cause shown may permit a party to raise a defense or objection or make a motion or request outside of the timelines permitted under subsection (b) of this rule.

(2) Other motions, requests, defenses, or objections, except lack of jurisdiction or failure of a charge to allege an offense, must be raised before the court-martial is adjourned for that case. Failure to raise such other motions, requests, defenses, or objections, shall constitute forfeiture, absent an affirmative waiver.

**Discussion**

See also R.C.M. 910(j) concerning matters waived by a plea of guilty.

---

(f) *Reconsideration.* On request of any party or *sua sponte*, the military judge may, prior to entry of judgment, reconsider any ruling, other than one amounting to a finding of not guilty, made by the military judge.

**Discussion**

The military judge may reconsider any ruling that affects the legal sufficiency of any finding of guilt or the sentence. See R.C.M. 917(d) for the standard to be used to determine the legal sufficiency of evidence. See also R.C.M. 1104 concerning procedures for post-trial reconsideration. Different standards may apply depending on the nature of the ruling. See *United States v. Scalf*, 29 M.J. 60 (C.M.A. 1989).

---

(g) *Effect of final determinations.* Any matter put in issue and finally determined by a court-martial,

## R.C.M. 905(g)

reviewing authority, or appellate court which had jurisdiction to determine the matter may not be disputed by the United States in any other court-martial of the same accused, except that, when the offenses charged at one court-martial did not arise out of the same transaction as those charged at the court-martial at which the determination was made, a determination of law and the application of law to the facts may be disputed by the United States. This rule also shall apply to matters which were put in issue and finally determined in any other judicial proceeding in which the accused and the United States or a federal governmental unit were parties.

### Discussion

See R.C.M. 907(b)(2)(C). Whether a matter has been finally determined in another judicial proceeding with jurisdiction to decide it, and whether such determination binds the United States in another proceeding are interlocutory questions. See R.C.M. 801(e). It does not matter whether the earlier proceeding ended in an acquittal, conviction, or otherwise, as long as the determination is final. Except for a ruling which is, or amounts to, a finding of not guilty, a ruling ordinarily is not final until action on the court-martial is completed. See Article 76; R.C.M. 1209. The accused is not bound in a court-martial by rulings in another court-martial. *But see* Article 3(b); R.C.M. 202.

The determination must have been made by a court-martial, reviewing authority, or appellate court, or by another judicial body, such as a United States court. A pretrial determination by a convening authority is not a final determination under this rule, although some decisions by a convening authority may bind the Government under other rules. See, e.g., R.C.M. 601, 604, 704, 705.

The United States is bound by a final determination by a court of competent jurisdiction even if the earlier determination is erroneous, except when the offenses charged at the second proceeding arose out of a different transaction from those charged at the first and the ruling at the first proceeding was based on an incorrect determination of law.

A final determination in one case may be the basis for a motion to dismiss or a motion for appropriate relief in another case, depending on the circumstances. The nature of the earlier determination and the grounds for it will determine its effect in other proceedings.

Examples:

(1) The military judge dismissed a charge for lack of personal jurisdiction, on grounds that the accused was only 16 years old at the time of enlistment and when the offenses occurred. At a second court-martial of the same accused for a different offense, the determination in the first case would require dismissal of the new charge unless the prosecution could show that since that determination the accused had effected a valid enlistment or constructive enlistment. See R.C.M. 202. Note, however, that if the initial ruling had been based on an error of law (for example, if the military judge had ruled the enlistment invalid because the accused was 18 at the time of enlistment) this would not require dismissal in the second court-martial for a different offense.

(2) The accused was tried in United States district court for assault on a federal officer. The accused defended solely on the basis

of alibi and was acquitted. The accused is then charged in a court-martial with assault on a different person at the same time and place as the assault on a federal officer was alleged to have occurred. The acquittal of the accused in federal district court would bar conviction of the accused in the court-martial. In cases of this nature, the facts of the first trial must be examined to determine whether the finding of the first trial is logically inconsistent with guilt in the second case.

(3) At a court-martial for larceny, the military judge excluded evidence of a statement made by the accused relating to the larceny and other uncharged offenses because the statement was obtained by coercion. At a second court-martial for an unrelated offense, the statement excluded at the first trial would be inadmissible, based on the earlier ruling, if the first case had become final. If the earlier ruling had been based on an incorrect interpretation of law, however, the issue of admissibility could be litigated anew at the second proceeding.

(4) At a court-martial for absence without authority, the charge and specification were dismissed for failure to state an offense. At a later court-martial for the same offense, the earlier dismissal would be grounds for dismissing the same charge and specification, but would not bar further proceedings on a new specification not containing the same defect as the original specification.

---

(h) *Written motions.* Written motions may be submitted to the military judge after referral and when appropriate they may be supported by affidavits, with service and opportunity to reply to the opposing party. Such motions may be disposed of before arraignment and without a session. Either party may request an Article 39(a) session to present oral argument or have an evidentiary hearing concerning the disposition of written motions.

(i) *Service.* Written motions shall be served on all other parties. Unless otherwise directed by the military judge, the service shall be made upon counsel for each party.

(j) *Application to convening authority.* Except as otherwise provided in this Manual, any matters which may be resolved upon motion without trial of the general issue of guilt may be submitted by a party to the convening authority before trial for decision. Submission of such matter to the convening authority is not, except as otherwise provided in this Manual, required, and is, in any event, without prejudice to the renewal of the issue by timely motion before the military judge.

(k) *Production of statements on motion to suppress.* Except as provided in this subsection, R.C.M. 914 shall apply at a hearing on a motion to suppress evidence under paragraph (b)(3) of this rule. For purposes of this subsection, a law enforcement officer shall be deemed a witness called by the Government, and upon a claim of privilege the military judge shall excise portions of the statement containing privileged matter.

**Rule 906. Motions for appropriate relief**

(a) *In general.* A motion for appropriate relief is a request for a ruling to cure a defect which deprives a party of a right or hinders a party from preparing for trial or presenting its case.

(b) *Grounds for appropriate relief.* The following may be requested by motion for appropriate relief. This list is not exclusive.

(1) *Continuances.* A continuance may be granted only by the military judge.

**Discussion**

The military judge should, upon a showing of reasonable cause, grant a continuance to any party for as long and as often as is just. *See* Article 40. Whether a request for a continuance should be granted is a matter within the discretion of the military judge. Reasons for a continuance may include: insufficient opportunity to prepare for trial; unavailability of an essential witness; the interest of Government in the order of trial of related cases; and illness of an accused, counsel, military judge, or member. *See also* R.C.M. 602, 803.

---

(2) *Record of denial of individual military counsel or of denial of request to retain detailed counsel when a request for individual military counsel granted.* If a request for military counsel was denied, which denial was upheld on appeal (if available) or if a request to retain detailed counsel was denied when the accused is represented by individual military counsel, and if the accused so requests, the military judge shall ensure that a record of the matter is included in the record of trial, and may make findings. Trial counsel may request a continuance to inform the convening authority of those findings. The military judge may not dismiss the charges or otherwise effectively prevent further proceedings based on this issue. However, the military judge may grant reasonable continuances until the requested military counsel can be made available if the unavailability results from temporary conditions or if the decision of unavailability is in the process of review in administrative channels.

(3) Correction of defects in the Article 32 preliminary hearing or pretrial advice.

**Discussion**

*See* R.C.M. 405, 406, 406A. If the motion is granted, the military judge should ordinarily grant a continuance so the defect may be corrected.

(4) *Amendment of charges or specifications.* After referral, a charge or specification may not be amended over the accused's objection except pursuant to R.C.M. 603(d) and (e).

**Discussion**

*See also* R.C.M. 307.

An amendment may be appropriate when a specification is unclear, redundant, inartfully drafted, misnames an accused, or is laid under the wrong article. A specification may be amended by striking surplusage, or substituting or adding new language. Surplusage may include irrelevant or redundant details or aggravating circumstances which are not necessary to enhance the maximum authorized punishment or to explain the essential facts of the offense. When a specification is amended after the accused has entered a plea to it, the accused should be asked to plead anew to the amended specification. A bill of particulars (*see* R.C.M. 906(b)(6)) may also be used when a specification is indefinite or ambiguous.

If a specification, although stating an offense, is so defective that the accused appears to have been misled, the accused should be given a continuance upon request, or, in an appropriate case, the specification may be dismissed. *See* R.C.M. 907(b)(3).

---

(5) Severance of a duplicitous specification into two or more specifications.

**Discussion**

Each specification may state only one offense. *See* R.C.M. 307(c)(4). A duplicitous specification is one which alleges two or more separate offenses. Lesser included offenses (*see* Part IV, paragraph 3; Appendix 12A) are not separate, nor is a continuing offense involving several separate acts. The sole remedy for a duplicitous specification is severance of the specification into two or more specifications, each of which alleges a separate offense contained in the duplicitous specification. However, if the duplicitousness is combined with or results in other defects, such as misleading the accused, other remedies may be appropriate. *See* R.C.M. 906(b)(3). *See also* R.C.M. 907(b)(3).

---

(6) *Bill of particulars.* A bill of particulars may be amended at any time, subject to such conditions as justice permits.

**Discussion**

The purposes of a bill of particulars are to inform the accused of the nature of the charge with sufficient precision to enable the accused to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable the accused to plead the acquittal or conviction in bar of another prosecution for the same offense when the specification itself is too vague and indefinite for such purposes.

A bill of particulars should not be used to conduct discovery of the Government's theory of a case, to force detailed disclosure of



## R.C.M. 906(b)(7)

acts underlying a charge, or to restrict the Government's proof at trial.

A bill of particulars need not be sworn because it is not part of the specification. A bill of particulars cannot be used to repair a specification which is otherwise not legally sufficient.

---

(7) Discovery and production of evidence and witnesses.

### Discussion

See R.C.M. 701 concerning discovery. See R.C.M. 703, 914, and 1001(f) concerning production of evidence and witnesses.

---

(8) *Relief from pretrial confinement.* Upon a motion for release from pretrial confinement, a victim of an alleged offense committed by the accused has the right to reasonable, accurate, and timely notice of the motion and any hearing, the right to confer with counsel, and the right to be reasonably heard. Inability to reasonably afford a victim these rights shall not delay the proceedings. The right to be heard under this rule includes the right to be heard through counsel.

### Discussion

See R.C.M. 305(j).

---

(9) Severance of multiple accused, if it appears that an accused or the Government is prejudiced by a joint or common trial. In a common trial, a severance shall be granted whenever any accused, other than the moving accused, faces charges unrelated to those charged against the moving accused.

### Discussion

A motion for severance is a request that one or more accused against whom charges have been referred to a joint or common trial be tried separately. Such a request should be granted if good cause is shown. For example, a severance may be appropriate when: the moving party wishes to use the testimony of one or more of the coaccused or the spouse of a coaccused; a defense of a coaccused is antagonistic to the moving party; or evidence as to any other accused will improperly prejudice the moving accused.

If a severance is granted by the military judge, the military judge will decide which accused will be tried first. See R.C.M. 801(a). In the case of joint charges, the military judge will direct an appropriate amendment of the charges and specifications.

See also R.C.M. 307(c)(5), 601(e)(3), 604, 812.

---

(10) *Severance of offenses.*

(A) *In general.* Offenses may be severed, but only to prevent manifest injustice.

(B) *Capital cases.* In a capital case, if the joinder of unrelated non-capital offenses appears to prejudice the accused, the military judge may sever the non-capital offenses from the capital offenses.

### Discussion

Ordinarily, all known charges should be tried at a single court-martial. *But see* R.C.M. 902A. Joinder of minor and major offenses, or of unrelated offenses, is not alone a sufficient ground to sever offenses. For example, when an essential witness as to one offense is unavailable, it might be appropriate to sever that offense to prevent violation of the accused's right to a speedy trial.

---

(11) *Change of place of trial.* The place of trial may be changed when necessary to prevent prejudice to the rights of the accused or for the convenience of the Government if the rights of the accused are not prejudiced thereby.

### Discussion

A change of the place of trial may be necessary when there exists in the place where the court-martial is pending so great a prejudice against the accused that the accused cannot obtain a fair and impartial trial there, or to obtain compulsory process over an essential witness.

When it is necessary to change the place of trial, the choice of places to which the court-martial will be transferred will be left to the convening authority, as long as the choice is not inconsistent with the ruling of the military judge.

---

(12) *Unreasonable multiplication of charges.* The military judge may provide a remedy, as described in this rule, if he or she finds there has been an unreasonable multiplication of charges as applied to findings or sentence.

(A) *As applied to findings.* Charges that arise from substantially the same transaction, while not legally multiplicitous, may still be unreasonably multiplied as applied to findings. When the military judge finds, in his or her discretion, that the offenses have been unreasonably multiplied, the appropriate remedy shall be dismissal of the lesser offenses or merger of the offenses into one specification.

(B) *As applied to sentence.* Where the military judge finds that the unreasonable multiplication of charges requires a remedy that focuses more

appropriately on punishment than on findings, he or she may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding and sentencing is by members, the maximum punishment for those offenses determined to be unreasonably multiplied shall be the maximum authorized punishment of the offense carrying the greatest maximum punishment. If the military judge makes such a finding and sentencing is by military judge, the remedy shall be as set forth in R.C.M. 1002(d)(2).

**Discussion**

A ruling on this motion ordinarily should be deferred until after findings are entered.

(13) Preliminary ruling on admissibility of evidence.

**Discussion**

See Mil. R. Evid. 104(c).

A request for a preliminary ruling on admissibility is a request that certain matters which are ordinarily decided during trial of the general issue be resolved before they arise, outside the presence of members. The purpose of such a motion is to avoid the prejudice which may result from bringing inadmissible matters to the attention of court members.

Whether to rule on an evidentiary question before it arises during trial is a matter within the discretion of the military judge. *But see* R.C.M. 905(b)(3) and (d); and Mil. R. Evid. 304(f)(5); 311(d)(7); 321(d)(7). Reviewability of preliminary rulings will be controlled by the Supreme Court’s decision in *Luce v. United States*, 469 U.S. 38 (1984).

(14) Motions relating to mental capacity or responsibility of the accused.

**Discussion**

See R.C.M. 706, 909, and 916(k) regarding procedures and standards concerning the mental capacity or responsibility of the accused.

**Rule 907. Motions to dismiss**

(a) *In general.* A motion to dismiss is a request to terminate further proceedings as to one or more charges and specifications on grounds capable of resolution without trial of the general issue of guilt.

**Discussion**

Dismissal of a specification terminates the proceeding with respect to that specification unless the decision to dismiss is reconsidered and reversed by the military judge. *See* R.C.M. 905(f). Dismissal of a specification on grounds stated in R.C.M. 907(b)(1) or (b)(3)(A) does not ordinarily bar a later court-martial for the same offense if the grounds for dismissal no longer exist. *See also* R.C.M. 905(g) and R.C.M. 907(b)(2).

See R.C.M. 916 concerning defenses.

(b) *Grounds for dismissal.* Grounds for dismissal include the following—

(1) *Nonwaivable grounds.* A charge or specification shall be dismissed at any stage of the proceedings if the court-martial lacks jurisdiction to try the accused for the offense.

(2) *Waivable grounds.* A charge or specification shall be dismissed upon motion made by the accused before the final adjournment of the court-martial in that case if:

(A) Dismissal is required under R.C.M. 707;

(B) The statute of limitations (Article 43) has run, provided that, if it appears that the accused is unaware of the right to assert the statute of limitations in bar of trial, the military judge shall inform the accused of this right;

**Discussion**

Except for certain offenses for which there is either: no limitation as to time; or child abuse offenses for which a time limitation has been enacted and applies that is based upon the life of a child abuse victim, *see* Article 43(a) and (b)(2), a person charged with an offense under the UCMJ may not be tried by court-martial over objection if sworn charges have not been received by the officer exercising summary court-martial jurisdiction over the command within five years. *See* Article 43(b). This period may be tolled (Article 43(c) and (d)), extended (Article 43(e) and (g)), or suspended (Article 43(f)) under certain circumstances. The prosecution bears the burden of proving that the statute of limitations has been tolled, extended, or suspended if it appears that it has run.

Some offenses are continuing offenses and any period of the offense occurring within the statute of limitations is not barred. Absence without leave, desertion, and fraudulent enlistment are not continuing offenses and are committed, respectively, on the day the person goes absent, deserts, or first receives pay or allowances under the enlistment.

When computing the statute of limitations, periods in which the accused was fleeing from justice or periods when the accused was absent without leave or in desertion are excluded. The military judge must determine by a preponderance, as an interlocutory matter, whether the accused was absent without authority or fleeing from justice. It would not be necessary that the accused be charged with the absence offense. In cases where the accused is charged with both an absence offense and a non-absence offense, but is found not guilty

## R.C.M. 907(b)(2)(C)

of the absence offense, the military judge would reconsider, by a preponderance, his or her prior determination whether that period of time is excludable.

If sworn charges have been received by an officer exercising summary court-martial jurisdiction over the command within the period of the statute, minor amendments (*see* R.C.M. 603(a)) may be made in the specification after the statute of limitations has run. However, if new charges are drafted or a major amendment made (*see* R.C.M. 603(d)) after the statute of limitations has run, prosecution is barred. The date of receipt of sworn charges is excluded when computing the appropriate statutory period. The date of the offense is included in the computation of the elapsed time. Article 43(g) allows the government time to reinstate charges dismissed as defective or insufficient for any cause. The government would have up to six months to reinstate the charges if the original period of limitations has expired or will expire within six months of the dismissal.

In some cases, the issue whether the statute of limitations has run will depend on the findings on the general issue of guilt. For example, where the date of an offense is in dispute, a finding by the court-martial that the offense occurred at an earlier time may affect a determination as to the running of the statute of limitations.

When the statute of limitations has run as to a lesser included offense, but not as to the charged offense, *see* R.C.M. 920(e)(2) with regard to instructions on the lesser offense.

---

(C) The accused has previously been tried by court-martial or federal civilian court for the same offense, provided that:

(i) No court-martial proceeding is a trial in the sense of this rule unless—

(I) In the case of a trial by military judge alone, presentation of the evidence on the general issue of guilt has begun;

(II) In the case of a trial with a military judge and members, the members have been impaneled; or

(III) In the case of a summary court-martial, presentation of the evidence on the general issue of guilt has begun.

(ii) No court-martial proceeding which has been terminated under R.C.M. 604(b) or R.C.M. 915 shall bar later prosecution for the same offense or offenses, if so provided in those rules;

(iii) No court-martial proceeding in which an accused has been found guilty of any charge or specification is a trial in the sense of this rule until the finding of guilty has become final after review of the case has been fully completed; and

(iv) No court-martial proceeding which lacked jurisdiction to try the accused for the offense is a trial in the sense of this rule.

### Discussion

R.C.M. 907(b)(2)(C)(i)(I) includes special courts-martial consisting of a military judge alone under Article 16(c)(2)(A).

---

(D) Prosecution is barred by:

(i) A pardon issued by the President;

(ii) Immunity from prosecution granted by a person authorized to do so; or

### Discussion

*See* R.C.M. 704.

---

(iii) Prior punishment under Article 13 or 15 for the same offense, if that offense was punishable by confinement of one year or less.

### Discussion

*See* Article 13 and Appendix 12, Maximum Punishment Chart.

---

(E) The specification fails to state an offense.

(3) *Permissible grounds.* A specification may be dismissed upon timely motion by the accused if one of the following is applicable:

(A) *Defective.* When the specification is so defective that it substantially misled the accused, and the military judge finds that, in the interest of justice, trial should proceed on any remaining charges and specifications without undue delay; or

(B) *Multiplicity.* When the specification is multiplicitous with another specification, is unnecessary to enable the prosecution to meet the exigencies of proof through trial, review, and appellate action, and should be dismissed in the interest of justice. A charge is multiplicitous if the proof of such charge also proves every element of another charge.

### Discussion

Ordinarily, a specification should not be dismissed for multiplicity before trial unless it clearly alleges the same offense, or one necessarily included therein, as is alleged in another specification. It may be appropriate to dismiss the less serious of any multiplicitous specifications after findings have been reached. Due consideration must be given, however, to possible post-trial or appellate action with regard to the remaining specification.

**Rule 908. Appeal by the United States**

(a) *In general.* The United States may appeal an order or ruling by a military judge that terminates the proceedings with respect to a charge or specification, or excludes evidence that is substantial proof of a fact material in the proceedings, or directs the disclosure of classified information, or that imposes sanctions for nondisclosure of classified information. The United States may also appeal a refusal by the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information or to enforce such an order that has previously been issued by the appropriate authority. The United States may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification except when the military judge enters a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.

**Discussion**

For the scope of these provisions, *see* Article 62(e). For rulings on a motion for a finding of not guilty, *see* R.C.M. 917.

**(b) Procedure.**

(1) *Delay.* After an order or ruling which may be subject to an appeal by the United States, the court-martial may not proceed, except as to matters unaffected by the ruling or order, if trial counsel requests a delay to determine whether to file notice of appeal under this rule. Trial counsel is entitled to no more than 72 hours under this subsection.

(2) *Decision to appeal.* The decision whether to file notice of appeal under this rule shall be made within 72 hours of the ruling or order to be appealed. If the Secretary concerned so prescribes, trial counsel shall not file notice of appeal unless authorized to do so by a person designated by the Secretary concerned.

(3) *Notice of appeal.* If the United States elects to appeal, trial counsel shall provide the military judge with written notice to this effect not later than 72 hours after the ruling or order. Such notice shall identify the ruling or order to be appealed and the charges and specifications affected. Trial counsel shall certify that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(4) *Effect on the court-martial.* Upon written notice to the military judge under paragraph (b)(3) of this rule, the ruling or order that is the subject of the appeal is automatically stayed and no session of the court-martial may proceed pending disposition by the Court of Criminal Appeals of the appeal, except that solely as to charges and specifications not affected by the ruling or order:

(A) Motions may be litigated, in the discretion of the military judge, at any point in the proceedings;

(B) When trial on the merits has not begun,

(i) a severance may be granted upon request of all the parties;

(ii) a severance may be granted upon request of the accused and when appropriate under R.C.M. 906(b)(10); or

(C) When trial on the merits has begun but has not been completed, a party may, on that party's request and in the discretion of the military judge, present further evidence on the merits.

(5) *Record.* Upon written notice to the military judge under paragraph (b)(3), trial counsel shall cause a record of the proceedings to be prepared. Such record shall be verbatim and complete to the extent necessary to resolve the issues appealed. The record shall be certified in accordance with R.C.M. 1112, and shall be reduced to a written transcript if required under R.C.M. 1114. The military judge or the Court of Criminal Appeals may direct that additional parts of the proceeding be included in the record.

(6) *Forwarding.* Upon written notice to the military judge under paragraph (b)(3) of this rule, trial counsel shall promptly and by expeditious means forward the appeal to a representative of the Government designated by the Judge Advocate General. The matter forwarded shall include: a statement of the issues appealed; the record of the proceedings or, if preparation of the record has not been completed, a summary of the evidence; and such other matters as the Secretary concerned may prescribe. The person designated by the Judge Advocate General shall promptly decide whether to file the appeal with the Court of Criminal Appeals and notify trial counsel of that decision.

(7) *Appeal filed.* If the United States elects to file an appeal, it shall be filed directly with the Court of Criminal Appeals, in accordance with the rules of that court.

## R.C.M. 908(b)(8)

### Discussion

When the Government files an appeal with the Court of Criminal Appeals under R.C.M. 908(b)(7), the Court maintains jurisdiction to review the case under Article 66(b) regardless of the sentence imposed.

---

(8) *Appeal not filed.* If the United States elects not to file an appeal, trial counsel promptly shall notify the military judge and the other parties.

(9) *Pretrial confinement of accused pending appeal.* If an accused is in pretrial confinement at the time the United States files notice of its intent to appeal under paragraph (b)(3) of this rule, the commander, in determining whether the accused should be confined pending the outcome of an appeal by the United States, should consider the same factors which would authorize the imposition of pretrial confinement under R.C.M. 305(h)(2)(B).

(c) *Appellate proceedings.*

(1) *Appellate counsel.* The parties shall be represented before appellate courts in proceedings under this rule as provided in R.C.M. 1202. Appellate Government counsel shall diligently prosecute an appeal under this rule.

(2) *Court of Criminal Appeals.* An appeal under Article 62 shall, whenever practicable, have priority over all other proceedings before the Court of Criminal Appeals. In determining an appeal under Article 62, the Court of Criminal Appeals may take action only with respect to matters of law.

(3) *Action following decision of Court of Criminal Appeals.* After the Court of Criminal Appeals has decided any appeal under Article 62, the accused may petition for review by the Court of Appeals for the Armed Forces, or the Judge Advocate General may certify a question to the Court of Appeals for the Armed Forces. The parties shall be notified of the decision of the Court of Criminal Appeals promptly. If the decision is adverse to the accused, the accused shall be notified of the decision and of the right to petition the Court of Appeals for the Armed Forces for review within 60 days orally on the record at the court-martial or in accordance with R.C.M. 1203(d). If the accused is notified orally on the record, trial counsel shall forward by expeditious means a certificate that the accused was so notified to the Judge Advocate General, who shall forward a copy to the clerk of the Court of Appeals for the Armed Forces when required by the Court. If the decision by the Court of Criminal

Appeals permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals. If the case is reviewed by the Court of Appeals for the Armed Forces, R.C.M. 1204 and 1205 shall apply.

### Discussion

The United States may appeal a sentence in accordance with Article 56(d) and the procedures set forth in R.C.M. 1117.

---

## Rule 909. Capacity of the accused to stand trial by court-martial

(a) *In general.* No person may be brought to trial by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against them or to conduct or cooperate intelligently in the defense of the case.

### Discussion

See also R.C.M. 916(k).

---

(b) *Presumption of capacity.* A person is presumed to have the capacity to stand trial unless the contrary is established.

(c) *Determination before referral.* If an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, he or she shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then he or she shall commit the accused to the custody of the Attorney General. If the general court-martial convening

authority does not concur, that authority may take any action that he or she deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(d) *Determination after referral.* After referral, the military judge may conduct a hearing to determine the mental capacity of the accused, either *sua sponte* or upon request of either party. If an inquiry pursuant to R.C.M. 706 conducted before or after referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the military judge shall conduct a hearing to determine the mental capacity of the accused. Any such hearing shall be conducted in accordance with subsection (e) of this rule.

(e) *Incompetence determination hearing.*

(1) *Nature of issue.* The mental capacity of the accused is an interlocutory question of fact.

(2) *Standard.* Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case. In making this determination, the military judge is not bound by the rules of evidence except with respect to privileges.

(3) If the military judge finds the accused is incompetent to stand trial, the judge shall report this finding to the general court-martial convening authority, who shall commit the accused to the custody of the Attorney General.

(f) *Hospitalization of the accused.* An accused who is found incompetent to stand trial under this rule shall be hospitalized by the Attorney General as provided in subsection 4241(d) of title 18, United States Code. If notified that the accused has recovered to such an extent that he or she is able to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense of the case, then the general court-martial convening authority shall promptly take custody of the accused. If, at the end of the period of hospitalization, the accused's mental condition has not so improved, action shall be taken in accordance with section 4246 of title 18, United States Code.

#### Discussion

Under 18 U.S.C. §4241(d), the initial period of hospitalization for an incompetent accused shall not exceed four months. However, in determining whether there is a substantial probability the accused

will attain the capacity to permit the trial to proceed in the foreseeable future, the accused may be hospitalized for an additional reasonable period of time. This additional period of time ends either when the accused's mental condition is improved so that trial may proceed, or when the pending charges against the accused are dismissed. If charges are dismissed solely due to the accused's mental condition, the accused is subject to hospitalization as provided in 18 U.S.C. §4246.

(g) *Excludable delay.* All periods of commitment shall be excluded as provided by R.C.M. 707(c). The 120-day time period under R.C.M. 707 shall begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment.

#### Rule 910. Pleas

(a) *Alternatives.*

(1) *In general.* An accused may plead as follows:

(A) guilty;

(B) not guilty of an offense as charged, but guilty of a named lesser included offense;

(C) guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or

(D) not guilty.

A plea of guilty may not be received as to an offense for which a sentence of death is mandatory.

#### Discussion

See paragraph 3, Part IV and Appendix 12A, concerning lesser included offenses. When the plea is to a lesser included offense without the use of exceptions and substitutions, the defense counsel should provide a written revised specification accurately reflecting the plea and request that the revised specification be included in the record as an appellate exhibit.

A plea of guilty to a lesser included offense does not bar the prosecution from proceeding on the offense as charged. *See also* R.C.M. 901(g).

A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation. *See* R.C.M. 1001(b)(4).

There are no offenses under the UCMJ for which a sentence of death is mandatory.

(2) *Conditional pleas.* With the approval of the military judge and the consent of the Government, an accused may enter a conditional plea of guilty, reserving the right, on further review or appeal, to

**R.C.M. 910(b)**

review of the adverse determination of any specified pretrial motion. If the accused prevails on further review or appeal, the accused shall be allowed to withdraw the plea of guilty. The Secretary concerned may prescribe who may consent for Government; unless otherwise prescribed by the Secretary concerned, trial counsel may consent on behalf of the Government.

(b) *Refusal to plead; irregular plea.* If an accused fails or refuses to plead, or makes an irregular plea, the military judge shall enter a plea of not guilty for the accused.

**Discussion**

An irregular plea includes pleas such as guilty without criminality or guilty to a charge but not guilty to all specifications thereunder. When a plea is ambiguous, the military judge should have it clarified before proceeding further.

---

(c) *Advice to accused.* Before accepting a plea of guilty, the military judge shall address the accused personally and inform the accused of, and determine that the accused understands, the following:

(1) The nature of the offense to which the plea is offered, the mandatory minimum penalty, if any, provided by law, the maximum possible penalty provided by law, and if applicable, the effect of any sentence limitation(s) provided for in a plea agreement on the minimum or maximum possible penalty that may be adjudged including the effect of any concurrent or consecutive sentence limitations;

**Discussion**

The elements of each offense to which the accused has pleaded guilty should be described to the accused. *See also* R.C.M. 910(e). The term "maximum possible penalty" as used in this rule refers to the total penalty that may be adjudged for all offenses for which the accused is pleading guilty.

---

(2) In a general or special court-martial, if the accused is not represented by counsel, that the accused has the right to be represented by counsel at every stage of the proceedings;

(3) That the accused has the right to plead not guilty or to persist in that plea if already made, and that the accused has the right to be tried by a court-martial, and that at such trial the accused has the right to confront and cross-examine witnesses against the accused, and

the right against self-incrimination;

(4) That if the accused pleads guilty, there will not be a trial of any kind as to those offenses to which the accused has so pleaded, so that by pleading guilty the accused waives the rights described in paragraph (c)(3) of this rule;

(5) That if the accused pleads guilty, the military judge will question the accused about the offenses to which the accused has pleaded guilty, and, if the accused answers these questions under oath, on the record, and in the presence of counsel, the accused's answers may later be used against the accused in a prosecution for perjury or false statement; and

**Discussion**

R.C.M. 910(c)(5) is inapplicable in a court-martial in which the accused is not represented by counsel.

---

(6) That if an election by the accused to be tried by military judge alone has been approved, the accused will be sentenced by the military judge.

**Discussion**

In a case in which the accused has not elected trial by military judge alone and has pleaded guilty to some offenses but not others, the case will proceed to trial on the merits on the remaining offenses before members. Following announcement of findings by the members on all offenses, the accused will be sentenced by the military judge unless the accused elects to be sentenced by members. *See* Articles 53(b) and 56, and R.C.M. 1002.

---

(d) *Ensuring that the plea is voluntary.* The military judge shall not accept a plea of guilty without first, by addressing the accused personally, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement under R.C.M. 705. The military judge shall also inquire whether the accused's willingness to plead guilty results from prior discussions between the convening authority, a representative of the convening authority, or trial counsel, and the accused or defense counsel.

(e) *Determining accuracy of plea.* The military judge shall not accept a plea of guilty without making such inquiry of the accused as shall satisfy the military judge that there is a factual basis for the plea. The accused shall be questioned under oath about the offenses.

**Discussion**

A plea of guilty must be in accord with the truth. Before the plea is accepted, the accused must admit every element of the offense(s) to which the accused pleaded guilty. Ordinarily, the elements should be explained to the accused. If any potential defense is raised by the accused's account of the offense or by other matter presented to the military judge, the military judge should explain such a defense to the accused and should not accept the plea unless the accused admits facts which negate the defense. If the statute of limitations would otherwise bar trial for the offense, the military judge should not accept a plea of guilty to it without an affirmative waiver by the accused. *See* R.C.M. 907(b)(2)(B).

The accused need not describe from personal recollection all the circumstances necessary to establish a factual basis for the plea. Nevertheless the accused must be convinced of, and able to describe, all the facts necessary to establish guilt. For example, an accused may be unable to recall certain events in an offense, but may still be able to adequately describe the offense based on witness statements or similar sources which the accused believes to be true.

The accused should remain at the counsel table during questioning by the military judge.

---

(f) *Plea agreement inquiry.*

(1) *In general.* A plea agreement may not be accepted if it does not comply with R.C.M. 705.

(2) *Notice.* The parties shall inform the military judge if a plea agreement exists.

**Discussion**

The military judge should ask whether a plea agreement exists. *See* R.C.M. 910(d). Even if the military judge fails to so inquire or the accused answers incorrectly, counsel have an obligation to bring any agreements or understandings in connection with the plea to the attention of the military judge. However, the military judge may not participate in discussions between the parties concerning the prospective terms and conditions of the plea agreement. *See* Article 53a(a)(2).

---

(3) *Disclosure.* If a plea agreement exists, the military judge shall require disclosure of the entire agreement before the plea is accepted.

(4) *Inquiry.*

(A) The military judge shall inquire to ensure:

(i) that the accused understands the agreement; and

(ii) that the parties agree to the terms of the agreement.

(B) If the military judge determines that the accused does not understand the material terms of the agreement, or that the parties disagree as to such terms, the military judge shall:

(i) conform, with the consent of the Government, the agreement to the accused's understanding; or

(ii) permit the accused to withdraw the plea.

**Discussion**

If the plea agreement contains any unclear or ambiguous terms, the military judge should obtain clarification from the parties. If there is doubt about the accused's understanding of any terms in the agreement, including the maximum possible penalty that may be adjudged pursuant to any sentence limitation, the military judge should explain those terms to the accused. If the accused after entering a plea of guilty sets up a matter inconsistent with the plea, the military judge shall resolve the inconsistency or reject the plea. *See* Article 45.

---

(5) *Sentence limitations in plea agreements.* If a plea agreement contains limitations on the punishment that may be imposed, the court-martial, subject to subparagraph (4)(B) and R.C.M. 705, shall sentence the accused in accordance with the agreement.

**Discussion**

If the accused has elected to be sentenced by members, the military judge shall instruct the members on any sentencing limitations contained in the plea agreement. *See* R.C.M. 1005(e)(1).

---

(6) *Accepted plea agreement.* After the plea agreement inquiry, the military judge shall announce on the record whether the plea and the plea agreement are accepted. Upon acceptance by the military judge, a plea agreement shall bind the parties and the court-martial.

(7) *Rejected plea agreement.* If the military judge does not accept a plea agreement, the military judge shall—

(A) issue a statement explaining the basis for the rejection;

(B) allow the accused to withdraw any plea; and

(C) inform the accused that if the plea is not withdrawn the court-martial may impose any lawful punishment.

**Discussion**

*See* Article 53a and R.C.M. 705 regarding the military judge's responsibility to review the terms and conditions of the plea agreement.



## R.C.M. 910(g)

(g) *Findings.* Findings based on a plea of guilty may be entered immediately upon acceptance of the plea at an Article 39(a) session unless the plea is to a lesser included offense and the prosecution intends to proceed to trial on the offense as charged.

### Discussion

If the accused has pleaded guilty to some offenses but not to others, and the accused has not elected to be tried by military judge alone, upon announcement of findings the accused will be sentenced by the military judge unless the accused elects to be sentenced by members. See R.C.M. 1002. The military judge should ordinarily defer informing the members of the offenses to which the accused has pleaded guilty until after findings on the remaining offenses have been entered See R.C.M. 913(a), Discussion and R.C.M. 920(e), Discussion, paragraph 3.

(h) *Later action.*

(1) *Withdrawal by the accused.* If after acceptance of the plea but before the sentence is announced the accused requests to withdraw a plea of guilty and substitute a plea of not guilty or a plea of guilty to a lesser included offense, the military judge shall permit the accused to do so only for good cause shown.

(2) *Statements by accused inconsistent with plea.* If after findings but before the sentence is announced the accused makes a statement to the court-martial, in testimony or otherwise, or presents evidence which is inconsistent with a plea of guilty on which a finding is based, the military judge shall inquire into the providence of the plea. If, following such inquiry, it appears that the accused entered the plea improvidently or through lack of understanding of its meaning and effect a plea of not guilty shall be entered as to the affected charges and specifications.

### Discussion

When the accused withdraws a previously accepted plea for guilty or a plea of guilty is set aside, counsel should be given a reasonable time to prepare to proceed. In a trial by military judge alone, recusal of the military judge will ordinarily be necessary when a plea is rejected or withdrawn after findings; in trial with members, a mistrial will ordinarily be necessary.

(i) [Reserved]

(j) *Waiver.* Except as provided in paragraph (a)(2) of this rule, a plea of guilty which results in a finding of guilty waives any objection, whether or not previously

raised, insofar as the objection relates to the factual issue of guilt of the offense(s) to which the plea was made.

### Discussion

Other errors with respect to the plea inquiry or acceptance of a plea under this rule are subject to forfeiture if not brought to the attention of the military judge, and will be reviewed for harmless error under Article 45.

## Rule 911. Assembly of the court-martial

The military judge shall announce the assembly of the court-martial.

### Discussion

When trial is by a court-martial with members, the court-martial is ordinarily assembled immediately after the members are sworn. The members are ordinarily sworn at the first session at which they appear, as soon as all parties and personnel have been announced. The members are seated with the president, who is the senior member, in the center, and the other members alternately to the president's right and left according to rank. If the rank of a member is changed, or if the membership of the court-martial changes, the members should be reseated accordingly.

When an accused's request to be tried by military judge alone is approved, the court-martial is ordinarily assembled immediately following approval of the request.

In a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), the court-martial is assembled prior to beginning of the trial on the merits.

Assembly of the court-martial is significant because it marks the point after which: substitution of the members and military judge may no longer take place without good cause (see Article 29, R.C.M. 505, 902, 912); the accused may no longer, as a matter of right, request trial by military judge alone or withdraw such a request previously approved (see Article 16, R.C.M. 903(d)); and the accused may no longer request, even with the permission of the military judge, or withdraw from a request for members (see Article 25(c)(2), R.C.M. 903(d)).

## Rule 912. Challenge of selection of members; examination and challenges of members

(a) *Pretrial matters.*

(1) *Questionnaires.* Before trial, trial counsel may, and shall upon request of defense counsel, submit to each member written questions requesting the following information:

- (A) Date of birth;
- (B) Sex;
- (C) Race;

(D) Marital status and sex, age, and number of dependents;

(E) Home of record;

(F) Civilian and military education, including, when available, major areas of study, name of school or institution, years of education, and degrees received;

(G) Current unit to which assigned;

(H) Past duty assignments;

(I) Awards and decorations received;

(J) Date of rank; and

(K) Whether the member has acted as accuser, counsel, preliminary hearing officer, investigating officer, convening authority, or legal officer or staff judge advocate for the convening authority in the case, or has forwarded the charges with a recommendation as to disposition.

Additional information may be requested with the approval of the military judge. Each member's responses to the questions shall be written and signed by the member. For purposes of this rule, the term "members" includes any alternate members.

#### Discussion

Using questionnaires before trial may expedite voir dire and may permit more informed exercise of challenges.

If the questionnaire is marked or admitted as an exhibit at the court-martial it must be attached to or included in the record of trial. See R.C.M. 1112(b)(6).

(2) *Other materials.* A copy of any written materials considered by the convening authority in selecting the members detailed to the court-martial shall be provided to any party upon request, except that such materials pertaining solely to persons who were not selected for detail as members need not be provided unless the military judge, for good cause, so directs.

(b) *Challenge of selection of members.*

(1) *Motion.* Before the examination of members under subsection (d) of this rule begins, or at the next session after a party discovered or could have discovered by the exercise of diligence, the grounds therefor, whichever is earlier, that party may move to stay the proceedings on the ground that members were selected improperly.

#### Discussion

See R.C.M. 502(a) and 503(a) concerning selection of members. Members are also improperly selected when, for example, a certain group or class is arbitrarily excluded from consideration as members.

(2) *Procedure.* Upon a motion under paragraph (b)(1) of this rule containing an offer of proof of matters which, if true, would constitute improper selection of members, the moving party shall be entitled to present evidence, including any written materials considered by the convening authority in selecting the members. Any other party may also present evidence on the matter. If the military judge determines that the members have been selected improperly, the military judge shall stay any proceedings requiring the presence of members until members are properly selected.

(3) *Forfeiture.* Failure to make a timely motion under this subsection shall forfeit the improper selection unless it constitutes a violation of R.C.M. 501(a), 502(a)(1), or 503(a)(2).

(c) *Stating grounds for challenge.* Trial counsel shall state any ground for challenge for cause against any member of which trial counsel is aware.

(d) *Examination of members.* The military judge may permit the parties to conduct examination of members or may personally conduct examination. In the latter event the military judge shall permit the parties to supplement the examination by such further inquiry as the military judge deems proper or the military judge shall submit to the members such additional questions by the parties as the military judge deems proper. A member may be questioned outside the presence of other members when the military judge so directs.

#### Discussion

Examination of the members is called "voir dire." If the members have not already been placed under oath for the purpose of voir dire (see R.C.M. 807(b)(2) Discussion (B)), they should be sworn before they are questioned.

The opportunity for voir dire should be used to obtain information for the intelligent exercise of challenges; counsel should not purposely use voir dire to present factual matter which will not be admissible or to argue the case.

The nature and scope of the examination of members is within the discretion of the military judge. Members may be questioned individually or collectively. Ordinarily, the military judge should permit counsel to personally question the members.

Trial counsel ordinarily conducts an inquiry before the defense. Whether trial counsel will question all the members before the defense begins or whether some other procedure will be followed

## R.C.M. 912(e)

depends on the circumstances. For example, when members are questioned individually outside the presence of other members, each party would ordinarily complete questioning that member before another member is questioned. The military judge and each party may conduct additional questioning, after initial questioning by a party, as necessary.

Ordinarily the members should be asked whether they are aware of any ground for challenge against them. This may expedite further questioning. The members should be cautioned, however, not to disclose information in the presence of other members which might disqualify them.

---

(e) *Evidence.* Any party may present evidence relating to whether grounds for challenge exist against a member.

(f) *Challenges and removal for cause.*

(1) *Grounds.* A member shall be excused for cause whenever it appears that the member:

(A) Is not competent to serve as a member under Article 25(a), (b), or (c);

(B) Has not been properly detailed as a member of the court-martial;

(C) Is an accuser as to any offense charged;

(D) Will be a witness in the court-martial;

(E) Has acted as counsel for any party as to any offense charged;

(F) Has been a preliminary hearing officer as to any offense charged;

(G) Has acted in the same case as convening authority or as the legal officer or staff judge advocate to the convening authority;

(H) Will act in the same case as reviewing authority or as the legal officer or staff judge advocate to the reviewing authority;

(I) Has forwarded charges in the case with a personal recommendation as to disposition;

(J) Upon a rehearing or new or other trial of the case, was a member of the court-martial which heard the case before;

(K) Is junior to the accused in grade or rank, unless it is established that this could not be avoided;

(L) Is in arrest or confinement;

(M) Has formed or expressed a definite opinion as to the guilt or innocence of the accused as to any offense charged;

(N) Should not sit as a member in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality.

## Discussion

Examples of matters which may be grounds for challenge are that the member: has a direct personal interest in the result of the trial; is closely related to the accused, a counsel, or a witness in the case; has participated as a member or counsel in the trial of a closely related case; has a decidedly friendly or hostile attitude toward a party; or has an inelastic opinion concerning an appropriate sentence for the offenses charged.

---

(2) *When made.*

(A) *Upon completion of examination.* Upon completion of any examination under subsection (d) of this rule and the presentation of evidence, if any, on the matter, each party shall state any challenges for cause it elects to make.

(B) *Other times.* A challenge for cause may be made at any other time during trial when it becomes apparent that a ground for challenge may exist. Such examination of the member and presentation of evidence as may be necessary may be made in order to resolve the matter.

(3) *Procedure.* Each party shall be permitted to make challenges outside the presence of the members. The party making a challenge shall state the grounds for it. Ordinarily trial counsel shall enter any challenges for cause before defense counsel. The military judge shall rule finally on each challenge. The burden of establishing that grounds for a challenge exist is upon the party making the challenge. A member successfully challenged shall be excused.

(4) *Waiver.* The grounds for challenge in subparagraph (f)(1)(A) of this rule may not be waived. Notwithstanding the absence of a challenge or waiver of a challenge by the parties, the military judge may, in the interest of justice, excuse a member against whom a challenge for cause would lie. When a challenge for cause has been denied, the successful use of a peremptory challenge by either party, excusing the challenged member from further participation in the court-martial, shall preclude further consideration of the challenge of that excused member upon later review. Further, failure by the challenging party to exercise a peremptory challenge against any member shall constitute waiver of further consideration of the challenge upon later review.

## Discussion

See Mil. R. Evid. 606 regarding when a member may be a witness.

---

(5) Following the exercise of challenges for cause, if any, and prior to the exercise of peremptory challenges under subsection (g) of this rule, the military judge, or a designee thereof, shall randomly assign numbers to the remaining members for purposes of impaneling members in accordance with R.C.M. 912A.

**Discussion**

Random numbers are assigned to the members in order to organize and identify the members to be impaneled under R.C.M. 912A.

---

**(g) Peremptory challenges.**

(1) *Procedure.* Each party may challenge one member peremptorily. Any member so challenged shall be excused. No party may be required to exercise a peremptory challenge before the examination of members and determination of any challenges for cause has been completed. Ordinarily trial counsel shall enter any peremptory challenge before the defense.

**Discussion**

Generally, no reason is necessary for a peremptory challenge. *But see Batson v. Kentucky* 476 U.S. 79 (1986); *United States v. Tulloch*, 47 M.J. 283 (C.A.A.F. 1997); *United States v. Curtis*, 33 M.J. 101 (C.M.A. 1991), *cert. denied*, 502 U.S. 1097 (1992); *United States v. Moore*, 28 M.J. 366 (C.M.A. 1989); *United States v. Santiago-Davilla*, 26 M.J. 380 (C.M.A. 1988).

---

(2) *Waiver.* Failure to exercise a peremptory challenge when properly called upon to do so shall waive the right to make such a challenge. The military judge may, for good cause shown, grant relief from the waiver, but a peremptory challenge may not be made after the presentation of evidence before the members has begun. However, nothing in this subsection shall bar the exercise of a previously unexercised peremptory challenge against a member newly detailed under R.C.M. 505(c)(2)(B), even if presentation of evidence on the merits has begun.

**Discussion**

When the membership of the court-martial has been reduced below the number of members required under R.C.M. 501(a), as applicable, or, when enlisted members have been requested and the fraction of enlisted members has been reduced below one-third, the proceedings

should be adjourned and the convening authority notified so that new members may be detailed. *See* R.C.M. 505. *See also* R.C.M. 805(d) concerning other procedures when new members are detailed.

---

**(h) Definitions.**

(1) *Witness.* For purposes of this rule, “witness” includes one who testifies at a court-martial and anyone whose declaration is received in evidence for any purpose, including written declarations made by affidavit or otherwise.

**Discussion**

For example, a person who by certificate has attested or otherwise authenticated an official record or other writing introduced in evidence is a witness.

---

(2) *Preliminary hearing officer.* For purposes of this rule, “preliminary hearing officer” includes any person who has examined charges under R.C.M. 405 and any person who was counsel for a member of a court of inquiry, or otherwise personally has conducted an investigation of the general matter involving the offenses charged.

**Rule 912A. Impaneling members and alternate members**

(a) *In general.* After challenges for cause and peremptory challenges are exercised, the military judge of a general or special court-martial with members shall impanel the members, and, if authorized by the convening authority, alternate members, in accordance with the following numerical requirements:

(1) *Capital cases.* In a general court-martial in which the charges were referred with a special instruction that the case be tried as a capital case, the number of members impaneled, subject to paragraph (4) of this subsection, shall be twelve.

(2) *General courts-martial.* In a general court-martial other than as described in paragraph (1) of this subsection, the number of members impaneled, subject to paragraph (4) of this subsection, shall be eight.

(3) *Special courts-martial.* In a special court-martial, the number of members impaneled, subject to paragraph (4) of this subsection, shall be four.

(4) *Alternate members.* A convening authority may authorize the military judge to impanel alternate

## R.C.M. 912A(a)(4)(A)

members. When authorized by the convening authority, the military judge shall designate which of the impaneled members are alternate members in accordance with these rules and consistent with the instructions of the convening authority.

(A) If the convening authority authorizes the military judge to impanel a specific number of alternate members, the number of members impaneled shall be the number of members required under paragraphs (1), (2), or (3) of this subsection, as applicable, plus the number of alternate members specified by the convening authority. The military judge shall not impanel the court-martial until the specified number of alternate members have been identified. New members may be detailed in order to impanel the specified number of alternate members.

(B) If the convening authority does not authorize the military judge to impanel a specific number of alternate members, and instead authorizes the military judge to impanel alternate members only if, after the exercise of all challenges, excess members remain, the number of members impaneled shall be the number of members required under paragraphs (a)(1), (2), or (3) of this rule and no more than three alternate members. New members shall not be detailed in order to impanel alternate members.

### Discussion

See Article 29(c), R.C.M. 503(a)(1), and R.C.M. 912A(d).

(b) *Enlisted accused.* In the case of an enlisted accused, the members shall be impaneled under subsection (a) of this rule in such numbers and proportion that—

(1) If the accused elected to be tried by a court-martial composed of at least one-third enlisted members, the membership of the panel includes at least one-third enlisted members; and

(2) If the accused elected to be tried by a court-martial composed of all officer members, the membership of the panel includes all officer members.

(c) *Number of members detailed insufficient.* If, after the exercise of all challenges, the number of detailed members remaining is fewer than the number of members required for the court-martial under subsections (a) and (b) of this rule, the convening authority shall detail new members under R.C.M. 503.

(d) *Excess members following the exercise of all challenges.* If the number of members remaining after

the exercise of all challenges is greater than the number of members required for the court-martial under subsections (a) and (b) of this rule, the military judge shall use the following procedures to identify the members who will be impaneled—

(1) *Enlisted panel.* In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the military judge shall—

(A) first identify the one-third enlisted members required under subsections (a) and (b) of this rule in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 912(f)(5); and

(B) then identify the remaining members required for the court-martial under subsections (a) and (b) of this rule, in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 912(f)(5).

(2) *Other panels.* For all other panels, the military judge shall identify the number of members required under subsections (a) and (b) of this rule in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 912(f)(5).

(3) *Alternate Members.*

(A) If the convening authority authorizes the military judge to impanel a specific number of alternate members, the specified number of alternate members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 912(f)(5), after first identifying members under paragraph (1) or (2) of this subsection.

(B) If the convening authority does not authorize the military judge to impanel a specific number of alternate members, and instead authorizes the military judge to impanel alternate members only if, after the exercise of all challenges, excess members remain, alternate members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 912(f)(5), after first identifying the members under paragraph (1) or (2) of this subsection. The military judge shall identify no more than three alternate members.

(4) The military judge shall excuse any members not identified as members or alternate members, if any.

### Discussion

When the accused has elected to be tried by a panel consisting of at least one-third enlisted members in accordance with R.C.M. 503(a)(2), the military judge is required to identify the minimum

number of enlisted members before identifying the remaining members to ensure the number of members required under R.C.M. 501(a), as applicable, is reached. For example, in a general court-martial in which the accused has requested at least one-third enlisted members, there must be at least three enlisted members. If, after the exercise of all challenges, the number of enlisted members is greater than three, the military judge first seats the three enlisted members assigned the three lowest numbers during voir dire. The military judge then seats the next five members, regardless of grade, assigned the lowest numbers.

If the convening authority authorized the military judge to impanel alternate members, the military judge would follow this process to identify the authorized number of alternate members. For example, in a court-martial in which the convening authority has authorized the military judge to impanel alternate members, but has not directed that a specific number of alternate members be impaneled, the military judge first seats the number of members required for the court-martial. If three or fewer excess members remain, the military judge identifies all excess members as alternate members. If more than three excess members remain, the military judge then identifies the next three members, regardless of grade, assigned the next lowest numbers as alternate members.

All members not seated as members or identified as alternate members are then excused by the military judge.

---

(e) *Lowest number.* The lowest number is the number with the lowest numerical value.

**Discussion**

For example, the following numbers are listed numerically from lowest to highest: 1, 2, 3, and 4.

---

(f) *Announcement.* After identifying the members to be impaneled in accordance with this rule, and after excusing any excess members, the military judge shall announce that the members are impaneled.

**Rule 912B. Excusal and replacement of members after impanelment**

(a) *In general.* A member who has been excused after impanelment shall be replaced in accordance with this rule. Alternate members excused after impanelment shall not be replaced.

(b) *Alternate members available.* An excused member shall be replaced with an impaneled alternate member, if an alternate member is available. The alternate member with the lowest random number assigned pursuant to R.C.M. 912(f)(5) shall replace the excused member, unless in the case of an enlisted accused, the use of such member would be inconsistent with the specific panel composition established under R.C.M. 903.

**Discussion**

When an accused has elected to be tried by a court-martial composed of at least one-third enlisted members, an officer member cannot replace an excused enlisted member unless the total panel membership remains at least one-third enlisted.

---

(c) *Alternate members not available.*

(1) *Detailing of new members not required.* In a general court-martial in which a sentence of death may not be adjudged, if, after impanelment, a court-martial member is excused and alternate members are not available, the court-martial may proceed if—

(A) There are at least six members; and

(B) In the case of an enlisted accused, the remaining panel composition is consistent with the specific panel composition established under R.C.M. 903.

(2) *Detailing of additional members required.* In all cases other than those described in paragraph (1), if an impaneled member is excused and no alternate member is available to replace the excused member, the court-martial may not proceed until the convening authority details sufficient additional new members.

**Rule 913. Presentation of the case on the merits**

(a) *Preliminary instructions.* The military judge may give such preliminary instructions as may be appropriate. If mixed pleas have been entered, the military judge should ordinarily defer informing the members of the offenses to which the accused pleaded guilty until after the findings on the remaining contested offenses have been entered.

**Discussion**

Preliminary instructions may include a description of the duties of members, procedures to be followed in the court-martial, and other appropriate matters.

Exceptions to the rule requiring the military judge to defer informing the members of an accused's prior pleas of guilty include cases in which the accused has specifically requested, on the record, that the military judge instruct the members of the prior pleas of guilty and cases in which a plea of guilty was to a lesser included offense within the contested offense charged in the specification. *See* R.C.M. 910(g), Discussion and R.C.M. 920(e), Discussion, paragraph 3.

## R.C.M. 913(b)

(b) *Opening statements.* Each party may make one opening statement to the court-martial before presentation of evidence has begun. The defense may elect to make its statement after the prosecution has rested, before the presentation of evidence for the defense. The military judge may, as a matter of discretion, permit the parties to address the court-martial at other times.

### Discussion

Counsel should confine their remarks to evidence they expect to be offered which they believe in good faith will be available and admissible and a brief statement of the issues in the case.

---

(c) *Presentation of evidence.* Each party shall have full opportunity to present evidence.

(1) *Order of presentation.* Ordinarily the following sequence shall be followed:

- (A) Presentation of evidence for the prosecution;
- (B) Presentation of evidence for the defense;
- (C) Presentation of prosecution evidence in rebuttal;
- (D) Presentation of defense evidence in surrebuttal;
- (E) Additional rebuttal evidence in the discretion of the military judge; and
- (F) Presentation of evidence requested by the military judge or members.

### Discussion

See R.C.M. 801(a) and Mil. R. Evid. 611 concerning control by the military judge over the order of proceedings.

---

(2) *Taking testimony.* The testimony of witnesses shall be taken orally in open session, unless otherwise provided in this Manual.

### Discussion

Each witness must testify under oath. *See* R.C.M. 807(b)(1)(B), Mil. R. Evid. 603. After a witness is sworn, the witness should be identified for the record (full name, rank, and unit, if military, or full name and address, if civilian). The party calling the witness conducts direct examination of the witness, followed by cross-examination of the witness by the opposing party. Redirect and re-cross-examination are conducted as necessary, followed by any questioning by the military judge and members. *See* Mil. R. Evid. 611, 614.

All documentary and real evidence (except marks or wounds on a person's body) should be marked for identification when first referred to in the proceedings and should be included in the record

of trial whether admitted in evidence or not. *See* R.C.M. 1112. "Real evidence" include physical objects, such as clothing, weapons, and marks or wounds on a person's body. If it is impracticable to attach an item of real evidence to the record, the item should be clearly and accurately described by testimony, photographs, or other means so that it may be considered on review. Similarly, when documentary evidence is used, if the document cannot be attached to the record (as in the case of an original official record or a large map), a legible copy or accurate extract should be included in the record. When a witness points to or otherwise refers to certain parts of a map, photograph, diagram, chart, or other exhibit, the place to which the witness pointed or referred should be clearly identified for the record, either by marking the exhibit or by an accurate description of the witness' actions with regard to the exhibit.

---

(3) *Views and inspections.* The military judge may, as a matter of discretion, permit the court-martial to view or inspect premises or a place or an article or object. Such a view or inspection shall take place only in the presence of all parties, the members (if any), and the military judge. A person familiar with the scene may be designated by the military judge to escort the court-martial. Such person shall perform the duties of escort under oath. The escort shall not testify, but may point out particular features prescribed by the military judge. Any statement made at the view or inspection by the escort, a party, the military judge, or any member shall be made part of the record.

### Discussion

The fact that a view or inspection has been made does not necessarily preclude the introduction in evidence of photographs, diagrams, maps, or sketches of the place or item viewed, if these are otherwise admissible.

---

(4) *Evidence subject to exclusion.* When offered evidence would be subject to exclusion upon objection, the military judge may, as a matter of discretion, bring the matter to the attention of the parties and may, in the interest of justice, exclude the evidence without an objection by a party.

### Discussion

The military judge should not exclude evidence which is not objected to by a party except in extraordinary circumstances. Counsel should be permitted to try the case and present the evidence without unnecessary interference by the military judge. *See also* Mil. R. Evid. 103.

---

(5) *Reopening case.* The military judge may, as a matter of discretion, permit a party to reopen its case

after it has rested.

**Rule 914. Production of statements of witnesses**

(a) *Motion for production.* After a witness other than the accused has testified on direct examination, the military judge, on motion of a party who did not call the witness, shall order the party who called the witness to produce, for examination and use by the moving party, any statement of the witness that relates to the subject matter concerning which the witness has testified, and that is:

(1) In the case of a witness called by trial counsel, in the possession of the United States; or

(2) In the case of a witness called by the defense, in the possession of the accused or defense counsel.

**Discussion**

See also R.C.M. 701.

Counsel should anticipate legitimate demands for statements under this and similar rules and avoid delays in the proceedings by voluntary disclosure before arraignment.

This rule does not apply to preliminary hearings under Article 32.

As to procedures for certain government information as to which a privilege is asserted, see Mil. R. Evid. 505, 506.

(b) *Production of entire statement.* If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the military judge shall order that the statement be delivered to the moving party.

(c) *Production of excised statement.* If the party who called the witness claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the military judge shall order that it be delivered to the military judge. Upon inspection, the military judge shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of a statement that is withheld from an accused over objection shall be preserved by trial counsel, and, in the event of a conviction, shall be made available to the reviewing authorities for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) *Recess for examination of the statement.* Upon delivery of the statement to the moving party, the military judge may recess the trial for the examination of the statement and preparation for its use in the trial.

(e) *Remedy for failure to produce statement.* If the other party elects not to comply with an order to deliver a statement to the moving party, the military judge shall order that the testimony of the witness be disregarded by the trier of fact and that the trial proceed, or, if it is trial counsel who elects not to comply, shall declare a mistrial if required in the interest of justice.

(f) *Definition.* As used in this rule, a “statement” of a witness means:

(1) A written statement made by the witness that is signed or otherwise adopted or approved by the witness;

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and contained in a recording or a transcription thereof; or

(3) A statement, however taken or recorded, or a transcription thereof, made by the witness to a federal grand jury.

**914A. Use of remote live testimony of a child**

(a) *General procedures.* A child shall be allowed to testify out of the presence of the accused after the military judge has determined that the requirements of Mil. R. Evid. 611(d)(3) have been satisfied. The procedure used to take such testimony will be determined by the military judge based upon the exigencies of the situation. At a minimum, the following procedures shall be observed:

(1) The witness shall testify from a remote location outside the courtroom;

(2) Attendance at the remote location shall be limited to the child, counsel for each side (not including an accused pro se), equipment operators, and other persons, such as an attendant for the child, whose presence is deemed necessary by the military judge;

(3) Sufficient monitors shall be placed in the courtroom to allow viewing and hearing of the testimony by the military judge, the accused, the members, the court reporter, and the public;



#### R.C.M. 914A(a)(4)

(4) The voice of the military judge shall be transmitted into the remote location to allow control of the proceedings; and

(5) The accused shall be permitted private, contemporaneous communication with his counsel.

(b) *Definition.* As used in this rule, “remote live testimony” includes, but is not limited to, testimony by videoteleconference, closed circuit television, or similar technology.

(c) *Prohibitions.* The procedures described in this rule shall not be used where the accused elects to absent himself from the courtroom pursuant to R.C.M. 804(c)(1).

#### Discussion

For purposes of this rule, unlike R.C.M. 914B, remote means or similar technology does not include receiving testimony by telephone where the parties cannot see and hear each other.

#### Rule 914B. Use of remote testimony

(a) *General procedures.* The military judge shall determine the procedures used to take testimony via remote means. At a minimum, all parties shall be able to hear each other, those in attendance at the remote site shall be identified, and the accused shall be permitted private, contemporaneous communication with his counsel.

(b) *Definition.* As used in this rule, testimony via “remote means” includes, but is not limited to, testimony by videoteleconference, closed circuit television, telephone, or similar technology.

#### Discussion

This rule applies for all witness testimony other than child witness testimony specifically covered by Mil. R. Evid. 611(d) and R.C.M. 914A. When utilizing testimony via remote means, military justice practitioners are encouraged to consult the procedure used in *In re San Juan Dupont Plaza Hotel Fire Litigation*, 129 F.R.D. 424 (D.P.R. 1989), and to read *United States v. Gigante*, 166 F.3d 75 (2d Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000).

#### Rule 915. Mistrial

(a) *In general.* The military judge may, as a matter of discretion, declare a mistrial when such action is manifestly necessary in the interest of justice because of circumstances arising during the proceedings which cast substantial doubt upon the fairness of the

proceedings. A mistrial may be declared as to some or all charges, and as to the entire proceedings or as to only the proceedings after findings.

#### Discussion

The power to grant a mistrial should be used with great caution, under urgent circumstances, and for plain and obvious reasons. As examples, a mistrial may be appropriate when inadmissible matters so prejudicial that a curative instruction would be inadequate are brought to the attention of the members or when members engage in prejudicial misconduct. Also a mistrial is appropriate when the proceedings must be terminated because of a legal defect, such as a jurisdictional defect or a defective referral. See also R.C.M. 905(g) concerning the effect of rulings in one proceeding on later proceedings.

(b) *Procedure.* On motion for a mistrial or when it otherwise appears that grounds for a mistrial may exist, the military judge shall inquire into the views of the parties on the matter and then decide the matter as an interlocutory question.

(c) *Effect of declaration of mistrial.*

(1) *Withdrawal of charges.* A declaration of a mistrial shall have the effect of withdrawing the affected charges and specifications from the court-martial.

#### Discussion

Upon declaration of a mistrial, the affected charges are returned to the convening authority who may refer them anew or otherwise dispose of them. See R.C.M. 401-407.

(2) *Further proceedings.* A declaration of a mistrial shall not prevent trial by another court-martial on the affected charges and specifications except when the mistrial was declared after jeopardy attached and before findings, and the declaration was:

(A) An abuse of discretion and without the consent of the defense; or

(B) The direct result of intentional prosecutorial misconduct designed to necessitate a mistrial.

#### Rule 916. Defenses

(a) *In general.* As used in this rule, “defenses” includes any special defense which, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly or partially, criminal responsibility for those acts.

**Discussion**

Special defenses are also called “affirmative defenses.”

“Alibi” and “good character” are not special defenses, as they operate to deny that the accused committed one or more of the acts constituting the offense. As to evidence of the accused’s good character, see Mil. R. Evid. 404(a)(1). See R.C.M. 701(b)(2) concerning notice of alibi.

---

(b) *Burden of proof.*

(1) *General rule.* Except as listed in paragraphs (b)(2) and (3) of this rule, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(2) *Lack of mental responsibility.* The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) *Mistake of fact as to age.* In the defense of mistake of fact as to age as described in Article 120b(d)(2) in a prosecution under Article 120b(b) (sexual assault of a child) or Article 120b(c) (sexual abuse of a child), the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence.

**Discussion**

A defense may be raised by evidence presented by the defense, the prosecution, or the court-martial. For example, in a prosecution for assault, testimony by prosecution witnesses that the victim brandished a weapon toward the accused may raise a defense of self-defense. See R.C.M. 916(e). More than one defense may be raised as to a particular offense. The defenses need not necessarily be consistent.

See R.C.M. 920(e)(3) concerning instructions on defenses.

---

(c) *Justification.* A death, injury, or other act caused or done in the proper performance of a legal duty is justified and not unlawful.

**Discussion**

The duty may be imposed by statute, regulation, or order. For example, the use of force by a law enforcement officer when reasonably necessary in the proper execution of a lawful apprehension is justified because the duty to apprehend is imposed by lawful authority. Also, killing an enemy combatant in battle is justified.

---

(d) *Obedience to orders.* It is a defense to any offense that the accused was acting pursuant to orders unless

the accused knew the orders to be unlawful or a person of ordinary sense and understanding would have known the orders to be unlawful.

**Discussion**

Ordinarily the lawfulness of an order is decided by the military judge. See R.C.M. 801(e). An exception might exist when the sole issue is whether the person who gave the order in fact occupied a certain position at the time.

An act performed pursuant to a lawful order is justified. See R.C.M. 916(c). An act performed pursuant to an unlawful order is excused unless the accused knew it to be unlawful or a person of ordinary sense and understanding would have known it to be unlawful.

---

(e) *Self-defense.*

(1) *Homicide or assault cases involving deadly force.* It is a defense to a homicide, assault involving deadly force, or battery involving deadly force that the accused:

(A) Apprehended, on reasonable grounds, that death or grievous bodily harm was about to be inflicted wrongfully on the accused; and

(B) Believed that the force the accused used was necessary for protection against death or grievous bodily harm.

**Discussion**

The words “involving deadly force” described the factual circumstances of the case, not specific assault offenses. If the accused is charged with simple assault, battery or any form of aggravated assault, or if simple assault, battery or any form of aggravated assault is in issue as a lesser included offense, the accused may rely on this subparagraph if the test specified in subparagraphs (A) and (B) is satisfied.

The test for the first element of self-defense is objective. Thus, the accused’s apprehension of death or grievous bodily harm must have been one which a reasonable, prudent person would have held under the circumstances. Because this test is objective, such matters as intoxication or emotional instability of the accused are irrelevant. On the other hand, such matters as the relative height, weight, and general build of the accused and the alleged victim, and the possibility of safe retreat are ordinarily among the circumstances which should be considered in determining the reasonableness of the apprehension of death or grievous bodily harm.

The test for the second element is entirely subjective. The accused is not objectively limited to the use of reasonable force. Accordingly, such matters as the accused’s emotional control, education, and intelligence are relevant in determining the accused’s actual belief as to the force necessary to repel the attack.

See also Mil. R. Evid. 404(a)(2) as to evidence concerning the character of the victim.

**R.C.M. 916(e)(2)**

(2) *Certain aggravated assault cases.* It is a defense to assault with a dangerous weapon or means likely to produce death or grievous bodily harm that the accused:

(A) Apprehended, on reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) In order to deter the assailant, offered but did not actually apply or attempt to apply such means or force as would be likely to cause death or grievous bodily harm.

**Discussion**

The principles in the discussion of R.C.M. 916(e)(1) concerning reasonableness of the apprehension of bodily harm apply here.

---

(3) *Other assaults.* It is a defense to any assault punishable under Article 89, 91, or 128 and not listed in paragraphs (e)(1) or (2) of this rule that the accused:

(A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) Believed that the force that accused used was necessary for protection against bodily harm, provided that the force used by the accused was less than force reasonably likely to produce death or grievous bodily harm.

**Discussion**

The principles in the discussion under R.C.M. 916(e)(1) apply here.

If, in using only such force as the accused was entitled to use under this aspect of self-defense, death or serious injury to the victim results, this aspect of self-defense may operate in conjunction with the defense of accident (see subsection (f) of this rule) to excuse the accused's acts. The death or serious injury must have been an unintended and unexpected result of the accused's proper exercise of the right of self-defense.

---

(4) *Loss of right to self-defense.* The right to self-defense is lost and the defenses described in paragraphs (e)(1), (2), and (3) of this rule shall not apply if the accused was an aggressor, engaged in mutual combat, or provoked the attack which gave rise to the apprehension, unless the accused had withdrawn in good faith after the aggression, combat, or provocation and before the offense alleged occurred.

**Discussion**

A person does not become an aggressor or provocateur merely because that person approaches another to seek an interview, even if the approach is not made in a friendly manner. For example, one may approach another and demand an explanation of offensive words or redress of a complaint. If the approach is made in a nonviolent manner, the right to self-defense is not lost.

Failure to retreat, when retreat is possible, does not deprive the accused of the right to self-defense if the accused was lawfully present. The availability of avenues of retreat is one factor which may be considered in addressing the reasonableness of the accused's apprehension of bodily harm and the sincerity of the accused's belief that the force used was necessary for self-protection.

---

(5) *Defense of another.* The principles of self-defense under paragraphs (e)(1) through (4) of this rule apply to defense of another. It is a defense to homicide, attempted homicide, assault with intent to kill, or any assault under Article 89, 91, or 128 that the accused acted in defense of another, provided that the accused may not use more force than the person defended was lawfully entitled to use under the circumstances.

**Discussion**

The accused acts at the accused's peril when defending another. Thus, if the accused goes to the aid of an apparent assault victim, the accused is guilty of any assault the accused commits on the apparent assailant if, unbeknownst to the accused, the apparent victim was in fact the aggressor and not entitled to use self-defense.

---

(f) *Accident.* A death, injury, or other event which occurs as the unintentional and unexpected result of doing a lawful act in a lawful manner is an accident and excusable.

**Discussion**

The defense of accident is not available when the act which caused the death, injury, or event was a negligent act.

---

(g) *Entrapment.* It is a defense that the criminal design or suggestion to commit the offense originated in the Government and the accused had no predisposition to commit the offense.

**Discussion**

The "Government" includes agents of the Government and persons cooperating with them (for example, informants). The fact that persons acting for the Government merely afford opportunities or facilities for the commission of the offense does not constitute

entrapment. Entrapment occurs only when the criminal conduct is the product of the creative activity of law enforcement officials.

When the defense of entrapment is raised, evidence of uncharged misconduct by the accused of a nature similar to that charged is admissible to show predisposition. See Mil. R. Evid. 404(b).

(h) *Coercion or duress.* It is a defense to any offense except killing an innocent person that the accused’s participation in the offense was caused by a reasonable apprehension that the accused or another innocent person would be immediately killed or would immediately suffer serious bodily injury if the accused did not commit the act. The apprehension must reasonably continue throughout the commission of the act. If the accused has any reasonable opportunity to avoid committing the act without subjecting the accused or another innocent person to the harm threatened, this defense shall not apply.

**Discussion**

The immediacy of the harm necessary may vary with the circumstances. For example, a threat to kill a person’s wife the next day may be immediate if the person has no opportunity to contact law enforcement officials or otherwise protect the intended victim or avoid committing the offense before then.

(i) *Inability.* It is a defense to refusal or failure to perform a duty that the accused was, through no fault of the accused, not physically or financially able to perform the duty.

**Discussion**

The test of inability is objective in nature. The accused’s opinion that a physical impairment prevented performance of the duty will not suffice unless the opinion is reasonable under all the circumstances.

If the physical or financial inability of the accused occurred through the accused’s own fault or design, it is not a defense. For example, if the accused, having knowledge of an order to get a haircut, spends money on other nonessential items, the accused’s inability to pay for the haircut would not be a defense.

(j) *Ignorance or mistake of fact.*

(1) *Generally.* Except as otherwise provided in this subsection, it is a defense to an offense that the accused held, as a result of ignorance or mistake, an incorrect belief of the true circumstances such that, if the circumstances were as the accused believed them, the accused would not be guilty of the offense. If the

ignorance or mistake goes to an element requiring premeditation, specific intent, willfulness, or knowledge of a particular fact, the ignorance or mistake need only have existed in the mind of the accused. If the ignorance or mistake goes to any other element requiring only general intent or knowledge, the ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. However, if the accused’s knowledge or intent is immaterial as to an element, then ignorance or mistake is not a defense.

(2) *Child Sexual Offenses.* It is a defense to a prosecution under Article 120b(b), sexual assault of a child, and Article 120b(c), sexual abuse of a child, that, at the time of the offense, the child was at least 12 years of age, and the accused reasonably believed that the child had attained the age of 16 years. The accused must prove this defense by a preponderance of the evidence.

**Discussion**

Examples of ignorance or mistake which need only exist in fact include: ignorance of the fact that the person assaulted was an officer; belief that property allegedly stolen belonged to the accused; belief that a controlled substance was really sugar.

Examples of ignorance or mistake which must be reasonable as well as actual include: belief that the accused charged with unauthorized absence had permission to go; belief that the accused had a medical “profile” excusing shaving as otherwise required by regulation. Some offenses require special standards of conduct (see, e.g., paragraph 94, Part IV, Check, worthless making and uttering – by dishonorably failing to maintain funds); the element of reasonableness must be applied in accordance with the standards imposed by such offenses.

Examples of offenses in which the accused’s intent or knowledge is immaterial include: rape of a child, sexual assault of a child, or sexual abuse of a child (if the victim is under 12 years of age, knowledge or belief as to age is immaterial). However, such ignorance or mistake may be relevant in extenuation and mitigation.

See R.C.M. 916(l)(1) concerning ignorance or mistake of law.

(k) *Lack of mental responsibility.*

(1) *Lack of mental responsibility.* It is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense.

**R.C.M. 916(k)(2)**

**Discussion**

See R.C.M. 706 concerning sanity inquiries; R.C.M. 909 concerning the capacity of the accused to stand trial; and R.C.M. 1105 concerning any post-trial hearing for an accused found not guilty only by reason of lack of mental responsibility.

---

(2) *Partial mental responsibility.* A mental condition not amounting to a lack of mental responsibility under paragraph (k)(1) of this rule is not an affirmative defense.

**Discussion**

Evidence of a mental condition not amounting to a lack of mental responsibility may be admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense. The defense must notify the trial counsel before the beginning of trial on the merits if the defense intends to introduce expert testimony as to the accused’s mental condition. *See* R.C.M. 701(b)(2).

---

(3) *Procedure.*

(A) *Presumption.* The accused is presumed to have been mentally responsible at the time of the alleged offense. This presumption continues until the accused establishes, by clear and convincing evidence, that he or she was not mentally responsible at the time of the alleged offense.

**Discussion**

The accused is presumed to be mentally responsible, and this presumption continues throughout the proceedings unless the finder of fact determines that the accused has proven lack of mental responsibility by clear and convincing evidence. *See* R.C.M. 916(b).

---

(B) *Inquiry.* If a question is raised concerning the mental responsibility of the accused, the military judge shall rule finally whether to direct an inquiry under R.C.M. 706.

**Discussion**

If an inquiry is directed, priority should be given to it.

---

(C) *Determination.* The issue of mental responsibility shall not be considered as an interlocutory question.

(1) *Not defenses generally.*

(1) *Ignorance or mistake of law.* Ignorance or mistake of law, including general orders or regulations, ordinarily is not a defense.

**Discussion**

For example, ignorance that it is a crime to possess marijuana is not a defense to wrongful possession of marijuana.

Ignorance or mistake of law may be a defense in some limited circumstances. If the accused, because of a mistake as to a separate nonpenal law, lacks the criminal intent or state of mind necessary to establish guilt, this may be a defense. For example, if the accused, under mistaken belief that the accused is entitled to take an item under property law, takes an item, this mistake of law (as to the accused’s legal right) would, if genuine, be a defense to larceny. On the other hand, if the accused disobeyed an order, under the actual but mistaken belief that the order was unlawful, this would not be a defense because the accused’s mistake was as to the order itself, and not as to a separate nonpenal law. Also, mistake of law may be a defense when the mistake results from reliance on the decision or pronouncement of an authorized public official or agency. For example, if an accused, acting on the advice of an official responsible for administering benefits that the accused is entitled to those benefits, applies for and receives those benefits, the accused may have a defense even though the accused was not legally eligible for the benefits. On the other hand, reliance on the advice of counsel that a certain course of conduct is legal is not, of itself, a defense.

---

(2) *Voluntary intoxication.* Voluntary intoxication, whether caused by alcohol or drugs, is not a defense. However, evidence of any degree of voluntary intoxication may be introduced for the purpose of raising a reasonable doubt as to the existence of actual knowledge, specific intent, willfulness, or a premeditated design to kill, if actual knowledge, specific intent, willfulness, or premeditated design to kill is an element of the offense.

**Discussion**

Intoxication may reduce premeditated murder to unpremeditated murder, but it will not reduce murder to manslaughter or any other lesser offense. *See* paragraph 56.c.(2)(c), Part IV.

Although voluntary intoxication is not a defense, evidence of voluntary intoxication may be admitted in extenuation

---

**Rule 917. Motion for a finding of not guilty**

(a) *In general.* The military judge, on motion by the accused or *sua sponte*, shall enter a finding of not guilty of one or more offenses charged at any time after the evidence on either side is closed but prior to entry of judgment if the evidence is insufficient to sustain a conviction of the offense affected. If a motion for a finding of not guilty at the close of the prosecution’s

case is denied, the defense may offer evidence on that offense without having reserved the right to do so.

### Discussion

In a case with members, the military judge may reserve ruling on a motion until any time prior to entry of judgment, including after the members return with findings. See R.C.M. 908 on appeals by the United States when the military judge sets aside a panel's finding of guilty.

---

(b) *Form of motion.* The motion shall specifically indicate wherein the evidence is insufficient.

(c) *Procedure.* Before ruling on a motion for a finding of not guilty, whether made by counsel or *sua sponte*, the military judge shall give each party an opportunity to be heard on the matter.

### Discussion

For a motion made under R.C.M. 917(a), the military judge ordinarily should permit the trial counsel to reopen the case as to the insufficiency specified in the motion before findings on the general issue of guilt are announced.

See R.C.M. 1104(b)(1)(B) regarding post-trial motions to set aside a finding of guilty.

---

(d) *Standard.* A motion for a finding of not guilty shall be granted only in the absence of some evidence which, together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of an offense charged. The evidence shall be viewed in the light most favorable to the prosecution, without an evaluation of the credibility of witnesses.

(e) *Motion as to greater offense.* A motion for a finding of not guilty may be granted as to part of a specification and, if appropriate, the corresponding charge, as long as a lesser offense charged is alleged in the portion of the specification as to which the motion is not granted. In such cases, the military judge shall announce that a finding of not guilty has been granted as to specified language in the specification and, if appropriate, corresponding charge. In cases before members, the military judge shall instruct the members accordingly, so that any findings later announced will not be inconsistent with the granting of the motion.

(f) *Effect of ruling.* Except as provided in R.C.M. 908(a), a ruling granting a motion for a finding of not guilty is final when announced and may not be

reconsidered. Such a ruling is a finding of not guilty of the affected specification, or affected portion thereof, and, when appropriate, of the corresponding charge. A ruling denying a motion for a finding of not guilty may be reconsidered at any time before entry of judgment.

(g) *Effect of denial on review.* If all the evidence admitted before findings, regardless by whom offered, is sufficient to sustain findings of guilty, the findings need not be set aside upon review solely because the motion for finding of not guilty should have been granted upon the state of the evidence when it was made.

### Rule 918. Finding

(a) *General findings.* The general findings of a court-martial state whether the accused is guilty of each charge and specification. If two or more accused are tried together, separate findings as to each shall be made.

(1) *As to a specification.* General findings as to a specification may be:

(A) guilty;

(B) not guilty of an offense as charged, but guilty of a named lesser included offense;

(C) guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any;

(D) not guilty only by reason of lack of mental responsibility; or

(E) not guilty.

Exceptions and substitutions may not be used to substantially change the nature of the offense or to increase the seriousness of the offense or the maximum punishment for it.

### Discussion

*Exceptions and substitutions.* One or more words or figures may be excepted from a specification and, when necessary, others substituted, if the remaining language of the specification, with or without substitutions, states an offense by the accused which is punishable by court-martial. Changing the date or place of the offense may, but does not necessarily, change the nature or identity of an offense.

If A and B are joint accused and A is convicted but B is acquitted of the offense charged, A should be found guilty by excepting the name of B from the specification as well as any other words indicating the offense was a joint one.

*Lesser included offenses.* If the evidence fails to prove the offense charged but does prove an offense necessarily included in the offense charged, the factfinder may find the accused not guilty of

## R.C.M. 918(a)(2)

the offense charged but guilty of the lesser included offense. See paragraph 3 of Part IV and Appendix 12A concerning lesser included offenses.

*Offenses arising from the same act or transaction.* The accused may be found guilty of two or more offenses arising from the same act or transaction, whether or not the offenses are separately punishable. *But see* R.C.M. 906(b)(12) and 907(b)(3)(B).

---

(2) *As to a charge.* General findings as to a charge may be:

(A) guilty;

(B) not guilty, but guilty of a violation of Article \_\_\_\_\_;

(C) not guilty only by reason of lack of mental responsibility; or

(D) not guilty.

### Discussion

Where there are two or more specifications under one charge, conviction of any of those specifications requires a finding of guilty of the corresponding charge. Under such circumstances any findings of not guilty as to the other specifications do not affect that charge. If the accused is found guilty of one specification and of a lesser included offense prohibited by a different Article as to another specification under the same charge, the findings as to the corresponding charge should be: "Of the Charge as to specification 1: Guilty; as to specification 2: not guilty, but guilty of \_\_\_\_\_, a violation of Article \_\_\_\_\_."

An attempt should be found as a violation of Article 80 unless the attempt is punishable under Articles 85, 94, 100, 103a, 103b, 119a, or 128, in which case it should be found as a violation of that Article.

A court-martial may not find an offense as a violation of an article under which it was not charged solely for the purpose of increasing the authorized punishment or for the purpose of adjudging less than the prescribed mandatory punishment.

---

(b) *Special findings.* In a trial by court-martial composed of military judge alone, the military judge shall make special findings upon request by any party. Special findings may be requested only as to matters of fact reasonably in issue as to an offense and need be made only as to offenses of which the accused was found guilty. Special findings may be requested at any time before general findings are announced. Only one set of special findings may be requested by a party in a case. If the request is for findings on specific matters, the military judge may require that the request be written. Special findings may be entered orally on the record at the court-martial or in writing during or after

the court-martial, but in any event shall be made before entry of judgment and included in the record of trial.

### Discussion

Special findings ordinarily include findings as to the elements of the offenses of which the accused has been found guilty, and any affirmative defense relating thereto.

See also R.C.M. 905(d); Mil. R. Evid. 304(f)(5), 311(d)(7), and 321(d)(7) concerning other findings to be made by the military judge.

Members may not make special findings. Special findings do not include, for example, the members' deliberation and voting on aggravating factors in a capital case under RCM 1004(b)(4), or on the defense of mental responsibility under R.C.M. 921(c)(4).

---

(c) *Basis of findings.* Findings may be based on direct or circumstantial evidence. Only matters properly before the court-martial on the merits of the case may be considered. A finding of guilty of any offense may be reached only when the factfinder is satisfied that guilt has been proved beyond a reasonable doubt.

### Discussion

"Direct evidence" is evidence which tends directly to prove or disprove a fact in issue (for example, an element of the offense charged). "Circumstantial evidence" is evidence which tends directly to prove not a fact in issue but some other fact or circumstance from which, either alone or together with other facts or circumstances, one may reasonably infer the existence or non-existence of a fact in issue. There is no general rule for determining or comparing the weight to be given to direct or circumstantial evidence.

A reasonable doubt is a doubt based on reason and common sense. A reasonable doubt is not mere conjecture; it is an honest, conscientious doubt suggested by the evidence, or lack of it, in the case. An absolute or mathematical certainty is not required. The rule as to reasonable doubt extends to every element of the offense. It is not necessary that each particular fact advanced by the prosecution which is not an element be proved beyond a reasonable doubt.

The factfinder should consider the inherent probability or improbability of the evidence, using common sense and knowledge of human nature, and should weigh the credibility of witnesses. A fact finder may properly believe one witness and disbelieve others whose testimony conflicts with that of the one. A factfinder may believe part of the testimony of a witness and disbelieve other parts.

## Rule 919. Argument by counsel on findings

(a) *In general.* After the closing of evidence, trial counsel shall be permitted to open the argument. Defense counsel shall be permitted to reply. Trial counsel shall then be permitted to reply in rebuttal.

(b) *Contents.* Arguments may properly include reasonable comment on the evidence in the case,

including inferences to be drawn therefrom, in support of a party's theory of the case.

**Discussion**

The military judge may exercise reasonable control over argument. *See* R.C.M. 801(a)(3).

Argument may include comment about the testimony, conduct, motives, interests, and biases of witnesses to the extent supported by the evidence. Counsel should not express a personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt or innocence of the accused, nor should counsel make arguments calculated to inflame passions or prejudices. In argument, counsel may treat the testimony of witnesses as conclusively establishing the facts related by the witnesses. Counsel may not cite legal authorities or the facts of other cases when arguing to members on findings.

Trial counsel may not comment on the accused's exercise of the right against self-incrimination or the right to counsel. *See* Mil. R. Evid. 512. Trial counsel may not argue that the prosecution's evidence is un rebutted if the only rebuttal could come from the accused. When the accused is on trial for several offenses and testifies only as to some of the offenses, trial counsel may not comment on the accused's failure to testify as to the others. When the accused testifies on the merits regarding an offense charged, trial counsel may comment on the accused's failure in that testimony to deny or explain specific incriminating facts that the evidence for the prosecution tends to establish regarding that offense.

Trial counsel may not comment on the failure of the defense to call witnesses or of the accused to testify at the Article 32 preliminary hearing or upon the probable effect of the court-martial's findings on relations between the military and civilian communities.

The rebuttal argument of trial counsel is generally limited to matters argued by the defense. If trial counsel is permitted to introduce new matter in closing argument, the defense should be allowed to reply in rebuttal. However, this will not preclude trial counsel from presenting a final argument.

---

(c) *Forfeiture of objection to improper argument.* Failure to object to improper argument before the military judge begins to instruct the members on findings shall constitute forfeiture of the objection.

**Discussion**

If an objection that an argument is improper is sustained, the military judge should immediately instruct the members that the argument was improper and that they must disregard it. In extraordinary cases, improper argument may require a mistrial. *See* R.C.M. 915. The military judge should be alert to improper argument and take appropriate action when necessary.

**Rule 920. Instructions on findings**

(a) *In general.* The military judge shall give the members appropriate instructions on findings.

**Discussion**

Instructions consist of a statement of the issues in the case and an explanation of the legal standards and procedural requirements by which the members will determine findings. Instructions should be tailored to fit the circumstances of the case, and should fairly and adequately cover the issues presented.

---

(b) *When given.* Instructions on findings shall be given before or after arguments by counsel, or at both times, and before the members close to deliberate on findings, but the military judge may, upon request of the members, any party, or *sua sponte*, give additional instructions at a later time.

**Discussion**

After members have reached a finding on a specification, instructions may not be given on an offense included therein which was not described in an earlier instruction unless the finding is illegal. This is true even if the finding has not been announced. When instructions are to be given is a matter within the sole discretion of the military trial judge.

---

(c) *Request for instructions.* At the close of the evidence or at such other time as the military judge may permit, any party may request that the military judge instruct the members on the law as set forth in the request. The military judge may require the requested instruction to be written. Each party shall be given the opportunity to be heard on any proposed instruction on findings before it is given. The military judge shall inform the parties of the proposed action on such requests before their closing arguments.

**Discussion**

Requests for and objections to instructions should be resolved at an Article 39(a) session. *See* R.C.M. 803.

If an issue has been raised, ordinarily the military judge must instruct on the issue when requested to do so. The military judge is not required to give the specific instruction requested by counsel, however, as long as the issue is adequately covered in the instructions.

The military judge should not identify the source of any instruction when addressing the members.

All written requests for instructions should be marked as appellate exhibits, whether or not they are given.

---

(d) *How given.* Instructions on findings shall be given orally on the record in the presence of all parties and the members. Written copies of the instructions, or,



## R.C.M. 920(e)

unless a party objects, portions of them, may also be given to the members for their use during deliberations.

### Discussion

A copy of any written instructions delivered to the members should be marked as an appellate exhibit.

(e) *Required instructions.* Instructions on findings shall include:

(1) A description of the elements of each offense charged, unless findings on such offenses are unnecessary because they have been entered pursuant to a plea of guilty;

(2) A description of the elements of each lesser included offense in issue, unless trial of a lesser included offense is barred by the statute of limitations (Article 43) and the accused refuses to waive the bar;

(3) A description of any special defense under R.C.M. 916 in issue;

(4) A direction that only matters properly before the court-martial may be considered;

(5) A charge that—

(A) The accused must be presumed to be innocent until the accused's guilt is established by legal and competent evidence beyond reasonable doubt;

(B) In the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(C) If, when a lesser included offense is in issue, there is a reasonable doubt as to the degree of guilt of the accused, the finding must be in a lower degree as to which there is not reasonable doubt; and

(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) is raised, add: The accused has the burden of proving the defense of mistake of fact as to consent or age by a preponderance of the evidence.]

(6) Directions on the procedures under R.C.M. 921 for deliberations and voting; and

(7) Such other explanations, descriptions, or directions as may be necessary and which are properly requested by a party or which the military judge

determines, *sua sponte*, should be given.

### Discussion

A matter is "in issue" when some evidence, without regard to its source or credibility, has been admitted upon which members might rely if they choose. An instruction on a lesser included offense is proper when (1) the offense is "necessarily included" in the charged offense in accordance with Article 79(b)(1); or (2) the offense is designated a lesser included offense by the President under Article 79(b)(2).

See R.C.M. 918(c) and the accompanying Discussion as to reasonable doubt and other matters relating to the basis for findings which may be the subject of an instruction.

Other matters which may be the subject of instruction in appropriate cases included: inferences (see the explanations in Part IV concerning inferences relating to specific offenses); the limited purpose for which evidence was admitted (regardless of whether such evidence was offered by the prosecution or defense) (see Mil. R. Evid. 105); the effect of character evidence (see Mil. R. Evid. 404, 405); the effect of judicial notice (see Mil. R. Evid. 201, 202); the weight to be given a pretrial statement (see Mil. R. Evid. 304(e)); the effect of stipulations (see R.C.M. 811); that, when a guilty plea to a lesser included offense has been accepted, the members should accept as proved the matters admitted by the plea, but must determine whether the remaining elements are established; that a plea of guilty to one offense may not be the basis for inferring the existence of a fact or element of another offense; the absence of the accused from trial should not be held against the accused; and that no adverse inferences may be drawn from an accused's failure to testify (see Mil. R. Evid. 301(f)).

The military judge may summarize and comment upon evidence in the case in instructions. In doing so, the military judge should present an accurate, fair, and dispassionate statement of what the evidence shows; not depart from an impartial role; not assume as true the existence or nonexistence of a fact in issue when the evidence is conflicting or disputed, or when there is no evidence to support the matter; and make clear that the members must exercise their independent judgment as to the facts.

(f) *Forfeiture and objections.* Failure to object to an instruction or to omission of an instruction before the members close to deliberate forfeits the objection. The parties shall be given the opportunity to be heard on any objection to or request for instructions outside the presence of the members. When a party objects to an instruction, the military judge may require the party objecting to specify in what respect the instructions given were improper.

### Rule 921. Deliberations and voting on findings

(a) *In general.* After the military judge instructs the members on findings, the members shall deliberate and vote in a closed session. Only the members shall be present during deliberations and voting. Superiority in rank shall not be used in any manner in an attempt to

control the independence of members in the exercise of their judgment.

(b) *Deliberations.* Deliberations properly include full and free discussion of the merits of the case. Unless otherwise directed by the military judge, members may take with them in deliberations their notes, if any, any exhibits admitted in evidence, and any written instructions. Members may request that the court-martial be reopened and that portions of the record be read to them or additional evidence introduced. The military judge may, in the exercise of discretion, grant such request.

(c) *Voting.*

(1) *Secret ballot.* Voting on the findings for each charge and specification shall be by secret written ballot. All members present shall vote.

(2) *Numbers of votes required to convict.* A finding of guilty results only if at least three-fourths of the members present vote for a finding of guilty.

#### Discussion

In computing the number of votes required to convict, any fraction of a vote is rounded up to the next whole number. For example, in a general court-martial with eight members, the concurrence of at least six members is required to convict. In the unusual case where a member has been excused after impanelment, resulting in a panel of seven members, the concurrence of at least six members would be required to convict. Likewise, if there are only six members, the concurrence of at least five members is required to convict. In a case that was referred as capital with 12 members, the concurrence of at least nine members is required to convict. However, a sentence of death is not authorized without the unanimous concurrence of all twelve members. See R.C.M. 1004(b)(7). The military judge should instruct the members on the specific number of votes required to convict.

(3) *Acquittal.* If fewer than three-fourths of the members present vote for a finding of guilty, a finding of not guilty has resulted as to the charge or specification on which the vote was taken.

(4) *Not guilty only by reason of lack of mental responsibility.* When the defense of lack of mental responsibility is in issue under R.C.M. 916(k)(1), the members shall first vote on whether the prosecution has proven the elements of the offense beyond a reasonable doubt. If at least three-fourths of the members present vote for a finding of guilty, then the members shall vote on whether the accused has proven lack of mental responsibility. If a majority of the members present concur that the accused has proven lack of mental responsibility by clear and convincing

evidence, a finding of not guilty only by reason of lack of mental responsibility results. If the vote on lack of mental responsibility does not result in a finding of not guilty only by reason of lack of mental responsibility, then the defense of lack of mental responsibility has been rejected and the finding of guilty stands.

#### Discussion

If lack of mental responsibility is in issue with regard to more than one specification, the members should determine the issue of lack of mental responsibility on each specification separately.

(5) *Included offenses.* Members shall not vote on a lesser included offense unless a finding of not guilty of the offense charged has been reached. If a finding of not guilty of an offense charged has been reached the members shall vote on each included offense on which they have been instructed, in order of severity beginning with the most severe. The members shall continue the vote on each included offense on which they have been instructed until a finding of guilty results or findings of not guilty have been reached as to each such offense.

(6) *Procedure for voting.*

(A) *Order.* Each specification shall be voted on separately before the corresponding charge. The order of voting on several specifications under a charge or on several charges shall be determined by the president unless a majority of the members object.

(B) *Counting votes.* The junior member shall collect the ballots and count the votes. The president shall check the count and inform the other members of the result.

#### Discussion

Once findings have been reached, they may be reconsidered only in accordance with R.C.M. 924.

(d) *Action after findings are reached.* After the members have reached findings on each charge and specification before them, the court-martial shall be opened and the president shall inform the military judge that findings have been reached. The military judge may, in the presence of the parties, examine any writing which the president intends to read to announce the findings and may assist the members in putting the findings in proper form. Neither that writing nor any

## R.C.M. 922

oral or written clarification or discussion concerning it shall constitute announcement of the findings.

### Discussion

Ordinarily a findings worksheet should be provided to the members as an aid to putting the findings in proper form. If the military judge examines any writing by the members or otherwise assists them to put findings in proper form, this must be done in an open session and counsel should be given the opportunity to examine such a writing and to be heard on any instructions the military judge may give. See Article 39(b).

The president should not disclose any specific number of votes for or against any finding.

## Rule 922. Announcement of findings

(a) *In general.* Findings shall be announced in the presence of all parties promptly after they have been determined.

### Discussion

A finding of an offense about which no instructions were given is not proper.

(b) *Findings by members.* The president shall announce the findings by the members. In a capital case, if a finding of guilty is unanimous with respect to a capital offense, the president shall so state.

### Discussion

If the findings announced are ambiguous, the military judge should seek clarification. See also R.C.M. 924.

(c) *Findings by military judge.* The military judge shall announce the findings when trial is by military judge alone or in accordance with R.C.M. 910(g).

(d) *Erroneous announcement.* If an error was made in the announcement of the findings of the court-martial, the error may be corrected by a new announcement in accordance with this rule. The error must be discovered and the new announcement made before the final adjournment of the court-martial in the case.

### Discussion

See R.C.M. 1104 concerning the action to be taken if the error in the announcement is discovered after final adjournment.

---

(e) *Polling prohibited.* Except as provided in Mil. R. Evid. 606, members may not be questioned about their deliberations and voting.

## Rule 923. Impeachment of findings

Findings that are proper on their face may be impeached only when extraneous prejudicial information was improperly brought to the attention of a member, outside influence was improperly brought to bear upon any member, or unlawful command influence was brought to bear upon any member.

### Discussion

Deliberations of the members ordinarily are not subject to disclosure. See Mil. R. Evid. 606. Unsound reasoning by a member, misconception of the evidence, or misapplication of the law is not a proper basis for challenging the findings. However, when a showing of a ground for impeaching the verdict has been made, members may be questioned about such a ground. The military judge determines, as an interlocutory matter, whether such an inquiry will be conducted and whether a finding has been impeached.

## Rule 924. Reconsideration of findings

(a) *Time for reconsideration.* Members may reconsider any finding reached by them before such finding is announced in open session.

(b) *Procedure.* Any member may propose that a finding be reconsidered. If such a proposal is made in a timely manner, the question whether to reconsider shall be determined in closed session by secret written ballot. Any finding of not guilty shall be reconsidered if a majority vote for reconsideration. Any finding of guilty shall be reconsidered if more than one-fourth of the members vote for reconsideration. Any finding of not guilty only by reason of lack of mental responsibility shall be reconsidered on the issue of the finding of guilty of the elements if more than one-fourth of the members vote for reconsideration, and on the issue of mental responsibility if a majority vote for reconsideration. If a vote to reconsider a finding succeeds, the procedures in R.C.M. 921 shall apply.

### Discussion

After the initial secret ballot vote on a finding in closed session, no other vote may be taken on that finding unless a vote to reconsider succeeds.

(c) *Military judge sitting alone.* In trial by military judge alone, the military judge may reconsider:

(1) any finding of guilty at any time before announcement of sentence; and

(2) the issue of the finding of guilty of the elements in a finding of not guilty only by reason of lack of mental responsibility at any time before announcement of sentence or, in the case of a complete acquittal, entry of judgment.

## CHAPTER X. SENTENCING

### Rule 1001. Presentencing procedure

#### (a) *In general.*

(1) *Procedure.* After findings of guilty have been announced, and the accused has had the opportunity to make a sentencing forum election under R.C.M. 1002(b), the prosecution and defense may present matters pursuant to this rule to aid the court-martial in determining an appropriate sentence. Such matters shall ordinarily be presented in the following sequence—

#### (A) Presentation by trial counsel of:

(i) service data relating to the accused taken from the charge sheet;

(ii) personal data relating to the accused and of the character of the accused's prior service as reflected in the personnel records of the accused;

(iii) evidence of prior convictions, military or civilian;

(iv) evidence of aggravation; and

(v) evidence of rehabilitative potential.

#### (B) Crime victim's right to be reasonably heard.

(C) Presentation by the defense of evidence in extenuation or mitigation or both.

#### (D) Rebuttal.

(E) Argument by trial counsel on sentence.

(F) Argument by defense counsel on sentence.

(G) Rebuttal arguments in the discretion of the military judge.

(2) *Adjudging sentence.* A sentence shall be adjudged in all cases without unreasonable delay.

#### (3) *Advice and inquiry.*

(A) *Crime victim.* At the beginning of the presentencing proceeding, the military judge shall announce that any crime victim who is present at the presentencing proceeding has the right to be reasonably heard, including the right to make a sworn statement, unsworn statement, or both. Prior to the conclusion of the presentencing proceeding, the military judge shall ensure that any such crime victim was afforded the opportunity to be reasonably heard.

### Discussion

In capital cases, the right to be reasonably heard does not include the right to make an unsworn statement. *See* R.C.M. 1001(c)(2)(D)(i).

---

(B) *Accused.* The military judge shall personally inform the accused of the right to present matters in extenuation and mitigation, including the right to make a sworn or unsworn statement or to remain silent, and shall ask whether the accused chooses to exercise those rights.

#### (b) *Matters to be presented by the prosecution.*

(1) *Service data from the charge sheet.* Trial counsel shall inform the court-martial of the data on the charge sheet relating to the pay and service of the accused and the duration and nature of any pretrial restraint. In the discretion of the military judge, this may be done by reading the material from the charge sheet or by giving the court-martial a written statement of such matter. If the defense objects to the data as being materially inaccurate or incomplete, or containing specified objectionable matter, the military judge shall determine the issue. Objections not asserted are forfeited.

(2) *Personal data and character of prior service of the accused.* Under regulations of the Secretary concerned, trial counsel may obtain and introduce from the personnel records of the accused evidence of the accused's marital status; number of dependents, if any; and character of prior service. Such evidence includes copies of reports reflecting the past military efficiency, conduct, performance, and history of the accused and evidence of any disciplinary actions including punishments under Article 15. "Personnel records of the accused" includes any

records made or maintained in accordance with departmental regulations that reflect the past military efficiency, conduct, performance, and history of the accused. If the accused objects to a particular document as inaccurate or incomplete in a specified respect, or as containing matter that is not admissible under the Military Rules of Evidence, the matter shall be determined by the military judge. Objections not asserted are forfeited.

### Discussion

Defense counsel may also, subject to the Military Rules of Evidence and this rule, present personnel records of the accused not introduced by trial counsel in accordance with R.C.M. 1001(b). A forfeited matter may be subject to review for plain error.

---

(3) *Evidence of prior convictions of the accused.*

(A) *In general.* Trial counsel may introduce evidence of prior military or civilian convictions of the accused. For purposes of this rule, there is a “conviction” in a court-martial case when a sentence has been adjudged. In a civilian case, a “conviction” includes any disposition following an initial judicial determination or assumption of guilt, such as when guilt has been established by guilty plea, trial, or plea of nolo contendere, regardless of the subsequent disposition, sentencing procedure, or final judgment. A “conviction” does not include a diversion from the judicial process without a finding or admission of guilt; expunged convictions; juvenile adjudications; minor traffic violations; foreign convictions; tribal court convictions; or convictions reversed, vacated, invalidated, or pardoned.

**Discussion**

A vacation of a suspended sentence (*see* R.C.M. 1108) is not a conviction and is not admissible as such, but may be admissible under R.C.M. 1001(b)(2) as reflective of the character of the prior service of the accused.

An accused may only be punished for the offenses of which he or she was convicted in that same court-martial.

(B) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible except that a finding of guilty by summary court-martial may not be used for purposes of this rule until review has been completed pursuant to Article 64. Evidence of the pendency of an appeal is admissible.

(C) *Method of proof.* Previous convictions may be proved by any evidence admissible under the Military Rules of Evidence.

**Discussion**

Normally, previous convictions may be proved by use of the personnel records of the accused, by the record of the conviction, or by the judgment. *See* R.C.M. 1111 or DD Form 493 (Extract of Military Records of Previous Convictions).

(4) *Evidence in aggravation.* Trial counsel may present evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty. Evidence in

aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused’s offense. In addition, evidence in aggravation may include evidence that the accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person. Except in capital cases a written or oral deposition taken in accordance with R.C.M. 702 is admissible in aggravation.

**Discussion**

*See also* R.C.M. 1004 concerning aggravating factors in capital cases.

(5) *Evidence of rehabilitative potential.* “Rehabilitative potential” refers to the accused’s potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society.

(A) *In general.* Trial counsel may present, by testimony or oral deposition in accordance with R.C.M. 702(g)(1), evidence in the form of opinions concerning the accused’s previous performance as a servicemember and potential for rehabilitation.

(B) *Foundation for opinion.* The witness or deponent providing opinion evidence regarding the accused’s rehabilitative potential must possess sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority. Relevant information and knowledge include, but are not limited to, information and knowledge about the accused’s character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense or offenses.

**Discussion**

*See* Mil. R. Evid. 701. *See also* Mil. R. Evid. 703 if the witness or deponent is testifying as an expert. The types of information and knowledge reflected in this subparagraph are illustrative only.

(C) *Bases for opinion.* An opinion regarding the

## R.C.M. 1001(b)(5)(D)

accused's rehabilitative potential must be based upon relevant information and knowledge possessed by the witness or deponent, and must relate to the accused's personal circumstances. The opinion of the witness or deponent regarding the severity or nature of the accused's offense or offenses may not serve as the principal basis for an opinion of the accused's rehabilitative potential.

(D) *Scope of opinion.* An opinion offered under this rule is limited to whether the accused has rehabilitative potential and to the magnitude or quality of any such potential. A witness may not offer an opinion regarding the appropriateness of a punitive discharge or whether the accused should be returned to the accused's unit.

### Discussion

On direct examination, a witness or deponent may respond affirmatively or negatively regarding whether the accused has rehabilitative potential. The witness or deponent may also opine succinctly regarding the magnitude or quality of the accused's rehabilitative potential; for example, the witness or deponent may opine that the accused has "great" or "little" rehabilitative potential. The witness or deponent, however, generally may not further elaborate on the accused's rehabilitative potential, such as describing the particular reasons for forming the opinion.

(E) *Cross-examination.* On cross-examination, inquiry is permitted into relevant and specific instances of conduct.

(F) *Redirect.* Notwithstanding any other provision in this rule, the scope of opinion testimony permitted on redirect may be expanded, depending upon the nature and scope of the cross-examination.

### Discussion

For example, on redirect a witness or deponent may testify regarding specific instances of conduct when the cross-examination of the witness or deponent concerned specific instances of misconduct. Similarly, for example, on redirect a witness or deponent may offer an opinion on matters beyond the scope of the accused's rehabilitative potential if an opinion about such matters was elicited during cross-examination of the witness or deponent and is otherwise admissible.

(c) *Crime victim's right to be reasonably heard.*

(1) *In general.* After presentation by trial counsel, a crime victim of an offense of which the accused has been found guilty has the right to be reasonably heard at the presentencing proceeding relating to that offense.

A crime victim who makes an unsworn statement under subsection (c)(5) is not considered a witness for the purposes of Article 42(b). If the crime victim exercises the right to be reasonably heard, the crime victim shall be called by the court-martial. The exercise of the right is independent of whether the crime victim testified during findings or is called to testify by the government or defense under this rule.

### Discussion

If there are numerous victims, the military judge may reasonably limit the form of the statements provided. *See* R.C.M. 801(a)(3).

The method by which the opportunity to be reasonably heard was provided to any crime victim present at the proceedings should be included in the record orally or in writing.

(2) *Definitions.*

(A) *Crime victim.* For purposes of this subsection, a crime victim is an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty or the individual's lawful representative or designee appointed by the military judge under these rules.

(B) *Victim impact.* For purposes of this subsection, victim impact includes any financial, social, psychological, or medical impact on the crime victim directly relating to or arising from the offense of which the accused has been found guilty.

(C) *Mitigation.* For the purposes of this subsection, mitigation includes any matter that may lessen the punishment to be adjudged by the court-martial or furnish grounds for a recommendation of clemency.

(D) *Right to be reasonably heard.*

(i) *Capital cases.* In capital cases, for purposes of this subsection, the "right to be reasonably heard" means the right to make a sworn statement.

(ii) *Non-capital cases.* In non-capital cases, for purposes of this subsection, the "right to be reasonably heard" means the right to make a sworn statement, an unsworn statement, or both.

(3) *Contents of statement.* The content of statements made under paragraphs (4) and (5) may only include victim impact and matters in mitigation. The statement may not include a recommendation of a specific sentence.

(4) *Sworn statement.* The crime victim may make a

sworn statement and shall be subject to cross-examination concerning it by trial counsel and defense counsel or examination on it by the court-martial.

(5) *Unsworn statement.*

(A) *In general.* The crime victim may make an unsworn statement and may not be cross-examined by trial counsel or defense counsel, or examined upon it by the court-martial. The prosecution or defense may, however, rebut any statements of fact therein. The unsworn statement may be oral, written, or both.

(B) *Procedure.* After the announcement of findings, a crime victim who elects to present an unsworn statement shall provide a written proffer of the matters that will be addressed in the statement to trial counsel and defense counsel. The military judge may waive this requirement for good cause shown. Upon good cause shown, the military judge may permit the crime victim's counsel, if any, to deliver all or part of the crime victim's unsworn statement.

### Discussion

A victim's statement should not exceed what is permitted under R.C.M. 1001(c)(3). A crime victim may also testify as a witness during presentencing proceedings in order to present evidence admissible under a rule other than R.C.M. 1001(c)(3). Upon objection by either party or *sua sponte*, a military judge may stop or interrupt a victim's statement that includes matters outside the scope of R.C.M. 1001(c)(3). A victim, victim's counsel, or designee has no separate right to present argument under R.C.M. 1001(h).

When the military judge waives the notice requirement under this rule, the military judge may conduct a session under Article 39(a) to ascertain the content of the victim's anticipated unsworn statement.

If the victim intends to submit a written statement, a copy of the statement satisfies the requirement for a written proffer.

---

(C) *New factual matters in unsworn statement.* If during the presentencing proceeding a crime victim makes an unsworn statement containing factual matters not previously disclosed under subparagraph (5)(B), the military judge shall take appropriate action within the military judge's discretion.

(d) *Matter to be presented by the defense.*

(1) *In general.* The defense may present matters in rebuttal of any material presented by the prosecution and the crime victim, if any, and may present matters in extenuation and mitigation regardless whether the defense offered evidence before findings.

(A) *Matter in extenuation.* Matter in extenuation of an offense serves to explain the circumstances

surrounding the commission of an offense, including those reasons for committing the offense which do not constitute a legal justification or excuse.

(B) *Matter in mitigation.* Matter in mitigation of an offense is introduced to lessen the punishment to be adjudged by the court-martial, or to furnish grounds for a recommendation of clemency. It includes the fact that nonjudicial punishment under Article 15 has been imposed for an offense growing out of the same act or omission that constitutes the offense of which the accused has been found guilty, particular acts of good conduct or bravery and evidence of the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any other trait that is desirable in a servicemember.

(2) *Statement by the accused.*

(A) *In general.* The accused may testify, make an unsworn statement, or both in extenuation, in mitigation, to rebut matters presented by the prosecution, or to rebut statements of fact contained in any crime victim's sworn or unsworn statement, whether or not the accused testified prior to findings. The accused may limit such testimony or statement to any one or more of the specifications of which the accused has been found guilty. The accused may make a request for a specific sentence. This subsection does not permit the filing of an affidavit of the accused.

(B) *Testimony of the accused.* The accused may give sworn oral testimony and shall be subject to cross-examination concerning it by trial counsel or examination on it by the court-martial, or both.

(C) *Unsworn statement.* The accused may make an unsworn statement and may not be cross-examined by trial counsel upon it or examined upon it by the court-martial. The prosecution may, however, rebut any statements of facts therein. The unsworn statement may be oral, written, or both, and may be made by the accused, by counsel, or both.

### Discussion

An unsworn statement ordinarily should not include what is properly argument, but inclusion of such matter by the accused when personally making an oral statement normally should not be grounds for stopping the statement.

---

(3) *Rules of evidence relaxed.* The military judge may, with respect to matters in extenuation or mitigation or both, relax the rules of evidence. This may include admitting letters, affidavits, certificates of



**R.C.M. 1001(e)**

military and civil officers, and other writings of similar authenticity and reliability.

(e) *Rebuttal and surrebuttal.* The prosecution may rebut matters presented by the defense. The defense in surrebuttal may then rebut any rebuttal offered by the prosecution. Rebuttal and surrebuttal may continue, in the discretion of the military judge. If the Military Rules of Evidence were relaxed under paragraph (d)(3) of this rule, they may be relaxed during rebuttal and surrebuttal to the same degree.

(f) *Production of witnesses.*

(1) *In general.* During the presentencing proceedings, there shall be much greater latitude than on the merits to receive information by means other than testimony presented through the personal appearance of witnesses. Whether a witness shall be produced to testify during presentencing proceedings is a matter within the discretion of the military judge, subject to the limitations in paragraph (2).

**Discussion**

See R.C.M. 703 concerning the procedures for production of witnesses for presentencing proceedings.

(2) *Limitations.* A witness may be produced to testify during presentencing proceedings through a subpoena or travel orders at Government expense only if—

(A) the testimony of the witness is necessary for consideration of a matter of substantial significance to a determination of an appropriate sentence;

(B) the weight or credibility of the testimony is of substantial significance to the determination of an appropriate sentence;

(C) the other party refuses to enter into a stipulation of fact containing the matters to which the witness is expected to testify, except in an extraordinary case when such a stipulation of fact would be an insufficient substitute for the testimony;

(D) other forms of evidence, such as oral depositions, written interrogatories, former testimony, or testimony by remote means would not be sufficient to meet the needs of the court-martial in the determination of an appropriate sentence; and

(E) the significance of the personal appearance of the witness to the determination of an appropriate sentence, when balanced against the practical difficulties of producing the witness, favors production of the witness. Factors to be considered include the

costs of producing the witness, the timing of the request for production of the witness, the potential delay in the presentencing proceeding that may be caused by the production of the witness, and the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

**Discussion**

The procedures for receiving testimony via remote means and the definition thereof are contained in R.C.M. 914B.

(g) *Additional matters to be considered.* In addition to matters introduced under this rule, the court-martial may consider—

(1) That a plea of guilty is a mitigating factor; and

(2) Any evidence properly introduced on the merits before findings, including:

(A) Evidence of other offenses or acts of misconduct even if introduced for a limited purpose; and

(B) Evidence relating to any mental impairment or deficiency of the accused.

**Discussion**

The fact that the accused is of low intelligence or that, because of a mental or neurological condition, the accused's ability to adhere to the right is diminished, may be extenuating. On the other hand, in determining the severity of a sentence, the court-martial may consider evidence tending to show that an accused has little regard for the rights of others.

(h) *Argument.* After introduction of matters relating to sentence under this rule, counsel for the prosecution and defense may argue for an appropriate sentence. Trial counsel may not in argument purport to speak for the convening authority or any higher authority, or refer to the views of such authorities or any policy directive relative to punishment or to any punishment or quantum of punishment greater than the court-martial may adjudge. Trial counsel may, however, recommend a specific lawful sentence and may also refer to the sentencing considerations set forth in R.C.M. 1002(f). Failure to object to improper argument before the military judge begins deliberations, or before the military judge instructs the members on sentencing, shall constitute forfeiture of the objection.

**Discussion**

A victim, victims' counsel, or designee has no right to present argument under this rule. A forfeited matter may be subject to review for plain error.

---

**Rule 1002. Sentencing determination**

(a) *Generally.* Subject to limitations in this Manual, the sentence to be adjudged is a matter within the discretion of the court-martial. A court-martial may adjudge any punishment authorized in this Manual in order to achieve the purposes of sentencing under subsection (f), including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment except—

(1) When a mandatory minimum sentence is prescribed by the code, the sentence for an offense shall include any punishment that is made mandatory by law for that offense. The sentence for an offense may not be greater than the maximum sentence established by law or by the President for that offense; and

**Discussion**

See Article 56(a) and R.C.M. 1003.

---

(2) If the military judge accepts a plea agreement with a sentence limitation, the court-martial shall sentence the accused in accordance with the limits established by the plea agreement.

(b) *Sentencing forum election.* In a general or special court-martial consisting of a military judge and members, upon the announcement of findings and before any matter is presented in the presentencing phase, the military judge shall inquire—

(1) In noncapital cases, whether the accused elects sentencing by members in lieu of sentencing by military judge for all charges and specifications for which the accused was found guilty; and

(2) In capital cases, whether the accused elects sentencing by members in lieu of sentencing by military judge for all charges and specifications for which the accused was found guilty and for which a sentence of death may not be adjudged.

**Discussion**

Under Article 53, the military judge sentences the accused for all charges and specifications for which the death penalty may not be

imposed unless the accused elects sentencing by members for such charges and specifications in accordance with Article 25.

---

(c) *Form of election.* The accused's election under subsection (b), shall be in writing and signed by the accused or shall be made orally on the record. The military judge shall ascertain whether the accused has consulted with defense counsel and has been informed of the right to make a sentencing forum election under subsection (b).

(d) *Noncapital cases.*

(1) *Sentencing by members.* In a general or special court-martial in which the accused has elected sentencing by members in lieu of sentencing by military judge under paragraph (b)(1), the members shall determine a single sentence for all of the charges and specifications of which the accused was found guilty. The military judge announces the sentence determined by the members in accordance with R.C.M. 1007.

(2) *Sentencing by military judge.* Unless a timely election for sentencing by members is made by the accused under subsection (b), the military judge shall determine the sentence of a general or special court-martial in accordance with this paragraph.

(A) *Segmented sentencing for confinement and fines.* The military judge at a general or special court-martial shall determine an appropriate term of confinement and fine, if applicable, for each specification for which the accused was found guilty. Subject to subsection (a), such a determination may include a term of no confinement or no fine when appropriate for the offense.

**Discussion**

The military judge should determine the appropriate amount of confinement or fine, if any, for each specification separately. The appropriate amount of confinement or fine that may be adjudged, if any, is at the discretion of the military judge subject to these rules.

---

(B) *Concurrent or consecutive terms of confinement.* If a sentence includes more than one term of confinement, the military judge shall determine whether the terms of confinement will run concurrently or consecutively. For each term of confinement, the military judge shall state whether the term of confinement is to run concurrently or consecutively with any other term or terms of confinement. The terms

**R.C.M. 1002(d)(2)(B)(i)**

of confinement for two or more specifications shall run concurrently—

- (i) when each specification involves the same victim and the same act or transaction;
- (ii) when provided for in a plea agreement;
- (iii) when the accused is found guilty of two or more specifications and the military judge finds that the charges or specifications are unreasonably multiplied; or
- (iv) when otherwise appropriate under subsection (f); or

**Discussion**

Whether a term of confinement should run concurrently with another term of confinement should be determined only after determining the appropriate amount of confinement for each charge and specification. A military judge may exercise broad discretion in determining whether terms of confinement will run concurrently or consecutively consistent with R.C.M. 1002(f).

See R.C.M. 705(c)(2)(F) and 910(f)(5) regarding sentence limitations in plea agreements.

---

(v) in a special court-martial, to the extent necessary to reduce the total confinement to the maximum confinement authorized under R.C.M. 201(f)(2).

(C) *Unitary sentencing for other forms of punishment.* All punishments other than confinement or fine available under R.C.M. 1003, if any, shall be determined as a single, unitary component of the sentence, covering all of the guilty findings in their entirety. The military judge shall not segment those punishments among the guilty findings.

(e) *Capital cases.* The following applies to cases referred as capital in accordance with R.C.M. 1004(b)(1)(A) that include a finding of guilty for a charge and specification for which death may be adjudged.

(1) *Sentencing by members.*

(A) Where all of the findings of guilty are for charges and specifications for which death may be adjudged, the members shall determine whether the sentence for each such specification shall be death or a lesser punishment. The members shall then determine a single sentence for all charges and specifications for which the accused was found guilty. The military judge shall announce the sentence determined by the members in accordance with R.C.M. 1007.

(B) Where there is a finding of guilty for a specification for which death may be adjudged and a finding of guilty for a specification for which death may not be adjudged, and the accused elects sentencing by members under paragraph (b)(2) for those specifications for which a sentence of death may not be adjudged:

(i) The members shall determine whether the sentence for each specification for which death may be adjudged shall be death or a lesser punishment;

(ii) The members shall determine a single, unitary sentence for all the charges and specifications for which the accused was found guilty; and

(iii) The military judge shall announce the sentence determined by the members in accordance with R.C.M. 1007.

(2) *Sentencing by members and military judge.* Unless a timely election for sentencing by members is made by the accused under paragraph (b)(2), where there is a finding of guilty for a specification for which death may be adjudged and a finding of guilty for a specification for which death may not be adjudged:

(A) The members shall determine whether the sentence for each specification for which death may be adjudged shall be death or a lesser punishment;

(B) The members shall determine a single, unitary sentence for the specifications for which death may be adjudged;

(C) The military judge shall determine the sentence for all charges and specifications for which death may not be adjudged in accordance with paragraph (d)(2); and

(D) If the sentence determined in subparagraphs (B) and (C) include more than one term of confinement, the military judge shall determine, in accordance with paragraph (d)(2), whether the terms of confinement, including any term of confinement determined by members, will run concurrently or consecutively.

(E) The military judge shall ensure that the sentence, at a minimum, includes any authorized punishment determined by the members. The military judge, taking into account the noncapital offenses addressed in sentencing by the military judge, must include, at a minimum, the discharge determined by the members and may include a more severe form of discharge in the sentence.

(F) The military judge shall announce the sentence in accordance with R.C.M. 1007.

(f) *Imposition of sentence.* In sentencing an accused under this rule, the court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(1) the nature and circumstances of the offense and the history and characteristics of the accused;

(2) the impact of the offense on—

(A) the financial, social, psychological, or medical well-being of any victim of the offense; and

(B) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(3) the need for the sentence to—

(A) reflect the seriousness of the offense;

(B) promote respect for the law;

(C) provide just punishment for the offense;

(D) promote adequate deterrence of misconduct;

(E) protect others from further crimes by the accused;

(F) rehabilitate the accused; and

(G) provide, in appropriate cases, the opportunity for retraining and returning to duty to meet the needs of the service; and

(4) the sentences available under these rules.

(g) *Information that may be considered.* The court-martial, in applying the factors listed in subsection (f) to the facts of a particular case, may consider—

(1) Any evidence admitted by the military judge during the presentencing proceeding under R.C.M. 1001; and

(2) Any evidence admitted by the military judge during the findings proceeding.

### Rule 1003. Punishments

(a) *In general.* Subject to the limitations in this Manual, the punishments authorized in this rule may be adjudged in the case of any person found guilty of one or more charges and specifications by a court-martial.

#### Discussion

“Any person” includes officers, enlisted persons, person in custody of the armed forces serving a sentence imposed by a court-martial, and, insofar as the punishments are applicable, any other person subject to the UCMJ. *See* R.C.M. 202.

(b) *Authorized punishments.* Subject to the limitations in this Manual, a court-martial may adjudge only the following punishments:

(1) *Reprimand.* A court-martial shall not specify the terms or wording of a reprimand. A reprimand, if approved, shall be issued, in writing, by the convening authority.

#### Discussion

A reprimand adjudged by a court-martial is a punitive censure. Only the convening authority may specify the terms of the reprimand. When a court-martial adjudges a reprimand, the convening authority shall issue the reprimand in writing or may disapprove, reduce, commute, or suspend the reprimand in accordance with R.C.M. 1109 or R.C.M. 1110.

(2) *Forfeiture of pay and allowances.* Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last.

Allowances shall be subject to forfeiture only when the sentence includes forfeiture of all pay and allowances. The maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or retainer pay, as applicable, or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or hardship duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced. In the case of an accused who is not confined, forfeitures of pay may not exceed two-thirds of pay per month.

#### Discussion

A forfeiture deprives the accused of the amount of pay (and allowances) specified as it accrues. Forfeitures accrue to the United States.

Forfeitures of pay and allowances adjudged as part of a court-martial sentence, or occurring by operation of Article 58b, are effective 14 days after the sentence is adjudged or when the sentence of a summary court-martial is approved by the convening authority, whichever is earlier.

“Basic pay” does not include pay for special qualifications, such as diving pay, or incentive pay such as flying, parachuting, or duty on board a submarine.

Forfeiture of pay and allowances under Article 58b is not a part of the sentence, but is an administrative result thereof.

### R.C.M. 1003(a)(3)

At a general court-martial, if both a punitive discharge and confinement are adjudged, then the operation of Article 58b results in total forfeiture of pay and allowances during that period of confinement. If only confinement is adjudged, and that confinement exceeds six months, the operation of Article 58b results in total forfeiture of pay and allowances during that period of confinement. If only a punitive discharge is adjudged, Article 58b has no effect on pay and allowances. A death sentence results in total forfeiture of pay and allowances.

At a special court-martial, if a bad-conduct discharge and confinement are adjudged, then the operation of Article 58b results in a forfeiture of two-thirds of pay only (not allowances) during that period of confinement. If only confinement is adjudged, and that confinement exceeds six months, then the operation of Article 58b results in a forfeiture of two-thirds of pay only (not allowances) during the period of confinement. If only a bad-conduct discharge is adjudged, Article 58b has no effect on pay.

If the sentence does not result in forfeitures by the operation of Article 58b, then only adjudged forfeitures are effective.

Article 58b has no effect on summary courts-martial.

---

(3) *Fine.* Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. In the case of a member of the armed forces, summary and special courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In the case of a person serving with or accompanying an armed force in the field, a summary court-martial may not adjudge a fine in excess of two-thirds of one month of the highest rate of enlisted pay, and a special court-martial may not adjudge a fine in excess of two-thirds of one year of the highest rate of officer pay. To enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial.

#### Discussion

A fine is in the nature of a judgment and, upon entry of judgment, makes the accused immediately liable to the United States for the entire amount of money specified in the sentence. A fine normally should not be adjudged against a member of the armed forces unless the accused was unjustly enriched as a result of the offense of which convicted. In the case of a civilian subject to military law, a fine, rather than a forfeiture, is the proper monetary penalty to be adjudged, regardless of whether unjust enrichment is present.

---

(4) *Reduction in pay grade.* Except as provided in R.C.M. 1301(d), a court-martial may sentence an enlisted member to be reduced to the lowest or any intermediate pay grade;

#### Discussion

Reduction under Article 58a is not a part of the sentence but is an administrative result thereof.

---

(5) *Restriction to specified limits.* Restriction may be adjudged for no more than 2 months for each month of authorized confinement and in no case for more than 2 months. Confinement and restriction may be adjudged in the same case, but they may not together exceed the maximum authorized period of confinement, calculating the equivalency at the rate specified in this subsection;

#### Discussion

Restriction does not exempt the person on whom it is imposed from any military duty. Restriction and hard labor without confinement may be adjudged in the same case provided they do not exceed the maximum limits for each. See R.C.M. 1003(c)(1)(A)(ii). The sentence adjudged should specify the limits of the restriction.

---

(6) *Hard labor without confinement.* Hard labor without confinement may be adjudged for no more than 1-1/2 months for each month of authorized confinement and in no case for more than three months. Hard labor without confinement may be adjudged only in the cases of enlisted members. The court-martial shall not specify the hard labor to be performed. Confinement and hard labor without confinement may be adjudged in the same case, but they may not together exceed the maximum authorized period of confinement, calculating the equivalency at the rate specified in this subsection.

#### Discussion

Hard labor without confinement is performed in addition to other regular duties and does not excuse or relieve a person from performing regular duties. Ordinarily, the immediate commander of the accused will designate the amount and character of the labor to be performed. Upon completion of the daily assignment, the accused should be permitted to take leave or liberty to which entitled.

See R.C.M. 1301(d) concerning limitations on hard labor without confinement in summary courts-martial.

---

(7) *Confinement.* The place of confinement shall not be designated by the court-martial. When confinement for life is authorized, it may be with or without eligibility for parole. A court-martial shall not adjudge a sentence to solitary confinement or to confinement without hard labor;

**Discussion**

The authority executing a sentence to confinement may require hard labor whether or not the words "at hard labor" are included in the sentence. See Article 58(b). To promote uniformity, the words "at hard labor" should be omitted in a sentence to confinement.

(8) *Punitive separation.* A court-martial may not adjudge an administrative separation from the service. There are three types of punitive separation.

(A) *Dismissal.* Dismissal applies only to commissioned officers, commissioned warrant officers, cadets, and midshipmen and may be adjudged only by a general court-martial. Regardless of the maximum punishment specified for an offense in Part IV of this Manual, a dismissal may be adjudged for any offense of which a commissioned officer, commissioned warrant officer, cadet, or midshipman has been found guilty;

(B) *Dishonorable discharge.* A dishonorable discharge applies only to enlisted persons and warrant officers who are not commissioned and may be adjudged only by a general court-martial. Regardless of the maximum punishment specified for an offense in Part IV of this Manual, a dishonorable discharge may be adjudged for any offense of which a warrant officer who is not commissioned has been found guilty. A dishonorable discharge should be reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies, or of offenses of a military nature requiring severe punishment; and

**Discussion**

See also R.C.M. 1003(d)(1) regarding when a dishonorable discharge is authorized as an additional punishment.

(C) *Bad-conduct discharge.* A bad-conduct discharge applies only to enlisted persons and may be adjudged by a general court-martial and by a special

court-martial which has met the requirements of R.C.M. 201(f)(2)(B). A bad-conduct discharge is less severe than a dishonorable discharge and is designed as a punishment for bad-conduct rather than as a punishment for serious offenses of either a civilian or military nature. It is also appropriate for an accused who has been convicted repeatedly of minor offenses and whose punitive separation appears to be necessary;

**Discussion**

See also R.C.M. 1003(d)(2) and (3) regarding when a bad-conduct discharge is authorized as an additional punishment.

(9) *Death.* Death may be adjudged only in accordance with R.C.M. 1004; and

(10) *Punishments under the law of war.* In cases tried under the law of war, a general court-martial may adjudge any punishment not prohibited by the law of war.

(c) *Limits on punishments.*

(1) *Based on offenses.*

(A) *Offenses listed in Part IV.*

(i) *Maximum punishment.* The maximum limits for the authorized punishments of confinement, forfeitures and punitive discharge (if any) are set forth for each offense listed in Part IV of this Manual. These limitations are for each separate offense, not for each charge. When a dishonorable discharge is authorized, a bad-conduct discharge is also authorized.

(ii) *Other punishments.* Except as otherwise specifically provided in this Manual, the types of punishments listed in paragraphs (b)(1), (3), (4), (5), (6) and (7) of this rule may be adjudged in addition to or instead of confinement, forfeitures, a punitive discharge (if authorized), and death (if authorized).

(B) *Offenses not listed in Part IV.*

(i) *Included or related offenses.* For an offense not listed in Part IV of this Manual which is included in or closely related to an offense listed therein the maximum punishment shall be that of the offense listed; however if an offense not listed is included in a listed offense, and is closely related to another or is equally closely related to two or more listed offenses, the maximum punishment shall be the same as the least severe of the listed offenses.

(ii) *Not included or related offenses.* An offense not listed in Part IV and not included in or closely

## R.C.M. 1003(e)(1)(C)

related to any offense listed therein is punishable as authorized by the United States Code, or as authorized by the custom of the service. When the United States Code provides for confinement for a specified period or not more than a specified period the maximum punishment by court-martial shall include confinement for that period. If the period is 1 year or longer, the maximum punishment by court-martial also includes a dishonorable discharge and forfeiture of all pay and allowances; if 6 months or more, a bad-conduct discharge and forfeiture of all pay and allowances; if less than 6 months, forfeiture of two-thirds pay per month for the authorized period of confinement.

(C) *Multiple Offenses.* When the accused is found guilty of two or more specifications, the maximum authorized punishment may be imposed for each separate specification, unless the military judge finds that the specifications are unreasonably multiplied.

### Discussion

R.C.M. 906(b)(12) provides the available remedies for cases in which a military judge finds an unreasonable multiplication of charges.

---

#### (2) *Based on rank of accused.*

(A) *Commissioned or warrant officers, cadets, and midshipmen.*

(i) A commissioned or warrant officer or a cadet, or midshipman may not be reduced in grade by any court-martial. However, in time of war or national emergency the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned, may commute a sentence of dismissal to reduction to any enlisted grade.

(ii) Only a general court-martial may sentence a commissioned or warrant officer or a cadet, or midshipman to confinement.

(iii) A commissioned or warrant officer or a cadet or midshipman may not be sentenced to hard labor without confinement.

(iv) Only a general court-martial, upon conviction of any offense in violation of the UCMJ, may sentence a commissioned or warrant officer or a cadet or midshipman to be separated from the service with a punitive separation. In the case of commissioned officers, cadets, midshipmen, and commissioned warrant officers, the separation shall be by dismissal.

In the case of all other warrant officers, the separation shall be by dishonorable discharge.

(B) *Enlisted persons.* See paragraph (b)(9) of this rule and R.C.M. 1301(d).

#### (3) *Based on reserve status in certain circumstances.*

(A) *Restriction on liberty.* A member of a reserve component whose order to active duty is approved pursuant to Article 2(d)(5) may be required to serve any adjudged restriction on liberty during that period of active duty. Other members of a reserve component ordered to active duty pursuant to Article 2(d)(1) or tried by summary court-martial while on inactive duty training may not—

(i) be sentenced to confinement; or

(ii) be required to serve a court-martial punishment consisting of any other restriction on liberty except during subsequent periods of inactive-duty training or active duty.

(B) *Forfeiture.* A sentence to forfeiture of pay of a member not retained on active duty after completion of disciplinary proceedings may be collected from active duty and inactive-duty training pay during subsequent periods of duty.

### Discussion

See R.C.M. 204. At the conclusion of nonjudicial punishment proceedings or final adjournment of the court-martial, the reserve component member who was ordered to active duty for the purpose of conducting disciplinary proceedings should be released from active duty within one working day unless the order to active duty was approved by the Secretary concerned and confinement or other restriction on liberty was adjudged. Unserved punishments may be carried over to subsequent periods of inactive-duty training or active duty.

---

(4) *Based on status as a person serving with or accompanying an armed force in the field.* In the case of a person serving with or accompanying an armed force in the field, no court-martial may adjudge forfeiture of pay and allowances, reduction in pay grade, hard labor without confinement, or a punitive separation.

(5) *Based on other rules.* The maximum limits on punishments in this rule may be further limited by other Rules for Courts-Martial.

### Discussion

The maximum punishment may be limited by: the jurisdictional limits of the court-martial (*see* R.C.M. 201(f) and 1301(d)); the

nature of the proceedings (*see* R.C.M. 810(d) (sentence limitations in rehearings, new trials, and other trials)); and by instructions by a convening authority (*see* R.C.M. 601(e)(1)).

---

(d) *Circumstances permitting increased punishments.*

(1) *Three or more convictions.* If an accused is found guilty of a specification or specifications for none of which a dishonorable discharge is otherwise authorized, proof of three or more previous convictions adjudged by a court-martial during the year next preceding the commission of any offense of which the accused stands convicted shall authorize a dishonorable discharge and forfeiture of all pay and allowances and, if the confinement otherwise authorized is less than 1 year, confinement for 1 year. In computing the 1-year period preceding the commission of any offense, periods of unauthorized absence shall be excluded. For purposes of this subsection, the court-martial convictions must be final.

(2) *Two or more convictions.* If an accused is found guilty of a specification or specifications for none of which a dishonorable or bad-conduct discharge is otherwise authorized, proof of two or more previous convictions adjudged by a court-martial during the 3 years next preceding the commission of any offense of which the accused stands convicted shall authorize a bad-conduct discharge and forfeiture of all pay and allowances and, if the confinement otherwise authorized is less than 3 months, confinement for 3 months. In computing the 3 year period preceding the commission of any offense, periods of unauthorized absence shall be excluded. For purposes of this subsection the court-martial convictions must be final.

(3) *Two or more specifications.* If an accused is found guilty of two or more specifications for none of which a dishonorable or bad-conduct discharge is otherwise authorized, the fact that the authorized confinement for these offenses totals 6 months or more shall, in addition, authorize a bad-conduct discharge and forfeiture of all pay and allowances.

### Discussion

All of these increased punishments are subject to all other limitations on punishments set forth elsewhere in this rule. Convictions by summary court-martial may not be used to increase the maximum punishment under this rule. However they may be admitted and considered under R.C.M. 1001.

---

### Rule 1004. Capital cases

(a) *In general.* Death may be adjudged only when—

(1) Death is expressly authorized under Part IV of this Manual for an offense of which the accused has been found guilty or is authorized under the law of war for an offense of which the accused has been found guilty under the law of war; and

(2) The accused was convicted of such an offense by either—

(A) the unanimous vote of all twelve members of the court-martial; or

(B) the military judge pursuant to the accused's plea of guilty to such an offense; and

(3) The requirements of subsections (b) and (c) of this rule have been met.

(b) *Procedure.* In addition to the provisions in R.C.M. 1001, the following procedures shall apply in capital cases—

(1) *Notice.*

(A) *Referral.* The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction on the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided that—

(i) the convening authority has otherwise complied with the notice requirement of subparagraph (B); and

(ii) if the accused demonstrates specific prejudice from such failure to include the special instruction, the military judge determines that a continuance or a recess is an adequate remedy.

(B) *Arraignment.* Before arraignment, trial counsel shall give the defense written notice of which aggravating factors under subsection (c) of this rule the prosecution intends to prove. Failure to provide timely notice under this subsection of any aggravating factors under subsection (c) of this rule shall not bar later notice and proof of such additional aggravating factors unless the accused demonstrates specific prejudice from such failure and that a continuance or a recess is not an adequate remedy.

(2) *Evidence of aggravating factors.* Trial counsel may present evidence in accordance with R.C.M. 1001(b)(4) tending to establish one or more of the aggravating factors in subsection (c) of this rule.



**R.C.M. 1004(b)(3)**

**Discussion**

See also R.C.M. 1004(b)(5).

(3) *Evidence in extenuation and mitigation.* The accused shall be given broad latitude to present evidence in extenuation and mitigation.

**Discussion**

See R.C.M. 1001(d).

(4) *Necessary findings.* Death may not be adjudged unless—

(A) The members unanimously find that at least one of the aggravating factors under subsection (c) existed beyond a reasonable doubt;

(B) Notice of such factor was provided in accordance with paragraph (1) of this subsection and all members concur in the finding with respect to such factor; and

(C) All members concur that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under subsection (c) of this rule.

(5) *Basis for findings.* The findings in paragraph (b)(4) of this rule may be based on evidence introduced before or after findings under R.C.M. 921, or both.

(6) *Instructions.* In addition to the instructions required under R.C.M. 1005, the military judge shall instruct the members of such aggravating factors under subsection (c) of this rule as may be in issue in the case, the charge(s) and specification(s) for which the members shall determine a sentence, and on the requirements and procedures under paragraphs (b)(4), (5), (7), and (8) of this rule. The military judge shall instruct the members that they must consider all evidence in extenuation and mitigation before a sentence of death may be determined by the members.

**Discussion**

If the accused elects sentencing by members in lieu of sentencing by military judge under R.C.M. 1002(b)(2), the military judge should instruct the members that they are to determine a single unitary sentence for all charges and specifications for which the accused was found guilty. If the accused does not elect sentencing by members in lieu of sentencing by military judge under R.C.M. 1002(b)(2), the military judge should instruct the members on the charge(s) and specification(s) for which the members shall determine a sentence

and the charge(s) and specifications(s) for which the military judge shall determine a sentence.

(7) *Voting.* In closed session, before voting on a sentence, the members shall vote by secret written ballot separately on each aggravating factor under subsection (c) of this rule on which they have been instructed. A sentence of death may not be considered unless the members unanimously concur in a finding of the existence of at least one such aggravating factor and unanimously find that the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, including any relevant aggravating factor(s) under subsection (c). After voting on the necessary findings, the members shall vote on a sentence in accordance with R.C.M. 1006.

(8) *Announcement.* If the members voted unanimously for death, the military judge shall, in addition to complying with R.C.M. 1006(e) and 1007, announce which aggravating factors under subsection (c) the members unanimously found to exist beyond a reasonable doubt.

(c) *Aggravating factors.* Death may be adjudged only if the members find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) That the offense was committed before or in the presence of the enemy, except that this factor shall not apply in the case of a violation of Article 118;

**Discussion**

See paragraph 27, Part IV, for an explanation of “before or in the presence of the enemy.”

(2) That in committing the offense the accused—

(A) Knowingly created a grave risk of substantial damage to the national security of the United States; or

(B) Knowingly created a grave risk of substantial damage to a mission, system, or function of the United States, provided that this subparagraph shall apply only if substantial damage to the national security of the United States would have resulted had the intended damage been effected;

(3) That the offense caused substantial damage to the national security of the United States, whether or not the accused intended such damage, except that this

factor shall not apply in case of a violation of Article 118;

(4) That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Articles 103a or 103b;

(5) That the accused committed the offense with the intent to avoid hazardous duty;

(6) That, only in the case of a violation of Article 118, the offense was committed in time of war and in territory in which the United States or an ally of the United States was then an occupying power or in which the armed forces of the United States were then engaged in active hostilities;

(7) That, only in the case of a violation of Article 118(1):

(A) The accused was serving a sentence of confinement for 30 years or more or for life at the time of the murder;

(B) The murder was committed: while the accused was engaged in the commission or attempted commission of a separate murder, or any robbery, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, aggravated arson, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense.

(C) The murder was committed for the purpose of receiving money or a thing of value;

(D) The accused procured another by means of compulsion, coercion, or a promise of an advantage, a service, or a thing of value to commit the murder;

(E) The murder was committed with the intent to avoid or to prevent lawful apprehension or effect an escape from custody or confinement;

(F) The victim was the President of the United States, the President-elect, the Vice President, or, if there was no Vice President, the officer in the order of succession to the office of President of the United States, the Vice-President-elect, or any individual who is acting as President under the Constitution and laws of the United States, any Member of Congress

(including a Delegate to, or Resident Commissioner in, the Congress) or Member-of-Congress elect, justice or judge of the United States, a chief of state or head of government (or the political equivalent) of a foreign nation, or a foreign official (as such term is defined in section 1116(b)(3)(A) of title 18, United States Code), if the official was on official business at the time of the offense and was in the United States or in a place described in Mil. R. Evid.315(c)(2), 315(c)(3);

(G) The accused then knew that the victim was any of the following persons in the execution of office: a commissioned, warrant, noncommissioned, or petty officer of the armed services of the United States; a member of any law enforcement or security activity or agency, military or civilian, including correctional custody personnel; or any firefighter;

(H) The murder was committed with intent to obstruct justice;

(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, "substantial physical harm" means fractures or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, or other serious bodily injuries. The term "substantial physical harm" does not mean minor injuries, such as a black eye or bloody nose. The term "substantial mental or physical pain or suffering" is accorded its common meaning and includes torture.

(J) The accused has been found guilty in the same case of another violation of Article 118;

(K) The victim of the murder was under 15 years of age.

(8) That only in the case of a violation of Article 118(a)(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life.

### Discussion

Conduct amounts to "reckless indifference" when it evinces a wanton disregard of consequences under circumstances involving grave danger to the life of another, although no harm is necessarily intended. The accused must have had actual knowledge of the grave danger to others or knowledge of circumstances that would cause a reasonable person to realize the highly dangerous character of such conduct. In determining whether participation in the offense was major, the accused's presence at the scene and the extent to which

## R.C.M. 1004(c)(10)

the accused aided, abetted, assisted, encouraged, or advised the other participants should be considered. *See United States v. Berg*, 31 M.J. 38 (C.M.A. 1990); *United States v. McMonagle* 38 M.J. 53 (C.M.A. 1993).

---

(9) [Reserved]

(10) That, only in the case of a violation of the law of war, death is authorized under the law of war for the offense;

(11) That, only in the case of a violation of Article 103, 103a, or 103b:

(A) The accused has been convicted of another offense involving espionage, spying, or treason for which either a sentence of death or imprisonment for life was authorized by statute; or

(B) That in committing the offense, the accused knowingly created a grave risk of death to a person other than the individual who was the victim.

For purposes of this rule, “national security” means the national defense and foreign relations of the United States and specifically includes: a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without.

### Discussion

Examples of substantial damage to the national security of the United States include: impeding the performance of a combat mission or operation; impeding the performance of an important mission in a hostile fire or imminent danger pay area (*see* 37 U.S.C. § 310(a)); and disclosing military plans, capabilities, or intelligence such as to jeopardize any combat mission or operation of the armed services of the United States or its allies or to materially aid an enemy of the United States.

---

(d) *Other penalties.* When death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life, with or without eligibility for parole, and may be adjudged in lieu of the death penalty, subject to limitations specifically prescribed in this Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not a part of it.

### Discussion

A sentence of death may not be ordered executed until approved by the President. *See* R.C.M. 1207. A sentence of death which has been finally ordered executed will be carried out in the manner prescribed by the Secretary concerned. *See* R.C.M. 1102(b)(5).

---

## Rule 1005. Instructions on sentence

(a) *In general.* The military judge shall give the members appropriate instructions on sentence.

### Discussion

Instructions should be tailored to the facts and circumstances of the individual case.

---

(b) *When given.* Instructions on sentence shall be given after arguments by counsel and before the members close to deliberate on sentence, but the military judge may, upon request of the members, any party, or *sua sponte*, give additional instructions at a later time.

(c) *Requests for instructions.* During presentencing proceedings or at such other time as the military judge may permit, any party may request that the military judge instruct the members on the law as set forth in the request. The military judge may require the requested instruction to be written. Each party shall be given the opportunity to be heard on any proposed instruction on sentence before it is given. The military judge shall inform the parties of the proposed action on such requests before their closing arguments on sentence.

### Discussion

Requests for and objections to instructions should be resolved at an Article 39(a) session. *See* R.C.M. 801(e)(1)(C), 803.

The military judge is not required to give the specific instruction requested by counsel if the matter is adequately covered in the instructions.

The military judge should not identify the source of any instruction when addressing the members.

All written requests for instructions should be marked as appellate exhibits, whether or not they are given.

---

(d) *How given.* Instructions on sentence shall be given orally on the record in the presence of all parties and the members. Written copies of the instructions, or unless a party objects, portions of them, may also be given to the members for their use during deliberations.

**Discussion**

A copy of any written instructions delivered to the members should be marked as an appellate exhibit.

(e) *Required instructions.* Instructions on sentence shall include—

(1) A statement of the maximum authorized punishment that may be adjudged and of the mandatory minimum punishment, if any;

**Discussion**

The maximum punishment that may be adjudged is the lowest of the total permitted by the applicable paragraph(s) in Part IV for each separate offense of which the accused was convicted (see also R.C.M. 1003 concerning additional limits on punishments and additional punishments which may be adjudged) or the jurisdictional limit of the court-martial (see R.C.M. 201(f) and R.C.M. 1301(d)). In a case involving a plea agreement, the instruction should be tailored to reflect the available range of permissible punishment as set forth in the sentencing limitation, if any. See R.C.M. 705. The military judge may upon request or when otherwise appropriate instruct on lesser punishments. See R.C.M. 1003. If an increased punishment is authorized under R.C.M. 1003(d), the members must be informed of the basis for the increased punishment.

A carefully drafted sentence worksheet ordinarily should be used and should include reference to all authorized punishments in the case.

(2) A statement of the effect any sentence announced including a punitive discharge and confinement, or confinement in excess of six months, will have on the accused’s entitlement to pay and allowances;

(3) A statement of the procedures for deliberation and voting on the sentence set out in R.C.M. 1006;

**Discussion**

See also R.C.M. 1004 concerning additional instructions required in capital cases.

(4) A statement informing the members that they are solely responsible for selecting an appropriate sentence and may not rely on the possibility of any mitigating action by the convening or higher authority;

**Discussion**

See also R.C.M. 1002.

(5) A statement that the members should consider all matters in extenuation, mitigation, and aggravation, whether introduced before or after findings, and matters introduced under R.C.M. 1001(b)(1), (2), (3) and (5);

**Discussion**

For example, tailored instructions on sentencing should reflect the considerations set forth in Article 56(c), including the reputation or record of the accused in the service for good conduct, efficiency, fidelity, courage, bravery, or other traits of good character, and any pretrial restraint imposed on the accused.

(6) A statement that the members shall consider the sentencing guidance set forth in R.C.M. 1002(f); and

(7) Such other explanations, descriptions, or directions that the military judge determines to be necessary, whether properly requested by a party or determined by the military judge *sua sponte*.

(f) *Failure to object.* Failure to object to an instruction or to omission of an instruction before the members close to deliberate on the sentence shall constitute forfeiture of the objection. The military judge may require the party objecting to specify in what respect the instructions were improper. The parties shall be given the opportunity to be heard on any objection outside the presence of the members.

**Rule 1006. Deliberations and voting on sentence**

(a) *In general.* With respect to charge(s) and specification(s) for which a sentence of death may be determined and in all other cases in which the accused elects sentencing by members under R.C.M. 1002(b), the members shall deliberate and vote after the military judge instructs the members on sentence. Only the members shall be present during deliberations and voting. Superiority in rank shall not be used in any manner to control the independence of members in the exercise of their judgment.

(b) *Deliberations.* Deliberations require a full and free discussion of the sentence to be imposed in the case. Unless otherwise directed by the military judge, members may take with them in deliberations their notes, if any, any exhibits admitted in evidence, and any written instructions. Members may request that the court-martial be reopened and that portions of the record be read to them or additional evidence

**R.C.M. 1006(c)**

introduced. The military judge may, in the exercise of discretion, grant such requests.

(c) *Proposal of sentences.* Any member may propose a sentence. Each proposal shall be in writing and shall contain the complete sentence proposed. The junior member shall collect the proposed sentences and submit them to the president.

**Discussion**

A proposal should state completely each kind and, where appropriate, amount of authorized punishment proposed by that member. For example, a proposal of confinement for life would state whether it is or is without the eligibility for parole. See R.C.M.1003(b)(7).

(d) *Voting.*

(1) *Duty of members.* Each member has the duty to vote for a proper sentence for the offenses of which the court-martial found the accused guilty, regardless of the member's vote or opinion as to the guilt of the accused.

(2) *Secret ballot.* Proposed sentences shall be voted on by secret written ballot.

(3) *Procedure.*

(A) *Order.* All members shall vote on each proposed sentence in its entirety beginning with the least severe and continuing, as necessary, with the next least severe, until a sentence is adopted by the concurrence of the number of members required under paragraph (d)(4) of this rule. The process of proposing sentences and voting on them may be repeated as necessary until a sentence is adopted.

(B) *Counting votes.* The junior member shall collect the ballots and count the votes. The president shall check the count and inform the other members of the result.

**Discussion**

A sentence adopted by the required number of members may be reconsidered only in accordance with R.C.M. 1009.

(4) *Number of votes required.*

(A) *Death.* A sentence may include death only if the members unanimously vote for the sentence to include death.

**Discussion**

See R.C.M. 1004.

(B) *Other.* Any sentence other than death may be determined only if at least three-fourths of the members vote for that sentence.

**Discussion**

In computing the number of votes required to adopt a sentence, any fraction of a vote is rounded up to the next whole number. For example, if there are seven members in a general court-martial because a member has been excused under Article 29, at least six would have to concur to impose a sentence requiring a three-fourths vote.

(5) *Mandatory sentence.* When a mandatory minimum is prescribed for an offense under the UCMJ, the members shall vote on a sentence in accordance with this rule.

(6) *Plea agreements.* When the military judge accepts a plea agreement with a sentence limitation, the members shall vote on a sentence in accordance with the sentence limitation.

(7) *Effect of failure to agree.* If the required number of members do not agree on a sentence after a reasonable effort to do so, a mistrial may be declared as to the sentence and the case shall be returned to the convening authority, who may order a rehearing on sentence only or order that a sentence of no punishment be imposed.

(e) *Action after a sentence is reached.* After the members have agreed upon a sentence by the required number of votes in accordance with this rule, the court-martial shall be opened and the president shall inform the military judge that the members have determined a sentence. The military judge may, in the presence of the parties, examine any writing used by the president to state the determination and may assist the members in putting the sentence in proper form. If the members voted unanimously for a sentence of death, the writing shall indicate which aggravating factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. Neither that writing nor any oral or written clarification or discussion concerning it shall constitute announcement of the sentence.

**Discussion**

Ordinarily a sentence worksheet should be provided to the members as an aid to putting the sentence in proper form. If a sentence worksheet has been provided, the military judge should examine it before announcing the sentence. If the military judge intends to instruct the members after such examination, counsel should be permitted to examine the worksheet and to be heard on any instructions the military judge may give.

The president should not disclose any specific number of votes for or against any sentence.

If the sentence is ambiguous or apparently illegal, see R.C.M. 1009.

If the members voted unanimously for a sentence of death, the sentence worksheet shall indicate which aggravating factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. See R.C.M. 1004(b)(8).

---

**Rule 1007. Announcement of sentence**

(a) *In general.* The sentence shall be announced in the presence of all parties promptly after it has been determined.

**Discussion**

The date that the sentence is announced is the date a sentence is adjudged. See Articles 53 and 57.

(b) *Announcement.*

(1) In the case of sentencing by members, the sentence shall be announced by the military judge in accordance with the members' determination.

(2) In all other cases, the military judge shall announce the sentence and shall specify—

(A) the term of confinement, if any, and the amount of fine, if any, determined for each offense;

(B) for each term of confinement announced under subparagraph (A), whether the term of confinement is to run concurrently or consecutively with any other term or terms of confinement adjudged; and

(C) any other punishments under R.C.M. 1003 as a single, unitary sentence.

**Discussion**

If the sentence announced by the military judge includes death, the military judge must also announce which aggravating factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. See R.C.M. 1004(b)(8).

(c) *Erroneous announcement.* If the announced sentence is not the one actually determined by the court-martial, the error may be corrected by a new announcement made before entry of the judgment into the record. This action shall not constitute reconsideration of the sentence. If the court-martial is adjourned before the error is discovered, the military judge may call the court-martial into session to correct the announcement.

(d) *Polling prohibited.* Except as provided in Mil. R. Evid. 606, members may not otherwise be questioned about their deliberations and voting.

**Rule 1008. Impeachment of sentence**

A sentence which is proper on its face may be impeached only when extraneous prejudicial information was improperly brought to the attention of a member, outside influence was improperly brought to bear upon any member, or unlawful command influence was brought to bear upon any member.

**Discussion**

See R.C.M. 923 Discussion concerning impeachment of findings.

---

**Rule 1009. Reconsideration of sentence**

(a) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before such sentence is announced in open session of the court.

(b) *Exceptions.*

(1) If the sentence announced in open session was less than the mandatory minimum prescribed for an offense of which the accused has been found guilty, the court that announced the sentence may reconsider such sentence upon reconsideration in accordance with subsection (e) of this rule.

(2) If the sentence announced in open session exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial, the sentence may be reconsidered after announcement in accordance with subsection (e) of this rule.

(3) If the sentence announced in open session is not in accordance with a sentence limitation in the plea agreement, if any, the sentence may be reconsidered after announcement in accordance with subsection (e) of this rule.

**R.C.M. 1009(c)**

(c) *Clarification of sentence.* A sentence may be clarified at any time before entry of judgment.

(1) *Sentence determined by the military judge.* When a sentence determined by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practicable after the ambiguity is discovered.

(2) *Sentence determined by members.* When a sentence determined by the members is ambiguous, the military judge shall bring the matter to the attention of the members if the matter is discovered before the court-martial is adjourned. If the matter is discovered after adjournment, the military judge may call a session for clarification by the members as soon as practicable after the ambiguity is discovered.

(d) *Action by the convening authority.* Prior to entry of judgment, if a convening authority becomes aware that the sentence of the court-martial is ambiguous, the convening authority shall return the matter to the court-martial for clarification. When the sentence of the court-martial appears to be illegal, the convening authority shall return the matter to the court-martial for correction.

(e) *Reconsideration procedure.* A military judge may reconsider a sentence once announced only under the circumstances described in subsection (b). Any member of the court-martial may propose that a sentence determined by the members be reconsidered.

(1) *Instructions.* When a sentence has been determined by members and reconsideration has been initiated, the military judge shall instruct the members on the procedure for reconsideration.

(2) *Voting.* The members shall vote by secret written ballot in closed session whether to reconsider a sentence already determined by them.

(3) *Number of votes required.*

(A) *Necessary findings in capital sentencing.* Members may reconsider a unanimous vote under R.C.M. 1004(b)(4)(A) that an aggravating factor was proven beyond a reasonable doubt if at least one member votes to reconsider. Members may reconsider a unanimous vote under R.C.M. 1004(b)(4)(C) that any extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under R.C.M. 1004(c), if at least one member votes to reconsider. In all other circumstances, a vote under R.C.M. 1004(b)(4)(A) or (C) may be reconsidered only if at least a majority of

the members vote for reconsideration.

(B) *Sentence Determinations.*

(i) *With a view toward increasing.* Members may reconsider a sentence with a view toward increasing the sentence only if at least a majority votes for reconsideration.

(ii) *With a view toward decreasing.* Members may reconsider a sentence with a view toward decreasing the sentence only if:

(I) In the case of a sentence which includes death, at least one member votes to reconsider; or

(II) In the case of any other sentence, more than one-fourth of the members vote to reconsider.

**Discussion**

After a sentence has been adopted by secret ballot in closed session, no other vote may be taken on the sentence unless a vote to reconsider succeeds.

---

(4) *Successful vote.* If a vote to reconsider a sentence succeeds, the procedures in R.C.M. 1006 shall apply.

**Rule 1010. Notice concerning post-trial and appellate rights**

In each general and special court-martial, prior to adjournment, the military judge shall ensure that defense counsel has informed the accused orally and in writing of:

(a) The right to submit matters to the convening authority to consider before taking action;

(b) The right to appellate review, and the effect of waiver or withdrawal of such right, or failure to file an appeal, as applicable;

(c) The right to apply for relief from the Judge Advocate General if the case is not reviewed by a Court of Criminal Appeals under Article 66; and

(d) The right to the advice and assistance of counsel in the exercise of the foregoing rights or any decision to waive them.

The written advice to the accused concerning post-trial and appellate rights shall be signed by the accused and defense counsel and inserted in the record of trial as an appellate exhibit.

**Discussion**

The post-trial duties of the defense counsel concerning the appellate rights of the accused are set forth in paragraph (E)(iv) of the Discussion accompanying R.C.M. 502(d)(5). The defense counsel shall explain the appellate rights to the accused and prepare the written document of such advisement prior to or during trial.

---

**Rule 1011. Adjournment**

The military judge may adjourn the court-martial at the end of the trial of an accused or proceed to trial of other cases referred to that court-martial. Such an adjournment may be for a definite or indefinite period.

**Discussion**

A court-martial and its personnel have certain powers and responsibilities following the trial. *See, e.g.*, R.C.M. 502(d)(4) Discussion (G), 502(d)(5) Discussion (E), 808, 1007, 1009, Chapter XI.

---



## CHAPTER XI. POST-TRIAL PROCEDURE

### Rule 1101. Statement of trial results

(a) *Content.* After final adjournment of a general or special court-martial, the military judge shall sign and include in the record of trial a Statement of Trial Results. The Statement of Trial Results shall consist of the following—

(1) *Findings.* For each charge and specification referred to trial—

(A) a summary of each charge and specification;

(B) the plea(s) of the accused; and

(C) the finding or other disposition of each charge and specification.

(2) *Sentence.* The sentence of the court-martial and the date the sentence was announced by the court-martial, and the amount of credit, if any, applied to the sentence for pretrial confinement or for other reasons. If the accused was convicted of more than one specification and any part of the sentence was determined by a military judge, the Statement of Trial Results shall also specify—

(A) the confinement and fine for each specification, if any;

(B) whether any term of confinement is to run consecutively or concurrently with any other term(s) of confinement;

(C) the total amount of any fine(s) and the total amount of any confinement, after accounting for any credit and any terms of confinement that are to run consecutively or concurrently.

#### Discussion

The date that the sentence is adjudged is the date the sentence was announced. *See* Articles 53 and 57. The adjudged sentence may be modified by the convening authority or the military judge. *See generally* R.C.M. 1104, R.C.M. 1109, and R.C.M. 1110.

See R.C.M. 1002(d)(2) for military judge alone sentencing and R.C.M. 1002(e)(2) for sentencing in capital cases by military judge and members.

(3) *Forum.* The type of court-martial and the command by which it was convened.

(4) *Plea agreements.* In a case with a plea agreement, the statement shall specify any limitations on the punishment as set forth in the plea agreement.

(5) *Suspension recommendation.* If the military judge recommends that any portion of the sentence should be suspended, the statement shall specify—

(A) the portion(s) of the sentence to which the recommendation applies;

(B) the minimum duration of the suspension; and

(C) the facts supporting the suspension recommendation.

#### Discussion

The convening authority may only suspend a sentence of dishonorable discharge, bad-conduct discharge, or confinement in excess of six months if the military judge includes a recommendation for suspension in the Statement of Trial Results. *See* R.C.M. 1109(f). When the accused is sentenced by members, the members may recommend suspension of punitive discharge or confinement in excess of six months, but the convening authority may only act to suspend these punishments if the military judge adopts the suspension recommendation and includes it in the Statement of Trial Results.

(6) *Other information.* Any additional information directed by the military judge or required under regulations prescribed by the Secretary concerned.

(b) *Not guilty only by reason of lack of mental responsibility.* If an accused was found not guilty only by reason of lack of mental responsibility of any charge or specification, the military judge shall sign the Statement of Trial Results only after a hearing is conducted under R.C.M. 1105.

(c) *Abatement.* If the military judge abated the proceedings and the court-martial adjourned without a disposition as to at least one specification, the military judge shall include a brief explanation as to the reasons for abatement in the record of trial. If all charges are subsequently withdrawn, dismissed, or otherwise disposed of, the military judge shall sign a Statement of Trial Results in accordance with this rule.

#### Discussion

The issuance of an explanation of the reasons for abatement does not prevent a later termination of the abatement.

(d) *Distribution.* Trial counsel shall promptly provide a copy of the Statement of Trial Results to the accused's immediate commander, the convening authority or the convening authority's designee, and,

if appropriate, the officer in charge of the confinement facility. A copy of the Statement of Trial Results shall be provided to the accused or to the accused's defense counsel. If the statement is served on defense counsel, defense counsel shall, by expeditious means, provide the accused with a copy. A copy of the Statement of Trial Results shall be provided to any crime victim or victim's counsel in the case, without regard to whether the accused was convicted or acquitted of any offense.

**Discussion**

See R.C.M. 1104(b) addressing post-trial motions and proceedings to resolve allegations of error in a Statement of Trial Results.

For the definition of "crime victim," see R.C.M. 1001(c)(2)(A). However, in this provision, a copy of the Statement of Trial Results shall be provided to any crime victim without regard to whether the accused was convicted or acquitted of any offense.

**Rule 1102. Execution and effective date of sentences**

(a) *In general.* Except as provided in subsection (b), a sentence is executed and takes effect as follows:

(1) *General and special courts-martial.* In the case of a general or special court-martial, a sentence is executed and takes effect when the judgment is entered into the record under R.C.M. 1111.

**Discussion**

Except for a punishment of death or dismissal, the sentence of a general or special court-martial is not required to be approved or ordered executed in order to take effect.

(2) *Summary courts-martial.* In the case of a summary court-martial, a sentence is executed and takes effect when the convening authority acts on the sentence.

(b) *Exceptions.*

(1) *Forfeitures and reductions.* Unless deferred under R.C.M. 1103 or suspended under R.C.M. 1107, that part of an adjudged sentence that includes forfeitures or confinement is executed and takes effect as follows:

(A) Subject to subparagraph (B), if a sentence includes forfeitures in pay or allowances or reduction in grade, or, if forfeiture or reduction is required by Articles 58a or 58b, the sentence shall take effect on

the earlier of—

(i) 14 days after the sentence is announced under R.C.M. 1007; or

(ii) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

**Discussion**

The date that the sentence is adjudged is the date the sentence was announced. See Articles 53 and 57.

(B) If an accused is not confined and is performing military duties, that portion of the sentence that provides for more than two-thirds forfeitures of pay shall not be executed.

**Discussion**

An accused who is required to perform duties may not, as a result of a court-martial sentence, be deprived of more than two-thirds of pay while in such a status. This rule does not prohibit other deductions or withholdings from an accused's pay and allowances.

(2) *Confinement.*

(A) *In general.* A commander shall deliver the accused into post-trial confinement when the sentence of the court-martial includes death or confinement, unless a sentence of confinement is deferred under R.C.M. 1103.

(B) *Calculation.* Any period of confinement included in the sentence of a court-martial begins to run from the date the sentence is announced by the court-martial. If the accused was earlier ordered into confinement under R.C.M. 305, the accused's sentence shall be credited one day for each day of confinement already served.

(C) *Exclusions in calculating confinement.* The following periods shall be excluded in computing the service of the term of confinement:

(i) Periods during which the sentence to confinement is suspended or deferred;

(ii) Periods during which the accused is in custody of civilian authorities under Article 14 from the time of the delivery to the return to military custody, if the accused was convicted in the civilian court;

(iii) Periods during which the accused is in

**R.C.M. 1102(b)(2)C(iv)**

custody of civilian or foreign authorities after the convening authority, pursuant to Article 57(b)(2), has postponed the service of a sentence to confinement;

(iv) Periods during which the accused has escaped, or is absent without authority, or is absent under a parole that a proper authority has later revoked, or is released from confinement through misrepresentation or fraud on the part of the prisoner, or is released from confinement upon the prisoner's petition for a writ under a court order that is later reversed; and

(v) Periods during which another sentence by court-martial to confinement is being served. When a prisoner serving a court-martial sentence to confinement is later convicted by a court-martial of another offense and sentenced to confinement, the later sentence interrupts the running of the earlier sentence. Any unremitted remaining portion of the earlier sentence will be served after the later sentence is fully executed.

(D) *Multiple sentences of confinement.* If a court-martial sentence includes more than one term of confinement, each term of confinement shall be served consecutively or concurrently as determined by the military judge.

**Discussion**

When an accused is convicted of two or more charges or specifications and sentencing is conducted in accordance with R.C.M. 1002(d)(2) or (e)(2), the military judge must specifically state whether multiple terms of confinement for such offenses are to run concurrently or consecutively. *See* R.C.M. 1101.

Whether two or more terms of confinement should run concurrently is a matter of judicial discretion. *See* R.C.M. 1002.

(E) *Nature of the confinement.* The omission of hard labor from any sentence of a court-martial which has adjudged confinement shall not prohibit an appropriate authority from requiring hard labor as part of the punishment.

(F) *Place of confinement.* The place of confinement for persons sentenced to confinement by courts-martial shall be determined by regulations prescribed by the Secretary concerned. Under such regulations as the Secretary concerned may prescribe, a sentence to confinement adjudged by a court-martial or other military tribunal, regardless whether the sentence includes a punitive discharge or dismissal and regardless whether the punitive discharge or dismissal

has been executed, may be ordered to be served in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated. No member of the armed forces, or person serving with or accompanying an armed force in the field, may be placed in confinement in immediate association with enemy prisoners, or with individuals who are detained under the law of war and are foreign nationals and not members of the armed forces. The Secretary concerned may prescribe regulations governing the conditions of confinement.

(3) *Dishonorable or a bad-conduct discharge, self-executing.* A bad-conduct or dishonorable discharge shall be executed under regulations prescribed by the Secretary concerned after an appropriate official designated by those regulations has certified that the accused's case is final within the meaning of R.C.M. 1209. Upon completion of the certification, the official shall forward the certification to the accused's personnel office for preparation of a final discharge order and certificate.

(4) *Dismissal of a commissioned officer, cadet, or midshipman.* Dismissal of a commissioned officer, cadet, or midshipman shall be executed under regulations prescribed by the Secretary concerned—

(A) after the conviction is final within the meaning of R.C.M. 1209 and Article 57(c)(1) as certified by the approval authority designated pursuant to Article 57(a)(4); and

(B) only after the approval by the Secretary concerned or such Under Secretary or Assistant Secretary as the Secretary concerned may designate.

(5) *Sentences extending to death.* A punishment of death shall be carried out in a manner prescribed by the Secretary concerned—

(A) after the conviction is final within the meaning of R.C.M. 1209; and

(B) only after the approval of the President under R.C.M. 1207.

(c) *Other considerations concerning the execution of certain sentences.*

(1) *Death; action when accused lacks mental capacity.* An accused lacking the mental capacity to understand the punishment to be suffered or the reason for imposition of the death sentence may not be put to death during any period when such incapacity exists. The accused is presumed to possess the mental capacity to understand the punishment to be suffered and the reason for imposition of the death sentence. If a substantial question is raised as to whether the accused lacks capacity, the convening authority then exercising general court-martial jurisdiction over the accused shall order a hearing on the question. A military judge, counsel for the Government, and defense counsel shall be detailed. The convening authority shall direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining whether the accused understands the punishment to be suffered and the reason therefor. The military judge shall consider all evidence presented, including evidence provided by the accused. The accused has the burden of proving such lack of capacity by a preponderance of the evidence. The military judge shall make findings of fact, which will then be forwarded to the convening authority ordering the hearing. If the accused is found to lack capacity, the convening authority shall stay the execution until the accused regains appropriate capacity.

(2) *Restriction; hard labor without confinement.* When restriction and hard labor without confinement are included in the same sentence, they shall, unless one is suspended, be executed concurrently.

**Rule 1103. Deferment of confinement, forfeitures, and reduction in grade; waiver of Article 58b forfeitures**

(a) *In general.*

(1) After a sentence is announced, the convening authority may defer a sentence to confinement, forfeitures, or reduction in grade in accordance with this rule. Deferment may be at the request of the accused as provided in subsection (b), or without a request of the accused as provided in subsection (c).

(2) Deferment of a sentence to confinement, forfeitures, or reduction in grade is a postponement of the running of the sentence.

(b) *Deferment requested by an accused.* The convening authority or, if the accused is no longer in the convening authority's jurisdiction, the officer exercising general court-martial jurisdiction over the

command to which the accused is assigned, may, upon written application of the accused, at any time after the adjournment of the court-martial and before the entry of judgment, defer the accused's service of a sentence to confinement, forfeitures, and reduction in grade.

(c) *Deferment without a request from the accused.*

(1) In a case in which a court-martial sentences to confinement an accused referred to in paragraph (2), the convening authority may defer service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the armed forces by a State or foreign country.

(2) Paragraph (1) applies to an accused who, while in custody of a State or foreign country, is temporarily returned by that State or foreign country to the armed forces for trial by court-martial and, after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) As used in this subsection, the term "State" means a State of the United States, the District of Columbia, a territory, and a possession of the United States.

(d) *Action on deferment request.*

(1) The authority acting on the deferment request may, in that authority's discretion, defer service of a sentence to confinement, forfeitures, or reduction in grade.

(2) In a case in which the accused requests deferment, the accused shall have the burden of showing that the interests of the accused and the community in deferral outweigh the community's interests in imposition of the punishment on its effective date. Factors that the authority acting on a deferment request may consider in determining whether to grant the deferment request include, where applicable: the probability of the accused's flight; the probability of the accused's commission of other offenses, intimidation of witnesses, or interference with the administration of justice; the nature of the offenses (including the effect on the victim) of which the accused was convicted; the sentence adjudged; the command's immediate need for the accused; the effect of deferment on good order and discipline in the command; the accused's character, mental condition, family situation, and service record. The decision of the authority acting on the deferment request shall be subject to judicial review only for abuse of discretion. The action of the authority acting on the deferment

## R.C.M. 1103(e)

request shall be in writing. A copy of the action on the deferment request, to include any rescission, shall be included in the record of trial and a copy shall be provided to the accused and to the military judge.

(e) *Restraint when deferment is granted.* When deferment of confinement is granted, no form of restraint or other limitation on the accused's liberty may be ordered as a substitute form of punishment. An accused may, however, be restricted to specified limits or conditions may be placed on the accused's liberty during the period of deferment for any other proper reason, including a ground for restraint under R.C.M. 304.

(f) *End of deferment.* Deferment of a sentence to confinement, forfeitures, or reduction in grade ends:

(1) In a case where the accused requested deferment under subsection (b)—

(A) When the military judge of a general or special court-martial enters the judgment into the record of trial under R.C.M. 1111; or

(B) When the convening authority of a summary court-martial acts on the sentence of the court-martial;

(2) In a case where the deferment was granted under subsection (c), when the accused has been permanently released to the armed forces by a State or foreign country;

(3) When the deferred confinement, forfeitures, or reduction in grade are suspended;

### Discussion

Forfeitures resulting by operation of law, rather than those adjudged as part of a sentence, may be waived for six months or for the duration of the period of confinement, whichever is less. The waived forfeitures are paid as support to dependent(s) designated by the convening authority. When directing waiver and payment, the convening authority should identify by name the dependent(s) to whom the payments will be made and state the number of months for which the waiver and payment shall apply. In cases where the amount to be waived and paid is less than the jurisdictional limit of the court, the monthly dollar amount of the waiver and payment should be stated.

Reductions in grade resulting by operation of law may not be deferred.

(4) When the deferment expires by its own terms; or

(5) When the deferment is otherwise rescinded in accordance with subsection (g).

(g) *Rescission of deferment.*

(1) *Who may rescind.* The authority who granted the

deferment or, if the accused is no longer within that authority's jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned, may rescind the deferment.

(2) *Action.* Deferment of confinement, forfeitures, or reduction in grade may be rescinded when additional information is presented to a proper authority which, when considered with all other information in the case, that authority finds, in that authority's discretion, is grounds for denial of deferment under paragraph (d)(2). The accused and the military judge shall promptly be informed of the basis for the rescission. The accused shall also be informed of the right to submit written matters and to request that the rescission be reconsidered. The accused may be required to serve the sentence to confinement, forfeitures, or reduction in grade pending this action.

(3) *Orders.* Rescission of a deferment before or concurrently with the entry of judgment shall be noted in the judgment that is entered into the record of trial under R.C.M. 1111.

(h) *Waiving forfeitures resulting from a sentence to confinement to provide for dependent support.*

(1) With respect to forfeiture of pay and allowances resulting only by operation of law and not adjudged by the court, the convening authority may waive, for a period not to exceed six months, all or part of the forfeitures for the purpose of providing support to the accused's dependent(s). The convening authority may waive and direct payment of any such forfeitures when they become effective by operation of Article 58(b).

(2) Factors that may be considered by the convening authority in determining the amount of forfeitures, if any, to be waived include, but are not limited to, the length of the accused's confinement, the number and age(s) of the accused's family members, whether the accused requested waiver, any debts owed by the accused, the ability of the accused's family members to find employment, and the availability of transitional compensation for abused dependents permitted under 10 U.S.C. 1059.

(3) For the purposes of this rule, a "dependent" means any person qualifying as a "dependent" under 37 U.S.C. 401.

### Rule 1104. Post-trial motions and proceedings

(a) *Post-trial Article 39(a) sessions.*

(1) *In general.* Upon motion of either party or *sua sponte*, the military judge may direct a post-trial

Article 39(a) session at any time before the entry of judgment under R.C.M. 1111 and, when necessary, after a case has been returned to the military judge by a higher court. Counsel for the accused shall be present in accordance with R.C.M. 804 and R.C.M. 805.

### Discussion

A post-trial session with members requires calling the court to order, and is not a post-trial Article 39(a) session.

(2) *Purpose.* The purpose of post-trial Article 39(a) sessions is to inquire into, and, when appropriate, to resolve any matter that arises after trial that substantially affects the legal sufficiency of any findings of guilty or the sentence.

(3) *Scope.* A military judge at a post-trial Article 39(a) session may reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence. Prior to entering such a finding or findings, the military judge shall give each party an opportunity to be heard on the matter in a post-trial Article 39(a) session. The military judge may *sua sponte*, at any time prior to the entry of judgment, take one or both of the following actions:

(i) enter a finding of not guilty of one or more offenses charged; or

(ii) enter a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification.

(b) *Post-trial motions.*

(1) *Matters.* Post-trial motions may be filed by either party or when directed by the military judge to address such matters as—

(A) An allegation of error in the acceptance of a plea of guilty;

(B) A motion to set aside one or more findings because the evidence is legally insufficient;

(C) A motion to correct a computational, technical, or other clear error in the sentence;

(D) An allegation of error in the Statement of Trial Results;

(E) An allegation of error in the post-trial processing of the court-martial; and

(F) An allegation of error in the convening authority's action under R.C.M. 1109 or 1110.

(2) *Timing.*

(A) Except as provided in subparagraphs (B) and (C), post-trial motions shall be filed not later than 14 days after defense counsel receives the Statement of Trial Results. The military judge may extend the time to submit such matters by not more than an additional 30 days for good cause.

(B) A motion to correct an error in the action of the convening authority shall be filed within five days after the party receives the convening authority's action. If any post-trial action by the convening authority is incomplete, irregular, or contains error, the military judge shall—

(i) return the action to the convening authority for correction; or

(ii) with the agreement of all parties, correct the action of the convening authority in the entry of judgment.

(C) A motion to correct a clerical or computational error in a judgment entered by the military judge shall be made within five days after a party is provided a copy of the judgment.

(c) *Matters not subject to post-trial sessions.* A post-trial session may not be directed:

(1) For reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(2) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of the code; or

(3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(d) *Procedure.*

(1) *Personnel.* The requirements of R.C.M. 505 and 805 shall apply at post-trial sessions except that, for good cause, a different military judge may be detailed, subject to R.C.M. 502(c) and 902.

(2) *Record.* All post-trial sessions shall be held in open session. The record of the post-trial sessions shall be prepared, certified, and provided in accordance with R.C.M. 1112 and shall be included in the record of the prior proceedings.

### **Rule 1105. Post-trial hearing for person found not guilty only by reason of lack of mental responsibility**

(a) *In general.* The military judge shall conduct a

## R.C.M. 1105(b)

hearing not later than forty days following the finding that an accused is not guilty only by reason of a lack of mental responsibility.

(b) *Psychiatric or psychological examination and report.* Prior to the hearing, the military judge or convening authority shall order a psychiatric or psychological examination of the accused, with the resulting psychiatric or psychological report transmitted to the military judge for use in the post-trial hearing.

(c) *Post-trial hearing.*

(1) The accused shall be represented by defense counsel and shall have the opportunity to testify, present evidence, call witnesses on his or her behalf, and to confront and cross-examine witnesses who appear at the hearing.

(2) The military judge is not bound by the rules of evidence except with respect to privileges.

(3) An accused found not guilty only by reason of a lack of mental responsibility of an offense involving bodily injury to another, or serious damage to the property of another, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another due to a present mental disease or defect. With respect to any other offense, the accused has the burden of such proof by a preponderance of the evidence.

(4) If, after the hearing, the military judge finds the accused has satisfied the standard specified in paragraph (3), the military judge shall inform the general court-martial convening authority of this result and the accused shall be released. If, however, the military judge finds after the hearing that the accused has not satisfied the standard specified in paragraph (3), then the military judge shall inform the general court-martial convening authority of this result and that authority may commit the accused to the custody of the Attorney General.

### Rule 1106. Matters submitted by the accused

(a) *In general.* After a sentence is announced in a court-martial, the accused may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109 or 1110.

(b) *Matters submitted by the accused.*

(1) Subject to paragraph (2), the accused may submit

to the convening authority any matters that may reasonably tend to inform the convening authority's exercise of discretion under R.C.M. 1109 or 1110. The convening authority is only required to consider written submissions. Submissions are not subject to the Military Rules of Evidence.

(2) Submissions under this rule may not include matters that relate to the character of a crime victim unless such matters were admitted as evidence at trial.

### Discussion

*See also* R.C.M. 1109(d)(3)(C)(ii). For purposes of this provision, the term "crime victim" has the same meaning as the term "victim of an offense under this chapter" in Article 6b.

(c) *Access to court-martial record.* Upon request by the defense, trial counsel shall provide the accused or counsel for the accused a copy of the recording of all open sessions of the court-martial, and copies of, or access to, the evidence admitted at the court-martial, and the appellate exhibits. Such access shall not include sealed or classified court-martial material or recordings unless authorized by a military judge upon a showing of good cause. A military judge shall issue appropriate protective orders when authorizing such access.

### Discussion

The record of trial is not certified until after entry of judgment. This rule allows the defense to have access to the court-martial recordings and evidence in a timely manner in order to submit matters to the convening authority for consideration in deciding whether to take action on either the findings or sentence. *See* R.C.M. 1109 and 1110.

(d) *Time periods.*

(1) *General and special courts-martial.* After a trial by general or special court-martial, the accused may submit matters to the convening authority under this rule within ten days after the sentence is announced.

(2) *Summary courts-martial.* After a trial by summary court-martial, the accused may submit matters under this rule within seven days after the sentence is announced.

(3) *Rebuttal.* In a case where a crime victim has submitted matters under R.C.M. 1106A, the accused shall have five days from receipt of those matters to submit any matters in rebuttal. Such a response shall be limited to addressing matters raised in the crime

victim's submissions.

(4) *Extension of time.*

(A) If, within the period described in paragraph (1) or (2), the accused shows that additional time is required for the accused to submit matters, the convening authority may, for good cause, extend the period for not more than 20 days.

(B) For purposes of this rule, good cause for an extension ordinarily does not include the need to obtain matters that reasonably could have been presented at the court-martial.

**Discussion**

If at the time a victim makes a submission under R.C.M. 1106A the accused has not yet made a submission, the accused's submission may include any matters permitted by R.C.M. 1106(b) in addition to matters in rebuttal under R.C.M. 1106(d)(1)(3).

(e) *Waiver.*

(1) *Failure to submit matters.* Failure to submit matters within the time prescribed by this rule waives the right to submit such matters.

(2) *Submission of matters.* Submission of any matters under this rule shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limits is expressly reserved in writing.

(3) *Written waiver.* The accused may expressly waive, in writing, the right to submit matters under this rule. Once submitted, such a waiver may not be revoked.

(4) *Absence of accused.* If the accused does not submit matters under this rule as a result of an unauthorized absence, the accused shall be deemed to have waived the right to submit matters under this rule.

**Rule 1106A. Matters submitted by crime victim**

(a) *In general.* In a case with a crime victim, after a sentence is announced in a court-martial any crime victim of an offense may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109 or 1110.

(b) *Notice to a crime victim.*

(1) *In general.* Subject to such regulations as the Secretary concerned may prescribe, trial counsel, or in the case of a summary court-martial, the summary

court-martial officer, shall make reasonable efforts to inform crime victims, through counsel, if applicable, of their rights under this rule, and shall advise such crime victims on the procedure for making submissions.

(2) *Crime victim defined.* As used in this rule, the term "crime victim" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty, and on which the convening authority may take action under R.C.M. 1109 or 1110, or the individual's lawful representative or designee appointed by the military judge under these rules.

(c) *Matters submitted by a crime victim.*

(1) Subject to paragraph (2), a crime victim may submit to the convening authority any matters that may reasonably tend to inform the convening authority's exercise of discretion under R.C.M. 1109 or 1110. The convening authority is only required to consider written submissions. Submissions are not subject to the Military Rules of Evidence.

(2) *Limitations on submissions.*

(A) Submissions under this rule may not include matters that relate to the character of the accused unless such matters were admitted as evidence at trial.

**Discussion**

See R.C.M. 1109(d)(3)(C)(i).

(B) The crime victim is entitled to one opportunity to submit matters to the convening authority under this rule.

**Discussion**

A convening authority is not required to consider matters submitted outside the single submission or outside the prescribed time limitations, and may not consider matters adverse to the accused without providing the accused an opportunity to respond. See R.C.M. 1109(d)(3)(C)(i).

(3) The convening authority shall ensure any matters submitted by a crime victim under this subsection be provided to the accused as soon as practicable.

**Discussion**

See R.C.M. 1106(d)(3).



**R.C.M. 1106A(d)**

---

(d) *Access to court-martial record.* Upon request by a crime victim or crime victim's counsel, trial counsel shall provide a copy of the recording of all open sessions of the court-martial, and copies of, or access to, the evidence admitted at the court-martial, and the appellate exhibits. Such access shall not include sealed or classified court-martial material or recordings unless authorized by a military judge upon a showing of good cause. A military judge shall issue appropriate protective orders when authorizing such access.

**Discussion**

The record of trial is not certified until after entry of judgment. This rule allows the victim to have access to the court-martial recordings and evidence in a timely manner in order to submit matters to the convening authority for consideration.

---

(e) *Time periods.*

(1) *General and special courts-martial.* After a trial by general or special court-martial, a crime victim may submit matters to the convening authority under this rule within ten days after the sentence is announced.

(2) *Summary courts-martial.* After a trial by summary court-martial, a crime victim may submit matters under this rule within seven days after the sentence is announced.

(3) *Extension of time.*

(A) If, within the period described in paragraph (1) or (2), the crime victim shows that additional time is required for the crime victim to submit matters, the convening authority may, for good cause, extend the period for not more than 20 days.

(B) For purposes of this rule, good cause for an extension ordinarily does not include the need to obtain matters that reasonably could have been obtained prior to the conclusion of the court-martial.

(f) *Waiver.*

(1) *Failure to submit matters.* Failure to submit matters within the time prescribed by this rule waives the right to submit such matters.

(2) *Written waiver.* A crime victim may expressly waive, in writing, the right to submit matters under this rule. Once filed, such a waiver may not be revoked.

**Rule 1107. Suspension of execution of sentence; remission**

(a) *In general.* Suspension of a sentence grants the accused a probationary period during which the suspended part of a sentence is not executed, and upon the accused's successful completion of which the suspended part of the sentence shall be remitted. Remission cancels the unexecuted part of a sentence to which it applies. The unexecuted part of a sentence is that part of the sentence that has not been carried out.

(b) *Who may suspend and remit.*

(1) *Suspension when acting on sentence.* The convening authority may suspend the execution of a court-martial sentence as authorized under R.C.M. 1109 or 1110.

(2) *Suspension after entry of judgment.* The commander of the accused who has the authority to convene a court-martial of the type that imposed the sentence on the accused may suspend any part of the unexecuted part of any sentence except a sentence of death, dishonorable discharge, bad-conduct discharge, dismissal, or confinement for more than six months.

(3) *Remission of sentence.* The commander of the accused who has the authority to convene a court-martial of the type that imposed the sentence on the accused may remit any unexecuted part of the sentence, except a sentence of death, dishonorable discharge, bad-conduct discharge, dismissal, or confinement for more than six months.

(4) *Secretarial authority.* The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years.

(c) *Conditions of suspension.* The authority who suspends the execution of the sentence of a court-martial shall:

(1) Specify in writing the conditions of the suspension;

(2) Cause a copy of the conditions of the suspension to be served on the probationer; and

(3) Cause a receipt to be secured from the

probationer for service of the conditions of the suspension.

Unless otherwise stated, an action suspending a sentence includes as a condition that the probationer not violate any punitive article of the Uniform Code of Military Justice.

(d) *Limitations on suspension.*

(1) A sentence of death may not be suspended.

(2) A sentence of dishonorable discharge, bad-conduct discharge, dismissal, or confinement for more than six months may be suspended only as provided by paragraph (b)(4) and R.C.M. 1109(f).

(3) Suspension shall be for a stated period or until the occurrence of an anticipated future event. The period shall not be unreasonably long. The Secretary concerned may further limit by regulation the period for which the execution of a sentence may be suspended. The convening authority shall provide in the action that, unless the suspension is sooner vacated, the expiration of the period of suspension shall remit the suspended portion of the sentence.

(e) *Termination of suspension by remission.* Expiration of the period provided in the action suspending a sentence or part of a sentence shall remit the suspended sentence portion unless the suspension is sooner vacated. Death or separation which terminates status as a person subject to the UCMJ will result in remission of the suspended portion of the sentence.

**Rule 1108. Vacation of suspension of sentence**

(a) *In general.* Suspension of execution of the sentence of a court-martial may be vacated for violation of any condition of the suspension as provided in this rule.

(b) *Timeliness.*

(1) *Violation of conditions.* Vacation shall be based on a violation of any condition of suspension which occurs within the period of suspension.

(2) *Vacation proceedings.* Vacation proceedings under this rule shall be completed within a reasonable time.

(3) *Order vacating the suspension.* The order vacating the suspension shall be issued before the expiration of the period of suspension.

(4) *Interruptions to the period of suspension.* Unauthorized absence of the probationer or the commencement of proceedings under this rule to vacate suspension interrupts and tolls the running of the period of suspension.

(c) *Confinement of probationer pending vacation proceedings.*

(1) *In general.* A probationer under a suspended sentence to confinement may be confined pending action under subsection (e) of this rule, in accordance with the procedures in this subsection.

(2) *Who may order confinement.* Any person who may order pretrial restraint under R.C.M. 304(b) may order confinement of a probationer under a suspended sentence to confinement.

(3) *Basis for confinement.* A probationer under a suspended sentence to confinement may be ordered into confinement upon probable cause to believe the probationer violated any conditions of the suspension.

(4) *Preliminary review of confinement.* Unless vacation proceedings under subsection (d) of this rule are completed within 7 days of imposition of confinement of the probationer (not including any delays requested by probationer), a preliminary review of the confinement shall be conducted by a neutral and detached officer appointed in accordance with regulations of the Secretary concerned.

(A) *Rights of confined probationer.* Before the preliminary review, the probationer shall be notified in writing of:

(i) The time, place, and purpose of the preliminary review, including the alleged violation(s) of the conditions of suspension;

(ii) The right to be present at the preliminary review;

(iii) The right to be represented at the preliminary review by civilian counsel provided by the probationer or, upon request, by military counsel detailed for this purpose; and

(iv) The opportunity to be heard, to present witnesses who are reasonably available and other evidence, and the right to confront and cross-examine adverse witnesses unless the officer conducting the preliminary review determines that this would subject these witnesses to risk or harm. For purposes of this subsection, a witness is not reasonably available if the witness requires reimbursement by the United States for cost incurred in appearing, cannot appear without unduly delaying the proceedings or, if a military witness, cannot be excused from other important duties. Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony.

(B) *Rules of evidence.* Only Mil. R. Evid. 301,

**R.C.M. 1108(e)(4)(C)**

302, 303, 305, 412, and Section V (Privileges) apply to proceedings under this rule, except Mil. R. Evid. 412(b)(1)(C) does not apply. In applying these rules to a preliminary review, the term “military judge,” as used in these rules, shall mean the officer conducting the preliminary review, who shall assume the military judge’s authority to exclude evidence from the hearing, and who shall, in discharging this duty, follow the procedures set forth in these rules.

(C) *Decision.* The officer conducting the preliminary review shall determine whether there is probable cause to believe that the probationer violated the conditions of the probationer’s suspension. If the officer conducting the preliminary review determines that probable cause is lacking, the officer shall issue a written order directing that the probationer be released from confinement. If the officer determines that there is probable cause to believe that the probationer violated a condition of suspension, the officer shall set forth this determination in a written memorandum that details therein the evidence relied upon and reasons for making the decision. The officer shall forward the original memorandum or release order to the probationer’s commander and forward a copy to the probationer and the officer in charge of the confinement facility.

(d) *Vacation proceedings.*

(1) *In general.* The purpose of the vacation hearing is to determine whether there is probable cause to believe that the probationer violated a condition of the probationer’s suspension.

(A) *Sentence of general courts-martial and certain special courts-martial.* In the case of vacation proceedings for a suspended sentence of any general court-martial or a suspended sentence of a special court-martial that adjudged either a bad-conduct discharge or confinement for more than six months, the officer having special court-martial jurisdiction over the probationer shall either personally hold the hearing or detail a judge advocate to preside at the hearing. If there is no officer having special court-martial jurisdiction over the probationer who is subordinate to the officer having general court-martial jurisdiction over the probationer, the officer exercising general court-martial jurisdiction over the probationer shall either personally hold a hearing under this subsection or detail a judge advocate to conduct the hearing.

(B) *Special court-martial wherein a bad-conduct discharge or confinement for more than six months was not adjudged.* In the case of vacation proceedings for a

sentence from a special court-martial that did not include a bad-conduct discharge or confinement for more than six months, the officer having special court-martial jurisdiction over the probationer shall either personally hold the hearing or detail a judge advocate to conduct the hearing.

(C) *Sentence of summary court-martial.* In the case of vacation proceedings for a suspended sentence of a summary court-martial, the officer having summary court-martial jurisdiction over the probationer shall either personally hold the hearing or detail a commissioned officer to conduct the hearing.

(2) *Notice to probationer.* Before the hearing, the officer conducting the hearing shall cause the probationer to be notified in writing of:

(A) The time, place, and purpose of the hearing;

(B) The right to be present at the hearing;

(C) The alleged violation(s) of the conditions of suspension and the evidence expected to be relied on;

(D) The right to be represented at the hearing by civilian counsel provided by the probationer or, upon request, by military counsel detailed for this purpose; and

(E) The opportunity to be heard, to present witnesses who are reasonably available and other evidence, and the right to confront and cross-examine adverse witnesses unless the officer conducting the preliminary review determines that this would subject these witnesses to risk or harm.

(3) *Procedure.*

(A) *Generally.* The hearing shall begin with the hearing officer informing the probationer of the probationer’s rights. The Government will then present evidence. Upon the conclusion of the Government’s presentation of evidence, the probationer may present evidence. The probationer shall have full opportunity to present any matters in defense, extenuation, or mitigation. Both the Government and probationer shall be afforded an opportunity to cross-examine adverse witnesses. The hearing officer may also question witnesses called by the parties.

(B) *Rules of evidence.* The Military Rules of Evidence applicable to vacation proceedings are the same as those set forth in subparagraph (c)(4)(B) of this rule.

(C) *Production of witnesses and other evidence.* The procedure for the production of witnesses and other evidence shall follow that prescribed in R.C.M. 405(h), except that R.C.M. 405(h)(3)(B) shall not

apply. The hearing officer shall only consider testimony and other evidence that is relevant to the limited purpose of the hearing.

#### Discussion

A hearing officer may not order the production of any privileged matters.

---

(D) *Presentation of testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the probationer may make an unsworn statement.

#### Discussion

See R.C.M. 807. The hearing officer is required to include in the record of the hearing, at a minimum, a summary of the substance of all testimony.

---

(E) *Other evidence.* If relevant to the limited purpose of the hearing, and not cumulative, a hearing officer may consider other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that the hearing officer determines is reliable. This other evidence need not be sworn.

(F) *Protective order for release of privileged information.* If the Government agrees to disclose to the probationer information to which the protections afforded by Mil. R. Evid. 505 or 506 may apply, the convening authority, or other person designated by regulation of the Secretary of the service concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the probationer. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority.

(G) *Presence of probationer.* The taking of evidence shall not be prevented and the probationer shall be considered to have waived the right to be present whenever the probationer:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify

exclusion from the proceeding.

(H) *Objections.* Any objection alleging failure to comply with these rules shall be made to the convening authority via the hearing officer. The hearing officer shall include a record of all objections in the written recommendations to the convening authority.

(I) *Access by spectators.* The procedures for access by spectators shall follow those prescribed in R.C.M. 405(j)(3).

(J) *Victims' rights.* Any victim of the underlying offense for which the probationer received the suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, has the right to reasonable, accurate, and timely notice of the vacation hearing.

#### Discussion

The term "victim" has the same meaning as the term "victim of an offense under this chapter" in Article 6b.

---

(4) *Record and recommendation.* The officer conducting the hearing shall make a summarized record of the hearing. If the hearing is not personally conducted by the officer having the authority to take action under subsection (e) of this rule, the officer who conducted the hearing shall forward the record and that officer's written recommendation concerning vacation to such authority. The record shall include the recommendation, the evidence relied upon, and the rationale supporting the recommendation.

(5) *Release from confinement.* If the hearing is not personally conducted by the officer having the authority to take action under subsection (e) of this rule and the officer conducting the hearing finds there is not probable cause to believe that the probationer violated any condition of the suspension, the officer shall order the release of the probationer from any confinement ordered under subsection (c) of this rule, and forward the record and recommendation to the officer having the authority to take action under subsection (e) of this rule.

(e) *Action.*

(1) *General courts-martial and certain special courts-martial.* In a case of a suspended sentence from any general court-martial or a suspended sentence from a special court-martial that adjudged either a bad-conduct discharge or confinement for more than six months, unless the officer exercising general court-

## R.C.M. 1108(e)(2)

martial jurisdiction over the probationer personally conducted the hearing, the officer exercising general court-martial jurisdiction over the probationer shall review the record and the recommendation produced by the officer who conducted the hearing on the alleged violation of the conditions of suspension, decide whether the probationer violated a condition of suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising general court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.

(2) *Special courts-martial wherein a bad-conduct discharge and confinement for more than six months was not adjudged.* In a case of a suspended sentence from a special court-martial that did not include a bad-conduct discharge or confinement for more than six months, unless the officer having special court-martial jurisdiction over the probationer personally conducted the hearing, the officer having special court-martial jurisdiction over the probationer shall review the record and the recommendation produced by the officer who conducted the hearing, decide whether the probationer violated a condition of suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising special court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence. The authority holding the same or higher court-martial authority as the officer who originally suspended the probationer's sentence may withhold the authority to take action under this paragraph to that officer.

(3) *Vacation of a suspended sentence from a summary court-martial.* In a case of a suspended sentence from a summary court-martial, unless the officer having summary court-martial jurisdiction over the probationer personally conducted the hearing, the officer having summary court-martial jurisdiction over the probationer shall review the record and the recommendation produced by the officer who conducted the hearing, and decide whether the probationer violated a condition of suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising summary court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence. The authority holding the same or

higher court-martial authority as the officer who originally suspended the probationer's sentence may withhold the authority to take action under this paragraph to that officer.

(4) *Execution.* Any unexecuted part of a suspended sentence ordered vacated under this subsection shall be executed.

## Rule 1109. Reduction of sentence, general and special courts-martial

(a) *In general.* This rule applies to the post-trial actions of the convening authority in any general or special court-martial in which—

(1) The court-martial found the accused guilty of—

(A) An offense for which the maximum authorized sentence to confinement is more than two years, without considering the jurisdictional maximum of the court;

(B) A violation of Article 120(a) or (b);

(C) A violation of Article 120b; or

(D) A violation of such other offense as the Secretary of Defense has specified by regulation; or

(2) The sentence of the court-martial includes—

(A) A bad-conduct discharge, dishonorable discharge, or dismissal;

(B) A term of confinement, or terms of confinement running consecutively, more than six months; or

### Discussion

The applicability of R.C.M. 1109(a)(2)(B) is determined by assessing the total amount of confinement that is to be served. In a case where the military judge determined the sentence of the accused, the total amount of confinement is based upon the military judge's determination as to whether any terms of confinement are to run concurrently or consecutively. For instance, if the military judge determines that all terms of confinement are to be served concurrently and the total amount of confinement is six months or less, R.C.M. 1109(a)(2)(B) does not apply. If, however, the military judge determines that two or more terms of confinement are to be served consecutively and the total amount of confinement is more than six months, R.C.M. 1109(a)(2)(B) applies.

---

(C) Death.

(b) *Limitation of authority on findings.* For any court-martial described under subsection (a), the convening authority may not set aside, disapprove, or take any other action on the findings of the court-martial.

(c) *Limited authority to act on sentence.* For any court-martial described under subsection (a), the convening authority may—

(1) Modify a bad-conduct discharge, dishonorable discharge, or dismissal only as provided in subsections (e) and (f);

(2) Modify a term of confinement of more than six months, or terms of confinement that running consecutively are more than six months, only as provided in subsections (e) and (f);

**Discussion**

See the Discussion following R.C.M. 1109(a)(2)(B).

(3) Reduce or commute a punishment of death only as provided in subsection (e);

(4) Reduce, commute, or suspend, in whole or in part, any punishment adjudged for an offense tried under the law of war other than the punishments specified in paragraphs (1), (2), and (3);

(5) Reduce, commute, or suspend, in whole or in part, the following punishments:

(A) The confinement portion of a sentence if the confinement portion of the sentence is six months or less, to include terms of confinement that running consecutively total six months or less;

**Discussion**

See the Discussion following R.C.M. 1109(a)(2)(B).

- (B) A reprimand;
- (C) Forfeiture of pay or allowances;
- (D) A fine;
- (E) Reduction in pay grade;
- (F) Restriction to specified limits; and
- (G) Hard labor without confinement.

(d) *General Considerations.*

(1) *Who may take action.* If it is impracticable for the convening authority to act under this rule, the convening authority shall, in accordance with such regulations as the Secretary concerned may prescribe, forward the case to an officer exercising general court-martial jurisdiction who may take action under this rule.

(2) *Legal advice.* In determining whether to take action, or to decline taking action under this rule, the convening authority shall consult with the staff judge advocate or legal advisor.

(3) *Consideration of matters.*

(A) *Matters submitted by accused and crime victim.* Before taking or declining to take any action on the sentence under this rule, the convening authority shall consider matters timely submitted under R.C.M. 1106 and 1106A, if any, by the accused and any crime victim.

(B) *Additional matters.* Before taking action the convening authority may consider—

(i) The Statement of Trial Results;

**Discussion**

See R.C.M. 1104(b) addressing post-trial motions and proceedings to resolve allegations of error in a Statement of Trial Results.

(ii) The evidence introduced at the court-martial, any appellate exhibits, and the recording or transcription of the proceedings, subject to the provisions of R.C.M. 1113 and subparagraph (C);

(iii) The personnel records of the accused; and

(iv) Such other matters as the convening authority deems appropriate.

(C) *Prohibited matters.*

(i) *Accused.* The convening authority may not consider matters adverse to the accused that were not admitted at the court-martial, with knowledge of which the accused is not chargeable, unless the accused is first notified and given an opportunity to rebut.

(ii) *Crime victim.* The convening authority shall not consider any matters that relate to the character of a crime victim unless such matters were presented as evidence at trial and not excluded at trial.

**Discussion**

For purposes of this provision, the term “crime victim” has the same meaning as “victim of an offense under this chapter” in Article 6b.

(3) *Timing.* Except as provided in subsection (e), any action taken by the convening authority under this rule shall be taken prior to entry of judgment. If the convening authority decides to take no action, that decision shall be transmitted promptly to the military

**R.C.M. 1109(e)**

judge as provided under subsection (g).

(e) *Reduction of sentence for substantial assistance by accused.*

(1) *In general.* A convening authority may reduce, commute, or suspend the sentence of an accused, in whole or in part, if the accused has provided substantial assistance in the criminal investigation or prosecution of another person.

(2) *Trial counsel.* A convening authority may reduce the sentence of an accused under this subsection only upon the recommendation of trial counsel who prosecuted the accused. If the person who served as trial counsel is no longer serving in that position, or is not reasonably available, the attorney who is primarily responsible for the investigation or prosecution in which the accused has provided substantial assistance, and who represents the United States, is trial counsel for the purposes of this subsection. The recommendation of trial counsel is the decision of trial counsel alone. No person may direct trial counsel to make or not make such a recommendation.

(3) *Who may act.*

(A) Before entry of judgment, the convening authority may act on the recommendation of trial counsel under paragraph (2).

(B) After entry of judgment, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned may act on the recommendation of trial counsel under paragraph (2).

(4) *Scope of authority.* A convening authority authorized to act under paragraph (3) may accept the recommendation of trial counsel under paragraph (2) of this subsection, and may reduce, commute, or suspend a sentence in whole or in part, including any mandatory minimum sentence.

(5) *Limitations.*

(A) A sentence of death may not be suspended under this subsection.

(B) In the case of a recommendation by trial counsel under paragraph (2) of this subsection made more than one year after entry of judgment, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned may reduce a sentence only if the substantial assistance of the accused involved—

(i) Information not known to the accused until one year or more after sentencing;

(ii) Information the usefulness of which could

not reasonably have been anticipated by the accused until more than one year after sentencing and which was promptly provided to the Government after its usefulness was reasonably apparent to the accused; or

(iii) Information provided by the accused to the Government within one year of sentencing, but which did not become useful to the Government until more than one year after sentencing.

(6) *Evaluating substantial assistance.* In evaluating whether the accused has provided substantial assistance, the trial counsel and convening authority may consider the presentence assistance of the accused.

(7) *Action after entry of judgment.* If the officer exercising general court-martial jurisdiction over the command to which the accused is assigned acts on the sentence of an accused after entry of judgment, the convening authority's action shall be forwarded to the chief trial judge. The chief trial judge, or a military judge detailed by the chief trial judge, shall modify the judgment of the court-martial to reflect the action by the convening authority. The action by the convening authority and the modified judgment shall be forwarded to the Judge Advocate General and shall be included in the original record of trial. A sentence which is reduced under this rule shall not abridge any right of the accused to appellate review.

(f) *Suspension.*

(1) The convening authority may suspend a sentence of a dishonorable discharge, bad-conduct discharge, dismissal, or confinement in excess of six months, if—

(A) The Statement of Trial Results filed under R.C.M. 1101 includes a recommendation by the military judge that the convening authority suspend the sentence, in whole or in part; and

(B) The military judge includes a statement explaining the basis for the suspension recommendation.

(2) If the convening authority suspends a sentence under this subsection—

(A) The portion of the sentence that is to be suspended may not exceed the portion of the sentence that the military judge recommended be suspended;

(B) The duration of the suspension may not be less than that recommended by the military judge; and

(C) The suspended portion of the sentence may be terminated by remission only as provided in R.C.M. 1107(e).

(3) A sentence that is suspended under this rule shall comply with the procedures prescribed in R.C.M. 1107(c), (d), and (e).

(g) *Decision; forwarding of decision and related matters.*

(1) *No action.* If the convening authority decides to take no action on the sentence under this rule, the staff judge advocate or legal advisor shall notify the military judge of this decision.

(2) *Action on sentence.* If the convening authority decides to act on the sentence under this rule, such action shall be in writing and shall include a written statement explaining the action. If any part of the sentence is disapproved, the action shall clearly state which part or parts are disapproved. The convening authority's staff judge advocate or legal advisor shall forward the action with the written explanation to the military judge to be attached to the record of trial.

(h) *Service on accused and crime victim.* If the convening authority took any action on the sentence under this rule, a copy of such action shall be served on the accused, crime victim, or on their respective counsel. If the action is served on counsel, counsel shall, by expeditious means, provide the accused or crime victim with a copy. If the judgment is entered expeditiously, service of the judgment will satisfy the requirements of this subsection.

### Discussion

See R.C.M. 1104(b) addressing post-trial motions and proceedings to resolve allegations of error in the convening authority's action under R.C.M. 1109. For purposes of this provision, the term "crime victim" has the same meaning as in R.C.M. 1106A(b)(2).

### Rule 1110. Action by convening authority in certain general and special courts-martial

(a) *In general.* This rule applies to the post-trial actions of the convening authority in any general or special court-martial not specified in R.C.M. 1109(a).

(b) *Action on findings.* In any court-martial subject to this rule, action on findings is not required; however, the convening authority may—

(1) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(2) Set aside any finding of guilty and—

(A) Dismiss the specification and, if appropriate,

the charge; or

(B) Order a rehearing in accordance with the procedures set forth in R.C.M. 810.

A rehearing may not be ordered as to findings of guilty when there is a lack of sufficient evidence in the record to support the findings of guilty of the offense charged or of any lesser included offense. A rehearing may be ordered, however, if the proof of guilt consisted of inadmissible evidence for which there is available an admissible substitute. A rehearing may be ordered as to any lesser offense included in an offense of which the accused was found guilty, provided there is sufficient evidence in the record to support the lesser included offense.

(c) *Action on sentence.*

(1) In any court-martial subject to this rule, action on the sentence is not required; however, the convening authority may disapprove, reduce, commute, or suspend, in whole or in part, the court-martial sentence. If the sentence is disapproved, the convening authority may order a rehearing on the sentence.

(2) In any court-martial subject to this rule, the convening authority, after entry of judgment, may reduce a sentence for substantial assistance in accordance with the procedures under R.C.M. 1109(e).

(d) *Procedures.* The convening authority shall use the same procedures as in subsections (d) and (h) of R.C.M. 1109 for any post-trial action on findings and sentence under this rule.

(e) *Decision; forwarding of decision and related matters.*

(1) *No action.* If the convening authority decides to take no action on the findings or sentence under this rule, the convening authority's staff judge advocate or legal advisor shall notify the military judge of the decision.

(2) *Action on findings.* If the convening authority decides to act on the findings under this rule, the action of the convening authority shall be in writing and shall include a written statement explaining the reasons for the action. If a rehearing is not ordered, the affected charges and specifications shall be dismissed by the convening authority in the action. The convening authority's staff judge advocate or legal advisor shall forward the action with the written explanation to the military judge to be attached to the record of trial.

(3) *Action on sentence.* If the convening authority decides to act on the sentence under this rule, the action of the convening authority on the sentence shall be in



## R.C.M. 1111(a)

writing and shall include a written statement explaining the reasons for the action. If any part of the sentence is disapproved, the action shall clearly state which part or parts are disapproved. The convening authority's staff judge advocate or legal advisor shall forward the action with the written explanation to the military judge to be attached to the record of trial.

### Discussion

See R.C.M. 1104(b) addressing post-trial motions and proceedings to resolve allegations of error in the convening authority's action under R.C.M. 1110.

---

## Rule 1111. Entry of judgment

### (a) *In general.*

(1) *Scope.* Under regulations prescribed by the Secretary concerned, the military judge of a general or special court-martial shall enter into the record of trial the judgment of the court. If the Chief Trial Judge determines that the military judge is not reasonably available, the Chief Trial Judge may detail another military judge to enter the judgment.

(2) *Purpose.* The judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders. The entry of judgment terminates the trial proceedings and initiates the appellate process.

(3) *Summary courts-martial.* In a summary court-martial, the findings and sentence of the court-martial, as modified or approved by the convening authority, constitute the judgment of the court-martial. A separate document need not be issued.

(b) *Contents.* The judgment of the court shall be signed and dated by the military judge and shall consist of—

(1) *Findings.* For each charge and specification referred to trial—

(A) a summary of each charge and specification;

(B) the plea of the accused; and

(C) the findings or other disposition of each charge and specification accounting for any modifications made by reason of any post-trial action by the convening authority or any post-trial ruling, order, or other determination by the military judge;

(2) *Sentence.* The sentence, accounting for any modifications made by reason of any post-trial action by the convening authority or any post-trial ruling, order, or other determination by the military judge, as well as the total amount of sentence credit, if any, to be

applied to the accused's sentence to confinement. If the accused was convicted of more than one specification and any part of the sentence was determined by a military judge, the judgment shall also specify—

(A) the confinement and fine for each specification, if any;

(B) whether any term of confinement shall run consecutively or concurrently with any other term(s) of confinement; and

(C) the total amount of any fine(s) and the total duration of confinement to be served, after accounting for the following—

(i) any terms of confinement that are to run consecutively or concurrently; and

(ii) any modifications to the sentence made by reason of any post-trial action by the convening authority or any post-trial ruling, order, or other determination by the military judge.

### Discussion

The date that the sentence is adjudged is the date the sentence was announced. *See* Articles 53 and 57. The adjudged sentence may be modified by the convening authority or the military judge. *See generally* R.C.M. 1104, R.C.M. 1107, R.C.M. 1109, and R.C.M. 1110.

*See* R.C.M. 1002(d)(2) for military judge alone sentencing and R.C.M. 1002(e)(2) for sentencing in capital cases by military judge and members.

---

### (3) *Additional information.*

(A) *Deferment.* If the accused requested that any portion of the sentence be deferred, the judgment shall specify the nature of the request, the convening authority's action, the effective date if approved, and, if the deferment ended prior to the entry of judgment, the date the deferment ended.

(B) *Waiver of automatic forfeitures.* If the accused requested that automatic forfeitures be waived by the convening authority under Article 58b, the judgment shall specify the nature of the request, the convening authority's action, and the effective date and length, if approved.

(C) *Suspension.* If the Statement of Trial Results included a recommendation by the military judge that a portion of the sentence be suspended, the judgment shall specify the action of the convening authority on the recommendation.

(D) *Reprimand*. If the sentence included a reprimand, the judgment shall contain the reprimand issued by the convening authority.

(E) *Rehearing*. If the judgment is entered after a rehearing, new trial or other trial, the judgment shall specify any sentence limitation applicable by operation of Article 63.

(F) *Other information*. Any additional information that the Secretary concerned may require by regulation.

(4) *Statement of Trial Results*. The Statement of Trial Results shall be included in the judgment in accordance with regulations prescribed by the Secretary concerned.

### Discussion

See Article 60 and R.C.M. 1101. The judgment of the court entered under this rule should provide a complete statement of the findings and the sentence reflecting the effect of any post-trial modifications. The judgment of the court should avoid using phrases such as “exceptions” and “substitutions” to reflect post-trial actions. Such a formulation is not an appropriate substitute for a complete statement of the findings and sentence.

---

(c) *Modification of judgment*. The judgment may be modified as follows—

(1) The military judge who entered a judgment may modify the judgment to correct computational or clerical errors within 14 days after the judgment was initially entered.

(2) The Judge Advocate General, the Court of Criminal Appeals, and the Court of Appeals for the Armed Forces may modify a judgment in the performance of their duties and responsibilities.

(3) If a case is remanded to a military judge, the military judge may modify the judgment consistent with the purposes of the remand.

(4) Any modification to the judgment of a court-martial must be included in the record of trial.

(d) *Rehearings, new trials, and other trials*. In the case of a rehearing, new trial, or other trial, the military judge shall enter a new judgment into the record of trial to reflect the results of the rehearing, new trial, or other trial.

(e) *When judgment is entered*.

(1) *Courts-martial without a finding of guilty*. When a court-martial results in a full acquittal or when a court-martial terminates before findings, the judgment shall be entered as soon as practicable. When a court-

martial results in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, the judgment shall be entered as soon as practicable after a hearing is conducted under R.C.M. 1105.

(2) *Courts-martial with a finding of guilty*. If a court-martial includes a finding of guilty to any specification or charge, the judgment shall be entered as soon as practicable after the staff judge advocate or legal advisor notifies the military judge of the convening authority’s post-trial action or decision to take no action under R.C.M. 1109 or 1110, as applicable.

(f) *Publication*.

(1) The judgment shall be entered into the record of trial.

(2) A copy of the judgment shall be provided to the accused or to the accused’s defense counsel. If the judgment is served on defense counsel, defense counsel shall, by expeditious means, provide the accused with a copy.

(3) A copy of the judgment shall be provided upon request to any crime victim or crime victim’s counsel in the case, without regard to whether the accused was convicted or acquitted of any offense.

### Discussion

For the definition of “crime victim,” see R.C.M. 1001(c)(2)(A). However, in this provision, a copy of the Statement of Trial Results shall be provided to any crime victim without regard to whether the accused was convicted or acquitted of any offense.

---

(4) The commander of the accused or the convening authority may publish the judgment of the court-martial to their respective commands.

(5) Under regulations prescribed by the Secretary of Defense, court-martial judgments shall be made available to the public.

### Rule 1112. Certification of record of trial; general and special courts-martial

(a) *In general*. Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be independent of any other document and shall include a recording of the court-martial. Court-martial proceedings may be recorded by videotape, audiotape, or other technology from which sound images may be reproduced to accurately depict the court-martial.

## R.C.M. 1112(b)

### Discussion

Video and audio recording and the taking of photographs in the courtroom are permitted only for the purpose of preparing the record of trial or as permitted by R.C.M. 806(c). Spectators, witnesses, counsel for the accused and counsel for victims are not permitted to make video or audio recordings or to take photographs in the courtroom.

---

(b) *Contents of the record of trial.* The record of trial contains the court-martial proceedings, and includes any evidence or exhibits considered by the court-martial in determining the findings or sentence. The record of trial in every general and special court-martial shall include:

(1) A substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting;

(2) The original charge sheet or a duplicate;

(3) A copy of the convening order and any amending order;

(4) The request, if any, for trial by military judge alone; the accused's election, if any, of members under R.C.M. 903; and, when applicable, any statement by the convening authority required under R.C.M. 503(a)(2);

(5) The election, if any, for sentencing by members in lieu of sentencing by military judge under R.C.M. 1002(b);

(6) Exhibits, or, if permitted by the military judge, copies, photographs, or descriptions of any exhibits that were received in evidence and any appellate exhibits;

(7) The Statement of Trial Results;

(8) Any action by the convening authority under R.C.M. 1109 or 1110; and

(9) The judgment entered into the record by the military judge.

(c) *Certification.* A court reporter shall prepare and certify that the record of trial includes all items required under subsection (b). If the court reporter cannot certify the record of trial because of the court reporter's death, disability, or absence, the military judge shall certify the record of trial.

(1) *Timing of certification.* The record of trial shall be certified as soon as practicable after the judgment has been entered into the record.

(2) *Additional proceedings.* If additional proceedings are held after the court reporter certifies

the record, a record of those proceedings shall be included in the record of trial, and a court reporter shall prepare a supplemental certification.

(d) *Loss of record, incomplete record, and correction of record.*

(1) If the certified record of trial is lost or destroyed, a court reporter shall, if practicable, certify another record of trial.

(2) A record of trial is complete if it complies with the requirements of subsection (b). If the record is incomplete or defective, a court reporter or any party may raise the matter to the military judge for appropriate corrective action. A record of trial found to be incomplete or defective before or after certification may be corrected to make it accurate. A superior competent authority may return a record of trial to the military judge for correction under this rule. The military judge shall give notice of the proposed correction to all parties and permit them to examine and respond to the proposed correction. All parties shall be given reasonable access to any court reporter notes or recordings of the proceedings.

(3) The military judge may take corrective action by any of the following means—

(A) reconstructing the portion of the record affected;

(B) dismissing affected specifications;

(C) reducing the sentence of the accused; or

(D) if the error was raised by motion or on appeal by the defense, declaring a mistrial as to the affected specifications.

### Discussion

Where there is an electronic or digital recording failure or loss of court reporter notes, the record should be reconstructed as completely as possible. If the interruption is discovered during trial, the military judge should summarize or reconstruct the portion of the proceedings which has not been recorded. If both parties agree to the summary or reconstruction of the proceedings, the proceedings may continue. If either party objects to the summary or reconstruction, the trial should proceed anew, and the proceedings repeated from the point where the interruption began.

---

(e) *Copies of the record of trial.*

(1) *Accused and victim.* Any victim entitled to a copy of the certified record of trial shall be notified of the opportunity to receive a copy of the certified record of trial. Following certification of the record of trial under subsection (c), in every general and special court-

martial, subject to paragraphs (3) and (4), a court reporter shall, in accordance with regulations issued by the Secretary concerned, provide a copy of the certified record of trial free of charge to—

- (A) The accused;
- (B) The victim of an offense of which the accused was charged if the victim testified during the proceedings; and
- (C) Any victim named in a specification of which the accused was charged, upon request, without regard to the findings of the court-martial.

**Discussion**

The term “victim” has the same meaning as the term “victim of an offense under this chapter” in Article 6b. The record of trial includes only those items listed in R.C.M. 1112(b).

(2) *Providing copy impracticable.* If it is impracticable to provide the record of trial to an individual entitled to receive a copy under paragraph (1) because of the unauthorized absence of the individual, or military exigency, or if the individual so requests on the record at the court-martial or in writing, the individual’s copy of the record shall be forwarded to the individual’s counsel, if any.

(3) *Sealed exhibits; classified information; closed sessions.* Any copy of the record of trial provided to an individual under paragraph (1) shall not contain classified information, information under seal, or recordings of closed sessions of the court-martial, and shall be handled as follows:

- (A) *Classified information.*
  - (i) *Forwarding to convening authority.* If the copy of the record of trial prepared for an individual under this rule contains classified information, trial counsel, unless directed otherwise by the convening authority, shall forward the individual’s copy to the convening authority, before it is provided to the individual.

(ii) *Responsibility of the convening authority.* The convening authority shall:

- (I) cause any classified information to be deleted or withdrawn from the individual’s copy of the record of trial;
- (II) cause a certificate indicating that classified information has been deleted or withdrawn to be attached to the record of trial; and

(III) cause the expurgated copy of the record of trial and the attached certificate regarding classified information to be provided to the individual as provided in subparagraphs (1)(A), (B), and (C).

(iii) *Contents of certificate.* The certificate regarding deleted or withdrawn classified information shall indicate:

- (I) that the original record of trial may be inspected in the Office of the Judge Advocate General under such regulations as the Secretary concerned may prescribe;
- (II) the locations in the record of trial from which matter has been deleted;
- (III) the locations in the record of trial which have been entirely deleted; and
- (IV) the exhibits which have been withdrawn.

(B) *Sealed exhibits and closed sessions.* The court reporter shall delete or withdraw from an individual’s copy of the record of trial—

- (i) any matter ordered sealed by the military judge under R.C.M. 1113; and
- (ii) any recording or transcript of a session that was ordered closed by the military judge, to include closed sessions held pursuant to Mil. R. Evid. 412, 513, and 514.

**Discussion**

Once classified information, sealed exhibits, and closed sessions are removed, the record of trial should ordinarily consist of the public proceedings of a court-martial, and should ordinarily contain public matters not subject to further redaction. In all cases, redactions should be in compliance with R.C.M. 1112(e)(4). If the terms of the sealing order permit, the court reporter may disclose to the individual being provided the record of trial those portions that the military judge has deemed appropriate for such disclosure in the sealing order.

(4) *Portions of the record protected by the Privacy Act.* Any copy of the record of trial provided to a victim under paragraph (1) shall not contain any portion of the record the release of which would unlawfully violate the privacy interests of any person other than that victim, to include those privacy interests recognized by 5 U.S.C. § 552a, the Privacy Act of 1974.

(5) *Additional copies.* The convening or higher authority may direct that additional copies of the record of trial of any general or special court-martial be prepared.

(f) *Attachments for appellate review.* In accordance

**R.C.M. 1112(f)(1)**

with regulations prescribed by the Secretary concerned, a court reporter shall attach the following matters to the record before the certified record of trial is forwarded to the office of the Judge Advocate General for appellate review:

- (1) If not used as exhibits—
  - (A) The preliminary hearing report under Article 32, if any;
  - (B) The pretrial advice under Article 34, if any;
  - (C) If the trial was a rehearing or new or other trial of the case, the record of any former hearings; and
  - (D) Written special findings, if any, by the military judge;
- (2) Exhibits or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were marked for and referred to on the record but not received in evidence;
- (3) Any matter filed by the accused or victim under R.C.M. 1106 or 1106A, or any written waiver of the right to submit such matters;
- (4) Any deferment request and the action on it;
- (5) Conditions of suspension, if any, and proof of service on probationer under R.C.M. 1107;
- (6) Any waiver or withdrawal of appellate review under R.C.M. 1115;
- (7) Records of any proceedings in connection with a vacation of suspension of the sentence under R.C.M. 1108;
- (8) Any transcription of the court-martial proceedings created pursuant to R.C.M. 1114; and
- (9) Any redacted materials.

**Discussion**

The record of trial and attachments may include electronic versions of any matters.

(g) *Security classification.* If the record of trial contains matters that must be classified under applicable security regulations, trial counsel shall cause a proper security classification to be assigned to the record of trial and on each page thereof on which classified material appears.

**Rule 1113. Sealed exhibits, proceedings, and other materials**

(a) *In general.* If the report of preliminary hearing or

record of trial contains exhibits, proceedings, or other materials ordered sealed by the preliminary hearing officer or military judge, counsel for the Government, the court reporter, or trial counsel shall cause such materials to be sealed so as to prevent unauthorized examination or disclosure. Counsel for the Government, the court reporter, or trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the preliminary hearing officer or military judge, and inserted at the appropriate place in the record of trial. Copies of the report of preliminary hearing or record of trial shall contain appropriate annotations that materials were sealed by order of the preliminary hearing officer or military judge and have been inserted in the report of preliminary hearing or record of trial. This rule shall be implemented in a manner consistent with Executive Order 13526, concerning classified national security information.

**Discussion**

Upon request or otherwise for good cause, a military judge may seal matters at his or her discretion. The terms “examination” and “disclosure” are defined in R.C.M. 1113(b)(4) and (5).

(b) *Examination and disclosure of sealed materials.* Except as provided in this rule, sealed materials may not be examined or disclosed.

**Discussion**

The terms of the sealing order may provide parameters for examination by or disclosure to those persons or entities whose interests are being protected.

(1) *Prior to referral.* Prior to referral of charges, the following individuals may examine and disclose sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; a military judge detailed to an Article 30a proceeding; and the general court-martial convening authority.

(2) *Referral through certification.* After referral of charges and prior to certification of the record under R.C.M. 1112(c), sealed materials may not be examined or disclosed in the absence of an order from the military judge based upon good cause.

**Discussion**

A convening authority who has granted clemency based upon review of sealed materials in the record of trial is not permitted to disclose the contents of the sealed materials when providing a written explanation of the reason for such action, as directed under R.C.M. 1109 or 1110.

(3) *Reviewing and appellate authorities; appellate counsel.*

(A) *Examination by reviewing and appellate authorities.* Reviewing and appellate authorities may examine sealed matters when those authorities determine that examination is reasonably necessary to a proper fulfillment of their responsibilities under the UCMJ, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct.

(B) *Examination by appellate counsel.* Appellate counsel may examine sealed materials subject to the following procedures.

(i) *Sealed materials released to trial counsel or defense counsel.* Materials presented or reviewed at trial and sealed, as well as materials reviewed in camera, released to trial counsel or defense counsel, and sealed, may be examined by appellate counsel upon a colorable showing to the reviewing or appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct.

(ii) *Sealed materials reviewed in camera but not released to trial counsel or defense counsel.* Materials reviewed in camera by a military judge, not released to trial counsel or defense counsel, and sealed may be examined by reviewing or appellate authorities. After examination of said materials, the reviewing or appellate authority may permit examination by appellate counsel for good cause.

**Discussion**

For disclosure procedures, see R.C.M. 1113(b)(3)(C).

(C) *Disclosure.* Appellate counsel shall not disclose sealed materials in the absence of:

(i) Prior authorization of the Judge Advocate General in the case of review under R.C.M. 1201 and 1210; or

(ii) Prior authorization of the appellate court before which a case is pending review under R.C.M. 1203 and 1204.

**Discussion**

In general, the Judge Advocate General or an appellate court should authorize disclosure of sealed material when such disclosure is necessary for review. Authorizations may place conditions on disclosure.

(D) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to R.C.M. 1307;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to R.C.M. 1201 and 1210;

(iii) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(iv) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(v) The Justices of the United States Supreme Court and their professional staffs; and

(vi) Any other court of competent jurisdiction.

(4) *Examination of sealed materials.* For purposes of this rule, "examination" includes reading, inspecting, and viewing.

(5) *Disclosure of sealed materials.* For purposes of this rule, "disclosure" includes photocopying, photographing, disseminating, releasing, manipulating, or communicating the contents of sealed materials in any way.

(6) Notwithstanding any other provision of this rule, in those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.

## R.C.M. 1114

### Rule 1114. Transcription of proceedings

(a) *Transcription of complete record.* A certified verbatim transcript of the record of trial shall be prepared—

(1) When the judgment entered into the record includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, a dishonorable or bad-conduct discharge, or confinement for more than six months; or

(2) As otherwise required by court rule, court order, or under regulations prescribed by the Secretary concerned.

#### Discussion

See R.C.M. 1116(b) regarding transcription of the record when a case is forwarded to appellate defense counsel.

---

(b) *Transcription of portions of the record.* A certified verbatim transcript of relevant portions of the record of trial shall be prepared—

(1) Upon application of a party as approved by the military judge, any court, or the Judge Advocate General; or

(2) As otherwise required under regulations prescribed by the Secretary concerned.

#### Discussion

See R.C.M. 1106 and 1106A regarding providing the record to the accused, a victim, or their counsel. When a certified transcript is prepared, the accused, counsel, or victim may request or be provided a copy to the same extent and under the same criteria as the applicable portion of the record.

---

(c) *Cost.* Any certified transcript required by this rule shall be prepared without cost to the accused.

(d) *Inclusion in the record of trial.* If a certified transcript is made under this rule, it shall be attached to the record of trial.

(e) *Authority.* The Secretary concerned shall prescribe by regulation the procedure for preparing and certifying a transcript under this rule.

### Rule 1115. Waiver or withdrawal of appellate review

(a) *In general.* After any general court-martial, except one in which the judgment entered into the record

includes a sentence of death, and after any special court-martial in which the judgment entered into the record includes a bad-conduct discharge or confinement for more than six months, the accused may waive or withdraw the right to appellate review by a Court of Criminal Appeals. The accused may sign a waiver of the right to appeal at any time after entry of judgment and may withdraw an appeal at any time before such review is completed.

#### Discussion

Unless an accused affirmatively waives or withdraws an appeal in accordance with this rule, all general and special courts-martial in which the judgment entered into the record includes a sentence of death; dismissal of a commissioned officer, cadet, or midshipman; dishonorable discharge or bad-conduct discharge; or confinement for two or more years receive automatic appellate review by a Court of Criminal Appeals. See Article 66(b)(3). All other general and special courts-martial not subject to automatic appellate review are eligible for direct appellate review by a Court of Criminal Appeals upon the appeal of the accused if the judgment entered into the record includes confinement for more than six months. See Article 66(b)(1). General and special courts-martial not eligible for appellate review by a Court of Criminal Appeals, or in which appellate review is waived, withdrawn, or an appeal is not filed under Article 66(b)(1), are reviewed by an attorney under R.C.M. 1201. After the attorney's review under R.C.M. 1201, such cases may also be submitted to the Judge Advocate General by application of the accused for post-final review. See R.C.M. 1201(h).

---

(b) *Right to counsel.*

(1) *In general.* The accused shall have the right to consult with qualified counsel before submitting a waiver or withdrawal of appellate review.

(2) *Waiver.*

(A) *Counsel who represented the accused at the court-martial.* The accused shall have the right to consult with any civilian, individual military, or detailed counsel who represented the accused at the court-martial concerning whether to waive appellate review unless such counsel has been excused under R.C.M. 505(d)(2)(B).

(B) *Associate counsel.* If counsel who represented the accused at the court-martial has not been excused but is not immediately available to consult with the accused because of physical separation or other reasons, associate defense counsel shall be detailed to the accused upon request by the accused. Such counsel shall communicate with the counsel who represented the accused at the court-martial, and shall advise the accused concerning whether to waive appellate review.

(C) *Substitute counsel.* If counsel who represented

the accused at the court-martial has been excused under R.C.M. 505(d)(2)(B), substitute defense counsel shall be detailed to advise the accused concerning waiver of appellate rights.

(3) *Withdrawal.*

(A) *Appellate defense counsel.* If the accused is represented by appellate defense counsel, the accused shall have the right to consult with such counsel concerning whether to withdraw an appeal.

(B) *Associate defense counsel.* If the accused is represented by appellate defense counsel, and such counsel is not immediately available to consult with the accused because of physical separation or other reasons, associate defense counsel shall be detailed to the accused, upon request by the accused. Such counsel shall communicate with appellate defense counsel and shall advise the accused whether to withdraw an appeal.

(C) *No counsel.* If appellate defense counsel has not been assigned to the accused, defense counsel shall be detailed for the accused. Such counsel shall advise the accused concerning whether to withdraw an appeal.

(4) *Civilian counsel.* Whether or not the accused was represented by civilian counsel at the court-martial, the accused may consult with civilian counsel, at no expense to the United States, concerning whether to waive or withdraw appellate review.

(5) *Record of trial.* Any defense counsel with whom the accused consults under this rule shall be given reasonable opportunity to examine the record of trial and any attachments.

### Discussion

See R.C.M. 1112(f) for required attachments to the record of trial.

(6) *Right to consult.* The right to consult with counsel, as used in this rule, does not require communication in the presence of one another.

(c) *Compulsion, coercion, and inducement prohibited.* No person may compel, coerce, or induce an accused by force, promises of clemency, or otherwise to waive or withdraw appellate review.

(d) *Form of waiver or withdrawal.* A waiver or withdrawal of appellate review shall:

(1) Be written;

(2) State that the accused and defense counsel have discussed the accused's rights to appellate review and

the effect of waiver or withdrawal of appellate review and that the accused understands these matters;

(3) State that the waiver or withdrawal is submitted voluntarily; and

(4) Be signed by the accused and by defense counsel.

### Discussion

See Appendix 13 and Appendix 14 for samples of forms.

(e) *To whom submitted.*

(1) *Waiver.* A waiver of appellate review shall be filed with the convening authority or the Judge Advocate General. The waiver shall be attached to the record of trial.

(2) *Withdrawal.* A withdrawal of appellate review may be filed with the authority exercising general court-martial jurisdiction over the accused, who shall promptly forward it to the Judge Advocate General, or directly with the Judge Advocate General. The withdrawal shall be attached to the record of trial.

(f) *Effect of waiver or withdrawal; substantial compliance required.*

(1) *In general.* A valid waiver or withdrawal of appellate review under this rule shall bar review by the Court of Criminal Appeals. Once submitted, a waiver or withdrawal in compliance with this rule may not be revoked.

(2) *Waiver.* If the accused files a waiver of appellate review in accordance with this rule, the record of trial and attachments shall be forwarded for review by a judge advocate under R.C.M. 1201.

(3) *Withdrawal.* Action on a withdrawal of appellate review shall be carried out in accordance with procedures established by the Judge Advocate General, or if the case is pending before a Court of Criminal Appeals, in accordance with the rules of such court. If the appeal is withdrawn, the record of trial and attachments shall be forwarded for review in accordance with R.C.M. 1201.

(4) *Substantial compliance required.* A purported waiver or withdrawal of an appeal which does not substantially comply with this rule shall have no effect.

### Rule 1116. Transmittal of records of trial for general and special courts-martial

(a) *Cases forwarded to the Judge Advocate General.* In



## R.C.M. 1116(b)

all general and special courts-martial in which the judgment includes a finding of guilty, the certified record of trial and attachments required under R.C.M. 1112(f) shall be sent directly to the Judge Advocate General concerned. Forwarding an electronic copy of the certified record of trial and attachments satisfies the requirements under this rule. The records of trial in general and special courts-martial without a finding of guilty shall be disposed of in accordance with the regulations of the Secretary concerned.

(b) *Transmittal of records for cases eligible for appellate review by a Court of Criminal Appeals.*

(1) *Automatic review.* Except when the accused has waived or withdrawn the right to appellate review, if the court-martial judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, a dishonorable or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward the certified record of trial and attachments required under R.C.M. 1112(f) to the Court of Criminal Appeals for automatic review under Article 66(b)(3).

### Discussion

See R.C.M. 1203(b).

(A) A copy of the record of trial and attachments shall be forwarded to appellate defense counsel in accordance with rules prescribed by the Secretary concerned. If the record forwarded does not include a written transcript of the proceedings, the Government shall provide appellate defense counsel with appropriate equipment for playback of the recording and with either—

(i) the means to transform the recording into a text format through voice recognition software or similar means; or

(ii) a transcription of the record in either printed or digital format.

(B) Upon written request of the accused, a copy of the record and attachments shall be forwarded to a civilian counsel provided by the accused.

(C) Copies of the record provided under subparagraph (b)(1)(A) of this rule shall not include sealed exhibits, recordings or transcriptions of closed sessions, or classified matters.

### Discussion

An accused may not waive or withdraw the right to appellate review before the Court of Criminal Appeals of any general court-martial in which the judgment includes a sentence of death. See Article 61, R.C.M. 1115.

See R.C.M. 1114 regarding the procedure for preparing and obtaining certified transcripts of all or a portion of the record. If a transcription is provided in digital format, the Government shall ensure that the recipient has an appropriate means of reading the transcription.

See R.C.M. 1112 and 1113 regarding access to classified and sealed matters. See R.C.M. 1201(a)(2) for review by an attorney of those cases eligible for appellate review by the Court of Criminal Appeals, but where the accused waives the right to appeal, withdraws an appeal, or fails to file a timely appeal. See R.C.M. 1202 concerning representation of the accused by appellate counsel before the appellate courts. See R.C.M. 1203 concerning review by the Court of Criminal Appeals and the powers and responsibilities of the Judge Advocate General after such review.

(2) *Cases eligible for direct appeal by the accused.* Except when the accused has waived or withdrawn the right to appeal under Article 61, if a general and special court-martial is not subject to automatic review under Article 66(b)(3) but is eligible for review under Article 66(b)(1), the Judge Advocate General shall provide notice to the accused of the right to file an appeal either by depositing the notice in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused, or, if the accused has not provided an address, to the latest address listed for the accused in the official service record of the accused. Proof of service shall be attached to the record of trial.

### Discussion

See R.C.M. 1115 for rules regarding the waiver or withdrawal of appellate review. See R.C.M. 1203 for rules concerning appellate review by a Court of Criminal Appeals.

(A) The Judge Advocate General shall forward a copy of the record of trial and attachments required under R.C.M. 1112(f) to an appellate defense counsel who shall be detailed to review the case, and upon request of the accused, to represent the accused before the Court of Criminal Appeals.

(B) The record of trial and attachments required under R.C.M. 1112(f) shall be forwarded in accordance with the procedures set forth in subparagraphs (b)(1)(A)–(C) of this rule.

(c) *Review of cases not eligible for appellate review by a Court of Criminal Appeals.* General and special courts-martial not eligible for appellate review under Article 66(b)(1) or (3) shall be reviewed under Article 65(d)(2).

#### Discussion

See R.C.M. 1201(a)(1); and R.C.M. 1203(b) and (c).

(d) *Review when appellate review by a Court of Criminal Appeals is waived, withdrawn, or not filed.* In a general or special court-martial in which the accused waives the right to appellate review or withdraws an appeal under Article 61, or fails to file a timely appeal in a case eligible for review by the Court of Criminal Appeals under Article 66(b)(1), the case shall be reviewed under Article 65(d)(3).

#### Discussion

See R.C.M. 1115, R.C.M. 1201(a)(2), and R.C.M. 1203(c).

### Rule 1117. Appeal of sentence by the United States

(a) *In general.* With the approval of the Judge Advocate General concerned, the Government may appeal a sentence announced under R.C.M. 1007 to the Court of Criminal Appeals on the grounds that –

- (1) the sentence violates the law; or
- (2) the sentence is plainly unreasonable.

(b) *Timing.*

(1) An appeal under this rule must be filed within 60 days after the date on which the judgment of the court-martial is entered into the record under R.C.M. 1111.

(2) Any request for approval must be submitted in sufficient time to obtain and consider submissions under paragraph (c)(4) of this rule.

(c) *Approval process.*

(1) A request from the Government to the Judge Advocate General for approval of an appeal under this rule shall include a statement of reasons in support of an appeal under paragraph (a)(1) or (a)(2), as applicable, based upon the information contained in the record before the sentencing authority at the time the sentence was announced under R.C.M. 1007.

(2) A statement of reasons in support of an appeal under paragraph (a)(1) shall identify the specific

provisions of law at issue and the facts in the record demonstrating a violation of the law in the announced sentence under R.C.M. 1007.

(3) A statement of reasons in support of an appeal under paragraph (a)(2) shall identify the facts in the record that demonstrate by clear and convincing evidence that the sentence announced under R.C.M. 1007 was plainly unreasonable because no reasonable sentencing authority would adjudge such a sentence in view of the record before the sentencing authority at the time the sentence was announced under R.C.M. 1007.

(4) Prior to acting on a request from the Government, the Judge Advocate General shall transmit the request to the military judge who presided over the presentencing proceeding for purposes of providing the military judge, the parties, and any person who, at the time of sentencing, was a crime victim as defined by R.C.M. 1001(c)(2)(A), with an opportunity to make a submission addressing the statement of reasons in the Government's request.

(A) The military judge shall establish the time for the parties and crime victims to provide such a submission to the military judge, and for the military judge to forward all submissions to the Judge Advocate General. The military judge shall ensure that the parties have not less than 7 days to prepare, review, and transmit such submissions.

(B) Submissions under this paragraph shall not include facts beyond the record established at the time the sentence was announced under R.C.M. 1007.

(5) The decision of the Judge Advocate General as to whether to approve a request shall be based on the information developed under this rule.

(6) If an appeal is approved by the Judge Advocate General and submitted to the Court of Criminal Appeals under this rule, the following shall be included with the appeal: the statement of approval, the Government's request and statement of reasons under paragraph (c)(2) or (3), and any submissions under paragraph (c)(4).

(d) *Contents of the record of trial.* Unless the record has been forwarded to the Court of Criminal Appeals for review under R.C.M. 1116(b), the record of trial for an appeal under this rule shall consist of—

- (1) any portion of the record in the case that is designated as pertinent by either of the parties;
- (2) the information submitted during the presentencing proceeding; and

**R.C.M. 1117(e)**

(3) any information required by rule or order of the Court of Criminal Appeals.

**Discussion**

For Appellant's right to counsel in cases reviewed by a Court of Criminal Appeals, *see* R.C.M. 1202. For action on cases following review by a Court of Criminal Appeals, *see* R.C.M. 1203(e).

---

(e) *Standard.* A sentence is plainly unreasonable if no reasonable sentencing authority would determine such a sentence in view of the record before the sentencing authority at the time the sentence was announced under R.C.M. 1007.

## CHAPTER XII. APPEALS AND REVIEW

### **Rule 1201. Review by the Judge Advocate General**

(a) *Review of certain general and special courts-martial.* Except as provided in subsection (b), an attorney designated by the Judge Advocate General shall review:

(1) Each general and special court-martial case that is not eligible for appellate review by a Court of Criminal Appeals under Article 66(b)(1) or (3); and

#### **Discussion**

See R.C.M. 1203(b) and (c).

---

(2) Each general or special court-martial eligible for appellate review by a Court of Criminal Appeals in which the Court of Criminal Appeals does not review the case because:

(A) In a case under Article 66(b)(3), other than one in which the sentence includes death, the accused withdraws direct appeal or waives the right to appellate review.

#### **Discussion**

See R.C.M. 1203(b).

---

(B) In a case under Article 66(b)(1), the accused does not file a timely appeal, or files a timely appeal and then withdraws it.

#### **Discussion**

See R.C.M. 1307 for judge advocate review of summary courts-martial.

---

(b) *Exception.* If the accused was found not guilty or not guilty only by reason of lack of mental responsibility of all offenses, or if the convening authority set aside all findings of guilty, no review under this rule is required.

(c) *By whom.*

(1) A review conducted under this rule may be conducted by an attorney within the Office of the Judge Advocate General or another attorney designated by the Judge Advocate General under regulations prescribed by the Secretary concerned.

(2) No person may review a case under this rule if that person has acted in the same case as an accuser, preliminary hearing officer, member of the court-martial, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense.

(d) *Form and content for review of cases not eligible for appellate review at the Court of Criminal Appeals.* The review referred to in paragraph (a)(1) shall include a written conclusion as to each of the following:

(1) Whether the court had jurisdiction over the accused and the offense;

(2) Whether each charge and specification stated an offense;

(3) Whether the sentence was within the limits prescribed as a matter of law; and

(4) When applicable, a response to each allegation of error made in writing by the accused.

(e) *Form and content for review of cases in which the accused has waived or withdrawn appellate review or failed to file an appeal.* The review referred to in paragraph (a)(2) shall include a written conclusion as to each of the following:

(1) Whether the court had jurisdiction over the accused and the offense;

(2) Whether each charge and specification stated an offense; and

(3) Whether the sentence was within the limits prescribed as a matter of law.

(f) *Remedies.*

(1) If the attorney conducting the review under subsection (a) believes corrective action is required, the attorney shall forward the matter to the Judge Advocate General, who may modify or set aside the findings or sentence, in whole or in part.

(2) In setting aside the findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered where the evidence was legally insufficient at the trial to support the findings.

(3) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(4) If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

## R.C.M. 1201(g)

### Discussion

See R.C.M. 1111 for modification of the judgment to reflect any action by the Judge Advocate General or convening authority under this rule.

---

(g) *Notification.* After a case is reviewed under subsection (a), the accused shall be notified of the results of the review and any action taken by the Judge Advocate General or convening authority by means of depositing a copy of the review and any modified judgment in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the accused's official service record. Proof of service shall be attached to the record of trial.

(h) *Application for relief to the Judge Advocate General after final review.*

(1) *In general.* Notwithstanding R.C.M. 1209, the Judge Advocate General may, upon application of the accused or a person with authority to act for the accused, modify or set aside the findings or sentence, in whole or in part, of—

(A) A summary court-martial previously reviewed under R.C.M. 1307; or

(B) A general or special court-martial previously reviewed under paragraph (a)(1) or (2).

(2) *Timing.* In order to qualify for review under this subsection, an accused must submit an application for review not later than one year after—

(A) In the case of a summary court-martial, the date of completion of review under R.C.M. 1307; or

(B) In the case of a general or special court-martial reviewed under paragraph (a)(1) or (a)(2), the later of—

(i) the date on which the accused is notified of the decision of the Judge Advocate General under subsection (g); or

(ii) the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails under subsection (g).

(3) *Extension.* The Judge Advocate General may, for good cause shown, extend the period for submission of an application under paragraph (h)(2) for a time period not to exceed two additional years.

(4) *Scope.*

(A) In a case previously reviewed under R.C.M. 1307 or paragraph (a)(1), the Judge Advocate General may act on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(B) In a case previously reviewed under paragraph (a)(2), the Judge Advocate General's review is limited to the issue of whether the waiver, withdrawal, or failure to file an appeal was invalid under the law.

### Discussion

If the Judge Advocate General determines that the waiver, withdrawal, or failure to file an appeal was invalid, the Judge Advocate General may order any corrective action, including forwarding the case to the Court of Criminal Appeals for appropriate appellate review.

See also R.C.M. 1210 concerning a petition for a new trial in any case, including a case where the accused waived or withdrew from appellate review, or failed to file an appeal.

Review of a case by a Judge Advocate General under this subsection is not part of appellate review within the meaning of Article 76 or R.C.M. 1209.

Review of a finding of not guilty only by reason of lack of mental responsibility under this rule may not extend to the determination of lack of mental responsibility. Thus, modification of a finding of not guilty only by reason of lack of mental responsibility under this rule is limited to changing the finding to not guilty or not guilty only by reason of lack of mental responsibility of a lesser included offense.

---

(5) *Procedure.* Each Judge Advocate General shall provide procedures for considering all cases properly submitted under this rule and may prescribe the manner by which an application for relief under this rule may be made and, if submitted by a person other than the accused, may require that the applicant show authority to act on behalf of the accused.

(i) *Remission and suspension.* The Judge Advocate General may, when so authorized by the Secretary concerned under Article 74, at any time remit or suspend the unexecuted part of any sentence, other than a sentence approved by the President.

(j) *Mandatory review of summary courts-martial forwarded under R.C.M. 1307.* The Judge Advocate General shall review summary courts-martial if the record of trial and the action thereon are forwarded under R.C.M. 1307(g). On such review, the Judge Advocate General may vacate or modify, in whole or in part, the findings or sentence, or both, of the court-martial on the ground of newly discovered evidence,

fraud on the court-martial, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(k) *Cases referred or submitted to the Court of Criminal Appeals.*

(1) *In general.* Action taken by the Judge Advocate General under subsections (h) or (j) may be reviewed by the Court of Criminal Appeals under Article 69(d) as follows:

(A) The Judge Advocate General may forward a case to the Court of Criminal Appeals. If the case is forwarded to a Court of Criminal Appeals, the accused shall be informed and shall have the rights to appellate defense counsel afforded under R.C.M. 1202(b)(2).

(B) The accused may submit an application for review to the Court of Criminal Appeals. The Court of Criminal Appeals may grant such an application only if the application demonstrates a substantial basis for concluding that the Judge Advocate General's action under this rule constituted prejudicial error, and the application is filed not later than the earlier of—

(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or

(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the accused's official service record. Proof of service shall be attached to the record of trial.

**Discussion**

See R.C.M. 1203.

(2) The submission of an application for review under subparagraph (k)(1)(B) does not constitute a proceeding before the Court of Criminal Appeals for purposes of representation by appellate defense counsel under Article 70(c)(1).

(3) In any case reviewed by a Court of Criminal Appeals under this subsection, the Court may take action only with respect to matters of law.

**Rule 1202. Appellate counsel**

(a) *In general.* The Judge Advocate General concerned shall detail one or more commissioned officers as appellate Government counsel and one or more commissioned officers as appellate defense counsel who are qualified under Article 27(b)(1).

(b) *Duties.*

(1) *Appellate Government counsel.* Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the United States Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General concerned. Appellate Government counsel may represent the United States before the United States Supreme Court when requested to do so by the Attorney General.

(2) *Appellate defense counsel.*

(A) In every general and special court-martial eligible for review by a Court of Criminal Appeals under Article 66(b)(1), an appellate defense counsel shall be detailed to review the case, unless the accused has waived the right to appeal under Article 61 or submits a written statement declining representation. Upon request, the detailed appellate defense counsel shall represent the accused in accordance with subparagraph (B).

**Discussion**

See R.C.M. 1203(c) and R.C.M. 1115.

(B) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court when the accused is a party in the case before such court and:

(i) The accused requests to be represented by appellate defense counsel;

**Discussion**

See Article 65(b) and Article 61.

(ii) The United States is represented by counsel; or

(iii) The Judge Advocate General has sent the case to the United States Court of Appeals for the Armed Forces. Appellate defense counsel is authorized

## R.C.M. 1202(e)

to communicate directly with the accused. The accused is a party in the case when named as a party in pleadings before the court or, even if not so named, when the military judge is named as respondent in a petition by the Government for extraordinary relief from a ruling in favor of the accused at trial.

### Discussion

For a discussion of the accused's right to detailed appellate defense counsel in any case eligible for review at the Court of Criminal Appeals, see R.C.M. 1202. See R.C.M. 1204(b)(1) concerning detailing counsel with respect to the right to appeal to the Court of Appeals for the Armed Forces for review. For a discussion of the duties of the trial defense counsel concerning post-trial and appellate matters, see R.C.M. 502(d)(5) Discussion (E). Appellate defense counsel may communicate with trial defense counsel concerning the case. *See also* Mil. R. Evid. 502 (privileges).

If all or part of the findings and sentence are affirmed by the Court of Criminal Appeals, appellate defense counsel should advise the accused whether the accused should petition for further review in the United States Court of Appeals for the Armed Forces and concerning which issues should be raised.

The accused may be represented by civilian counsel before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court. Civilian counsel may represent the accused before these courts in addition to or instead of military counsel.

If, after any decision of the Court of Appeals for the Armed Forces, the accused may apply for a writ of certiorari (*see* R.C.M. 1205), appellate defense counsel should advise the accused whether to apply for review by the Supreme Court and which issues might be raised. If authorized to do so by the accused, appellate defense counsel may prepare and file a petition for a writ of certiorari on behalf of the accused.

The accused has no right to select appellate defense counsel. Under some circumstances, however, the accused may be entitled to request that the detailed appellate defense counsel be replaced by another appellate defense counsel.

---

(c) *Counsel in capital cases.* To the greatest extent practicable, in any case in which the death penalty is adjudged, at least one appellate defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to capital cases. Such counsel may, if necessary, be a civilian, and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

### Discussion

See R.C.M. 502(d)(2)(C) concerning the qualifications for counsel learned in the law applicable to capital cases.

## Rule 1203. Review by a Court of Criminal Appeals

(a) *In general.* Each Judge Advocate General shall establish a Court of Criminal Appeals composed of appellate military judges who shall serve for a tour of not less than three years, subject to such provision for reassignment as may be prescribed in regulations issued by the Secretary concerned.

### Discussion

*See* Article 66 concerning the composition of the Courts of Criminal Appeals, the qualifications of appellate military judges, the grounds for their ineligibility, and restrictions upon the official relationship of the members of the court to other members. Uniform rules of court for the Courts of Criminal Appeals are prescribed by the Judge Advocates General.

---

(b) *Cases reviewed by a Court of Criminal Appeals—Automatic Review.* A Court of Criminal Appeals shall review cases forwarded to it by the Judge Advocate General under Article 65(b)(1).

### Discussion

*See* R.C.M. 1116(b)(1).

Except for when an accused waives or withdraws the right to appellate review, a Court of Criminal Appeals automatically reviews cases in which the judgment entered into the record includes a sentence of death; dismissal of a commissioned officer, cadet, or midshipman; dishonorable discharge or bad-conduct discharge; or confinement for 2 years or more. *See* Article 65(b)(1), Article 66(b)(3), R.C.M. 1116(b)(1).

An accused may not waive the right to appellate review or withdraw an appeal before the Court of Criminal Appeals in any general court-martial in which the judgment includes a sentence of death. *See* R.C.M. 1115.

---

(c) *Cases eligible for review by a Court of Criminal Appeals—Appeal by the accused.* A Court of Criminal Appeals shall review a timely appeal from the judgment of the court-martial in accordance with the standards set forth in Article 66(b)(1) and the rules prescribed under Article 66(h).

### Discussion

The Court of Criminal Appeals may specify additional issues for briefing, argument, and decision, and may review eligible cases for plain error. *See* R.C.M. 1115 for waiver of appellate review or withdrawal of an appeal. In those cases in which an accused chooses not to file an appeal, the case will be reviewed by an attorney under R.C.M. 1201(a)(2).

If a Court of Criminal Appeals sets aside any findings of guilty or the sentence, it may, except as to findings set aside for

lack of sufficient evidence in the record to support the findings, order an appropriate type of rehearing or reassess the sentence as appropriate. See R.C.M. 810 concerning rehearings. If the Court of Criminal Appeals sets aside all the findings and the sentence and does not order a rehearing, it must order the charges dismissed. See Article 59(a) and Article 66.

A Court of Criminal Appeals may on petition for extraordinary relief issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law. Any party may petition a Court of Criminal Appeals for extraordinary relief.

See R.C.M. 908 concerning procedures for interlocutory appeals by the Government. See R.C.M. 1117 concerning Government appeals of certain sentences.

(d) *Timeliness.* In order for an appeal under subsection (c) to be timely, it must be filed in accordance with Article 66(c) and the rules prescribed under Article 66(h).

(e) *Action on cases reviewed by a Court of Criminal Appeals.*

(1) *Forwarding by the Judge Advocate General to the Court of Appeals for the Armed Forces.* The Judge Advocate General may forward the decision of the Court of Criminal Appeals to the Court of Appeals for the Armed Forces for review with respect to any matter of law. In such a case, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals and the order forwarding the case to be served on the accused and on appellate defense counsel. While a review of a forwarded case is pending, the Secretary concerned may defer further service of a sentence to confinement that has been ordered executed in such a case.

**Discussion**

Prior to forwarding a case to the Court of Appeals for the Armed Forces for review, the Judge Advocate General concerned is required to provide appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps. See Article 67(a)(2) and R.C.M. 1204(a)(2).

When a decision of the Court of Criminal Appeals has the effect of setting aside confinement the appellant is serving, and the Judge Advocate General has decided to forward the decision of the Court of Criminal Appeals to the Court of Appeals for the Armed Forces for review under this rule, a new R.C.M. 305 review may be required if continued confinement is sought.

(2) *Action when sentence is set aside.* In a case reviewed by it under this rule in which the Court of Criminal Appeals has set aside the sentence and which is not forwarded to the Court of Appeals for the Armed

Forces under paragraph (e)(1), the Judge Advocate General shall instruct an appropriate authority to modify the judgment in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has ordered a rehearing on sentence, the record shall be sent to an appropriate convening authority. If that convening authority finds a rehearing impracticable that convening authority may order that a sentence of no punishment be imposed.

**Discussion**

If charges are dismissed, see R.C.M. 1208 concerning restoration of rights, privileges, and property. See R.C.M. 1111 concerning the entry of judgment.

(3) *Action when sentence is affirmed in whole or part.*

(A) *Sentence requiring approval by the President.* If the Court of Criminal Appeals affirms any sentence which includes death, the Judge Advocate General shall transmit the record of trial and the decision of the Court of Criminal Appeals directly to the Court of Appeals for the Armed Forces when any period for reconsideration provided by the rules of the Courts of Criminal Appeals has expired.

(B) *Other cases.* If the Court of Criminal Appeals affirms any sentence other than one which includes death, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals to be served on the accused in accordance with subsection (f).

(4) *Remission or suspension.* If the Judge Advocate General believes that a sentence as affirmed by the Court of Criminal Appeals, other than one which includes death, should be remitted or suspended in whole or part, the Judge Advocate General may, before taking action under paragraphs (e)(1) or (3), transmit the record of trial and the decision of the Court of Criminal Appeals to the Secretary concerned with a recommendation for action under Article 74 or may take such action as may be authorized by the Secretary concerned under Article 74(a).

**Discussion**

If charges are dismissed, see R.C.M. 1208 concerning restoration of rights, privileges, and property. See R.C.M. 1111 concerning the entry of judgment.



**R.C.M. 1203(e)(5)**

(5) *Action when accused lacks mental capacity.* In a review conducted under subsection (b) or (c), the Court of Criminal Appeals may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the Court of Criminal Appeals may direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The Court may further order a remand under R.C.M. 810(f) as may be necessary. If the record is thereafter returned to the Court of Criminal Appeals, the Court of Criminal Appeals may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence—including matters outside the record of trial—that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the Court of Criminal Appeals shall stay the proceedings until the accused regains appropriate capacity, or take other appropriate action. Nothing in this subsection shall prohibit the Court of Criminal Appeals from making a determination in favor of the accused which will result in the setting aside of a conviction.

(f) *Notification to accused.*

(1) *Notification of decision.* The accused shall be notified of the decision of the Court of Criminal Appeals in accordance with regulations of the Secretary concerned.

**Discussion**

The accused may be notified personally, or a copy of the decision may be sent, after service on appellate counsel of record, if any, by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the accused's official service record.

If the Judge Advocate General has forwarded the case to the Court of Appeals for the Armed Forces, the accused should be so notified.

---

(2) *Notification of right to petition the Court of Appeals for the Armed Forces for review.* If the accused has the right to petition the Court of Appeals

for the Armed Forces for review, the accused shall be provided with a copy of the decision of the Court of Criminal Appeals bearing an endorsement notifying the accused of this right. The endorsement shall inform the accused that such a petition:

(A) May be filed only within 60 days from the time the accused was in fact notified of the decision of the Court of Criminal Appeals or the mailed copy of the decision was postmarked, whichever is earlier; and

(B) May be forwarded through the officer immediately exercising general court-martial jurisdiction over the accused and through the appropriate Judge Advocate General or filed directly with the Court of Appeals for the Armed Forces.

**Discussion**

*See Article 67(c); see also R.C.M. 1204(b).*

---

(3) *Receipt by the accused—disposition.* When the accused has the right to petition the Court of Appeals for the Armed Forces for review, the receipt of the accused for the copy of the decision of the Court of Criminal Appeals, a certificate of service on the accused, or the postal receipt for delivery of certified mail shall be transmitted in duplicate by expeditious means to the appropriate Judge Advocate General. If the accused is personally served, the receipt or certificate of service shall show the date of service. The Judge Advocate General shall forward one copy of the receipt, certificate, or postal receipt to the clerk of the Court of Appeals for the Armed Forces when required by the court.

(g) *Cases not reviewed by the Court of Appeals for the Armed Forces.* If the decision of the Court of Criminal Appeals is not subject to review by the Court of Appeals for the Armed Forces, or if the Judge Advocate General has not forwarded the case to the Court of Appeals for the Armed Forces and the accused has not filed or the Court of Appeals for the Armed Forces has denied a petition for review, then either:

(1) The Judge Advocate General shall, if the sentence affirmed by the Court of Criminal Appeals includes a dismissal, transmit the record, the decision of the Court of Criminal Appeals, and the Judge Advocate General's recommendation to the Secretary concerned for action under R.C.M. 1206; or

(2) If the sentence affirmed by the Court of Criminal Appeals does not include a dismissal, the unexecuted

portion of the sentence affirmed by the Court of Criminal Appeals shall be executed in accordance with R.C.M. 1102.

**Discussion**

See R.C.M. 1102, 1206, and Article 74(a) concerning the authority of the Secretary and others to take action.

**Rule 1204. Review by the Court of Appeals for the Armed Forces**

(a) *Cases reviewed by the Court of Appeals for the Armed Forces.* Under such rules as it may prescribe, the Court of Appeals for the Armed Forces shall review the record in all cases:

(1) in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) reviewed by a Court of Criminal Appeals which the Judge Advocate General, after appropriate notification to the other Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps, orders sent to the Court of Appeals for the Armed Forces for review; and

(3) reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

**Discussion**

See Article 67(a)(2) on the notification requirement when the Judge Advocate General orders a case sent to the Court under R.C.M. 1204(a)(2). Notification ensures that the views of each of the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps are taken into consideration before the certification process is used to present a case to the Court of Appeals for the Armed Forces.

(b) *Petition by the accused for review by the Court of Appeals for the Armed Forces.*

(1) *Counsel.* When the accused is notified of the right to forward a petition for review by the Court of Appeals for the Armed Forces, if requested by the accused, associate counsel qualified under R.C.M. 502(d)(2) shall be detailed to advise and assist the accused in connection with preparing a petition for further appellate review.

**Discussion**

See R.C.M. 1202 for duties of appellate defense counsel.

(2) *Forwarding petition.* The accused shall file any petition for review by the Court of Appeals for the Armed Forces under paragraph (a)(3) of this rule directly with the Court of Appeals for the Armed Forces.

**Discussion**

See Article 67(b) and R.C.M. 1203(f)(2) concerning notifying the accused of the right to petition the Court of Appeals for the Armed Forces for review and the time limits for submitting a petition. See also the rules of the Court of Appeals for the Armed Forces concerning when the time for filing a petition begins to run and when a petition is now timely.

(c) *Action on decision by the Court of Appeals for the Armed Forces.*

(1) *In general.* After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further proceedings in accordance with the decision of the court. Otherwise, unless the decision is subject to review by the Supreme Court, or there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the appropriate authority to take action in accordance with that decision. If the Court has ordered a rehearing, but the convening authority to whom the record is transmitted finds a rehearing impracticable, the convening authority may dismiss the charges.

**Discussion**

See R.C.M. 1111 concerning modification of the judgment in the case. See also R.C.M. 1206 and Article 74(a).

(2) *Sentence requiring approval of the President.*

(A) If the Court of Appeals for the Armed Forces has affirmed a sentence that must be approved by the President before it may be executed, the Judge Advocate General shall transmit the record of trial, the decision of the Court of Criminal Appeals, the decision of the Court of Appeals for the Armed Forces, and the recommendation of the Judge Advocate General to the Secretary concerned.

**R.C.M. 1204(c)(2)(B)**

(B) If the Secretary concerned is the Secretary of a military department, the Secretary concerned shall forward the material received under subparagraph (A) to the Secretary of Defense, together with the recommendation of the Secretary concerned. The Secretary of Defense shall forward the material, with the recommendation of the Secretary concerned and the recommendation of the Secretary of Defense, to the President for the action of the President.

(C) If the Secretary concerned is the Secretary of Homeland Security, the Secretary concerned shall forward the material received under subparagraph (A) to the President, together with the recommendation of the Secretary concerned, for action of the President.

**Discussion**

See Article 57(a)(3) and R.C.M. 1207.

---

(3) *Sentence requiring approval of the Secretary concerned.* If the Court of Appeals for the Armed Forces has affirmed a sentence which requires approval of the Secretary concerned before it may be executed, the Judge Advocate General shall follow the procedure in R.C.M. 1203(e)(3).

**Discussion**

See Article 57(a)(4) and R.C.M. 1206.

---

(4) *Decisions subject to review by the Supreme Court.* If the decision of the Court of Appeals for the Armed Forces is subject to review by the Supreme Court, the Judge Advocate General shall take no action under paragraphs (c)(1), (2), or (3) of this rule until: (A) the time for filing a petition for a writ of certiorari with the Supreme Court has expired; or (B) the Supreme Court has denied any petitions for writ of certiorari filed in the case. After (A) or (B) has occurred, the Judge Advocate General shall take action under paragraphs (c)(1), (2), or (3). If the Supreme Court grants a writ of certiorari, the Judge Advocate General shall take action under R.C.M. 1205(b).

**Rule 1205. Review by the Supreme Court**

(a) *Cases subject to review by the Supreme Court.* Under 28 U.S.C. § 1259 and Article 67a, decisions of the Court of Appeals for the Armed Forces may be

reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under Article 67(a)(1);

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under Article 67(a)(2);

(3) Cases in which the Court of Appeals for the Armed Forces granted a petition for review under Article 67(a)(3); and

(4) Cases other than those described in paragraphs (a)(1), (2), and (3) of this rule in which the Court of Appeals for the Armed Forces granted relief.

The Supreme Court may not review by writ of certiorari any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) *Action by the Supreme Court.* After the Supreme Court has taken action, other than denial of a petition for writ of certiorari, in any case, the Judge Advocate General shall, unless the case is returned to the Court of Appeals for the Armed Forces for further proceedings, forward the case to the President or the Secretary concerned in accordance with R.C.M. 1204(c)(2) or (3) when appropriate, or take action in accordance with the decision.

**Rule 1206. Powers and responsibilities of the Secretary**

(a) *Sentences requiring approval by the Secretary.* No part of a sentence extending to dismissal of a commissioned officer, cadet, or midshipman may be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary.

**Discussion**

See Article 57(a)(4).

---

(b) *Remission and suspension.*

(1) *In general.* The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commander may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures, other than a sentence approved by the President.

(2) *Substitution of discharge.* The Secretary

concerned may, for good cause, substitute an administrative discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(3) *Sentence commuted by the President.* When the President has commuted a death sentence to a lesser punishment, the Secretary concerned may remit or suspend any remaining part or amount of the unexecuted portion of the sentence of a person convicted by a military tribunal under the Secretary's jurisdiction.

**Rule 1207. Sentences requiring approval by the President**

No part of a court-martial sentence extending to death may be executed until approved by the President.

**Discussion**

See Article 57(a)(3). See also R.C.M. 1203 and 1204 concerning review by the Court of Criminal Appeals and Court of Appeals for the Armed Forces in capital cases.

**Rule 1208. Restoration**

(a) *New trial.* All rights, privileges, and property affected by an executed portion of a court-martial sentence—except an executed dismissal or discharge—which has not again been adjudged upon a new trial or which, after the new trial, has not been sustained upon the action of any reviewing authority, shall be restored. So much of the findings and so much of the sentence adjudged at the earlier trial shall be set aside as may be required by the findings and sentence at the new trial. Ordinarily, action taken under this subsection shall be reflected in the new judgment entered in the case.

**Discussion**

See Article 75(b) and (c) concerning the action to be taken on an executed dismissal or discharge which is not imposed at a new trial.

(b) *Other cases.* In cases other than those in subsection (a), all rights, privileges, and property affected by an executed part of a court-martial sentence that has been set aside or disapproved by any competent authority shall be restored unless a new trial, other trial, or rehearing is ordered and such executed part is included in a sentence imposed at the new trial, other trial, or

rehearing. Ordinarily, any restoration shall be reflected in the new judgment entered in the case. In accordance with regulations established by the Secretary concerned, for the period after the date on which an executed part of a court-martial sentence is set aside, an accused who is pending a rehearing, new trial, or other trial shall receive the pay and allowances due at the restored grade.

**Discussion**

See R.C.M. 1111 concerning entry of a new judgment in the case.

**Rule 1209. Finality of courts-martial**

(a) *When a conviction is final.*

(1) *General and special courts-martial.* A conviction in a general or special court-martial is final when—

(A) Review is completed under R.C.M. 1201(a) (Article 65);

(B) Review is completed by a Court of Criminal Appeals and—

(i) The accused does not file a timely petition for review by the Court of Appeals for the Armed Forces and the case is not otherwise under review by that court;

(ii) A petition for review is denied or otherwise rejected by the Court of Appeals for the Armed Forces; or

(iii) Review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(I) A petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) A petition for writ of certiorari is denied or otherwise rejected by the Supreme Court; or

(III) Review is otherwise completed in accordance with the judgment of the Supreme Court.

**Discussion**

See R.C.M. 1201, 1203, 1204, and 1205 concerning cases subject to review by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court. See also R.C.M. 1115 for waiver or withdrawal of appellate review.

(2) *Summary courts-martial.* A conviction in a summary court-martial is final when a judge advocate

## R.C.M. 1209(b)

completes review under R.C.M. 1307(d) and no further action is required under R.C.M. 1307(e).

### Discussion

Although a summary court-martial conviction is final under R.C.M. 1209(a)(2), an accused may petition for post-final review pursuant to R.C.M. 1307(h). *See also* R.C.M. 1201(h).

(b) *Effect of finality.* The appellate review of records of trial provided by the UCMJ, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by the UCMJ, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by the UCMJ, are final and conclusive. The judgment of a court-martial and orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial under Article 73, to action under Article 69, to action by the Secretary concerned as provided in Article 74, and the authority of the President.

### Rule 1210. New trial

(a) *In general.* At any time within three years after the date of entry of judgment, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court-martial. A petition may not be submitted after the death of the accused. A petition for a new trial of the facts may not be submitted on the basis of newly discovered evidence when the petitioner was found guilty of the relevant offense pursuant to a guilty plea.

(b) *Who may petition.* A petition for a new trial may be submitted by the accused personally, or by accused's counsel, regardless whether the accused has been separated from the Service.

(c) *Form of petition.* A petition for a new trial shall be written and shall be signed under oath or affirmation by the accused, by a person possessing the power of attorney of the accused for that purpose, or by a person with the authorization of an appropriate court to sign the petition as the representative of the accused. The petition shall contain the following information, or an explanation why such matters are not included:

(1) The name, service number, and current address

of the accused;

(2) The date and location of the trial;

(3) The type of court-martial and the title or position of the convening authority;

(4) The request for the new trial;

(5) The sentence or a description thereof as reflected in the judgment of the case, with any later reduction thereof by clemency or otherwise;

(6) A brief description of any finding or sentence believed to be unjust;

(7) A full statement of the newly discovered evidence or fraud on the court-martial which is relied upon for the remedy sought;

(8) Affidavits pertinent to the matters in paragraph (c)(7) of this rule; and

(9) The affidavit of each person whom the accused expects to present as a witness in the event of a new trial. Each such affidavit should set forth briefly the relevant facts within the personal knowledge of the witness.

(d) *Effect of petition.* The submission of a petition for a new trial does not stay the execution of a sentence.

(e) *Who may act on petition.* If the accused's case is pending before a Court of Criminal Appeals or the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise, the Judge Advocate General of the armed force which reviewed the previous trial shall act on the petition, except that petitions submitted by persons who, at the time of trial and sentence from which the petitioner seeks relief, were members of the Coast Guard, and who were members of the Coast Guard at the time the petition is submitted, shall be acted on in the Department in which the Coast Guard is serving at the time the petition is so submitted.

(f) *Grounds for new trial.*

(1) *In general.* A new trial may be granted only on grounds of newly discovered evidence or fraud on the court-martial.

(2) *Newly discovered evidence.* A new trial shall not be granted on the grounds of newly discovered evidence unless the petition shows that:

(A) The evidence was discovered after the trial;

(B) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and

(C) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

(3) *Fraud on court-martial.* No fraud on the court-martial warrants a new trial unless it had a substantial contributing effect on a finding of guilty or the sentence adjudged.

#### Discussion

Examples of fraud on a court-martial which may warrant granting a new trial are: confessed or proved perjury in testimony or forgery of documentary evidence which clearly had a substantial contributing effect on a finding of guilty and without which there probably would not have been a finding of guilty of the offense; willful concealment by the prosecution from the defense of evidence favorable to the defense which, if presented to the court-martial, would probably have resulted in a finding of not guilty; and willful concealment of a material ground for challenge of the military judge or any member or of the disqualification of counsel or the convening authority, when the basis for challenge or disqualification was not known to the defense at the time of trial (see R.C.M. 912).

(g) *Action on petition.*

(1) *In general.* The authority considering the petition may cause such additional investigation to be made and such additional information to be secured as that authority believes appropriate. Upon written request, and in its discretion, the authority considering the petition may permit oral argument on the matter.

(2) *Courts of Criminal Appeals; Court of Appeals for the Armed Forces.* The Courts of Criminal Appeals and the Court of Appeals for the Armed Forces shall act on a petition for a new trial in accordance with their respective rules.

(3) *The Judge Advocates General.* When a petition is considered by the Judge Advocate General, any hearing may be before the Judge Advocate General or before an officer or officers designated by the Judge Advocate General. If the Judge Advocate General believes meritorious grounds for relief under Article 74 have been established but that a new trial is not appropriate, the Judge Advocate General may act under Article 74 if authorized to do so, or transmit the petition and related papers to the Secretary concerned with a recommendation. The Judge Advocate General may also, in cases which have been finally reviewed but have not been reviewed by a Court of Criminal Appeals, act under Article 69.

#### Discussion

See also R.C.M. 1201(h).

(h) *Action when new trial is granted.*

(1) *Forwarding to convening authority.* When a petition for a new trial is granted, the Judge Advocate General shall select and forward the case to a convening authority for disposition.

(2) *Charges at new trial.* At a new trial, the accused may not be tried for any offense of which the accused was found not guilty or upon which the accused was not tried at the earlier court-martial.

(3) *Action by convening authority.* The convening authority's action on the record of a new trial is the same as in other courts-martial.

(4) *Disposition of record.* The disposition of the record of a new trial is the same as for other courts-martial.

(5) *Judgment.* After a new trial, a new judgment shall be entered in accordance with R.C.M. 1111.

#### Discussion

See Article 75 and R.C.M. 1208.

(6) *Action by persons charged with execution of the sentence.* Persons charged with the administrative duty of executing a sentence adjudged upon a new trial shall credit the accused with any executed portion or amount of the original sentence included in the new sentence in computing the term or amount of punishment actually to be executed pursuant to the sentence.

## CHAPTER XIII. SUMMARY COURTS-MARTIAL

### Rule 1301. Summary courts-martial

(a) *Composition.* A summary court-martial is composed of one commissioned officer on active duty. Unless otherwise prescribed by the Secretary concerned a summary court-martial shall be of the same armed force as the accused. Summary courts-martial shall be conducted in accordance with the regulations of the military Service to which the accused belongs. Whenever practicable, a summary court-martial should be an officer whose grade is not below lieutenant of the Navy or Coast Guard or captain of the Army, Air Force, or Marine Corps. When only one commissioned officer is present with a command or detachment, that officer shall be the summary court-martial of that command or detachment. When more than one commissioned officer is present with a command or detachment, the convening authority may not be the summary court-martial of that command or detachment.

(b) *Function.* The function of the summary court-martial is to promptly adjudicate minor offenses under a simple disciplinary proceeding. A finding of guilt by the summary court-martial does not constitute a criminal conviction as it is not a criminal forum. However, a summary court-martial shall constitute a trial for purposes of determining former jeopardy under Article 44. The summary court-martial shall thoroughly and impartially inquire into both sides of the matter and shall ensure that the interests of both the Government and the accused are safeguarded and that justice is done. A summary court-martial may seek advice from a judge advocate or legal officer on questions of law, but the summary court-martial may not seek advice from any person on factual conclusions that should be drawn from evidence or the sentence that should be imposed, as the summary court-martial has the independent duty to make these determinations.

#### Discussion

For a definition of "minor offenses," see subparagraph 1.e, Part V. See R.C.M. 1209(a)(2) for the finality of a finding of guilty at a summary court-martial.

(c) *Jurisdiction.*

[Note: R.C.M. 1301(c) applies to offenses committed on or after 24 June 2014.]

(1) Subject to Chapter II, summary courts-martial have the power to try persons subject to the UCMJ, except commissioned officers, warrant officers, cadets, aviation cadets, and midshipmen, for any non-capital offense made punishable by the UCMJ.

#### Discussion

See R.C.M. 103(4) for the definition of the term "capital offense."

(2) Notwithstanding paragraph (c)(1), summary courts-martial do not have jurisdiction over offenses under Articles 120(a), 120(b), 120b(a), 120b(b), and attempts thereof under Article 80. Such offenses shall not be referred to a summary court-martial.

#### Discussion

Only a general court-martial has jurisdiction to try penetrative sex offenses under subsections (a) and (b) of Article 120, subsections (a) and (b) of Article 120b, and attempts to commit such penetrative sex offenses under Article 80.

(d) *Punishments.*

(1) *Limitations—amount.* Subject to R.C.M. 1003, summary courts-martial may impose any punishment not forbidden by the UCMJ except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than 1 month, hard labor without confinement for more than 45 days, restriction to specified limits for more than 2 months, or forfeiture of more than two-thirds of 1 month's pay.

#### Discussion

The maximum penalty that can be adjudged in a summary court-martial is confinement for 30 days, forfeiture of two-thirds pay per month for one month, and reduction to the lowest pay grade. See R.C.M. 1301(d)(2) for additional limits on sentences that may be adjudged where the accused is serving in a pay grade above the fourth enlisted pay grade.

A summary court-martial may not suspend all or part of a sentence, although the summary court-martial may recommend to the convening authority that all or part of a sentence be suspended. If a sentence includes both reduction in grade and forfeitures, the maximum forfeiture is calculated at the reduced pay grade. See also R.C.M. 1003 concerning other punishments which may be imposed, the effects of certain types of punishment, and the combination of certain types of punishment.

---

(2) *Limitations—pay grade.* In the case of enlisted members above the fourth enlisted pay grade, summary courts-martial may not adjudge confinement, hard labor without confinement, or reduction except to the next pay grade.

#### Discussion

The provisions of this subsection apply to an accused in the fifth enlisted pay grade who is reduced to the fourth enlisted pay grade by the summary court-martial.

---

(e) *Counsel.* The accused at a summary court-martial does not have the right to counsel. If the accused has counsel qualified under R.C.M. 502(d)(2), that counsel may be permitted to represent the accused at the summary court-martial if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it.

#### Discussion

Neither the Constitution nor any statute establishes any right to counsel at summary courts-martial. Therefore, it is not error to deny an accused the opportunity to be represented by counsel at a summary court-martial. However, appearance of counsel is not prohibited. The detailing authority may, as a matter of discretion, detail, or otherwise make available, a military attorney to represent the accused at a summary court-martial.

---

(f) *Power to obtain witnesses and evidence.* A summary court-martial may obtain evidence pursuant to R.C.M. 703.

#### Discussion

The summary court-martial must obtain witnesses for the prosecution and the defense pursuant to the standards in R.C.M. 703. The summary court-martial rules on any request by the accused for witnesses or evidence in accordance with the procedure in R.C.M. 703(c) and (e).

---

(g) *Secretarial limitations.* The Secretary concerned may prescribe procedural or other rules for summary courts-martial not inconsistent with this Manual or the UCMJ.

### Rule 1302. Convening a summary court-martial

(a) *Who may convene summary courts-martial.* Unless limited by competent authority summary courts-martial may be convened by:

(1) Any person who may convene a general or special court-martial;

(2) The commander of a detached company or other detachment of the Army;

(3) The commander of a detached squadron or other detachment of the Air Force;

(4) The commander or officer in charge of any other command when empowered by the Secretary concerned; or

(5) A superior competent authority to any of the above.

(b) *When convening authority is accuser.* If the convening authority or the summary court-martial is the accuser, it is discretionary with the convening authority whether to forward the charges to a superior authority with a recommendation to convene the summary court-martial. If the convening authority or the summary court-martial is the accuser, the jurisdiction of the summary court-martial is not affected.

(c) *Procedure.* After the requirements of Chapters III and IV of this Part have been satisfied, summary courts-martial shall be convened in accordance with R.C.M. 504(d)(2). The convening order may be by notation signed by the convening authority on the charge sheet. Charges shall be referred to summary courts-martial in accordance with R.C.M. 601.

#### Discussion

When the convening authority is the summary court-martial because the convening authority is the only commissioned officer present with the command or detachment, see R.C.M. 1301(a), that fact should be noted on the charge sheet.

---

### Rule 1303. Right to object to trial by summary court-martial

No person who objects thereto before arraignment may be tried by summary court-martial even if that person also refused punishment under Article 15 and demanded trial by court-martial for the same offenses.



## R.C.M. 1304(a)

### Discussion

If the accused objects to trial by summary court-martial, the convening authority may dispose of the case in accordance with R.C.M. 401.

---

### Rule 1304. Trial procedure

#### (a) Pretrial duties.

(1) *Examination of file.* The summary court-martial shall carefully examine the charge sheet, allied papers, and immediately available personnel records of the accused before trial.

### Discussion

“Personnel records” are those personnel records of the accused that are maintained locally and are immediately available. “Allied papers” in a summary court-martial include convening orders, investigative reports, correspondence relating to the case, and witness statements.

---

(2) *Report of irregularity.* The summary court-martial shall report to the convening authority any substantial irregularity in the charge sheet, allied papers, or personnel records.

### Discussion

The summary court-martial should examine the charge sheet, allied papers, and personnel records to ensure that they are complete and free from errors or omissions which might affect admissibility. The summary court-martial should check the charges and specifications to ensure that each alleges personal jurisdiction over the accused (*see* R.C.M. 202) and an offense under the UCMJ (*see* R.C.M. 203 and Part IV). Substantial defects or errors in the charges and specifications must be reported to the convening authority, because such defects cannot be corrected except by preferring and referring the affected charge and specification anew in proper form. A defect or error is substantial if correcting it would state an offense not otherwise stated, or include an offense, person, or matter not fairly included in the specification as preferred. *See* R.C.M. 1304(a)(3) concerning minor errors.

---

(3) *Correction and amendment.* The summary court-martial may, subject to R.C.M. 603, correct errors on the charge sheet and amend charges and specifications. Any such corrections or amendments shall be initialed.

(4) *Rights of victims at summary courts-martial.* Pursuant to Article 6b, a victim at summary court-martial is entitled to the following rights:

- (A) To be reasonably protected from the accused;
- (B) To reasonable, accurate, and timely notice of

the summary court-martial;

(C) To not be excluded from the summary court-martial unless the summary court-martial officer, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at the summary court-martial;

(D) To be reasonably heard during sentencing in accordance with R.C.M. 1001(c); and

(E) The reasonable right to confer with the representative of the command and counsel for the government, if any.

### Discussion

The term “victim” has the same meaning as the term “victim of an offense under this chapter” in Article 6b.

---

#### (b) Summary court-martial procedure.

### Discussion

A sample guide is at Appendix 8. The summary court-martial should review and become familiar with the guide before proceeding.

---

(1) *Preliminary proceeding.* After complying with R.C.M. 1304(a), the summary court-martial shall hold a preliminary proceeding during which the accused shall be given a copy of the charge sheet and informed of the following:

(A) The general nature of the charges;

(B) The fact that the charges have been referred to a summary court-martial for trial and the date of referral;

(C) The identity of the convening authority;

(D) The name(s) of the accuser(s);

(E) The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expects to introduce into evidence;

(F) The accused’s right to inspect the allied papers and immediately available personnel records;

(G) That during the trial the summary court-martial will not consider any matters, including statements previously made by the accused to the officer detailed as summary court-martial unless

admitted in accordance with the Military Rules of Evidence;

(H) The accused's right to plead not guilty or guilty;

(I) The accused's right to cross-examine witnesses and have the summary court-martial cross-examine witnesses on behalf of the accused;

(J) The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial as necessary;

(K) The accused's right to testify on the merits, or to remain silent with the assurance that no adverse inference will be drawn by the summary court-martial from such silence;

(L) If any findings of guilty are announced, the accused's rights to remain silent, to make an unsworn statement, oral or written or both, and to testify, and to introduce evidence in extenuation or mitigation;

(M) The maximum sentence which the summary court-martial may adjudge if the accused is found guilty of the offense or offenses alleged; and

(N) The accused's right to object to trial by summary court-martial.

(2) *Trial proceeding.*

(A) *Objection to trial.* The summary court-martial shall give the accused a reasonable period of time to decide whether to object to trial by summary court-martial. The summary court-martial shall thereafter record the response. If the accused objects to trial by summary court-martial, the summary court-martial shall return the charge sheet, allied papers, and personnel records to the convening authority. If the accused fails to object to trial by summary court-martial, trial shall proceed.

(B) *Arraignment.* After complying with R.C.M. 1304(b)(1) and (2)(A), the summary court-martial shall read and show the charges and specifications to the accused and, if necessary, explain them. The accused may waive the reading of the charges. The summary court-martial shall then ask the accused to plead to each specification and charge.

(C) *Motions.* Before receiving pleas the summary court-martial shall allow the accused to make motions to dismiss or for other relief. The summary court-martial shall take action on behalf of the accused, if requested by the accused, or if it appears necessary in the interests of justice.

(D) *Pleas.*

(i) *Not guilty pleas.* When a not guilty plea is entered, the summary court-martial shall proceed to trial.

(ii) *Guilty pleas.* If the accused pleads guilty to any offense, the summary court-martial shall comply with R.C.M. 910.

(iii) *Rejected guilty pleas.* If the summary court-martial is in doubt that the accused's pleas of guilty are voluntarily and understandingly made, or if at any time during the trial any matter inconsistent with pleas of guilty arises, which inconsistency cannot be resolved, the summary court-martial shall enter not guilty pleas as to the affected charges and specifications.

(iv) *No plea.* If the accused refuses to plead, the summary court-martial shall enter not guilty pleas.

(v) *Changed pleas.* The accused may change any plea at any time before findings are announced. The accused may change pleas from guilty to not guilty after findings are announced only for good cause.

(E) *Presentation of evidence.*

(i) The Military Rules of Evidence (Part III) apply to summary courts-martial.

(ii) The summary court-martial shall arrange for the attendance of necessary witnesses for the prosecution and defense, including those requested by the accused.

**Discussion**

See R.C.M. 703. Ordinarily witnesses should be excluded from the courtroom until called to testify. See Mil. R. Evid. 615.

---

(iii) Witnesses for the prosecution shall be called first and examined under oath. The accused shall be permitted to cross-examine these witnesses. The summary court-martial shall aid the accused in cross-examination if such assistance is requested or appears necessary in the interests of justice. The witnesses for the accused shall then be called and similarly examined under oath.

(iv) The summary court-martial shall obtain evidence which tends to disprove the accused's guilt or establishes extenuating circumstances.

**Discussion**

See R.C.M. 703 and 1001.

---

**R.C.M. 1304(b)(2)(F)**

(F) *Findings and sentence.*

(G) The summary court-martial shall apply the principles in R.C.M. 918 in determining the findings. The summary court-martial shall announce the findings to the accused in open session.

(ii) The summary court-martial shall follow the procedures in R.C.M. 1001 and 1002 and apply the principles in the remainder of Chapter X in determining a sentence, except as follows:

(I) If an accused is found guilty of more than one offense, a summary court-martial shall determine the appropriate confinement and fine, if any, for all offenses of which the accused was found guilty. The summary court-martial shall not determine or announce separate terms of confinement or fines for each offense; and

(II) The summary court-martial shall announce the sentence to the accused in open session.

(iii) If the sentence includes confinement, the summary court-martial shall advise the accused of the right to apply to the convening authority for deferment of the service of the confinement.

(iv) If the accused is found guilty, the summary court-martial shall advise the accused of the rights under R.C.M. 1306(a) and (h) and R.C.M. 1307(h) after the sentence is announced.

(v) The summary court-martial shall, as soon as practicable, inform the convening authority of the findings, sentence, recommendations, if any, for suspension of the sentence, and any deferment request.

(vi) If the sentence includes confinement, the summary court-martial shall cause the delivery of the accused to the accused's commanding officer or the commanding officer's designee.

**Discussion**

If the accused's immediate commanding officer is not the convening authority, the summary court-martial should ensure that the immediate commanding officer is informed of the findings, sentence, and any recommendations pertaining thereto. See R.C.M. 1102 concerning post-trial confinement.

**Rule 1305. Record of trial**

(a) *In general.* The record of trial of a summary court-martial shall be prepared as prescribed in subsection (b) of this rule. The convening or higher authority may prescribe additional requirements for the record of trial.

**Discussion**

See Appendix 9 for a sample of a Record of Trial by Summary Court-Martial.

Any matters submitted under R.C.M. 1306(a) should be appended to the record of trial.

(b) *Contents.* The summary court-martial shall prepare a written record of trial, which shall include:

(1) The pleas, findings, and sentence, and if the accused was represented by counsel at the summary court-martial, a notation to that effect;

(2) The fact that the accused was advised of the matters set forth in R.C.M. 1304(b)(1);

(3) If the summary court-martial is the convening authority, a notation to that effect.

(c) *Certification.* The summary court-martial shall certify the record by signing the record of trial. An electronic record of trial may be certified with the electronic signature of the summary court-martial.

**Discussion**

Certification means attesting that the record accurately reports the proceedings and includes any matters prescribed by the Secretary concerned.

(d) *Forwarding copies of the record.*

(1) *Accused's copy.*

(A) *Service.* The summary court-martial shall cause a copy of the record of trial to be served on the accused as soon as it is certified. Service of a certified electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service under this rule.

(B) *Receipt.* The summary court-martial shall cause the accused's receipt for the copy of the record of trial to be obtained and attached to the original record of trial or shall attach to the original record of trial a certificate that the accused was served a copy of the record. If the record of trial was not served on the accused personally, the summary court-martial shall attach a statement explaining how and when such service was accomplished. If the accused was represented by counsel, such counsel may be served with the record of trial.

(C) *Classified information.* If classified information is included in the record of trial of a

summary court-martial, R.C.M. 1112(e)(3)(A) shall apply.

(2) *Forwarding to the convening authority.* The original and one copy of the record of trial shall be forwarded to the convening authority after compliance with paragraph (d)(1) of this rule.

(3) *Further disposition.* After compliance with R.C.M. 1306(b) and (h) and R.C.M. 1307(h), if applicable, the record of trial shall be disposed of under regulations prescribed by the Secretary concerned.

(e) *Loss of record; defective record; correction of record.*

(1) *Loss of record.* If the certified record of trial is lost or destroyed, the summary court-martial shall, if practicable, cause another record of trial to be prepared for certification. The new record of trial shall become the record of trial in the case if the requirements of this rule are met.

(2) *Defective record.* A record of trial found to be defective after certification may be returned to the summary court-martial to be corrected. The summary court-martial shall give notice of the proposed correction to the parties and permit them to examine and respond to the proposed correction before issuing a certificate of correction. The parties shall be given reasonable access to any recording of the proceedings.

#### Discussion

The type of opportunity to respond depends on the nature and scope of the proposed correction. In many instances an adequate opportunity can be provided by allowing the parties to present affidavits and other documentary evidence to the person issuing the certificate of correction or by a conference telephone call among the summary court-martial, the parties, and the reporter, if any. In other instances, an evidentiary hearing with witnesses may be required. The accused need not be present at any hearing on a certificate of correction.

(3) *Certificate of correction; service on the accused.* The certificate of correction shall be certified as provided in subsection (c) of this rule and a copy served on the accused as provided in paragraph (d)(1) of this rule. The certificate of correction and the accused's receipt for the certificate of correction shall be attached to each copy of the record of trial required to be prepared under this rule.

### Rule 1306. Post-trial procedure, summary court-martial

(a) *Matters submitted.* After a sentence is adjudged by a summary court-martial, the accused and any crime victim may submit matters to the convening authority in accordance with R.C.M. 1106 and R.C.M. 1106A.

#### Discussion

For the definition of "crime victim," see R.C.M. 1106A(b)(2).

(b) *Convening authority's action.*

(1) *In general.* The convening authority shall take action on the sentence of a summary court-martial and, in the discretion of the convening authority, the findings of a summary court-martial.

(2) *Action on findings.* Action on the findings is not required. With respect to findings, the convening authority may:

(A) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(B) set aside any finding of guilty and:

(i) dismiss the specification and, if appropriate, the charge; or

(ii) direct a rehearing in accordance with R.C.M. 810 and subsection (e).

(3) *Action on sentence.* The convening authority shall take action on the sentence. The convening authority may disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence. The convening authority shall approve the sentence that is warranted by the circumstances of the offense and appropriate for the accused.

#### Discussion

In determining what sentence should be approved, the convening authority should consider the sentencing guidance in R.C.M. 1002(f) and all matters relating to clemency, such as pretrial confinement.

See R.C.M. 910(f)(5) on the effect of a plea agreement on the sentence of a summary court-martial.

A sentence adjudged by a court-martial may be approved if it was within the jurisdiction of the court-martial to adjudge (*see* R.C.M. 201(f)) and did not exceed the maximum limits prescribed in Part IV and Chapter X of this Part for the offense(s) of which the accused legally has been found guilty.

*See also* R.C.M. 1003(b).

## R.C.M. 1306(b)(4)

See R.C.M. 1103(c) for the convening authority's ability to defer service of a sentence to confinement in a summary court-martial where the accused is in the custody of a state or foreign country.

---

(4) *When proceedings resulted in finding of not guilty.* The convening authority shall not take action disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty. When an accused is found not guilty only by reason of lack of mental responsibility, the convening authority, however, shall commit the accused to a suitable facility pending a hearing and disposition in accordance with R.C.M. 1105.

(5) *Action when accused lacks mental capacity.* The convening authority may not approve a sentence while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. If, before the convening authority takes action, a substantial question is raised as to the requisite mental capacity of the accused, the convening authority shall either—

(A) direct an examination of the accused in accordance with R.C.M. 706 to determine the accused's present capacity to understand and cooperate in the post-trial proceedings; or

(B) disapprove the findings and sentence.

### Discussion

See R.C.M. 909 regarding presumptions and standards governing issues of mental competence.

---

(c) *Ordering rehearing or other trial.* The convening authority may, in the convening authority's discretion, order a rehearing. A rehearing may be ordered as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only. A rehearing may not be ordered as to findings of guilty when there is a lack of sufficient evidence in the record to support the findings of guilty of the offense charged or of any lesser included offense. A rehearing may be ordered, however, if the proof of guilt consisted of inadmissible evidence for which there is available an admissible substitute. A rehearing may be ordered as to any lesser offense included in an offense of which the accused was found guilty, provided there is sufficient evidence in the record to support the lesser

included offense.

### Discussion

See R.C.M. 810 regarding procedures for rehearings and limitations on sentence at rehearings.

---

(d) *Contents of action and related matters.*

(1) *In general.* The convening authority shall state in writing and insert in the record of trial the convening authority's decision as to the sentence, whether any findings of guilty are disapproved, whether any charges or specifications are changed or dismissed and an explanation for such action, and any orders as to further disposition. The action shall be signed by the convening authority. The convening authority's authority to sign shall appear below the signature. The convening authority may recall and modify any action taken by that convening authority at any time before it has been published, or, if the action is favorable to the accused, at any time prior to forwarding the record for review or before the accused has been officially notified.

(2) *Sentence.* The action shall state whether the sentence adjudged by the court-martial is approved. If only part of the sentence is approved, the action shall state which parts are approved. A rehearing may not be directed if any sentence is approved.

(3) *Suspension.* The action shall indicate, when appropriate, whether an approved sentence is to be executed or whether the execution of all or any part of the sentence is to be suspended. No reasons need be stated.

(4) *Deferment of service of sentence to confinement.* Whenever the service of the sentence to confinement is deferred by the convening authority under R.C.M. 1103 before or concurrently with the initial action in the case, the action shall include the date on which the deferment became effective. The reason for the deferment need not be stated in the action.

(e) *Incomplete, ambiguous, or erroneous action.* When the action of the convening authority or of a higher authority is incomplete, ambiguous, or contains error, the authority who took the incomplete, ambiguous, or erroneous action may be instructed by an authority acting under Article 64, 66, 67, 67a, or 69 to withdraw the original action and substitute a corrected action.

(f) *Service.* A copy of the convening authority's action shall be served on the accused or on defense counsel

and, upon the victim's request, the victim. If the action is served on defense counsel, defense counsel shall, by expeditious means, provide the accused with a copy.

### Discussion

The term "victim" has the same meaning as "crime victim" in R.C.M. 1106A(b)(2).

---

(g) *Subsequent action.* Any action taken on a summary court-martial after the initial action by the convening authority shall be in writing, signed by the authority taking the action, and promulgated in appropriate orders.

(h) *Review by a judge advocate.* A judge advocate shall review each summary court-martial in which there is a finding of guilty pursuant to R.C.M. 1307.

### Rule 1307. Review of summary courts-martial by a judge advocate

(a) *In general.* Except as provided in subsection (b) of this rule, under regulations of the Secretary concerned, a judge advocate shall review each summary court-martial in which there is a finding of guilty.

(b) *Exception.* If the accused is found not guilty or not guilty only by reason of lack of mental responsibility of all offenses or if the convening authority disapproved all findings of guilty, no review under this rule is required.

(c) *Disqualification.* No person may review a case under this rule if that person has acted in the same case as an accuser, preliminary hearing officer, summary court-martial officer, or counsel, or has otherwise acted on behalf of the prosecution or defense.

(d) *Form and content of review.* The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court-martial had jurisdiction over the accused and each offense as to which there is a finding of guilty that has not been disapproved;

(B) each specification as to which there is a finding of guilty that has not been disapproved stated an offense; and

(C) the sentence was legal.

(2) A response to each allegation of error made in writing by the accused. Such allegations may be filed under R.C.M. 1106 or directly with the judge advocate

who reviews the case; and

(3) If the case is sent for action to the officer exercising general court-martial jurisdiction under subsection (e) of this rule, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

A copy of the judge advocate's review under this rule shall be attached to the record of trial. A copy of the review shall also be forwarded to the accused.

(e) *Forwarding to officer exercising general court-martial jurisdiction.* In cases reviewed under this rule, the record of trial shall be sent for action to the officer exercising general court-martial convening authority over the accused at the time the court-martial was held (or to that officer's successor) when:

(1) The judge advocate who reviewed the case recommends corrective action; or

(2) Such action is otherwise required by regulations of the Secretary concerned.

(f) *Action by officer exercising general court-martial jurisdiction.*

(1) *Action.* The officer exercising general court-martial jurisdiction who receives a record under subsection (e) of this rule may—

(A) Disapprove or approve the findings or sentence in whole or in part;

(B) Remit, commute, or suspend the sentence in whole or in part;

(C) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) Dismiss the charges.

### Discussion

See R.C.M. 1102(a) concerning when the officer exercising general court-martial jurisdiction may order parts of the sentence executed. See R.C.M. 1111(a)(3) explaining that the findings and sentence of the court-martial, as modified or approved by the convening authority, constitute the judgment in summary courts-martial.

---

(2) *Rehearing.* If the officer exercising general court-martial jurisdiction orders a rehearing, but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) *Notification.* After the officer exercising general court-martial jurisdiction has taken action, the accused

**R.C.M. 1307(g)**

shall be notified of the action and the accused shall be provided with a copy of the action.

(g) *Records forwarded to the Judge Advocate General.* If the judge advocate who reviews the case under this rule states that corrective action is required as a matter of law, and the officer exercising general court-martial jurisdiction does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and the action thereon shall be forwarded to the Judge Advocate General for review under R.C.M. 1201(j).

(h) *Application for post-final review by the Judge Advocate General.* Not later than one year after completion of the judge advocate's review of the case under this rule, the accused may apply for review by the Judge Advocate General under R.C.M. 1201(h) on the grounds of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over the accused or offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(i) *Review by a Court of Criminal Appeals.* After the Judge Advocate General reviews a summary court-martial under R.C.M. 1201(h) or (j), the case may be sent to the Court of Criminal Appeals by order of the Judge Advocate General, or the accused may submit an application for review to the Court of Criminal Appeals in accordance with R.C.M. 1201(k).

(j) *Other records.* Records reviewed under this rule that are not forwarded under subsection (g) shall be disposed of as prescribed by the Secretary concerned.

**PART III**  
**MILITARY RULES OF EVIDENCE:**  
**SECTION I**  
**GENERAL PROVISIONS**

**Rule 101. Scope**

(a) *Scope.* These rules apply to courts-martial proceedings to the extent and with the exceptions stated in Mil. R. Evid. 1101.

(b) *Sources of Law.* In the absence of guidance in this Manual or these rules, courts-martial will apply:

(1) First, the Federal Rules of Evidence and the case law interpreting them; and

(2) Second, when not inconsistent with subdivision (b)(1), the rules of evidence at common law.

(c) *Rule of Construction*

(1) Except as otherwise provided in these rules, the term “military judge” includes:

(A) a military magistrate designated to preside at a special court-martial or pre-referral judicial proceeding; and

(B) a summary court-martial officer.

(2) A reference in these rules to any kind of written material or any other medium includes electronically stored information.

**Discussion**

Discussion was added to these Rules in 2013. The Discussion itself does not have the force of law, even though it may describe legal requirements derived from other sources. It is in the nature of a treatise, and may be used as secondary authority. If a matter is included in a rule, it is intended that the matter be binding, unless it is clearly expressed as precatory. The Discussion will be revised from time to time as warranted by changes in applicable law. *See* Composition of the Manual for Courts-Martial in Appendix 15

Practitioners should also refer to the Analysis of the Military Rules of Evidence contained in Appendix 16 of this Manual. The Analysis is similar to Committee Notes accompanying the Federal Rules of Evidence and is intended to address the basis of the rule, deviation from the Federal Rules of Evidence, relevant precedent, and drafters’ intent.

---

**Rule 102. Purpose**

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

**Rule 103. Rulings on evidence**

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only if the error materially prejudices a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the military judge of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not Needing to Renew an Objection or Offer of Proof.* Once the military judge rules definitively on the record admitting or excluding evidence, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Review of Constitutional Error.* The standard provided in subdivision (a)(2) does not apply to errors implicating the United States Constitution as it applies to members of the Armed Forces, unless the error arises under these rules and subdivision (a)(2) provides a standard that is more advantageous to the accused than the constitutional standard.

(d) *Military Judge’s Statement about the Ruling; Directing an Offer of Proof.* The military judge may make any statement about the character or form of the evidence, the objection made, and the ruling. The military judge may direct that an offer of proof be made in question-and-answer form.

(e) *Preventing the Members from Hearing Inadmissible Evidence.* In a court-martial composed of a military judge and members, to the extent practicable, the military judge must conduct a trial so that inadmissible evidence is not suggested to the members by any means.

(f) *Taking Notice of Plain Error.* A military judge may take notice of a plain error that materially prejudices a substantial right, even if the claim of error was not properly preserved.



## M.R.E. 104

### Rule 104. Preliminary questions

(a) *In general.* The military judge must decide any preliminary question about whether a witness is available or qualified, a privilege exists, a continuance should be granted, or evidence is admissible. In so deciding, the military judge is not bound by evidence rules, except those on privilege.

(b) *Relevance that Depends on a Fact.* When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The military judge may admit the proposed evidence on the condition that the proof be introduced later. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge, except where these rules or this Manual provide expressly to the contrary.

(c) *Conducting a Hearing so that the Members Cannot Hear It.* The military judge must conduct any hearing on a preliminary question so that the members cannot hear it if:

- (1) the hearing involves the admissibility of a statement of the accused under Mil. R. Evid. 301-306;
- (2) the accused is a witness and so requests; or
- (3) justice so requires.

(d) *Cross-Examining the Accused.* By testifying on a preliminary question, the accused does not become subject to cross-examination on other issues in the case.

(e) *Evidence Relevant to Weight and Credibility.* This rule does not limit a party's right to introduce before the members evidence that is relevant to the weight or credibility of other evidence.

### Rule 105. Limiting evidence that is not admissible against other parties or for other purposes

If the military judge admits evidence that is admissible against a party or for a purpose - but not against another party or for another purpose - the military judge, on timely request, must restrict the evidence to its proper scope and instruct the members accordingly.

### Rule 106. Remainder of or related writings or recorded statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the

introduction, at that time, of any other part - or any other writing or recorded statement - that in fairness ought to be considered at the same time.

## SECTION II

### JUDICIAL NOTICE

#### Rule 201. Judicial notice of adjudicative facts

(a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) *Kinds of Facts that May Be Judicially Noticed.* The military judge may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known universally, locally, or in the area pertinent to the event; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) *Taking Notice.* The military judge:

(1) may take judicial notice whether requested or not; or

(2) must take judicial notice if a party requests it and the military judge is supplied with the necessary information.

The military judge must inform the parties in open court when, without being requested, he or she takes judicial notice of an adjudicative fact essential to establishing an element of the case.

(d) *Timing.* The military judge may take judicial notice at any stage of the proceeding.

(e) *Opportunity to Be Heard.* On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the military judge takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) *Instructing the Members.* The military judge must instruct the members that they may or may not accept the noticed fact as conclusive.

#### Rule 202. Judicial notice of law

(a) *Domestic Law.* The military judge may take judicial notice of domestic law. If a domestic law is a fact that is of consequence to the determination of the action, the procedural requirements of Mil. R. Evid. 201—except Rule 201(f)—apply.

(b) *Foreign Law.* A party who intends to raise an issue concerning the law of a foreign country must give reasonable written notice. The military judge, in determining foreign law, may consider any relevant material or source, in accordance with Mil. R. Evid. 104. Such a determination is a ruling on a question of law.

### SECTION III

## EXCLUSIONARY RULES AND RELATED MATTERS CONCERNING SELF-INCRIMINATION, SEARCH AND SEIZURE, AND EYEWITNESS IDENTIFICATION

### Rule 301. Privilege concerning compulsory self-incrimination

(a) *General Rule.* An individual may claim the most favorable privilege provided by the Fifth Amendment to the United States Constitution, Article 31, or these rules. The privileges against self-incrimination are applicable only to evidence of a testimonial or communicative nature.

(b) *Standing.* The privilege of a witness to refuse to respond to a question that may tend to incriminate the witness is a personal one that the witness may exercise or waive at his or her discretion.

(c) *Limited Waiver.* An accused who chooses to testify as a witness waives the privilege against self-incrimination only with respect to the matters about which he or she testifies. If the accused is on trial for two or more offenses and on direct examination testifies about only one or some of the offenses, the accused may not be cross-examined as to guilt or innocence with respect to the other offenses unless the cross-examination is relevant to an offense concerning which the accused has testified. This waiver is subject to Mil. R. Evid. 608(b).

### Discussion

A military judge is not required to provide Article 31 warnings. If a witness who seems uninformed of the privileges under this rule appears likely to incriminate himself or herself, the military judge may advise the witness of the right to decline to make any answer that might tend to incriminate the witness and that any self-incriminating answer the witness might make can later be used as evidence against the witness. Counsel for any party or for the witness may ask the military judge to so advise a witness if such a request is made out of the hearing of the witness and the members, if present. Failure to so advise a witness does not make the testimony

of the witness inadmissible.

(d) *Exercise of the Privilege.* If a witness states that the answer to a question may tend to incriminate him or her, the witness cannot be required to answer unless the military judge finds that the facts and circumstances are such that no answer the witness might make to the question would tend to incriminate the witness or that the witness has, with respect to the question, waived the privilege against self-incrimination. A witness may not assert the privilege if he or she is not subject to criminal penalty as a result of an answer by reason of immunity, running of the statute of limitations, or similar reason.

(1) *Immunity Requirements.* The minimum grant of immunity adequate to overcome the privilege is that which under either R.C.M. 704 or other proper authority provides that neither the testimony of the witness nor any evidence obtained from that testimony may be used against the witness at any subsequent trial other than in a prosecution for perjury, false swearing, the making of a false official statement, or failure to comply with an order to testify after the military judge has ruled that the privilege may not be asserted by reason of immunity.

(2) *Notification of Immunity or Leniency.* When a prosecution witness before a court-martial has been granted immunity or leniency in exchange for testimony, the grant must be reduced to writing and must be served on the accused prior to arraignment or within a reasonable time before the witness testifies. If notification is not made as required by this rule, the military judge may grant a continuance until notification is made, prohibit or strike the testimony of the witness, or enter such other order as may be required.

(e) *Waiver of the Privilege.* A witness who answers a self-incriminating question without having asserted the privilege against self-incrimination may be required to answer questions relevant to the disclosure, unless the questions are likely to elicit additional self-incriminating information.

(1) If a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are purely collateral.

(2) Any limited waiver of the privilege under subdivision (e) applies only at the trial in which the

## M.R.E. 301(f)

answer is given, does not extend to a rehearing or new or other trial, and is subject to Mil. R. Evid. 608(b).

### (f) *Effect of Claiming the Privilege.*

(1) *No Inference to Be Drawn.* The fact that a witness has asserted the privilege against self-incrimination cannot be considered as raising any inference unfavorable to either the accused or the government.

(2) *Pretrial Invocation Not Admissible.* The fact that the accused during official questioning and in exercise of rights under the Fifth Amendment to the United States Constitution or Article 31 remained silent, refused to answer a certain question, requested counsel, or requested that the questioning be terminated, is not admissible against the accused.

(3) *Instructions Regarding the Privilege.* When the accused does not testify at trial, defense counsel may request that the members of the court be instructed to disregard that fact and not to draw any adverse inference from it. Defense counsel may request that the members not be so instructed. Defense counsel's election will be binding upon the military judge except that the military judge may give the instruction when the instruction is necessary in the interests of justice.

## Rule 302. Privilege concerning mental examination of an accused

(a) *General rule.* The accused has a privilege to prevent any statement made by the accused at a mental examination ordered under R.C.M. 706 and any derivative evidence obtained through use of such a statement from being received into evidence against the accused on the issue of guilt or innocence or during sentencing proceedings. This privilege may be claimed by the accused notwithstanding the fact that the accused may have been warned of the rights provided by Mil. R. Evid. 305 at the examination.

### (b) *Exceptions.*

(1) There is no privilege under this rule when the accused first introduces into evidence such statements or derivative evidence.

(2) If the court-martial has allowed the defense to present expert testimony as to the mental condition of the accused, an expert witness for the prosecution may testify as to the reasons for his or her conclusions, but such testimony may not extend to statements of the accused except as provided in subdivision (b)(1).

(c) *Release of Evidence from an R.C.M. 706 Examination.* If the defense offers expert testimony concerning the mental condition of the accused, the

military judge, upon motion, must order the release to the prosecution of the full contents, other than any statements made by the accused, of any report prepared pursuant to R.C.M. 706. If the defense offers statements made by the accused at such examination, the military judge, upon motion, may order the disclosure of such statements made by the accused and contained in the report as may be necessary in the interests of justice.

(d) *Noncompliance by the Accused.* The military judge may prohibit an accused who refuses to cooperate in a mental examination authorized under R.C.M. 706 from presenting any expert medical testimony as to any issue that would have been the subject of the mental examination.

(e) *Procedure.* The privilege in this rule may be claimed by the accused only under the procedure set forth in Mil. R. Evid. 304 for an objection or a motion to suppress.

## Rule 303. Degrading questions

Statements and evidence are inadmissible if they are not material to the issue and may tend to degrade the person testifying.

## Rule 304. Confessions and admissions

(a) *General rule.* If the accused makes a timely motion or objection under this rule, an involuntary statement from the accused, or any evidence derived therefrom, is inadmissible at trial except as provided in subdivision (e).

### (1) *Definitions.* As used in this rule:

(A) "Involuntary statement" means a statement obtained in violation of the self-incrimination privilege or Due Process Clause of the Fifth Amendment to the United States Constitution, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.

(B) "Confession" means an acknowledgment of guilt.

(C) "Admission" means a self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended by its maker to be exculpatory.

(2) Failure to deny an accusation of wrongdoing is not an admission of the truth of the accusation if at the time of the alleged failure the person was under investigation or was in confinement, arrest, or custody for the alleged wrongdoing.

(b) *Evidence Derived from a Statement of the Accused.* When the defense has made an appropriate and timely motion or objection under this rule, evidence allegedly derived from a statement of the accused may not be admitted unless the military judge finds by a preponderance of the evidence that:

- (1) the statement was made voluntarily,
- (2) the evidence was not obtained by use of the accused's statement, or
- (3) the evidence would have been obtained even if the statement had not been made.

(c) *Corroboration of a Confession or Admission.*

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that would tend to establish the trustworthiness of the admission or confession.

(2) Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of the admission or confession, then it may be considered as evidence against the accused. Not every element or fact contained in the confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) *Quantum of Evidence Needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the admission or confession. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) *Procedure.* The military judge alone is to determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is

introduced unless the military judge allows submission of such evidence subject to later corroboration.

(d) *Disclosure of Statements by the Accused and Derivative Evidence.* Before arraignment, the prosecution must disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to trial counsel, and within the control of the Armed Forces, and all evidence derived from such statements, that the prosecution intends to offer against the accused.

(e) *Limited Use of an Involuntary Statement.* A statement obtained in violation of Article 31 or Mil. R. Evid. 305(b)-(c) may be used only:

- (1) to impeach by contradiction the in-court testimony of the accused; or
- (2) in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

(f) *Motions and Objections.*

(1) Motions to suppress or objections under this rule, or Mil. R. Evid. 302 or 305, to any statement or derivative evidence that has been disclosed must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the objection.

(2) If the prosecution seeks to offer a statement made by the accused or derivative evidence that was not disclosed before arraignment, the prosecution must provide timely notice to the military judge and defense counsel. The defense may object at that time, and the military judge may make such orders as are required in the interests of justice.

(3) The defense may present evidence relevant to the admissibility of evidence as to which there has been an objection or motion to suppress under this rule. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily.

(A) Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under subdivision (f)(3).

(B) When the accused testifies under subdivision (f)(3), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-

## M.R.E. 304(f)(4)

examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(4) *Specificity.* The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

(5) *Rulings.* The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(6) *Burden of Proof.* When the defense has made an appropriate motion or objection under this rule, the prosecution has the burden of establishing the admissibility of the evidence. When the military judge has required a specific motion or objection under subdivision (f)(4), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(7) *Standard of Proof.* The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence.

(8) *Effect of Guilty Plea.* Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this rule with respect to that offense regardless of whether raised prior to plea.

(g) *Weight of the Evidence.* If a statement is admitted into evidence, the military judge must permit the defense to present relevant evidence with respect to the voluntariness of the statement and must instruct the members to give such weight to the statement as it deserves under all the circumstances.

(h) *Completeness.* If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

(i) *Evidence of an Oral Statement.* A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing is not accounted for.

(j) *Refusal to Obey an Order to Submit a Body Substance.* If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

(1) A charge of violating an order to submit such a sample; or

(2) Any other charge on which the results of the chemical analysis would have been admissible.

### Rule 305. Warnings about rights

(a) *General rule.* A statement obtained in violation of this rule is involuntary and will be treated under Mil. R. Evid. 304.

(b) *Definitions.* As used in this rule:

(1) "Person subject to the code" means a person subject to the Uniform Code of Military Justice as contained in Chapter 47 of Title 10, United States Code. This term includes, for purposes of subdivision (c) of this rule, a knowing agent of any such person or of a military unit.

(2) "Interrogation" means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

(3) "Custodial interrogation" means questioning that takes place while the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way.

(c) *Warnings Concerning the Accusation, Right to Remain Silent, and Use of Statements.*

(1) *Article 31 Rights Warnings.* A statement obtained from the accused in violation of the accused's rights under Article 31 is involuntary and therefore inadmissible against the accused except as provided in subdivision (d). Pursuant to Article 31, a person subject to the code may not interrogate or request any statement from an accused or a person suspected of an offense without first:

(A) informing the accused or suspect of the nature of the accusation;

(B) advising the accused or suspect that the accused or suspect has the right to remain silent; and

(C) advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.

(2) *Fifth Amendment Right to Counsel.* If a person suspected of an offense and subjected to custodial interrogation requests counsel, any statement made in the interrogation after such request, or evidence derived from the interrogation after such request, is inadmissible against the accused unless counsel was present for the interrogation.

(3) *Sixth Amendment Right to Counsel.* If an accused against whom charges have been preferred is interrogated on matters concerning the preferred charges by anyone acting in a law enforcement capacity, or the agent of such a person, and the accused requests counsel, or if the accused has appointed or retained counsel, any statement made in the interrogation, or evidence derived from the interrogation, is inadmissible unless counsel was present for the interrogation.

(4) *Exercise of Rights.* If a person chooses to exercise the privilege against self-incrimination, questioning must cease immediately. If a person who is subjected to interrogation under the circumstances described in subdivisions (c)(2) or (c)(3) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.

(d) *Presence of Counsel.* When a person entitled to counsel under this rule requests counsel, a judge advocate or an individual certified in accordance with Article 27(b) will be provided by the United States at no expense to the person and without regard to the person's indigency and must be present before the interrogation may proceed. In addition to counsel supplied by the United States, the person may retain civilian counsel at no expense to the United States. Unless otherwise provided by regulations of the Secretary concerned, an accused or suspect does not have a right under this rule to have military counsel of his or her own selection.

(e) *Waiver.*

(1) *Waiver of the Privilege Against Self-Incrimination.* After receiving applicable warnings under this rule, a person may waive the rights described therein and in Mil. R. Evid. 301 and make a statement. The waiver must be made freely, knowingly, and intelligently. A written waiver is not required. The accused or suspect must affirmatively

acknowledge that he or she understands the rights involved, affirmatively decline the right to counsel, and affirmatively consent to making a statement.

(2) *Waiver of the Right to Counsel.* If the right to counsel is applicable under this rule and the accused or suspect does not affirmatively decline the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(3) *Waiver After Initially Invoking the Right to Counsel.*

(A) *Fifth Amendment Right to Counsel.*

If an accused or suspect subjected to custodial interrogation requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that:

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(B) *Sixth Amendment Right to Counsel.* If an accused or suspect interrogated after preferral of charges as described in subdivision (c)(3) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.

(f) *Standards for Nonmilitary Interrogations.*

(1) *United States Civilian Interrogations.* When a person subject to the code is interrogated by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, the person's entitlement to rights warnings and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar interrogations.

(2) *Foreign Interrogations.* Warnings under Article 31 and the Fifth and Sixth Amendments to the United States Constitution are not required during an

## M.R.E. 306

interrogation conducted outside of a State, district, Commonwealth, territory, or possession of the United States by officials of a foreign government or their agents unless such interrogation is conducted, instigated, or participated in by military personnel or their agents or by those officials or agents listed in subdivision (f)(1). A statement obtained from a foreign interrogation is admissible unless the statement is obtained through the use of coercion, unlawful influence, or unlawful inducement. An interrogation is not “participated in” by military personnel or their agents or by the officials or agents listed in subdivision (f)(1) merely because such a person was present at an interrogation conducted in a foreign nation by officials of a foreign government or their agents, or because such a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign interrogation.

### **Rule 306. Statements by one of several accused**

When two or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the accused may not be received in evidence unless all references inculcating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination.

### **Rule 311. Evidence obtained from unlawful searches and seizures**

(a) *General rule.* Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

- (1) the accused makes a timely motion to suppress or an objection to the evidence under this rule;
- (2) the accused had a reasonable expectation of privacy in the person, place, or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the Armed Forces; and
- (3) exclusion of the evidence results in appreciable deterrence of future unlawful searches or seizures and

the benefits of such deterrence outweigh the costs to the justice system.

(b) *Definition.* As used in this rule, a search or seizure is “unlawful” if it was conducted, instigated, or participated in by:

- (1) military personnel or their agents and was in violation of the Constitution of the United States as applied to members of the Armed Forces, a federal statute applicable to trials by court-martial that requires exclusion of evidence obtained in violation thereof, or Mil. R. Evid. 312-317;
- (2) other officials or agents of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States or any political subdivision of such a State, Commonwealth, or possession, and was in violation of the Constitution of the United States, or is unlawful under the principles of law generally applied in the trial of criminal cases in the United States district courts involving a similar search or seizure; or
- (3) officials of a foreign government or their agents, where evidence was obtained as a result of a foreign search or seizure that subjected the accused to gross and brutal maltreatment. A search or seizure is not “participated in” by a United States military or civilian official merely because that person is present at a search or seizure conducted in a foreign nation by officials of a foreign government or their agents, or because that person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign search or seizure.

(c) *Exceptions.*

- (1) *Impeachment.* Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.
- (2) *Inevitable Discovery.* Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.
- (3) *Good Faith Execution of a Warrant or Search Authorization.* Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) the search or seizure resulted from an authorization to search, seize or apprehend issued by an individual competent to issue the authorization under Mil. R. Evid. 315(d) or from a search warrant

or arrest warrant issued by competent civilian authority;

(B) the individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(C) the officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith is to be determined using an objective standard.

(4) *Reliance on Statute or Binding Precedent.* Evidence that was obtained as a result of an unlawful search or seizure may be used when the official seeking the evidence acted in objectively reasonable reliance on a statute or on binding precedent later held violative of the Fourth Amendment.

(d) *Motions to Suppress and Objections.*

(1) *Disclosure.* Prior to arraignment, the prosecution must disclose to the defense all evidence seized from the person or property of the accused, or believed to be owned by the accused, or evidence derived therefrom, that it intends to offer into evidence against the accused at trial.

(2) *Time Requirements.*

(A) When evidence has been disclosed prior to arraignment under subdivision (d)(1), the defense must make any motion to suppress or objection under this rule prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the motion or objection.

(B) If the prosecution intends to offer evidence described in subdivision (d)(1) that was not disclosed prior to arraignment, the prosecution must provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interest of justice.

(3) *Specificity.* The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence described in subdivision (d)(1). If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the search or seizure, the military judge may enter any order required by the interests of justice, including

authorization for the defense to make a general motion to suppress or a general objection.

(4) *Challenging Probable Cause.*

(A) *Relevant Evidence.* If the defense challenges evidence seized pursuant to a search warrant or search authorization on the ground that the warrant or authorization was not based upon probable cause, the evidence relevant to the motion is limited to evidence concerning the information actually presented to or otherwise known by the authorizing officer, except as provided in subdivision (d)(4)(B).

(B) *False Statements.* If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, is entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion must be granted unless the search is otherwise lawful under these rules.

(5) *Burden and Standard of Proof.*

(A) *In general.* When the defense makes an appropriate motion or objection under subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure; that the evidence would have been obtained even if the unlawful search or seizure had not been made; that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant; that the evidence was obtained by officials in objectively reasonable reliance on a statute or on binding precedent later held violative of the Fourth Amendment; or that the deterrence of future unlawful searches or seizures is not appreciable or such deterrence does not outweigh the costs to the justice system of excluding the evidence.



## M.R.E. 311(d)(5)(B)

(B) *Statement Following Apprehension.* In addition to subdivision (d)(5)(A), a statement obtained from a person apprehended in a dwelling in violation of R.C.M. 302(d)(2) and (e), is admissible if the prosecution shows by a preponderance of the evidence that the apprehension was based on probable cause, the statement was made at a location outside the dwelling subsequent to the apprehension, and the statement was otherwise in compliance with these rules.

(C) *Specific Grounds of Motion or Objection.* When the military judge has required the defense to make a specific motion or objection under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or objected to the evidence.

(6) *Defense Evidence.* The defense may present evidence relevant to the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the search or seizure giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under subdivision (d). When the accused testifies under subdivision (d), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(7) *Rulings.* The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(8) *Informing the Members.* If a defense motion or objection under this rule is sustained in whole or in part, the court-martial members may not be informed of that fact except when the military judge must instruct the members to disregard evidence.

(e) *Effect of Guilty Plea.* Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under the Fourth Amendment to the

Constitution of the United States and Mil. R. Evid. 311-317 with respect to the offense, whether or not raised prior to plea.

## Rule 312. Body views and intrusions

(a) *General rule.* Evidence obtained from body views and intrusions conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Visual examination of the body.*

(1) *Consensual Examination.* Evidence obtained from a visual examination of the unclothed body is admissible if the person consented to the inspection in accordance with Mil. R. Evid. 314(e).

(2) *Involuntary Examination.* Evidence obtained from an involuntary display of the unclothed body, including a visual examination of body cavities, is admissible only if the inspection was conducted in a reasonable fashion and authorized under the following provisions of the Military Rules of Evidence:

(A) inspections and inventories under Mil. R. Evid. 313;

(B) searches under Mil. R. Evid. 314(b) and 314(c) if there is a reasonable suspicion that weapons, contraband, or evidence of crime is concealed on the body of the person to be searched;

(C) searches incident to lawful apprehension under Mil. R. Evid. 314(g);

(D) searches within a jail, confinement facility, or similar facility under Mil. R. Evid. 314(h) if reasonably necessary to maintain the security of the institution or its personnel;

(E) emergency searches under Mil. R. Evid. 314(i); and

(F) probable cause searches under Mil. R. Evid. 315.

## Discussion

An examination of the unclothed body under this rule should be conducted whenever practicable by a person of the same sex as that of the person being examined; however, failure to comply with this requirement does not make an examination an unlawful search within the meaning of Mil. R. Evid. 311.

(c) *Intrusion into Body Cavities.*

(1) *Mouth, Nose, and Ears.* Evidence obtained from a reasonable nonconsensual physical intrusion into the

mouth, nose, and ears is admissible under the same standards that apply to a visual examination of the body under subdivision (b).

(2) *Other Body Cavities.* Evidence obtained from nonconsensual intrusions into other body cavities is admissible only if made in a reasonable fashion by a person with appropriate medical qualifications and if:

(A) at the time of the intrusion there was probable cause to believe that a weapon, contraband, or other evidence of crime was present;

(B) conducted to remove weapons, contraband, or evidence of crime discovered under subdivisions (b) or (c)(2)(A) of this rule;

(C) conducted pursuant to Mil. R. Evid. 316(c)(5)(C);

(D) conducted pursuant to a search warrant or search authorization under Mil. R. Evid. 315; or

(E) conducted pursuant to Mil. R. Evid. 314(h) based on a reasonable suspicion that the individual is concealing a weapon, contraband, or evidence of crime.

(d) *Extraction of Body Fluids.* Evidence obtained from nonconsensual extraction of body fluids is admissible if seized pursuant to a search warrant or a search authorization under Mil. R. Evid. 315. Evidence obtained from nonconsensual extraction of body fluids made without such a warrant or authorization is admissible, notwithstanding Mil. R. Evid. 315(g), only when probable cause existed at the time of extraction to believe that evidence of crime would be found and that the delay necessary to obtain a search warrant or search authorization could have resulted in the destruction of the evidence. Evidence obtained from nonconsensual extraction of body fluids is admissible only when executed in a reasonable fashion by a person with appropriate medical qualifications.

(e) *Other Intrusive Searches.* Evidence obtained from a nonconsensual intrusive search of the body, other than searches described in subdivisions (c) or (d), conducted to locate or obtain weapons, contraband, or evidence of crime is admissible only if obtained pursuant to a search warrant or search authorization under Mil. R. Evid. 315 and conducted in a reasonable fashion by a person with appropriate medical qualifications in such a manner so as not to endanger the health of the person to be searched.

(f) *Intrusions for Valid Medical Purposes.* Evidence or contraband obtained in the course of a medical

examination or an intrusion conducted for a valid medical purpose is admissible. Such an examination or intrusion may not, for the purpose of obtaining evidence or contraband, exceed what is necessary for the medical purpose.

### Discussion

Nothing in this rule will be deemed to interfere with the lawful authority of the Armed Forces to take whatever action may be necessary to preserve the health of a service member.

Compelling a person to ingest substances for the purposes of locating the property described above or to compel the bodily elimination of such property is a search within the meaning of this section.

---

(g) *Medical Qualifications.* The Secretary concerned may prescribe appropriate medical qualifications for persons who conduct searches and seizures under this rule.

### Rule 313. Inspections and inventories in the Armed Forces

(a) *General Rule.* Evidence obtained from lawful inspections and inventories in the Armed Forces is admissible at trial when relevant and not otherwise inadmissible under these rules. An unlawful weapon, contraband, or other evidence of a crime discovered during a lawful inspection or inventory may be seized and is admissible in accordance with this rule.

(b) *Lawful Inspections.* An “inspection” is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. Inspections must be conducted in a reasonable fashion and, if applicable, must comply with Mil. R. Evid. 312. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected.

(1) *Purpose of Inspections.* An inspection may include, but is not limited to, an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness; and that personnel are present, fit, and

## M.R.E. 313(b)(2)

ready for duty. An order to produce body fluids, such as urine, is permissible in accordance with this rule.

(2) *Searches for Evidence.* An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule.

(3) *Examinations to Locate and Confiscate Weapons or Contraband.*

(A) An inspection may include an examination to locate and confiscate unlawful weapons and other contraband provided that the criteria set forth in subdivision (b)(3)(B) are not implicated.

(B) The prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this rule if a purpose of an examination is to locate weapons or contraband, and if:

(i) the examination was directed immediately following a report of a specific offense in the unit, organization, installation, vessel, aircraft, or vehicle and was not previously scheduled;

(ii) specific individuals are selected for examination; or

(iii) persons examined are subjected to substantially different intrusions during the same examination.

(c) *Lawful Inventories.* An “inventory” is a reasonable examination, accounting, or other control measure used to account for or control property, assets, or other resources. It is administrative and not prosecutorial in nature, and if applicable, the inventory must comply with Mil. R. Evid. 312. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this rule.

### Rule 314. Searches not requiring probable cause

(a) *General Rule.* Evidence obtained from reasonable searches not requiring probable cause is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the Armed Forces.

(b) *Border Searches.* Evidence from a border search for customs or immigration purposes authorized by a federal statute is admissible.

(c) *Searches Upon Entry to or Exit from United States Installations, Aircraft, and Vessels Abroad.* In addition

to inspections under Mil. R. Evid. 313(b), evidence is admissible when a commander of a United States military installation, enclave, or aircraft on foreign soil, or in foreign or international airspace, or a United States vessel in foreign or international waters, has authorized appropriate personnel to search persons or the property of such persons upon entry to or exit from the installation, enclave, aircraft, or vessel to ensure the security, military fitness, or good order and discipline of the command. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceeding is not authorized by subdivision (c).

### Discussion

Searches under subdivision (c) may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party; however, failure to comply with a treaty or agreement does not render a search unlawful within the meaning of Mil. R. Evid. 311.

(d) *Searches of Government Property.* Evidence resulting from a search of government property without probable cause is admissible under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Normally a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use, but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

(e) *Consent Searches.*

(1) *General Rule.* Evidence of a search conducted without probable cause is admissible if conducted with lawful consent.

(2) *Who May Consent.* A person may consent to a search of his or her person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

### Discussion

Where a co-occupant of property is physically present at the time of the requested search and expressly states his refusal to consent to the

search, a warrantless search is unreasonable as to that co-occupant and evidence from the search is inadmissible as to that co-occupant. *Georgia v. Randolph*, 547 U.S. 103 (2006).

---

(3) *Scope of Consent*. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property, and may be withdrawn at any time.

(4) *Voluntariness*. To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(5) *Burden and Standard of Proof*. The prosecution must prove consent by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the standard of proof.

(f) *Searches Incident to a Lawful Stop*.

(1) *Lawfulness*. A stop is lawful when conducted by a person authorized to apprehend under R.C.M. 302(b) or others performing law enforcement duties and when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The stop must be temporary and investigatory in nature.

(2) *Stop and Frisk*. Evidence is admissible if seized from a person who was lawfully stopped and who was frisked for weapons because he or she was reasonably suspected to be armed and dangerous. Contraband or evidence that is located in the process of a lawful frisk may be seized.

### Discussion

Mil. R. Evid. 314(f)(2) requires that the official making the stop have a reasonable suspicion based on specific and articulable facts that the person being frisked is armed and dangerous. Officer safety is a factor, and the officer need not be absolutely certain that the individual detained is armed for the purposes of frisking or patting down that person's outer clothing for weapons. The test is whether a reasonably prudent person in similar circumstances would be

warranted in a belief that his or her safety was in danger. The purpose of a frisk is to search for weapons or other dangerous items, including but not limited to: firearms, knives, needles, or razor blades. A limited search of outer clothing for weapons serves to protect both the officer and the public; therefore, a frisk is reasonable under the Fourth Amendment.

---

(3) *Vehicles*. Evidence is admissible if seized in the course of a search for weapons in the areas of the passenger compartment of a vehicle in which a weapon may be placed or hidden, so long as the person lawfully stopped is the driver or a passenger and the official who made the stop has a reasonable suspicion that the person stopped is dangerous and may gain immediate control of a weapon.

### Discussion

The scope of the search is similar to the "stop and frisk" defined in Mil. R. Evid. 314(f)(2). During the search for weapons, the official may seize any item that is immediately apparent as contraband or as evidence related to the offense serving as the basis for the stop. As a matter of safety, the official may, after conducting a lawful stop of a vehicle, order the driver and any passengers out of the car without any additional suspicion or justification.

---

(g) *Searches Incident to Apprehension*.

(1) *General Rule*. Evidence is admissible if seized in a search of a person who has been lawfully apprehended or if seized as a result of a reasonable protective sweep.

(2) *Search for Weapons and Destructible Evidence*. A lawful search incident to apprehension may include a search for weapons or destructible evidence in the area within the immediate control of a person who has been apprehended. "Immediate control" means that area in which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property.

### Discussion

The scope of the search for weapons is limited to that which is necessary to protect the arresting official. The official may not search a vehicle for weapons if there is no possibility that the arrestee could reach into the searched area, for example, after the arrestee is handcuffed and removed from the vehicle. The scope of the search is broader for destructible evidence related to the offense for which the individual is being arrested. Unlike a search for weapons, the search for destructible offense-related evidence may take place after the arrestee is handcuffed and removed from a vehicle. If, however, the official cannot expect to find destructible offense-related evidence, this exception does not apply.

**M.R.E. 314(g)(3)**

---

(3) *Protective Sweep for Other Persons.*

(A) *Area of Potential Immediate Attack.* Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

(B) *Wider Protective Sweep.* When an apprehension takes place at a location in which another person might be present who might endanger the apprehending officials or others in the area of the apprehension, a search incident to arrest may lawfully include a reasonable examination of those spaces where a person might be found. Such a reasonable examination is lawful under subdivision (g) if the apprehending official has a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(h) *Searches within Jails, Confinement Facilities, or Similar Facilities.* Evidence obtained from a search within a jail, confinement facility, or similar facility is admissible even if conducted without probable cause provided that it was authorized by persons with authority over the institution.

(i) *Emergency Searches to Save Life or for Related Purposes.* Evidence obtained from emergency searches of persons or property conducted to save life, or for a related purpose, is admissible provided that the search was conducted in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(j) *Searches of Open Fields or Woodlands.* Evidence obtained from a search of an open field or woodland is admissible provided that the search was not unlawful within the meaning of Mil. R. Evid. 311.

**Rule 315. Probable cause searches**

(a) *General rule.* Evidence obtained from reasonable searches conducted pursuant to a search warrant or search authorization, or under the exigent circumstances described in this rule, is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the Armed Forces.

(b) *Definitions.* As used in these rules:

(1) “Search authorization” means express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) “Search warrant” means express permission to search and seize issued by competent civilian authority.

(c) *Scope of Search Authorization.* A search authorization may be valid under this rule for a search of:

(1) the physical person of anyone subject to military law or the law of war wherever found;

(2) military property of the United States or of nonappropriated fund activities of an Armed force of the United States wherever located;

(3) persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) nonmilitary property within a foreign country.

**Discussion**

If nonmilitary property within a foreign country is owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense, a search should be conducted in coordination with an appropriate representative of the agency concerned, although failure to obtain such coordination would not render a search unlawful within the meaning of Mil. R. Evid. 311. If other nonmilitary property within a foreign country is to be searched, the search should be conducted in accordance with any relevant treaty or agreement or in coordination with an appropriate representative of the foreign country, although failure to obtain such coordination or noncompliance with a treaty or agreement would not render a search unlawful within the meaning of Mil. R. Evid. 311.

---

(d) *Who May Authorize.* A search authorization under this rule is valid only if issued by an impartial individual in one of the categories set forth in subdivisions (d)(1) and (d)(2). An otherwise impartial authorizing official does not lose impartiality merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous

authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(1) *Commander*. A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) *Military Judge or Magistrate*. A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned.

(e) *Who May Search*.

(1) *Search Authorization*. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

(2) *Search Warrants*. Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable federal statute.

(f) *Basis for Search Authorizations*.

(1) *Probable Cause Requirement*. A search authorization issued under this rule must be based upon probable cause.

(2) *Probable Cause Determination*. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule will be based upon any or all of the following:

(A) written statements communicated to the authorizing official;

(B) oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(C) such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements through regulation.

(g) *Exigencies*. Evidence obtained from a probable cause search is admissible without a search warrant or search authorization when there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought. Military operational necessity may create an exigency by prohibiting or preventing communication with a person empowered to grant a search authorization.

#### **Rule 316. Seizures**

(a) *General rule*. Evidence obtained from reasonable seizures is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the Armed Forces.

(b) *Apprehension*. Apprehension is governed by R.C.M. 302.

(c) *Seizure of Property or Evidence*.

(1) *Based on Probable Cause*. Evidence is admissible when seized based on a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

(2) *Abandoned Property*. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(3) *Consent*. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Mil. R. Evid. 314.

(4) *Government Property*. Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subdivision (d), unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided in Mil. R. Evid. 314(d), at the time of the seizure.

## M.R.E. 316(c)(5)

(5) *Other Property.* Property or evidence not included in subdivisions (c)(1)-(4) may be seized for use in evidence by any person listed in subdivision (d) if:

(A) *Authorization.* The person is authorized to seize the property or evidence by a search warrant or a search authorization under Mil. R. Evid. 315;

(B) *Exigent Circumstances.* The person has probable cause to seize the property or evidence and under Mil. R. Evid. 315(g) a search warrant or search authorization is not required; or

(C) *Plain View.* The person while in the course of otherwise lawful activity observes in a reasonable fashion property or evidence that the person has probable cause to seize.

(6) *Temporary Detention.* Nothing in this rule prohibits temporary detention of property on less than probable cause when authorized under the Constitution of the United States.

(d) *Who May Seize.* Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

(e) *Other Seizures.* Evidence obtained from a seizure not addressed in this rule is admissible provided that its seizure was permissible under the Constitution of the United States as applied to members of the Armed Forces.

### **Rule 317. Interception of wire and oral communications**

(a) *General rule.* Wire or oral communications constitute evidence obtained as a result of an unlawful search or seizure within the meaning of Mil. R. Evid. 311 when such evidence must be excluded under the Fourth Amendment to the Constitution of the United States as applied to members of the Armed Forces or if such evidence must be excluded under a federal statute applicable to members of the Armed Forces.

(b) *When Authorized by Court Order.* Evidence from the interception of wire or oral communications is admissible when authorized pursuant to an application to a federal judge of competent jurisdiction under the provisions of a federal statute.

### **Discussion**

Pursuant to 18 U.S.C. § 2516(1), the Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with 18 U.S.C. § 2518, an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, for purposes of obtaining evidence concerning the offenses enumerated in 18 U.S.C. § 2516(1), to the extent such offenses are punishable under the Uniform Code of Military Justice.

(c) *Regulations.* Notwithstanding any other provision of these rules, evidence obtained by members of the Armed Forces or their agents through interception of wire or oral communications for law enforcement purposes is not admissible unless such interception:

(1) takes place in the United States and is authorized under subdivision (b);

(2) takes place outside the United States and is authorized under regulations issued by the Secretary of Defense or the Secretary concerned; or

(3) is authorized under regulations issued by the Secretary of Defense or the Secretary concerned and is not unlawful under applicable federal statutes.

### **Rule 321. Eyewitness identification**

(a) *General rule.* Testimony concerning a relevant out-of-court identification by any person is admissible, subject to an appropriate objection under this rule, if such testimony is otherwise admissible under these rules. The witness making the identification and any person who has observed the previous identification may testify concerning it. When in testimony a witness identifies the accused as being, or not being, a participant in an offense or makes any other relevant identification concerning a person in the courtroom, evidence that on a previous occasion the witness made a similar identification is admissible to corroborate the witness' testimony as to identity even if the credibility of the witness has not been attacked directly, subject to appropriate objection under this rule.

(b) *When Inadmissible.* An identification of the accused as being a participant in an offense, whether such identification is made at the trial or otherwise, is inadmissible against the accused if:

(1) The identification is the result of an unlawful lineup or other unlawful identification process, as defined in subdivision (c), conducted by the United States or other domestic authorities and the accused makes a timely motion to suppress or an objection to the evidence under this rule; or

(2) Exclusion of the evidence is required by the Due Process Clause of the Fifth Amendment to the Constitution of the United States as applied to members of the Armed Forces. Evidence other than an identification of the accused that is obtained as a result of the unlawful lineup or unlawful identification process is inadmissible against the accused if the accused makes a timely motion to suppress or an objection to the evidence under this rule and if exclusion of the evidence is required under the Constitution of the United States as applied to members of the Armed Forces.

(c) *Unlawful Lineup or Identification Process.*

(1) *Unreliable.* A lineup or other identification process is unreliable, and therefore unlawful, if the lineup or other identification process is so suggestive as to create a substantial likelihood of misidentification.

(2) *In Violation of Right to Counsel.* A lineup is unlawful if it is conducted in violation of the accused's rights to counsel.

(A) *Military Lineups.* An accused or suspect is entitled to counsel if, after preferral of charges or imposition of pretrial restraint under R.C.M. 304 for the offense under investigation, the accused is required by persons subject to the code or their agents to participate in a lineup for the purpose of identification. When a person entitled to counsel under this rule requests counsel, a judge advocate or a person certified in accordance with Article 27(b) will be provided by the United States at no expense to the accused or suspect and without regard to indigency or lack thereof before the lineup may proceed. The accused or suspect may waive the rights provided in this rule if the waiver is freely, knowingly, and intelligently made.

(B) *Nonmilitary Lineups.* When a person subject to the code is required to participate in a lineup for purposes of identification by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, and the provisions of subdivision (c)(2)(A) do not apply, the person's entitlement to counsel and the validity of any waiver of

applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar lineups.

(d) *Motions to Suppress and Objections.*

(1) *Disclosure.* Prior to arraignment, the prosecution must disclose to the defense all evidence of, or derived from, a prior identification of the accused as a lineup or other identification process that it intends to offer into evidence against the accused at trial.

(2) *Time Requirement.* When such evidence has been disclosed, any motion to suppress or objection under this rule must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move constitutes a waiver of the motion or objection.

(3) *Continuing Duty.* If the prosecution intends to offer such evidence and the evidence was not disclosed prior to arraignment, the prosecution must provide timely notice to the military judge and counsel for the accused. The defense may enter an objection at that time, and the military judge may make such orders as are required in the interests of justice.

(4) *Specificity.* The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the lineup or other identification process, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(5) *Defense Evidence.* The defense may present evidence relevant to the issue of the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the lineup or identification process giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under subdivision (d). When the accused testifies under subdivision (d), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution



## M.R.E. 321(d)(6)

for perjury, false swearing, or the making of a false official statement.

(6) *Burden and Standard of Proof.* When the defense has raised a specific motion or objection under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

### (A) *Right to Counsel.*

(i) *Initial Violation of Right to Counsel at a Lineup.* When the accused raises the right to presence of counsel under this rule, the prosecution must prove by a preponderance of the evidence that counsel was present at the lineup or that the accused, having been advised of the right to the presence of counsel, voluntarily and intelligently waived that right prior to the lineup.

(ii) *Identification Subsequent to a Lineup Conducted in Violation of the Right to Counsel.* When the military judge determines that an identification is the result of a lineup conducted without the presence of counsel or an appropriate waiver, any later identification by one present at such unlawful lineup is also a result thereof unless the military judge determines that the contrary has been shown by clear and convincing evidence.

### (B) *Unreliable Identification.*

(i) *Initial Unreliable Identification.* When an objection raises the issue of an unreliable identification, the prosecution must prove by a preponderance of the evidence that the identification was reliable under the circumstances.

(ii) *Identification Subsequent to an Unreliable Identification.* When the military judge determines that an identification is the result of an unreliable identification, a later identification may be admitted if the prosecution proves by clear and convincing evidence that the later identification is not the result of the inadmissible identification.

(7) *Rulings.* A motion to suppress or an objection to evidence made prior to plea under this rule will be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at the trial of the general issue or until after findings, but no such determination will be deferred if a party's right to appeal the ruling is affected adversely. Where factual issues are involved in ruling upon such motion or objection, the military judge will state his or her essential findings of fact on the record.

(e) *Effect of Guilty Pleas.* Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under this rule with respect to that offense whether or not raised prior to the plea.

## SECTION IV

### RELEVANCY AND ITS LIMITS

#### Rule 401. Test for relevant evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

#### Rule 402. General admissibility of relevant evidence

(a) Relevant evidence is admissible unless any of the following provides otherwise:

- (1) the United States Constitution as it applies to members of the Armed Forces;
- (2) a federal statute applicable to trial by courts-martial;
- (3) these rules; or
- (4) this Manual.

(b) Irrelevant evidence is not admissible.

#### Rule 403. Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons

The military judge may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the members, undue delay, wasting time, or needlessly presenting cumulative evidence.

#### Rule 404. Character evidence, crimes or other acts

(a) *Character Evidence.*

(1) *Prohibited Uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for an Accused or Victim*

(A) The accused may offer evidence of the accused's pertinent trait and, if the evidence is

admitted, the prosecution may offer evidence to rebut it. General military character is not a pertinent trait for the purposes of showing the probability of innocence of the accused for the following offenses under the UCMJ:

- (i) Article 105;
- (ii) Articles 120-122;
- (iii) Articles 123a-124;
- (iv) Articles 126-127;
- (v) Articles 129-131;
- (vi) Any other offense in which evidence of general military character of the accused is not relevant to any element of an offense for which the accused has been charged; or

(vii) An attempt or conspiracy to commit one of the above offenses.

(B) Subject to the limitations in Mil. R. Evid. 412, the accused may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecution may:

- (i) offer evidence to rebut it; and
- (ii) offer evidence of the accused's same trait;

and

(C) in a homicide or assault case, the prosecution may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) *Exceptions for a Witness.* Evidence of a witness' character may be admitted under Mil R. Evid. 607, 608, and 609.

(b) *Crimes, Wrongs, or Other Acts.*

(1) *Prohibited Uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by the accused, the prosecution must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecution intends to offer at trial; and

(B) do so before trial – or during trial if the military judge, for good cause, excuses lack of pre-trial notice.

#### **Rule 405. Methods of proving character**

(a) *By Reputation or Opinion.* When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the military judge may allow an inquiry into relevant specific instances of the person's conduct.

(b) *By Specific Instances of Conduct.* When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(c) *By Affidavit.* The defense may introduce affidavits or other written statements of persons other than the accused concerning the character of the accused. If the defense introduces affidavits or other written statements under this subdivision, the prosecution may, in rebuttal, also introduce affidavits or other written statements regarding the character of the accused. Evidence of this type may be introduced by the defense or prosecution only if, aside from being contained in an affidavit or other written statement, it would otherwise be admissible under these rules.

(d) *Definitions.* "Reputation" means the estimation in which a person generally is held in the community in which the person lives or pursues a business or profession. "Community" in the Armed Forces includes a post, camp, ship, station, or other military organization regardless of size.

#### **Rule 406. Habit; routine practice**

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The military judge may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

#### **Rule 407. Subsequent remedial measures**

(a) When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- (1) negligence;
- (2) culpable conduct;
- (3) a defect in a product or its design; or

#### **M.R.E. 407(a)(4)**

(4) a need for a warning or instruction.

(b) The military judge may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

#### **Rule 408. Compromise offers and negotiations**

(a) *Prohibited Uses.* Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in order to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim - except when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) *Exceptions.* The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

#### **Rule 409. Offers to pay medical and similar expenses**

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

#### **Rule 410. Pleas, plea discussions, and related statements**

(a) *Prohibited Uses.* Evidence of the following is not admissible against the accused who made the plea or participated in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere plea;

(3) any statement made in the course of any judicial inquiry regarding either of the foregoing pleas; or

(4) any statement made during plea discussions with the convening authority, staff judge advocate, trial counsel or other counsel for the government if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) *Exceptions.* The military judge may admit a statement described in subdivision (a)(3) or (a)(4):

(1) when another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a proceeding for perjury or false statement, if the accused made the statement under oath, on the record, and with counsel present.

(c) *Request for Administrative Disposition.* A “statement made during plea discussions” includes a statement made by the accused solely for the purpose of requesting disposition under an authorized procedure for administrative action in lieu of trial by court-martial; “on the record” includes the written statement submitted by the accused in furtherance of such request.

#### **Rule 411. Liability insurance**

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice or proving agency, ownership, or control.

#### **Rule 412. Sex offense cases: The victim’s sexual behavior or predisposition**

(a) *Evidence generally inadmissible.* The following evidence is not admissible in any proceeding involving an alleged sexual offense except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that a victim engaged in other sexual behavior; or

(2) Evidence offered to prove a victim’s sexual predisposition.

(b) *Exceptions.* In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(1) evidence of specific instances of a victim’s sexual behavior, if offered to prove that someone other than the accused was the source of semen, injury, or other physical evidence;

(2) evidence of specific instances of a victim’s sexual behavior with respect to the person accused of the sexual misconduct, if offered by the accused to prove consent or if offered by the prosecution; and

(3) evidence the exclusion of which would violate the accused's constitutional rights.

(c) *Procedure to determine admissibility.*

(1) A party intending to offer evidence under subdivision (b) must—

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party and the military judge and notify the victim or, when appropriate, the victim's guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the victim, and offer relevant evidence. The victim must be afforded a reasonable opportunity to attend and be heard. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims' Counsel under section 1044e of title 10, United States Code. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1113 and remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subdivision that the evidence that the accused seeks to offer is relevant for a purpose under subdivision (b)(1) or (2) of this rule and that the probative value of such evidence outweighs the danger of unfair prejudice to the victim's privacy, or that the evidence is described by subdivision (b)(3) of this rule, such evidence shall be admissible under this rule to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the victim may be examined or cross-examined. Any evidence introduced under this rule is subject to challenge under Mil. R. Evid. 403.

(d) *Definitions.* For purposes of this rule, the term "sexual offense" includes any sexual misconduct punishable under the Uniform Code of Military Justice, federal law or state law. "Sexual behavior"

includes any sexual behavior not encompassed by the alleged offense. The term "sexual predisposition" refers to a victim's mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the fact finder. For purposes of this rule, the term "victim" includes an alleged victim.

**Rule 413. Similar crimes in sexual offense cases**

(a) *Permitted Uses.* In a court-martial proceeding for a sexual offense, the military judge may admit evidence that the accused committed any other sexual offense. The evidence may be considered on any matter to which it is relevant.

(b) *Disclosure to the Accused.* If the prosecution intends to offer this evidence, the prosecution must disclose it to the accused, including any witnesses' statements or a summary of the expected testimony. The prosecution must do so at least 5 days prior to entry of pleas or at a later time that the military judge allows for good cause.

(c) *Effect on Other Rules.* This rule does not limit the admission or consideration of evidence under any other rule.

(d) *Definition.* As used in this rule, "sexual offense" means an offense punishable under the Uniform Code of Military Justice, or a crime under federal or state law (as "state" is defined in 18 U.S.C. § 513), involving:

- (1) any conduct prohibited by Article 120;
- (2) any conduct prohibited by 18 U.S.C. chapter 109A;
- (3) contact, without consent, between any part of the accused's body, or an object held or controlled by the accused, and another person's genitals or anus;
- (4) contact, without consent, between the accused's genitals or anus and any part of another person's body;
- (5) contact with the aim of deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
- (6) an attempt or conspiracy to engage in conduct described in subdivisions (d)(1)-(5).

**Rule 414. Similar crimes in child-molestation cases**

(a) *Permitted Uses.* In a court-martial proceeding in which an accused is charged with an act of child molestation, the military judge may admit evidence that the accused committed any other offense of child

## M.R.E. 414(b)

molestation. The evidence may be considered on any matter to which it is relevant.

(b) *Disclosure to the Accused.* If the prosecution intends to offer this evidence, the prosecution must disclose it to the accused, including witnesses' statements or a summary of the expected testimony. The prosecution must do so at least 5 days prior to entry of pleas or at a later time that the military judge allows for good cause.

(c) *Effect on Other Rules.* This rule does not limit the admission or consideration of evidence under any other rule.

(d) *Definitions.* As used in this rule:

(1) "Child" means a person below the age of 16; and

(2) "Child molestation" means an offense punishable under the Uniform Code of Military Justice, or a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513), that involves:

(A) any conduct prohibited by Article 120 and committed with a child, or prohibited by Article 120b.

(B) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;

(C) any conduct prohibited by 18 U.S.C. chapter 110;

(D) contact between any part of the accused's body, or an object held or controlled by the accused, and a child's genitals or anus;

(E) contact between the accused's genitals or anus and any part of a child's body;

(F) contact with the aim of deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(G) an attempt or conspiracy to engage in conduct described in subdivisions (d)(2)(A)-(F).

## SECTION V

### PRIVILEGES

#### Rule 501. Privilege in general

(a) A person may not claim a privilege with respect to any matter except as required by or provided for in:

(1) the United States Constitution as applied to members of the Armed Forces;

(2) a federal statute applicable to trials by courts-martial;

(3) these rules;

(4) this Manual; or

(5) the principles of common law generally recognized in the trial of criminal cases in the United States district courts under rule 501 of the Federal Rules of Evidence, insofar as the application of such principles in trials by courts-martial is practicable and not contrary to or inconsistent with the Uniform Code of Military Justice, these rules, or this Manual.

(b) A claim of privilege includes, but is not limited to, the assertion by any person of a privilege to:

(1) refuse to be a witness;

(2) refuse to disclose any matter;

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

(c) The term "person" includes an appropriate representative of the Federal Government, a State, or political subdivision thereof, or any other entity claiming to be the holder of a privilege.

(d) Notwithstanding any other provision of these rules, information not otherwise privileged does not become privileged on the basis that it was acquired by a medical officer or civilian physician in a professional capacity.

#### Rule 502. Lawyer-client privilege

(a) *General Rule.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) between the client or the client's representative and the lawyer or the lawyer's representative;

(2) between the lawyer and the lawyer's representative;

(3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest;

(4) between representatives of the client or between the client and a representative of the client; or

(5) between lawyers representing the client.

(b) *Definitions.* As used in this rule:

(1) "Client" means a person, public officer, corporation, association, organization, or other entity, either public or private, who receives professional legal services from a lawyer, or who consults a lawyer with

a view to obtaining professional legal services from the lawyer.

(2) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law; or a member of the Armed Forces detailed, assigned, or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding. The term “lawyer” does not include a member of the Armed Forces serving in a capacity other than as a judge advocate, legal officer, or law specialist as defined in Article 1, unless the member:

(A) is detailed, assigned, or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding;

(B) is authorized by the Armed Forces, or reasonably believed by the client to be authorized, to render professional legal services to members of the Armed Forces; or

(C) is authorized to practice law and renders professional legal services during off-duty employment.

(3) “Lawyer’s representative” means a person employed by or assigned to assist a lawyer in providing professional legal services.

(4) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) *Who May Claim the Privilege.* The privilege may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The lawyer or the lawyer’s representative who received the communication may claim the privilege on behalf of the client. The authority of the lawyer to do so is presumed in the absence of evidence to the contrary.

(d) *Exceptions.* There is no privilege under this rule under any of the following circumstances:

(1) *Crime or Fraud.* If the communication clearly contemplated the future commission of a fraud or crime or if services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) *Claimants through Same Deceased Client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) *Breach of Duty by Lawyer or Client.* As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(4) *Document Attested by the Lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) *Joint Clients.* As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

### **Rule 503. Communications to clergy**

(a) *General Rule.* A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman’s assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) *Definitions.* As used in this rule:

(1) “Clergyman” means a minister, priest, rabbi, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergyman.

(2) “Clergyman’s assistant” means a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor.

(3) A communication is “confidential” if made to a clergyman in the clergyman’s capacity as a spiritual adviser or to a clergyman’s assistant in the assistant’s official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

(c) *Who May Claim the Privilege.* The privilege may be claimed by the person, guardian, or conservator, or by a personal representative if the person is deceased. The clergyman or clergyman’s assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergyman or clergyman’s assistant to do so is presumed in the absence of evidence to the contrary.

**Rule 504. Marital privilege**

(a) *Spousal Incapacity.* A person has a privilege to refuse to testify against his or her spouse. There is no privilege under subdivision (a) when, at the time of the testimony, the parties are divorced, or the marriage has been annulled.

(b) *Confidential Communication Made During the Marriage.*

(1) *General Rule.* A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were married and not separated as provided by law.

(2) *Who May Claim the Privilege.* The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused regardless of whether the spouse who made the communication objects to its disclosure.

(c) *Exceptions.*

(1) *To Confidential Communications Only.* Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b) and are not entitled to protection under the privilege in subdivision (b).

(2) *To Spousal Incapacity and Confidential Communications.* There is no privilege under subdivisions (a) or (b):

(A) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

(B) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and with respect to the privilege in subdivision (a), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other, or with

respect to the privilege in subdivision (b), the relationship was a sham at the time of the communication; or

(C) In proceedings in which a spouse is charged, in accordance with Article 133 or 134, with importing the other spouse as an alien for prostitution or other immoral purpose in violation of 8 U.S.C. § 1328 with transporting the other spouse in interstate commerce for prostitution, immoral purposes, or another offense in violation of 18 U.S.C. §§ 2421-2424; or with violation of such other similar statutes under which such privilege may not be claimed in the trial of criminal cases in the United States district courts.

(d) *Definitions.* As used in this rule:

(1) “A child of either” means a biological child, adopted child, or ward of one of the spouses and includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is:

(A) an individual under the age of 18; or

(B) an individual with a mental handicap who functions under the age of 18.

(2) “Temporary physical custody” means a parent has entrusted his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody, nor is a written agreement required. Rather, the focus is on the parent’s agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of his or her child for recurring care or during absences due to temporary duty or deployments.

(3) As used in this rule, a communication is “confidential” if made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.

**Rule 505. Classified information**

(a) *General Rule.* Classified information must be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information. The Secretary of Defense may prescribe security procedures for protection against the compromise of

classified information submitted to courts-martial and appellate authorities.

(b) *Definitions.* As used in this rule:

(1) "Classified information" means any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulations, to require protection against unauthorized disclosure for reasons of national security, and any restricted data, as defined in 42 U.S.C. §2014(y).

(2) "National security" means the national defense and foreign relations of the United States.

(3) "In camera hearing" means a session under Article 39(a) from which the public is excluded.

(4) "In camera review" means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(5) "Ex parte" means a discussion between the military judge and either defense counsel or prosecution, without the other party or the public present. This discussion can be on or off the record, depending on the circumstances. The military judge will grant a request for an ex parte discussion or hearing only after finding that such discussion or hearing is necessary to protect classified information or other good cause. Prior to granting a request from one party for an ex parte discussion or hearing, the military judge must provide notice to the opposing party on the record. If the ex parte discussion is conducted off the record, the military judge should later state on the record that such ex parte discussion took place and generally summarize the subject matter of the discussion, as appropriate.

(c) *Access to Evidence.* Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge must be provided to the accused.

(d) *Declassification.* Trial counsel should, when practicable, seek declassification of evidence that may be used at trial, consistent with the requirements of national security. A decision not to declassify evidence under this section is not subject to review by a military judge or upon appeal.

(e) *Action Prior to Referral of Charges.*

(1) Prior to referral of charges, upon a showing by the accused that the classified information sought is relevant and necessary to an element of the offense or a legally cognizable defense, the convening authority must respond in writing to a request by the accused for

classified information if the privilege in this rule is claimed for such information. In response to such a request, the convening authority may:

(A) delete specified items of classified information from documents made available to the accused;

(B) substitute a portion or summary of the information for such classified documents;

(C) substitute a statement admitting relevant facts that the classified information would tend to prove;

(D) provide the document subject to conditions that will guard against the compromise of the information disclosed to the accused; or

(E) withhold disclosure if actions under (A) through (D) cannot be taken without causing identifiable damage to the national security.

(2) An Article 32 preliminary hearing officer may not rule on any objection by the accused to the release of documents or information protected by this rule.

(3) Any objection by the accused to the withholding of information or to the conditions of disclosure must be raised through a motion for appropriate relief at a pretrial conference.

(f) *Actions after Referral of Charges.*

(1) *Pretrial Conference.* At any time after referral of charges, any party may move for a pretrial conference under Article 39(a) to consider matters relating to classified information that may arise in connection with the trial. Following such a motion, or when the military judge recognizes the need for such conference, the military judge must promptly hold a pretrial conference under Article 39(a).

(2) *Ex Parte Permissible.* Upon request by either party and with a showing of good cause, the military judge must hold such conference ex parte to the extent necessary to protect classified information from disclosure.

(3) *Matters to be Established at Pretrial Conference.*

(A) *Timing of Subsequent Actions.* At the pretrial conference, the military judge must establish the timing of:

(i) requests for discovery;

(ii) the provision of notice required by subdivision (i) of this rule; and

(iii) established by subdivision (j) of this rule.

(B) *Other Matters.* At the pretrial conference, the military judge may also consider any matter that relates



**M.R.E. 505(f)(4)**

to classified information or that may promote a fair and expeditious trial.

(4) *Convening Authority Notice and Action.* If a claim of privilege has been made under this rule with respect to classified information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority. The convening authority may:

(A) institute action to obtain the classified information for the use by the military judge in making a determination under subdivision (j);

(B) dismiss the charges;

(C) dismiss the charges or specifications or both to which the information relates; or

(D) take such other action as may be required in the interests of justice.

(5) *Remedies.* If, after a reasonable period of time, the information is not provided to the military judge in circumstances where proceeding with the case without such information would materially prejudice a substantial right of the accused, the military judge must dismiss the charges or specifications or both to which the classified information relates.

(g) *Protective Orders.* Upon motion of trial counsel, the military judge must issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused in any court-martial proceeding or that has otherwise been provided to, or obtained by, any such accused in any such court-martial proceeding. The terms of any such protective order may include, but are not limited to, provisions:

(1) prohibiting the disclosure of the information except as authorized by the military judge;

(2) requiring storage of material in a manner appropriate for the level of classification assigned to the documents to be disclosed;

(3) requiring controlled accesses to the material during normal business hours and at other times upon reasonable notice;

(4) mandating that all persons requiring security clearances will cooperate with investigatory personnel in any investigations that are necessary to obtain a security clearance;

(5) requiring the maintenance of logs regarding access by all persons authorized by the military judge

to have access to the classified information in connection with the preparation of the defense;

(6) regulating the making and handling of notes taken from material containing classified information; or

(7) requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

(h) *Discovery and Access by the Accused.*

(1) *Limitations.*

(A) *Government Claim of Privilege.* In a court-martial proceeding in which the government seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, trial counsel must submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration must be signed by the head, or designee, of the executive or military department or government agency concerned.

(B) *Standard for Discovery or Access by the Accused.* Upon the submission of a declaration under subdivision (h)(1)(A), the military judge may not authorize the discovery of or access to such classified information unless the military judge determines that such classified information would be noncumulative and relevant to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing. If the discovery of or access to such classified information is authorized, it must be addressed in accordance with the requirements of subdivision

(h)(2).

(2) *Alternatives to Full Discovery.*

(A) *Substitutions and Other Alternatives.* The military judge, in assessing the accused's right to discover or access classified information under subdivision (h), may authorize the government:

(i) to delete or withhold specified items of classified information;

(ii) to substitute a summary for classified information; or

(iii) to substitute a statement admitting relevant facts that the classified information or material would tend to prove, unless the military judge determines that disclosure of the classified information itself is necessary to enable the accused to prepare for trial.

(B) *In Camera Review*. The military judge must, upon the request of the prosecution, conduct an in camera review of the prosecution's motion and any materials submitted in support thereof and must not disclose such information to the accused.

(C) *Action by Military Judge*. The military judge must grant the request of trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with subdivision (h)(2)(A), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific classified information.

(3) *Reconsideration*. An order of a military judge authorizing a request of trial counsel to substitute, summarize, withhold, or prevent access to classified information under subdivision (h) is not subject to a motion for reconsideration by the accused, if such order was entered pursuant to an ex parte showing under subdivision (h).

(i) *Disclosure by the Accused*.

(1) *Notification to Trial Counsel and Military Judge*. If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused must, within the time specified by the military judge or, where no time is specified, prior to arraignment of the accused, notify trial counsel and the military judge in writing.

(2) *Content of Notice*. Such notice must include a brief description of the classified information.

(3) *Continuing Duty to Notify*. Whenever the accused learns of additional classified information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused must notify trial counsel and the military judge in writing as soon as possible thereafter and must include a brief description of the classified information.

(4) *Limitation on Disclosure by Accused*. The accused may not disclose, or cause the disclosure of, any information known or believed to be classified in connection with a trial or pretrial proceeding until:

(A) notice has been given under subdivision (i); and

(B) the government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in subdivision (j).

(5) *Failure to comply*. If the accused fails to comply with the requirements of subdivision (i), the military judge:

(A) may preclude disclosure of any classified information not made the subject of notification; and

(B) may prohibit the examination by the accused of any witness with respect to any such information.

(j) *Procedure for Use of Classified Information in Trials and Pretrial Proceedings*.

(1) *Hearing on Use of Classified Information*.

(A) *Motion for Hearing*. Within the time specified by the military judge for the filing of a motion under this rule, either party may move for a hearing concerning the use at any proceeding of any classified information. Upon a request by either party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.

(B) *Request for In Camera Hearing*. Any hearing held pursuant to subdivision (j) (or any portion of such hearing specified in the request of a knowledgeable United States official) must be held in camera if a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration that a public proceeding may result in the disclosure of classified information.

(C) *Notice to Accused*. Before the hearing, trial counsel must provide the accused with notice of the classified information that is at issue. Such notice must identify the specific classified information at issue whenever that information previously has been made available to the accused by the United States. When the United States has not previously made the information available to the accused in connection with the case the information may be described by generic category, in such forms as the military judge may approve, rather than by identification of the specific information of concern to the United States.

(D) *Standard for Disclosure*. Classified information is not subject to disclosure under subdivision (j) unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presenting proceedings, relevant and material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment must be admitted only if no unclassified version of such information is available.

**M.R.E. 505(j)(1)(E)**

(E) *Written Findings.* As to each item of classified information, the military judge must set forth in writing the basis for the determination.

(2) *Alternatives to Full Disclosure.*

(A) *Motion by the Prosecution.* Upon any determination by the military judge authorizing the disclosure of specific classified information under the procedures established by subdivision (j), trial counsel may move that, in lieu of the disclosure of such specific classified information, the military judge order:

(i) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove:

(ii) the substitution for such classified information of a summary of the specific classified information; or

(iii) any other procedure or redaction limiting the disclosure of specific classified information.

(B) *Declaration of Damage to National Security.* Trial counsel may, in connection with a motion under subdivision (j), submit to the military judge a declaration signed by the head, or designee, of the executive or military department or government agency concerned certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by trial counsel, the military judge must examine such declaration during an in camera review.

(C) *Hearing.* The military judge must hold a hearing on any motion under subdivision (j). Any such hearing must be held in camera at the request of a knowledgeable United States official possessing authority to classify information.

(D) *Standard for Use of Alternatives.* The military judge must grant such a motion of trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the accused with substantially the same ability to make his or her defense as would disclosure of the specific classified information.

(3) *Sealing of Records of In Camera Hearings.* If at the close of an in camera hearing under subdivision (j) (or any portion of a hearing under subdivision (j) that is held in camera), the military judge determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing must be sealed in accordance

with R.C.M. 1113 and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(4) *Remedies.*

(A) If the military judge determines that alternatives to full disclosure may not be used and the prosecution continues to object to disclosure of the information, the military judge must issue any order that the interests of justice require, including but not limited to, an order:

(i) striking or precluding all or part of the testimony of a witness;

(ii) declaring a mistrial;

(iii) finding against the government on any issue as to which the evidence is relevant and material to the defense;

(iv) dismissing the charges, with or without prejudice; or

(v) dismissing the charges or specifications or both to which the information relates.

(B) The government may avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

(5) *Disclosure of Rebuttal Information.* Whenever the military judge determines that classified information may be disclosed in connection with a trial or pretrial proceeding, the military judge must, unless the interests of fairness do not so require, order the prosecution to provide the accused with the information it expects to use to rebut the classified information.

(A) *Continuing Duty.* The military judge may place the prosecution under a continuing duty to disclose such rebuttal information.

(B) *Sanction for Failure to Comply.* If the prosecution fails to comply with its obligation under subdivision (j), the military judge:

(i) may exclude any evidence not made the subject of a required disclosure; and

(ii) may prohibit the examination by the prosecution of any witness with respect to such information.

(6) *Disclosure at Trial of Previous Statements by a Witness.*

(A) *Motion for Production of Statements in Possession of the Prosecution.* After a witness called by trial counsel has testified on direct examination, the military judge, on motion of the accused, may order

production of statements of the witness in the possession of the prosecution that relate to the subject matter as to which the witness has testified. This paragraph does not preclude discovery or assertion of a privilege otherwise authorized.

(B) *Invocation of Privilege by the Government.* If the government invokes a privilege, trial counsel may provide the prior statements of the witness to the military judge for in camera review to the extent necessary to protect classified information from disclosure.

(C) *Action by Military Judge.* If the military judge finds that disclosure of any portion of the statement identified by the government as classified would be detrimental to the national security in the degree required to warrant classification under the applicable Executive Order, statute, or regulation, that such portion of the statement is consistent with the testimony of the witness, and that the disclosure of such portion is not necessary to afford the accused a fair trial, the military judge must excise that portion from the statement. If the military judge finds that such portion of the statement is inconsistent with the testimony of the witness or that its disclosure is necessary to afford the accused a fair trial, the military judge must, upon the request of trial counsel, consider alternatives to disclosure in accordance with subdivision (j)(2).

(k) *Introduction into Evidence of Classified Information.*

(1) *Preservation of Classification Status.* Writings, recordings, and photographs containing classified information may be admitted into evidence in court-martial proceedings under this rule without change in their classification status.

(A) *Precautions.* The military judge in a trial by court-martial, in order to prevent unnecessary disclosure of classified information, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(B) *Classified Information Kept Under Seal.* The military judge must allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may upon motion by the government, seal exhibits containing classified

information in accordance with R.C.M. 1113 for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

(2) *Testimony.*

(A) *Objection by Trial Counsel.* During the examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) *Action by Military Judge.* Following an objection under subdivision (k), the military judge must take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness' response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect classified information from disclosure.

(3) *Closed session.* The military judge may, subject to the requirements of the United States Constitution, exclude the public during that portion of the presentation of evidence that discloses classified information.

(1) *Record of Trial.* If under this rule any information is reviewed in camera by the military judge and withheld from the accused, the accused objects to such withholding, and the trial continues to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as any motions and any materials submitted in support thereof must be sealed in accordance with R.C.M. 701(g)(2) or R.C.M. 1113 and attached to the record of trial as an appellate exhibit. Such material will be made available to reviewing and appellate authorities in accordance with R.C.M. 1113. The record of trial with respect to any classified matter will be prepared under R.C.M. 1112(e)(3).

### Discussion

In addition to the Sixth Amendment right of an accused to a public trial, the Supreme Court has held that the press and general public have a constitutional right under the First Amendment to access to criminal trials. *United States v. Hershey*, 20 M.J. 433, 436 (C.M.A. 1985) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)). The test that must be met before closure of a criminal trial to the public is set out in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984), to wit: the presumption of openness “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.* at 510.

The military judge must consider reasonable alternatives to closure and must make adequate findings supporting the closure to aid in review.

---

### Rule 506. Government information

(a) *Protection of Government Information.* Except where disclosure is required by a federal statute, government information is privileged from disclosure if disclosure would be detrimental to the public interest.

(b) *Scope.* “Government information” includes official communication and documents and other information within the custody or control of the Federal Government. This rule does not apply to the identity of an informant (Mil. R. Evid. 507).

### Discussion

For additional procedures concerning information contained in safety investigations, consult Service regulations and DoD Instruction 6055.07, “Mishap Notification, Investigation, Reporting, and Record Keeping.

---

(c) *Definitions.* As used in this rule:

(1) “In camera hearing” means a session under Article 39(a) from which the public is excluded.

(2) “In camera review” means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(3) “Ex parte” means a discussion between the military judge and either defense counsel or prosecution, without the other party or the public present. This discussion can be on or off the record, depending on the circumstances. The military judge will grant a request for an ex parte discussion or hearing only after finding that such discussion or hearing is necessary to protect government information or other good cause. Prior to granting a request from

one party for an ex parte discussion or hearing, the military judge must provide notice to the opposing party on the record. If the ex parte discussion is conducted off the record, the military judge should later state on the record that such ex parte discussion took place and generally summarize the subject matter of the discussion, as appropriate.

(d) *Who May Claim the Privilege.* The privilege may be claimed by the head, or designee, of the executive or military department or government agency concerned. The privilege for records and information of the Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, the Inspector General, or any other superior authority. A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. The authority of a witness or trial counsel to do so is presumed in the absence of evidence to the contrary.

(e) *Action Prior to Referral of Charges.*

(1) Prior to referral of charges, upon a showing by the accused that the government information sought is relevant and necessary to an element of the offense or a legally cognizable defense, the convening authority must respond in writing to a request by the accused for government information if the privilege in this rule is claimed for such information. In response to such a request, the convening authority may:

(A) delete specified items of government information claimed to be privileged from documents made available to the accused;

(B) substitute a portion or summary of the information for such documents;

(C) substitute a statement and admitting relevant facts that the government information would tend to prove;

(D) provide the document subject to conditions similar to those set forth in subdivision (g) of this rule; or

(E) withhold disclosure if actions under subdivisions (e)(1)(A)-(D) cannot be taken without causing identifiable damage to the public interest.

(2) Any objection by the accused to withholding of information or to the conditions of disclosure must be raised through a motion for appropriate relief at a pretrial conference.

(f) *Action After Referral of Charges.*

(1) *Pretrial Conference*. At any time after referral of charges, any party may move for a pretrial conference under Article 39(a) to consider matters relating to government information that may arise in connection with the trial. Following such a motion, or when the military judge recognizes the need for such conference, the military judge must promptly hold a pretrial conference under Article 39(a).

(2) *Ex Parte Permissible*. Upon request by either party and with a showing of good cause, the military judge must hold such conference ex parte to the extent necessary to protect government information from disclosure.

(3) *Matters to be Established at Pretrial Conference*.

(A) *Timing of Subsequent Actions*. At the pretrial conference, the military judge must establish the timing of:

- (i) requests for discovery;
- (ii) the provision of notice required by subdivision (i) of this rule; and
- (iii) the initiation of the procedure established by subdivision (j) of this rule.

(B) *Other Matters*. At the pretrial conference, the military judge may also consider any matter which relates to government information or which may promote a fair and expeditious trial.

(4) *Convening Authority Notice and Action*. If a claim of privilege has been made under this rule with respect to government information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority. The convening authority may:

(A) institute action to obtain the information for use by the military judge in making a determination under subdivision (j);

(B) dismiss the charges;

(C) dismiss the charges or specifications or both to which the information relates; or

(D) take such other action as may be required in the interests of justice.

(5) *Remedies*. If after a reasonable period of time the information is not provided to the military judge in circumstances where proceeding with the case without such information would materially prejudice a substantial right of the accused, the military judge must

dismiss the charges or specifications or both to which the information relates.

(g) *Protective Orders*. Upon motion of trial counsel, the military judge must issue an order to protect against the disclosure of any government information that has been disclosed by the United States to any accused in any court-martial proceeding or that has otherwise been provided to, or obtained by, any such accused in any such court-martial proceeding. The terms of any such protective order may include, but are not limited to, provisions:

(1) prohibiting the disclosure of the information except as authorized by the military judge;

(2) requiring storage of the material in a manner appropriate for the nature of the material to be disclosed;

(3) requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

(4) requiring the maintenance of logs recording access by persons authorized by the military judge to have access to the government information in connection with the preparation of the defense;

(5) regulating the making and handling of notes taken from material containing government information; or

(6) requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

(h) *Discovery and Access by the Accused*.

(1) *Limitations*.

(A) *Government Claim of Privilege*. In a court-martial proceeding in which the government seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any government information subject to a claim of privilege, trial counsel must submit a declaration invoking the United States' government information privilege and setting forth the detriment to the public interest that the discovery of or access to such information reasonably could be expected to cause. The declaration must be signed by a knowledgeable United States official as described in subdivision (d) of this rule.

(B) *Standard for Discovery or Access by the Accused*. Upon the submission of a declaration under subdivision (h)(1)(A), the military judge may not authorize the discovery of or access to such government information unless the military judge determines that such government information would

**M.R.E. 506(h)(2)**

be noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing. If the discovery of or access to such governmental information is authorized, it must be addressed in accordance with the requirements of subdivision (h)(2).

(2) *Alternatives to Full Disclosure.*

(A) *Substitutions and Other Alternatives.* The military judge, in assessing the accused's right to discovery or access government information under subdivision (h), may authorize the government:

(i) to delete or withhold specified items of government information;

(ii) to substitute a summary for government information; or

(iii) to substitute a statement admitting relevant facts that the government information or material would tend to prove, unless the military judge determines that disclosure of the government information itself is necessary to enable the accused to prepare for trial.

(B) *In Camera Review.* The military judge must, upon the request of the prosecution, conduct an in camera review of the prosecution's motion and any materials submitted in support thereof and must not disclose such information to the accused.

(C) *Action by Military Judge.* The military judge must grant the request of trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with subdivision (h)(2)(A), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific government information.

(i) *Disclosure by the Accused.*

(1) *Notification to Trial Counsel and Military Judge.* If an accused reasonably expects to disclose, or to cause the disclosure of, government information subject to a claim of privilege in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused must, within the time specified by the military judge or, where no time is specified, prior to arraignment of the accused, notify trial counsel and the military judge in writing.

(2) *Content of Notice.* Such notice must include a brief description of the government information.

(3) *Continuing Duty to Notify.* Whenever the accused learns of additional government information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused must notify trial counsel and the military judge in writing as soon as possible thereafter and must include a brief description of the government information.

(4) *Limitation on Disclosure by Accused.* The accused may not disclose, or cause the disclosure of, any information known or believed to be subject to a claim of privilege in connection with a trial or pretrial proceeding until:

(A) notice has been given under subdivision (i); and

(B) the government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in subdivision (j).

(5) *Failure to Comply.* If the accused fails to comply with the requirements of subdivision (i), the military judge:

(A) may preclude disclosure of any government information not made the subject of notification; and

(B) may prohibit the examination by the accused of any witness with respect to any such information.

(j) *Procedure for Use of Government Information Subject to a Claim of Privilege in Trials and Pretrial Proceedings.*

(1) *Hearing on Use of Government Information.*

(A) *Motion for Hearing.* Within the time specified by the military judge for the filing of a motion under this rule, either party may move for an in camera hearing concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Upon a request by either party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.

(B) *Request for In Camera Hearing.* Any hearing held pursuant to subdivision (j) must be held in camera if a knowledgeable United States official described in subdivision (d) of this rule submits to the military judge a declaration that disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

(C) *Notice to Accused.* Subject to subdivision (j)(2) below, the prosecution must disclose government information claimed to be privileged under this rule for the limited purpose of litigating, in camera, the admissibility of the information at trial. The military

judge must enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subdivision (g), above. The accused may not disclose any information provided under subdivision (j) unless, and until, such information has been admitted into evidence by the military judge. In the in camera hearing, both parties may have the opportunity to brief and argue the admissibility of the government information at trial.

(D) *Standard for Disclosure.* Government information is subject to disclosure at the court-martial proceeding under subdivision (j) if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused, and is otherwise admissible in the court-martial proceeding.

(E) *Written Findings.* As to each item of government information, the military judge must set forth in writing the basis for the determination.

(2) *Alternatives to Full Disclosure.*

(A) *Motion by the Prosecution.* Upon any determination by the military judge authorizing disclosure of specific government information under the procedures established by subdivision (j), the prosecution may move that, in lieu of the disclosure of such information, the military judge order:

(i) the substitution for such government information of a statement admitting relevant facts that the specific government information would tend to prove;

(ii) the substitution for such government information of a summary of the specific government information; or

(iii) any other procedure or redaction limiting the disclosure of specific government information.

(B) *Hearing.* The military judge must hold a hearing on any motion under subdivision (j). At the request of trial counsel, the military judge will conduct an in camera hearing.

(C) *Standard for Use of Alternatives.* The military judge must grant such a motion of trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the accused with substantially the same ability to make his or her defense as would disclosure of the specific government information.

(3) *Sealing of Records of In Camera Hearings.* If at the close of an in camera hearing under subdivision (j) (or any portion of a hearing under subdivision (j) that is held in camera), the military judge determines that the government information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing must be sealed in accordance with R.C.M. 1113 and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(4) *Remedies.*

(A) If the military judge determines that alternatives to full disclosure may not be used and the prosecution continues to object to disclosure of the information, the military judge must issue any order that the interests of justice require, including but not limited to, an order:

(i) striking or precluding all or part of the testimony of a witness;

(ii) declaring a mistrial;

(iii) finding against the government on any issue as to which the evidence is relevant and necessary to the defense;

(iv) dismissing the charges, with or without prejudice; or

(v) dismissing the charges or specifications or both to which the information relates.

(B) The government may avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

(5) *Disclosure of Rebuttal Information.* Whenever the military judge determines that government information may be disclosed in connection with a trial or pretrial proceeding, the military judge must, unless the interests of fairness do not so require, order the prosecution to provide the accused with the information it expects to use to rebut the government information.

(A) *Continuing Duty.* The military judge may place the prosecution under a continuing duty to disclose such rebuttal information.

(B) *Sanction for Failure to Comply.* If the prosecution fails to comply with its obligation under subdivision (j), the military judge may make such ruling as the interests of justice require, to include:

(i) excluding any evidence not made the subject of a required disclosure; and



## M.R.E. 506(k)

(ii) prohibiting the examination by the prosecution of any witness with respect to such information.

(k) *Appeals of Orders and Rulings.* In a court-martial in which a punitive discharge may be adjudged, the government may appeal an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The government may also appeal an order or ruling in which the military judge refuses to issue a protective order sought by the United States to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification.

(l) *Introduction into Evidence of Government Information Subject to a Claim of Privilege.*

(1) *Precautions.* The military judge in a trial by court-martial, in order to prevent unnecessary disclosure of government information after there has been a claim of privilege under this rule, may order admission into evidence of only part of a writing, recording, or photograph or admit into evidence the whole writing, recording, or photograph with excision of some or all of the government information contained therein, unless the whole ought in fairness to be considered.

(2) *Government Information Kept Under Seal.* The military judge must allow government information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the prosecution, seal exhibits containing government information in accordance with R.C.M. 1113 for any period after trial as necessary to prevent a disclosure of government information when a knowledgeable United States official described in subdivision (d) submits to the military judge a declaration setting forth the detriment to the public interest that the disclosure of such information reasonably could be expected to cause.

(3) *Testimony.*

(A) *Objection by Trial Counsel.* During examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose government information not previously found admissible if such information has

been or is reasonably likely to be the subject of a claim of privilege under this rule.

(B) *Action by Military Judge.* Following such an objection, the military judge must take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any government information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness' response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect government information from disclosure.

(m) *Record of Trial.* If under this rule any information is reviewed in camera by the military judge and withheld from the accused, the accused objects to such withholding, and the trial continues to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as any motions and any materials submitted in support thereof must be sealed in accordance with R.C.M. 701(g)(2) or 1113 and attached to the record of trial as an appellate exhibit. Such material will be made available to reviewing and appellate authorities in accordance with R.C.M. 1113.

## Rule 507. Identity of informants

(a) *General Rule.* The United States or a State or subdivision thereof has a privilege to refuse to disclose the identity of an informant. Unless otherwise privileged under these rules, the communications of an informant are not privileged except to the extent necessary to prevent the disclosure of the informant's identity.

(b) *Definitions.* As used in this rule:

(1) "Informant" means a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a person whose official duties include the discovery, investigation, or prosecution of crime.

(2) "In camera review" means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(c) *Who May Claim the Privilege.* The privilege may be claimed by an appropriate representative of the United States, regardless of whether information was furnished to an officer of the United States or a State or subdivision thereof. The privilege may be claimed

by an appropriate representative of a State or subdivision if the information was furnished to an officer thereof, except the privilege will not be allowed if the prosecution objects.

**(d) Exceptions.**

(1) *Voluntary Disclosures; Informant as a Prosecution Witness.* No privilege exists under this rule:

(A) if the identity of the informant has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informants own action; or

(B) if the informant appears as a witness for the prosecution.

(2) *Informant as a Defense Witness.* If a claim of privilege has been made under this rule, the military judge must, upon motion by the accused, determine whether disclosure of the identity of the informant is necessary to the accused's defense on the issue of guilt or innocence. Whether such a necessity exists will depend on the particular circumstances of each case, taking into consideration the offense charged, the possible defense, the possible significance of the informant's testimony, and other relevant factors. If it appears from the evidence in the case or from other showing by a party that an informant may be able to give testimony necessary to the accused's defense on the issue of guilt or innocence, the military judge may make any order required by the interests of justice.

(3) *Informant as a Witness regarding a Motion to Suppress Evidence.* If a claim of privilege has been made under this rule with respect to a motion under Mil. R. Evid. 311, the military judge must, upon motion of the accused, determine whether disclosure of the identity of the informant is required by the United States Constitution as applied to members of the Armed Forces. In making this determination, the military judge may make any order required by the interests of justice.

**(e) Procedures.**

(1) *In Camera Review.* If the accused has articulated a basis for disclosure under the standards set forth in this rule, the prosecution may ask the military judge to conduct an in camera review of affidavits or other evidence relevant to disclosure.

(2) *Order by the Military Judge.* If a claim of privilege has been made under this rule, the military judge may make any order required by the interests of justice.

(3) *Action by the Convening Authority.* If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this rule, and the prosecution elects not to disclose the identity of the informant, the matter must be reported to the convening authority. The convening authority may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances.

(4) *Remedies.* If, after a reasonable period of time disclosure is not made, the military judge, sua sponte or upon motion of either counsel and after a hearing if requested by either party, may dismiss the charge or specifications or both to which the information regarding the informant would relate if the military judge determines that further proceedings would materially prejudice a substantial right of the accused.

**Rule 508. Political vote**

A person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

**Rule 509. Deliberations of courts and juries**

Except as provided in Mil. R. Evid. 606, the deliberations of courts, courts-martial, military judges, and grand and petit juries are privileged to the extent that such matters are privileged in trial of criminal cases in the United States district courts, but the results of the deliberations are not privileged.

**Rule 510. Waiver of privilege by voluntary disclosure**

(a) A person upon whom these rules confer a privilege against disclosure of a confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication under such circumstances that it would be inappropriate to allow the claim of privilege. This rule does not apply if the disclosure is itself a privileged communication.

(b) Unless testifying voluntarily concerning a privileged matter or communication, an accused who testifies in his or her own behalf or a person who testifies under a grant or promise of immunity does not, merely by reason of testifying, waive a privilege to

## M.R.E. 511

which he or she may be entitled pertaining to the confidential matter or communication.

### **Rule 511. Privileged matter disclosed under compulsion or without opportunity to claim privilege**

#### *(a) General Rule.*

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if disclosure was compelled erroneously or was made without an opportunity for the holder of the privilege to claim the privilege.

#### *(b) Use of Communications Media.*

The telephonic transmission of information otherwise privileged under these rules does not affect its privileged character. Use of electronic means of communication other than the telephone for transmission of information otherwise privileged under these rules does not affect the privileged character of such information if use of such means of communication is necessary and in furtherance of the communication.

### **Rule 512. Comment upon or inference from claim of privilege; instruction**

#### *(a) Comment or Inference not permitted.*

(1) The claim of a privilege by the accused whether in the present proceeding or upon a prior occasion is not a proper subject of comment by the military judge or counsel for any party. No inference may be drawn therefrom.

(2) The claim of a privilege by a person other than the accused whether in the present proceeding or upon a prior occasion normally is not a proper subject of comment by the military judge or counsel for any party. An adverse inference may not be drawn therefrom except when determined by the military judge to be required by the interests of justice.

*(b) Claiming a Privilege Without the Knowledge of the Members.* In a trial before a court-martial with members, proceedings must be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the members.

*(c) Instruction.* Upon request, any party against whom the members might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom except as provided in subdivision (a)(2).

### **Rule 513. Psychotherapist—patient privilege**

*(a) General Rule.* A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition.

*(b) Definitions.* As used in this rule:

(1) "Patient" means a person who consults with or is examined or interviewed by a psychotherapist for purposes of advice, diagnosis, or treatment of a mental or emotional condition.

(2) "Psychotherapist" means a psychiatrist, clinical psychologist, clinical social worker, or other mental health professional who is licensed in any State, territory, possession, the District of Columbia, or Puerto Rico to perform professional services as such, or who holds credentials to provide such services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials.

(3) "Assistant to a psychotherapist" means a person directed by or assigned to assist a psychotherapist in providing professional services, or is reasonably believed by the patient to be such.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for such transmission of the communication.

(5) "Evidence of a patient's records or communications" means testimony of a psychotherapist, or assistant to the same, or patient records that pertain to communications by a patient to a psychotherapist, or assistant to the same, for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

*(c) Who May Claim the Privilege.* The privilege may be claimed by the patient or the guardian or conservator of the patient. A person who may claim the privilege may authorize trial counsel, defense counsel, or any counsel representing the patient to claim the privilege on his or her behalf. The psychotherapist or

assistant to the psychotherapist who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist, assistant, guardian, or conservator to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) *Exceptions.* There is no privilege under this rule:

- (1) when the patient is dead;
- (2) when the communication is evidence of child abuse or of neglect, or in a proceeding in which one spouse is charged with a crime against a child of either spouse;
- (3) when federal law, state law, or service regulation imposes a duty to report information contained in a communication;
- (4) when a psychotherapist or assistant to a psychotherapist believes that a patient's mental or emotional condition makes the patient a danger to any person, including the patient;
- (5) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist are sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;
- (6) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission; or
- (7) when an accused offers statements or other evidence concerning his mental condition in defense, extenuation, or mitigation, under circumstances not covered by R.C.M. 706 or Mil. R. Evid. 302. In such situations, the military judge may, upon motion, order disclosure of any statement made by the accused to a psychotherapist as may be necessary in the interests of justice.

(e) *Procedure to Determine Admissibility of Patient Records or Communications.*

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party must:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause

shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party, the military judge and, if practical, notify the patient or the patient's guardian, conservator, or representative that the motion has been filed and that the patient has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge must conduct a hearing, which shall be closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient must be afforded a reasonable opportunity to attend the hearing and be heard. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims' Counsel under section 1044e of title 10, United States Code. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the production or admissibility of protected records or communications. Prior to conducting an in-camera review, the military judge must find by a preponderance of the evidence that the moving party showed:

(A) a specific, credible factual basis demonstrating a reasonable likelihood that the records or communications would contain or lead to the discovery of evidence admissible under an exception to the privilege;

(B) that the requested information meets one of the enumerated exceptions under subdivision (d) of this rule;

(C) that the information sought is not merely cumulative of other information available; and

(D) that the party made reasonable efforts to obtain the same or substantially similar information through non-privileged sources.

(4) Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subdivision (d) of this Rule and

## M.R.E. 513(e)(5)

are included in the stated purpose for which the records or communications are sought under subdivision (e)(1)(A) of this Rule.

(5) To prevent unnecessary disclosure of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(6) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 701(g)(2) or 1113 and must remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise.

### **Rule 514. Victim advocate—victim privilege**

(a) *General Rule.* A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate or between the alleged victim and Department of Defense Safe Helpline staff, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim.

(b) *Definitions.* As used in this rule:

(1) "Victim" means any person who is alleged to have suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) "Victim advocate" means a person, other than a prosecutor, trial counsel, any victims' counsel, law enforcement officer, or military criminal investigator in the case, who:

(A) is designated in writing as a victim advocate in accordance with service regulation;

(B) is authorized to perform victim advocate duties in accordance with service regulation and is acting in the performance of those duties; or

(C) is certified as a victim advocate pursuant to federal or state requirements.

(3) "Department of Defense Safe Helpline staff" are persons who are designated by competent authority in writing as Department of Defense Safe Helpline staff.

(4) A communication is "confidential" if made in the course of the victim advocate-victim relationship or Department of Defense Safe Helpline staff-victim relationship and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of advice or assistance to the alleged victim or those reasonably necessary for such transmission of the communication.

(5) "Evidence of a victim's records or communications" means testimony of a victim advocate or Department of Defense Safe Helpline staff, or records that pertain to communications by a victim to a victim advocate or Department of Defense Safe Helpline staff, for the purposes of advising or providing assistance to the victim.

(c) *Who May Claim the Privilege.* The privilege may be claimed by the victim or the guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a counsel representing the victim to claim the privilege on his or her behalf. The victim advocate or Department of Defense Safe Helpline staff who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, Department of Defense Safe Helpline staff, guardian, conservator, or a counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) *Exceptions.* There is no privilege under this rule:

(1) when the victim is dead;

(2) when federal law, state law, Department of Defense regulation, or service regulation imposes a duty to report information contained in a communication;

(3) when a victim advocate or Department of Defense Safe Helpline staff believes that a victim's mental or emotional condition makes the victim a danger to any person, including the victim;

(4) if the communication clearly contemplated the future commission of a fraud or crime, or if the services of the victim advocate or Department of Defense Safe Helpline staff are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

(5) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission; or

(6) when admission or disclosure of a communication is constitutionally required.

(e) *Procedure to Determine Admissibility of Victim Records or Communications.*

(1) In any case in which the production or admission of records or communications of a victim is a matter in dispute, a party may seek an interlocutory ruling by the

military judge. In order to obtain such a ruling, the party must:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party, the military judge and, if practicable, notify the victim or the victim's guardian, conservator, or representative that the motion has been filed and that the victim has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge must conduct a hearing, which shall be closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim must be afforded a reasonable opportunity to attend the hearing and be heard. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims' Counsel under section 1044e of title 10, United States Code. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the production or admissibility of protected records or communications. Prior to conducting an in camera review, the military judge must find by a preponderance of the evidence that the moving party showed:

(A) a specific, credible factual basis demonstrating a reasonable likelihood that the records or communications would contain or lead to the discovery of evidence admissible under an exception to the privilege;

(B) that the requested information meets one of the enumerated exceptions under subdivision (d) of this rule;

(C) that the information sought is not merely cumulative of other information available; and

(D) that the party made reasonable efforts to obtain the same or substantially similar information through non-privileged sources.

(4) Any production of disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subdivision (d) of this Rule and are included in the stated purpose for which the records or communications are sought under subdivision (e)(1)(A) of this rule.

(5) To prevent unnecessary disclosure of evidence of a victim's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(6) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 701(g)(2) or 1113 and must remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise.

## SECTION VI

### WITNESSES

#### **Rule 601. Competency to testify in general**

Every person is competent to be a witness unless these rules provide otherwise.

#### **Rule 602. Need for personal knowledge**

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness' own testimony. This rule does not apply to a witness' expert testimony under Mil. R. Evid. 703.

#### **Rule 603. Oath or affirmation to testify truthfully**

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness' conscience.

#### **Rule 604. Interpreter**

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

## M.R.E. 605

### **Rule 605. Military judge's competency as a witness**

(a) The presiding military judge may not testify as a witness at any proceeding of that court-martial. A party need not object to preserve the issue.

(b) This rule does not preclude the military judge from placing on the record matters concerning docketing of the case.

### **Rule 606. Member's competency as a witness**

(a) *At the Trial by Court-Martial.* A member of a court-martial may not testify as a witness before the other members at any proceeding of that court-martial. If a member is called to testify, the military judge must give the opposing party an opportunity to object outside the presence of the members.

(b) *During an Inquiry into the Validity of a Finding or Sentence.*

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a finding or sentence, a member of a court-martial may not testify about any statement made or incident that occurred during the deliberations of that court-martial; the effect of anything on that member's or another member's vote; or any member's mental processes concerning the finding or sentence. The military judge may not receive a member's affidavit or evidence of a member's statement on these matters.

(2) *Exceptions.* A member may testify about whether:

(A) extraneous prejudicial information was improperly brought to the members' attention;

(B) unlawful command influence or any other outside influence was improperly brought to bear on any member; or

(C) a mistake was made in entering the finding or sentence on the finding or sentence forms.

### **Rule 607. Who may impeach a witness**

Any party, including the party that called the witness, may attack the witness' credibility.

### **Rule 608. A witness' character for truthfulness or untruthfulness**

(a) *Reputation or Opinion Evidence.* A witness' credibility may be attacked or supported by testimony about the witness' reputation for having a character for truthfulness or untruthfulness, or by testimony in the

form of an opinion about that character. Evidence of truthful character is admissible only after the witness' character for truthfulness has been attacked.

(b) *Specific Instances of Conduct.* Except for a criminal conviction under Mil. R. Evid. 609, extrinsic evidence is not admissible to prove specific instances of a witness' conduct in order to attack or support the witness' character for truthfulness. The military judge may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about. By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness' character for truthfulness.

(c) *Evidence of Bias.* Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

### **Rule 609. Impeachment by evidence of a criminal conviction or finding of guilty by summary court-martial**

(a) *In General.* The following rules apply to attacking a witness' character for truthfulness by evidence of a criminal conviction or finding of guilty by summary court-martial.

(1) For an offense that, in the convicting jurisdiction, was punishable by death, dishonorable discharge, or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Mil. R. Evid. 403, in a court-martial in which the witness is not the accused; and

(B) must be admitted in a court-martial in which the witness is the accused, if the probative value of the evidence outweighs its prejudicial effect to that accused; and

(2) For any offense regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving – or the witness' admitting – a dishonest act or false statement.

(3) In determining whether an offense tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President

under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(b) *Limit on Using the Evidence After 10 Years.* Subdivision (b) applies if more than 10 years have passed since the witness' conviction or finding of guilty by summary court-martial or release from confinement for it, whichever is later. Evidence of the conviction or finding of guilty by summary court-martial is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) *Effect of a Pardon, Annulment, or Certificate of Rehabilitation.* Evidence of a conviction or finding of guilty by summary court-martial is not admissible if:

(1) the conviction or finding of guilty by summary court-martial has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death, dishonorable discharge, or imprisonment for more than one year; or

(2) the conviction or finding of guilty by summary court-martial has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Juvenile Adjudications.* Evidence of a juvenile adjudication is admissible under this rule only if:

(1) the adjudication was of a witness other than the accused;

(2) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(3) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) *Limit on use of a finding of guilty by summary court-martial.* A finding of guilty by summary court-martial may not be used for purposes of impeachment unless the accused at the summary court-martial proceeding was represented by military or civilian defense counsel.

(f) *Pendency of an Appeal.* A conviction that satisfies this rule is admissible even if an appeal is pending, except that a finding of guilty by summary court-

martial may not be used for purposes of impeachment until review has been completed under Article 64. Evidence of the pendency is also admissible.

(g) *Definition.* For purposes of this rule, there is a conviction in a general or special court-martial when a sentence has been adjudged.

#### **Rule 610. Religious beliefs or opinions**

Evidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness' credibility.

#### **Rule 611. Mode and order of examining witnesses and presenting evidence**

(a) *Control by the Military Judge; Purposes.*

The military judge should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of Cross-Examination.* Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness' credibility. The military judge may allow inquiry into additional matters as if on direct examination.

(c) *Leading Questions.* Leading questions should not be used on direct examination except as necessary to develop the witness' testimony. Ordinarily, the military judge should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness or a witness identified with an adverse party.

(d) *Remote live testimony of a child.*

(1) In a case involving domestic violence or the abuse of a child, the military judge must, subject to the requirements of subdivision (d)(3) of this rule, allow a child victim or witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) *Definitions.*

As used in this rule:

(A) "Child" means a person who is under the age of 16 at the time of his or her testimony.



## M.R.E. 611(d)(2)(B)

(B) “Abuse of a child” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(C) “Exploitation” means child pornography or child prostitution.

(D) “Negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to endanger seriously the physical health of the child.

(E) “Domestic violence” means an offense that has as an element the use, or attempted or threatened use of physical force against a person by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

(3) Remote live testimony will be used only where the military judge makes the following three findings on the record:

(A) that it is necessary to protect the welfare of the particular child witness;

(B) that the child witness would be traumatized, not by the courtroom generally, but by the presence of the accused; and

(C) that the emotional distress suffered by the child witness in the presence of the accused is more than *de minimis*.

(4) Remote live testimony of a child will not be used when the accused elects to absent himself from the courtroom in accordance with R.C.M. 804(d).

(5) In making a determination under subdivision (d)(3), the military judge may question the child in chambers, or at some comfortable place other than the courtroom, on the record for a reasonable period of time, in the presence of the child, a representative of the prosecution, a representative of the defense, and the child’s attorney or guardian ad litem.

### **Rule 612. Writing used to refresh a witness’ memory**

(a) *Scope*. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) while testifying; or

(2) before testifying, if the military judge decides that justice requires the party to have those options.

(b) *Adverse Party’s Options; Deleting Unrelated Matter*. An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness’ testimony. If the producing party claims that the writing includes unrelated or privileged matter, the military judge must examine the writing in camera, delete any unrelated or privileged portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) *Failure to Produce or Deliver the Writing*. If a writing is not produced or is not delivered as ordered, the military judge may issue any appropriate order. If the prosecution does not comply, the military judge must strike the witness’ testimony or - if justice so requires - declare a mistrial.

(d) *No Effect on Other Disclosure Requirements*. This rule does not preclude disclosure of information required to be disclosed under other provisions of these rules or this Manual.

### **Rule 613. Witness’ prior statement**

(a) *Showing or Disclosing the Statement During Examination*. When examining a witness about the witness’ prior statement, a party need not show it or disclose its contents to the witness. The party must, on request, show it or disclose its contents to an adverse party’s attorney.

(b) *Extrinsic Evidence of a Prior Inconsistent Statement*. Extrinsic evidence of a witness’ prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. Subdivision (b) does not apply to an opposing party’s statement under Mil R. Evid. 801(d)(2).

### **Rule 614. Court-martial’s calling or examining a witness**

(a) *Calling*. The military judge may—*sua sponte* or at the request of the members or the suggestion of a party—call a witness. Each party is entitled to cross-examine the witness. When the members wish to call or recall a witness, the military judge must determine whether the testimony would be relevant and not barred by any rule or provision of this Manual.

(b) *Examining*. The military judge or members may examine a witness regardless of who calls the witness.

Members must submit their questions to the military judge in writing. Following the opportunity for review by both parties, the military judge must rule on the propriety of the questions, and ask the questions in an acceptable form on behalf of the members. When the military judge or the members call a witness who has not previously testified, the military judge may conduct the direct examination or may assign the responsibility to counsel for any party.

(c) *Objections.* Objections to the calling of witnesses by the military judge or the members or to the interrogation by the military judge or the members may be made at the time or at the next available opportunity when the members are not present.

#### **Rule 615. Excluding witnesses**

At a party's request, the military judge must order witnesses excluded so that they cannot hear other witnesses' testimony, or the military judge may do so sua sponte. This rule does not authorize excluding:

- (a) the accused;
- (b) a member of an Armed service or an employee of the United States after being designated as a representative of the United States by trial counsel;
- (c) a person whose presence a party shows to be essential to presenting the party's case;
- (d) a person authorized by statute to be present; or
- (e) a victim of an offense from the trial of an accused for that offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.

### **SECTION VII**

#### **OPINIONS AND EXPERT TESTIMONY**

##### **Rule 701. Opinion testimony by lay witnesses**

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness' perception;
- (b) helpful to clearly understanding the witness' testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Mil. R. Evid. 702.

##### **Rule 702. Testimony by expert witnesses**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (c) the testimony is based on sufficient facts or data;
- (e) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

##### **Rule 703. Bases of an expert's opinion testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the members of a court-martial only if the military judge finds that their probative value in helping the members evaluate the opinion substantially outweighs their prejudicial effect.

##### **Rule 704. Opinion on an ultimate issue**

An opinion is not objectionable just because it embraces an ultimate issue.

##### **Rule 705. Disclosing the facts or data underlying an expert's opinion**

Unless the military judge orders otherwise, an expert may state an opinion - and give the reasons for it - without first testifying to the underlying facts or data. The expert may be required to disclose those facts or data on cross-examination.

##### **Rule 706. Court-appointed expert witnesses**

- (a) *Appointment Process.* Trial counsel, defense counsel, and the court-martial have equal opportunity to obtain expert witnesses under Article 46 and R.C.M. 703.
- (b) *Compensation.* The compensation of expert witnesses is governed by R.C.M. 703.

**M.R.E. 706(c)**

(c) *Accused's Choice of Experts.* This rule does not limit an accused in calling any expert at the accused's own expense.

**Rule 707. Polygraph examinations**

(a) *Prohibitions.* Notwithstanding any other provision of law, the result of a polygraph examination, the polygraph examiner's opinion, or any reference to an offer to take, failure to take, or taking of a polygraph examination is not admissible.

(b) *Statements Made During a Polygraph Examination.* This rule does not prohibit admission of an otherwise admissible statement made during a polygraph examination.

**SECTION VIII**

**HEARSAY**

**Rule 801. Definitions that apply to this section; exclusions from hearsay**

(a) *Statement.* "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) *Declarant.* "Declarant" means the person who made the statement.

(c) *Hearsay.* "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) *Statements that Are Not Hearsay.* A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness' Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant perceived earlier.

(2) *An Opposing Party's Statement.* The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's co-conspirator during and in furtherance of the conspiracy. The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

**Rule 802. The rule against hearsay**

Hearsay is not admissible unless any of the following provides otherwise:

(a) a federal statute applicable in trial by courts-martial; or

(b) these rules.

**Rule 803. Exceptions to the rule against hearsay - regardless of whether the declarant is available as a witness**

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) *Excited Utterance.* A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) *Then-Existing Mental, Emotional, or Physical Condition.* A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) *Statement Made for Medical Diagnosis or Treatment.* A statement that—

(A) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) *Recorded Recollection.* A record that—

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness' knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) *Records of a Regularly Conducted Activity.* A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by - or from information transmitted by - someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a uniformed service, business, institution, association, profession, organization, occupation, or calling of any kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Mil. R. Evid. 902(11) or with a statute permitting certification in a criminal proceeding in a court of the United States; and

(E) the opponent does not show that the source of information or the method or circumstance of preparation indicate a lack of trustworthiness. Records of regularly conducted activities include, but are not limited to, enlistment papers, physical examination papers, fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

(7) *Absence of a Record of a Regularly Conducted Activity.* Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(8) *Public Records.* A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including a matter observed by law-enforcement personnel and other personnel acting in a law enforcement capacity; or

(iii) against the government, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness. Notwithstanding subdivision

(8)(A)(ii), the following are admissible as a record of a fact or event if made by a person within the scope of the person's official duties and those duties included a duty to know or to ascertain through appropriate and trustworthy channels of information the truth of the fact or event and to record such fact or event: enlistment papers, physical examination papers, fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, court-martial conviction records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

(9) *Public Records of Vital Statistics.* A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) *Absence of a Public Record.*

Testimony - or a certification under Rule 902 - that a diligent search failed to disclose a public record or statement if:

(A) the testimony or certification is admitted to prove that

(i) the record or statement does not exist; or

**M.R.E. 803(10)(B)**

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) a counsel for the government who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the accused does not object in writing within 7 days of receiving the notice - unless the military judge sets a different time for the notice or the objection.

(11) *Records of Religious Organizations Concerning Personal or Family History.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Certificates of Marriage, Baptism, and Similar Ceremonies.* A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) *Family Records.* A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) *Records of Documents that Affect an Interest in Property.* The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

(15) *Statements in Documents that Affect an Interest in Property.* A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents.* A statement in a document that is at least 20 years old and whose authenticity is established.

(17) *Market Reports and Similar Commercial Publications.* Market quotations, lists (including government price lists), directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) *Statements in Learned Treatises, Periodicals, or Pamphlets.* A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) *Reputation Concerning Personal or Family History.* A reputation among a person's family by blood, adoption, or marriage - or among a person's associates or in the community - concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history, age, ancestry, or other similar fact of the person's personal or family history.

(20) *Reputation Concerning Boundaries or General History.* A reputation in a community - arising before the controversy - concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, State, or nation.

(21) *Reputation Concerning Character.* A reputation among a person's associates or in the community concerning the person's character.

(22) *Judgment of a Previous Conviction.* Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death, dishonorable discharge, or imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecution for a purpose other than impeachment, the judgment was against the accused.

The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment for more than one year, the maximum punishment prescribed by the President under Article 56 of the Uniform of Military Justice at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(23) *Judgments Involving Personal, Family, or General History, or a Boundary.* A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

- (A) was essential to the judgment; and
- (B) could be proved by evidence of reputation.

**Rule 804. Exceptions to the rule against hearsay – when the declarant is unavailable as a witness**

(a) *Criteria for Being Unavailable.* A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant’s statement because the military judge rules that a privilege applies;
- (2) refuses to testify about the subject matter despite the military judge’s order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant’s attendance, in the case of a hearsay exception under subdivision (b)(1) or (b)(5);

(B) the declarant’s attendance or testimony, in the case of a hearsay exception under subdivision (b)(2), (b)(3), or (b)(4); or

(6) has previously been deposed about the subject matter and is absent due to military necessity, age, imprisonment, non-amenability to process, or other reasonable cause.

Subdivision (a) does not apply if the statement’s proponent procured or wrongfully caused the

declarant’s unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) *The Exceptions.* The following are exceptions to the rule against hearsay, and are not excluded by that rule if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony that:

(A) was given by a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Subject to the limitations in Articles 49 and 50, a record of testimony given before a court-martial, court of inquiry, military commission, other military tribunal, or preliminary hearing under Article 32 is admissible under subdivision (b)(1) if the record of the testimony is a verbatim record.

(2) *Statement under the Belief of Imminent Death.* In a prosecution for any offense resulting in the death of the alleged victim, a statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.

(3) *Statement against Interest.* A statement that:

(A) a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it tends to expose the declarant to criminal liability and is offered to exculpate the accused.

(4) *Statement of Personal or Family History.* A statement about:

(A) the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person’s family that the declarant’s information is likely to be accurate

## M.R.E. 804(b)(5)

(5) *Other Exceptions*. [Transferred to Mil. R. Evid. 807]

(6) *Statement Offered against a Party that Wrongfully Caused the Declarant's Unavailability*. A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result.

### Rule 805. Hearsay within hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception or exclusion to the rule.

### Rule 806. Attacking and supporting the declarant's credibility

When a hearsay statement - or a statement described in Mil. R. Evid. 801(d)(2)(C), (D), or (E) - has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The military judge may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

### Rule 807. Residual exception

(a) *In General*. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Mil. R. Evid. 803 or 804:

(1) the statement has equivalent circumstantial guarantees of trustworthiness;

(2) it is offered as evidence of a material fact;

(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) *Notice*. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's

name and address, so that the party has a fair opportunity to meet it.

## SECTION IX

### AUTHENTICATION AND IDENTIFICATION

#### Rule 901. Authenticating or identifying evidence

(a) *In General*. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) *Examples*. The following are examples only - not a complete list - of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion about Handwriting*. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact*. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like*. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion about a Voice*. An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence about a Telephone Conversation*. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence about Public Records*. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence about Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) *Evidence about a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or Rule.* Any method of authentication or identification allowed by a federal statute, a rule prescribed by the Supreme Court, or an applicable regulation prescribed pursuant to statutory authority.

#### **Rule 902. Evidence that is self-authenticating**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic Public Documents that are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any State, district, Commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents that are Not Sealed but are Signed and Certified.* A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in subdivision (1)(A) above; and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester - or of any foreign official whose certificate of genuineness

relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the military judge may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record - or a copy of a document that was recorded or filed in a public office as authorized by law - if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with subdivision (1), (2), or (3) above, a federal statute, a rule prescribed by the Supreme Court, or an applicable regulation prescribed pursuant to statutory authority.

(4a) *Documents or Records of the United States Accompanied by Attesting Certificates.* Documents or records kept under the authority of the United States by any department, bureau, agency, office, or court thereof when attached to or accompanied by an attesting certificate of the custodian of the document or record without further authentication.

(5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and Periodicals.* Printed material purporting to be a newspaper or periodical.

(7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.



## M.R.E. 902(10)

(10) *Presumptions under a Federal Statute or Regulation.* A signature, document, or anything else that a federal statute, or an applicable regulation prescribed pursuant to statutory authority, declares to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of Mil. R. Evid. 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, or at a later time that the military judge allows for good cause, the proponent must give an adverse party reasonable written notice of the intent to offer the record and must make the record and certification available for inspection so that the party has a fair opportunity to challenge them.

### Rule 903. Subscribing witness' testimony

A subscribing witness' testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

## SECTION X

### CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

#### Rule 1001. Definitions that apply to this section

In this section:

- (a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A "photograph" means a photographic image or its equivalent stored in any form.
- (d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout or other output readable by sight if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.
- (e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

#### Rule 1002. Requirement of the original

An original writing, recording, or photograph is required in order to prove its content unless these rules, this Manual, or a federal statute provides otherwise.

#### Rule 1003. Admissibility of duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

#### Rule 1004. Admissibility of other evidence of content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) *Originals lost or destroyed.* All the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) *Original not obtainable.* An original cannot be obtained by any available judicial process;
- (c) *Original in possession of opponent.* The party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue.

#### Rule 1005. Copies of public records to prove content

The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Mil. R. Evid. 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

**Rule 1006. Summaries to prove content**

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. The military judge may order the proponent to produce them in court.

**Rule 1007. Testimony or statement of a party to prove content**

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

**Rule 1008. Functions of the military judge and the members**

Ordinarily, the military judge determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Mil. R. Evid. 1004 or 1005. When a court-martial is composed of a military judge and members, the members determine - in accordance with Mil. R. Evid. 104(b) - any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

**SECTION XI****MISCELLANEOUS RULES****Rule 1101. Applicability of these rules**

(a) *In General.* Except as otherwise provided in this Manual, these rules apply generally to all courts-martial, including summary courts-martial, Article 39(a) sessions, Article 30a proceedings, remands, proceedings in revision, and contempt proceedings other than contempt proceedings in which the judge may act summarily.

(b) *Rules Relaxed.* The application of these rules may be relaxed in presentencing proceedings as provided under R.C.M. 1001 and otherwise as provided in this Manual.

(c) *Rules on Privilege.* The rules on privilege apply at all stages of a case or proceeding.

(d) *Exceptions.* Unless otherwise provided for in this Manual, these rules—except for Mil. R. Evid. 412 and those on privilege—do not apply to the following:

- (1) the military judge's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
- (2) preliminary hearings under Article 32;
- (3) proceedings for vacation of suspension of sentence under Article 72; and
- (4) miscellaneous actions and proceedings related to search authorizations, pretrial restraint, pretrial confinement, or other proceedings authorized under the Uniform Code of Military Justice or this Manual that are not listed in subdivision (a).

**Rule 1102. Amendments**

(a) *General Rule.* Amendments to the Federal Rules of Evidence—other than Articles III and V—will amend parallel provisions of the Military Rules of Evidence by operation of law 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

(b) *Rules Determined Not to Apply.* The President has determined that the following Federal Rules of Evidence do not apply to the Military Rules of Evidence: Rules 301, 302, 415, and 902(12).

**Rule 1103. Title**

These rules may be cited as the Military Rules of Evidence.

THIS PAGE LEFT INTENTIONALLY BLANK

**Part IV**  
**PUNITIVE ARTICLES**  
**(Statutory text of each Article is in bold)**

**Discussion**

Part IV of the Manual addresses the punitive articles, 10 U.S.C. §§ 877-934. Part IV is organized by paragraph beginning with Article 77; therefore, each paragraph number is associated with an article. For example, paragraph 60 addresses Article 120, Rape and sexual assault generally. Article 77, Principals, and Article 79, Lesser included offenses, are located in the punitive article subchapter of Title 10 but are not chargeable offenses as such.

Other than Articles 77 and 79, the punitive articles of the code are discussed using the following sequence:

- a. Text of the article
- b. Elements of the offense or offenses
- c. Explanation
- d. Maximum punishment
- e. Sample specifications

Presidentially prescribed lesser included offenses, as authorized under Article 79(b)(2), are established in Appendix 12A. For offenses not listed in Appendix 12A that may or may not be lesser included offenses, see R.C.M. 307(c)(3) and its accompanying Discussion regarding charging in the alternative. Practitioners are advised, to read and comply with *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010).

Sample specifications are provided in subparagraph e of each paragraph in Part IV and are meant to serve as a guide. The specifications may be varied in form and content as necessary.

R.C.M. 307 prescribes rules for referral of charges and for drafting specifications. The discussion under that rule explains how to allege violations under the code using the format of charge and specification; however, practitioners are advised to read and comply with *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011) and *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010).

The term “elements,” as used in Part IV, includes both the statutory elements of the offense and any aggravating factors listed under the President’s authority which increases the maximum permissible punishment when specified aggravating factors are pled and proven.

The prescriptions of maximum punishments in subparagraph d of each paragraph of Part IV must be read in conjunction with R.C.M. 1003, which prescribes additional punishments that may be available and additional limitations on punishments.

---

**1. Article 77 (10 U.S.C. 877)—Principals**

*a. Text of statute.*

**Any person punishable under this chapter who—**

**(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or**

**(2) causes an act to be done which if directly performed by him would be punishable by this chapter;**

**is a principal.**

*b. Explanation.*

(1) *Purpose.* Article 77 does not define an offense. Its purpose is to make clear that a person need not personally perform the acts necessary to constitute an offense to be guilty of it. A person who aids, abets, counsels, commands, or procures the commission of an offense, or who causes an act to be done which, if done by that person directly would be an offense, is equally guilty of the offense as one who commits it directly, and may be punished to the same extent.

Article 77 eliminates the common law distinctions between principal in the first degree (“perpetrator”); principal in the second degree (one who aids, counsels, commands, or encourages the commission of an offense and who is present at the scene of the crime—commonly known as an “aider and abettor”); and accessory before the fact (one who aids, counsels, commands, or encourages the commission of an offense and who is not present at the scene of the crime). All of these are now “principals.”

(2) *Who may be liable for an offense.*

(a) *Perpetrator.* A perpetrator is one who actually commits the offense, either by the perpetrator’s own hand, or by causing an offense to be committed by knowingly or intentionally inducing or setting in motion acts by an animate or inanimate agency or instrumentality which result in the commission of an offense. For example, a person who knowingly conceals contraband drugs in an automobile, and then induces another person, who is unaware and has no reason to know of the presence of drugs, to drive the automobile onto a military installation, is, although not present in the automobile, guilty of wrongful introduction of drugs onto a military installation. (On these facts, the driver would be guilty of no crime.) Similarly, if, upon orders of a superior, a soldier shot a person who appeared to the soldier to be an enemy, but was known to the superior as a friend, the superior would be guilty of murder (but the soldier would be guilty of no offense).

¶1.b.(2)(b)

Article 78

(b) *Other Parties.* If one is not a perpetrator, to be guilty of an offense committed by the perpetrator, the person must:

(i) Assist, encourage, advise, instigate, counsel, command, or procure another to commit, or assist, encourage, advise, counsel, or command another in the commission of the offense; and

(ii) Share in the criminal purpose or design.

One who, without knowledge of the criminal venture or plan, unwittingly encourages or renders assistance to another in the commission of an offense is not guilty of a crime. See the parentheticals in the examples in subparagraph 1.b.(2)(a) of this paragraph. In some circumstances, inaction may make one liable as a party, where there is a duty to act. If a person (for example, a security guard) has a duty to interfere in the commission of an offense, but does not interfere, that person is a party to the crime if such a noninterference is intended to and does operate as an aid or encouragement to the actual perpetrator.

(3) *Presence.*

(a) *Not necessary.* Presence at the scene of the crime is not necessary to make one a party to the crime and liable as a principal. For example, one who, knowing that a person intends to shoot another person and intending that such an assault be carried out, provides the person with a pistol, is guilty of assault when the offense is committed, even though not present at the scene.

(b) *Not sufficient.* Mere presence at the scene of a crime does not make one a principal unless the requirements of subparagraph 1.b.(2)(a) or (b) have been met.

(4) *Parties whose intent differs from the perpetrator's.* When an offense charged requires proof of a specific intent or particular state of mind as an element, the evidence must prove that the accused had that intent or state of mind, whether the accused is charged as a perpetrator or an "other party" to crime. It is possible for a party to have a state of mind more or less culpable than the perpetrator of the offense. In such a case, the party may be guilty of a more or less serious offense than that committed by the perpetrator. For example, when a homicide is committed, the perpetrator may act in the heat of sudden passion caused by adequate provocation and be guilty of manslaughter, while the party who, without such passion, hands the perpetrator a weapon and encourages the perpetrator to kill the victim, would be guilty of murder. On the other hand, if a party assists a

perpetrator in an assault on a person who, known only to the perpetrator, is an officer, the party would be guilty only of assault, while the perpetrator would be guilty of assault on an officer.

(5) *Responsibility for other crimes.* A principal may be convicted of crimes committed by another principal if such crimes are likely to result as a natural and probable consequence of the criminal venture or design. For example, the accused who is a party to a burglary is guilty as a principal not only of the offense of burglary, but also, if the perpetrator kills an occupant in the course of the burglary, of murder. (See also paragraph 5, Conspiracy, concerning liability for offenses committed by co-conspirators.)

(6) *Principals independently liable.* One may be a principal, even if the perpetrator is not identified or prosecuted, or is acquitted.

(7) *Withdrawal.* A person may withdraw from a common venture or design and avoid liability for any offenses committed after the withdrawal. To be effective, the withdrawal must meet the following requirements:

(a) It must occur before the offense is committed;

(b) The assistance, encouragement, advice, instigation, counsel, command, or procurement given by the person must be effectively countermanded or negated; and

(c) The withdrawal must be clearly communicated to the would-be perpetrators or to appropriate law enforcement authorities in time for the perpetrators to abandon the plan or for law enforcement authorities to prevent the offense.

**2. Article 78 (10 U.S.C. 878)—Accessory after the fact**

a. *Text of statute.*

**Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That an offense punishable by the UCMJ was committed by a certain person;

(2) That the accused knew that this person had committed such offense;

(3) That thereafter the accused received, comforted, or assisted the offender; and

(4) That the accused did so for the purpose of hindering or preventing the apprehension, trial, or punishment of the offender.

*c. Explanation.*

(1) *In general.* The assistance given a principal by an accessory after the fact is not limited to assistance designed to effect the escape or concealment of the principal, but also includes acts performed to conceal the commission of the offense by the principal (for example, by concealing evidence of the offense).

(2) *Failure to report offense.* The mere failure to report a known offense will not make one an accessory after the fact. Such failure may violate a general order or regulation, however, and thus constitute an offense under Article 92. See paragraph 18. If the offense involved is a serious offense, and the accused does anything to conceal it, failure to report it may constitute the offense of misprision of a serious offense, under Article 131c. See paragraph 84.

(3) *Offense punishable by the UCMJ.* The term “offense punishable by this chapter” in the text of the article means any offense described in the UCMJ.

(4) *Status of principal.* The principal who committed the offense in question need not be subject to the UCMJ, but the offense committed must be punishable by the UCMJ.

(5) *Conviction or acquittal of principal.* The prosecution must prove that a principal committed the offense to which the accused is allegedly an accessory after the fact. However, evidence of the conviction or acquittal of the principal in a separate trial is not admissible to show that the principal did or did not commit the offense. Furthermore, an accused may be convicted as an accessory after the fact despite the acquittal in a separate trial of the principal whom the accused allegedly comforted, received, or assisted.

(6) *Accessory after the fact not a lesser included offense.* The offense of being an accessory after the fact is not a lesser included offense of the primary offense.

(7) *Actual knowledge.* Actual knowledge is required but may be proved by circumstantial evidence.

*d. Maximum punishment.* Any person subject to the UCMJ who is found guilty as an accessory after the fact to an offense punishable under the UCMJ shall be subject to the maximum punishment authorized for the principal offense, except that in no case shall the death penalty nor more than one-half of the maximum

confinement authorized for that offense be adjudged, nor shall the period of confinement exceed 10 years in any case, including offenses for which life imprisonment may be adjudged.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), knowing that (at/on board—location), on or about \_\_\_\_ 20 \_\_, had committed an offense punishable by the Uniform Code of Military Justice, to wit: \_\_\_\_\_, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, in order to (hinder) (prevent) the (apprehension) (trial) (punishment) of the said \_\_\_\_\_, (receive) (comfort) (assist) the said \_\_\_\_\_ by \_\_\_\_\_.

**3. Article 79 (10 U.S.C. 879)—Conviction of offense charged, Lesser included offenses, and attempts**

*a. Text of statute.*

**(a) IN GENERAL.—An accused may be found guilty of any of the following:**

**(1) The offense charged.**

**(2) A lesser included offense.**

**(3) An attempt to commit the offense charged.**

**(4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.**

**(b) LESSER INCLUDED OFFENSE DEFINED.—In this section (article), the term “lesser included offense” means—**

**(1) an offense that is necessarily included in the offense charged; and**

**(2) any lesser included offense so designated by regulation prescribed by the President.**

**(c) REGULATORY AUTHORITY.—Any designation of a lesser included offense in a regulation referred to in subsection (b) shall be reasonably included in the greater offense.**

*b. Explanation.*

(1) *In general.* Article 79 contains two provisions concerning notice of Lesser included offenses: (1) offenses that are “necessarily included” in the charged offense in accordance with Article 79(b)(1); and (2) offenses designated as Lesser included offenses by the President under Article 79(b)(2). Each provision sets forth an independent basis for providing notice of a lesser included offense.

(2) “*Necessarily included*” offenses. Under Article 79(b)(1), an offense is “necessarily included” in a charged offense when the elements of the lesser offense are a subset of the elements of the charged offense, thereby putting the accused on notice to be prepared to defend against the lesser offense in addition to the offense specifically charged. A lesser offense is “necessarily included” when:

(a) All of the elements of the lesser offense are included in the greater offense, and the common elements are identical (for example, wrongful appropriation as a lesser included offense of larceny);

(b) All of the elements of the lesser offense are included in the greater offense, but at least one element is a subset by being legally less serious (for example, unlawful entry as a lesser included offense of burglary); or

(c) All of the elements of the lesser offense are “included and necessary” parts of the greater offense, but the mental element is a subset by being legally less serious (for example, voluntary manslaughter as a lesser included offense of premeditated murder).

(3) *Offenses designated by the President*. Under Article 79(b)(2), Congress has authorized the President to designate Lesser included offenses by regulation.

(a) The President may designate an offense as a lesser included offense under Article 79(b)(2), subject to the requirement in Article 79(c) that the designated lesser included offense “shall be reasonably included in the greater offense.”

(b) Appendix 12A sets forth the list of Lesser included offenses designated by the President under Article 79(b)(2).

(c) The President may include a “necessarily included offense” in the list of offenses prescribed under Article 79(b)(2), but is not required to do so. A court may identify an offense as a “necessarily included” offense under Article 79(b)(1) regardless of whether the offense has been designated under Article 79(b)(2).

#### Discussion

For offenses that may or may not be lesser included offenses, see R.C.M. 307(c)(3) and its accompanying Discussion regarding charging in the alternative.

(4) *Sua sponte duty*. A military judge must instruct panel members on Lesser included offenses reasonably raised by the evidence.

(5) *Multiple Lesser included offenses*. When the offense charged is a compound offense comprising two or more Lesser included offenses, an accused may be found guilty of any or all of the offenses included in the offense charged.

(6) *Findings of guilty to a lesser included offense*. A court-martial may find an accused not guilty of the offense charged, but guilty of a lesser included offense by the process of exception and substitution. The court-martial may except (that is, delete) the words in the specification that pertain to the offense charged and, if necessary, substitute language appropriate to the lesser included offense. For example, the accused is charged with murder in violation of Article 118, but found guilty of voluntary manslaughter in violation of Article 119. Such a finding may be worded as follows:

Of the Specification: Guilty, except the word “murder” substituting therefor the words “willfully and unlawfully kill,” of the excepted word, not guilty, of the substituted words, guilty.

Of the Charge: Not guilty, but guilty of a violation of Article 119.

If a court-martial finds an accused guilty of a lesser included offense, the finding as to the charge shall state a violation of the specific punitive article violated and not a violation of Article 79.

#### 4. Article 80 (10 U.S.C. 880)—Attempts

a. *Text of statute*.

**(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.**

**(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.**

**(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.**

b. *Elements*.

(1) That the accused did a certain overt act;

(2) That the act was done with the specific intent to commit a certain offense under the UCMJ;

(3) That the act amounted to more than mere preparation; and

(4) That the act apparently tended to effect the commission of the intended offense.

c. *Explanation.*

(1) *In general.* To constitute an attempt there must be a specific intent to commit the offense accompanied by an overt act which directly tends to accomplish the unlawful purpose.

(2) *More than preparation.* Preparation consists of devising or arranging the means or measures necessary for the commission of the offense. The overt act required goes beyond preparatory steps and is a direct movement toward the commission of the offense. For example, a purchase of matches with the intent to burn a haystack is not an attempt to commit arson, but it is an attempt to commit arson to apply a burning match to a haystack, even if no fire results. The overt act need not be the last act essential to the consummation of the offense. For example, an accused could commit an overt act, and then voluntarily decide not to go through with the intended offense. An attempt would nevertheless have been committed, for the combination of a specific intent to commit an offense, plus the commission of an overt act directly tending to accomplish it, constitutes the offense of attempt. Failure to complete the offense, whatever the cause, is not a defense.

(3) *Factual impossibility.* A person who purposely engages in conduct which would constitute the offense if the attendant circumstances were as that person believed them to be is guilty of an attempt. For example, if A, without justification or excuse and with intent to kill B, points a gun at B and pulls the trigger, A is guilty of attempt to murder, even though, unknown to A, the gun is defective and will not fire. Similarly, a person who reaches into the pocket of another with the intent to steal that person's billfold is guilty of an attempt to commit larceny, even though the pocket is empty.

(4) *Voluntary abandonment.* It is a defense to an attempt offense that the person voluntarily and completely abandoned the intended crime, solely because of the person's own sense that it was wrong, prior to the completion of the crime. The voluntary abandonment defense is not allowed if the abandonment results, in whole or in part, from other reasons, for example, the person feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance. A person who is entitled to the defense of

voluntary abandonment may nonetheless be guilty of a lesser included, completed offense. For example, a person who voluntarily abandoned an attempted armed robbery may nonetheless be guilty of assault with a dangerous weapon.

(5) *Solicitation.* Soliciting another to commit an offense does not constitute an attempt. See paragraph 6 for a discussion of Article 82, Solicitation.

(6) *Attempts not under Article 80.* While most attempts should be charged under Article 80, the following attempts are specifically addressed by some other article, and should be charged accordingly:

- (a) Article 85—Desertion
- (b) Article 94—Mutiny or sedition
- (c) Article 100—Subordinate compelling surrender
- (d) Article 103a—Espionage
- (e) Article 103b—Aiding the enemy
- (f) Article 119a—Death or injury of an unborn child
- (g) Article 128—Assault

(7) *Regulations.* An attempt to commit conduct which would violate a lawful general order or regulation under Article 92 (see paragraph 18) should be charged under Article 80. It is not necessary in such cases to prove that the accused intended to violate the order or regulation, but it must be proved that the accused intended to commit the prohibited conduct.

d. *Maximum punishment.* Any person subject to the UCMJ who is found guilty of an attempt under Article 80 to commit any offense punishable by the UCMJ shall be subject to the same maximum punishment authorized for the commission of the offense attempted, except that in no case shall the death penalty be adjudged, and in no case, other than attempted murder, shall confinement exceeding 20 years be adjudged. Except in the cases of attempts of rape and sexual assault under Article 120(a) or (b), and rape and sexual assault of a child under Article 120b(a) or (b), mandatory minimum punishment provisions shall not apply.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, attempt to (describe offense with sufficient detail to include expressly or by necessary implication every element).



## 5. Article 81 (10 U.S.C. 881)—Conspiracy

### a. *Text of statute.*

**(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.**

**(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.**

### b. *Elements.*

#### (1) *Conspiracy.*

(a) That the accused entered into an agreement with one or more persons to commit an offense under the UCMJ; and

(b) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

(2) *Conspiracy when offense is an offense under the law of war resulting in the death of one or more victims.*

(a) That the accused entered into an agreement with one or more persons to commit an offense under the law of war;

(b) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused knowingly performed an overt act for the purpose of bringing about the object of the conspiracy; and

(c) That death resulted to one or more victims.

### c. *Explanation.*

(1) *Co-conspirators.* Two or more persons are required in order to have a conspiracy. Knowledge of the identity of co-conspirators and their particular connection with the criminal purpose need not be established. The accused must be subject to the UCMJ, but the other co-conspirators need not be. A person

may be guilty of conspiracy although incapable of committing the intended offense. For example, a bedridden conspirator may knowingly furnish the car to be used in a robbery. The joining of another conspirator after the conspiracy has been established does not create a new conspiracy or affect the status of the other conspirators. However, the conspirator who joined an existing conspiracy can be convicted of this offense only if, at or after the time of joining the conspiracy, an overt act in furtherance of the object of the agreement is committed.

(2) *Agreement.* The agreement in a conspiracy need not be in any particular form or manifested in any formal words. It is sufficient if the minds of the parties arrive at a common understanding to accomplish the object of the conspiracy, and this may be shown by the conduct of the parties. The agreement need not state the means by which the conspiracy is to be accomplished or what part each conspirator is to play.

(3) *Object of the agreement.* The object of the agreement must, at least in part, involve the commission of one or more offenses under the UCMJ. An agreement to commit several offenses is ordinarily but a single conspiracy. Some offenses require two or more culpable actors acting in concert. There can be no conspiracy where the agreement exists only between the persons necessary to commit such an offense. Examples include dueling, bigamy, extramarital sexual conduct, and bribery.

#### (4) *Overt act.*

(a) The overt act must be independent of the agreement to commit the offense; must take place at the time of or after the agreement; must be done by one or more of the conspirators, but not necessarily the accused; and must be done to effectuate the object of the agreement.

(b) The overt act need not be in itself criminal, but it must be a manifestation that the agreement is being executed. Although committing the intended offense may constitute the overt act, it is not essential that the object offense be committed. Any overt act is enough, no matter how preliminary or preparatory in nature, as long as it is a manifestation that the agreement is being executed.

(c) An overt act by one conspirator becomes the act of all without any new agreement specifically directed to that act and each conspirator is equally guilty even though each does not participate in, or have knowledge of, all of the details of the execution of the conspiracy.

(5) *Liability for offenses.* Each conspirator is liable for all offenses committed pursuant to the conspiracy by any of the co-conspirators while the conspiracy continues and the person remains a party to it.

(6) *Withdrawal.* A party to the conspiracy who abandons or withdraws from the agreement to commit the offense before the commission of an overt act by any conspirator is not guilty of conspiracy. An effective withdrawal or abandonment must consist of affirmative conduct which is wholly inconsistent with adherence to the unlawful agreement and which shows that the party has severed all connection with the conspiracy. A conspirator who effectively abandons or withdraws from the conspiracy after the performance of an overt act by one of the conspirators remains guilty of conspiracy and of any offenses committed pursuant to the conspiracy up to the time of the abandonment or withdrawal. However, a person who has abandoned or withdrawn from the conspiracy is not liable for offenses committed thereafter by the remaining conspirators. The withdrawal of a conspirator from the conspiracy does not affect the status of the remaining members.

(7) *Factual impossibility.* It is not a defense that the means adopted by the conspirators to achieve their object, if apparently adapted to that end, were actually not capable of success, or that the conspirators were not physically able to accomplish their intended object.

(8) *Conspiracy as a separate offense.* A conspiracy to commit an offense is a separate and distinct offense from the offense which is the object of the conspiracy, and both the conspiracy and the consummated offense which was its object may be charged, tried, and punished. The commission of the intended offense may also constitute the overt act which is an element of the conspiracy to commit that offense.

(9) *Special conspiracies under Article 134.* The United States Code prohibits conspiracies to commit certain specific offenses which do not require an overt act. These conspiracies should be charged under Article 134. Examples include conspiracies to impede or injure any federal officer in the discharge of duties under 18 U.S.C. § 372, conspiracies against civil rights under 18 U.S.C. § 241, and certain drug conspiracies under 21 U.S.C. § 846. See subparagraph 91.c.(4)(a)(1)(iii).

d. *Maximum punishment.*

(1) *Offenses under the UCMJ.* Any person subject to the UCMJ who is found guilty of conspiracy shall be subject to the maximum punishment authorized for

the offense that is the object of the conspiracy, except that in no case shall the death penalty be imposed, subject to subparagraph d.(2) of this paragraph.

(2) *Offenses under the law of war resulting in the death of one or more victims.* Any person subject to the UCMJ who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.

e. *Sample specification*

(1) *Conspiracy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_20\_\_, conspire with \_\_\_\_\_ (and \_\_\_\_\_) to commit an offense under the Uniform Code of Military Justice, to wit: (larceny of \_\_\_\_\_, of a value of (about) \$\_\_\_\_, the property of \_\_\_\_\_), and in order to effect the object of the conspiracy the said \_\_\_\_\_ (and \_\_\_\_\_) did \_\_\_\_\_.

(2) *Conspiracy when an offense is an offense under the law of war resulting in the death of one or more victims.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_20\_\_, conspire with \_\_\_\_\_ (and \_\_\_\_\_) to commit an offense under the law of war, to wit: (murder of \_\_\_\_\_), and in order to effect the object of the conspiracy the said \_\_\_\_\_ knowingly did \_\_\_\_\_ resulting in the death of \_\_\_\_\_.

## 6. Article 82 (10 U.S.C. 882)—Soliciting commission of offenses

a. *Text of statute.*

**(a) SOLICITING COMMISSION OF OFFENSES GENERALLY.—Any person subject to this chapter who solicits or advises another to commit an offense under this chapter (other than an offense specified in subsection (b)) shall be punished as a court-martial may direct.**

**(b) SOLICITING DESERTION, MUTINY, SEDITION, OR MISBEHAVIOR BEFORE THE ENEMY.—Any person subject to this chapter who solicits or advises another to violate section 885 of**

this title (article 85), section 894 of this title (article 94), or section 899 of this title (article 99)—

**(1) if the offense solicited or advised is attempted or is committed, shall be punished with the punishment provided for the commission of the offense; and**

**(2) if the offense solicited or advised is not attempted or committed, shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused solicited or advised a certain person or persons to commit a certain offense under the UCMJ; and

(2) That the accused did so with the intent that the offense actually be committed.

[Note: If the offense solicited or advised was attempted or committed, add the following element]

(3) That the offense solicited or advised was (committed) (attempted) as the proximate result of the solicitation.

c. *Explanation.*

(1) *Instantaneous offense.* The offense is complete when a solicitation is made or advice is given with the specific wrongful intent to influence another or others to commit any offense under the UCMJ. It is not necessary that the person or persons solicited or advised agree to or act upon the solicitation or advice.

(2) *Form of solicitation.* Solicitation may be by means other than word of mouth or writing. Any act or conduct which reasonably may be construed as a serious request or advice to commit any offense under the UCMJ may constitute solicitation. It is not necessary that the accused act alone in the solicitation or in the advising; the accused may act through other persons in committing this offense.

(3) *Solicitations as an element in another offense.* Some offenses require, as an element of proof, some act of solicitation by the accused. These offenses are separate and distinct from solicitations under Article 82. When the accused's act of solicitation constitutes, by itself, a separate offense, the accused should be charged with that separate, distinct offense—for example, pandering and obstructing justice.

d. *Maximum punishment.*

(1) *Solicitation of espionage.* Such punishment that a court-martial may direct, other than death.

(2) *Solicitation of desertion; mutiny or sedition; misbehavior before the enemy.* If the offense solicited

or advised is committed or attempted, then the accused shall be punished with the punishment provided for the commission of the offense solicited or advised. If the offense solicited or advised is not committed or attempted, then the following punishment may be imposed: dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years, or the maximum punishment of the underlying offense, whichever is lesser.

(3) *Solicitation of all other offenses.* Any person subject to the UCMJ who is found guilty of soliciting or advising another person to commit an offense not specified in Article 82(b) that, if committed by one subject to the UCMJ, would be punishable under the UCMJ, shall be subject to the following maximum punishment: dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years, or the maximum punishment of the underlying offense, whichever is lesser.

e. *Sample specifications.*

(1) *For soliciting another to commit an offense.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (solicit) (advise) \_\_\_\_\_ (to disobey a general regulation, to wit: \_\_\_\_\_) (to steal \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_) (to \_\_\_\_\_), by \_\_\_\_\_.

(2) *For soliciting desertion (Article 85) or mutiny (Article 94(a)).*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_ 20 \_\_, (a time of war) by (here state the manner and form of solicitation or advice), (solicit) (advise) \_\_\_\_\_ (and \_\_\_\_\_) to (desert in violation of Article 85) (mutiny in violation of Article 94(a)) [\*and, as a result of such (solicitation) (advice), the offense (solicited) (advised) was, on or about \_\_\_\_\_, 20 \_\_, (at/on board—location), (attempted) (committed) by \_\_\_\_\_ (and \_\_\_\_\_)].

[\*Note: This language should be added to the end of the specification if the offense solicited or advised is actually committed.]

(3) *For soliciting sedition (Article 94(a)) or misbehavior before or in the presence of the enemy (Article 99).*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location), on or about \_\_\_\_ 20 \_\_, (a time of war) by (here state the manner and form of

solicitation or advice), (solicit) (advise) \_\_\_\_\_ (and \_\_\_\_\_) to commit (an act of misbehavior before the enemy in violation of Article 99) (sedition in violation of Article 94(a)) [\*and, as a result of such (solicitation) (advice), the offense (solicited) (advised) was, on or about \_\_\_\_ 20 \_\_, (at/on board—location), committed by \_\_\_\_\_ (and \_\_\_\_\_)].

[\*Note: This language should be added to the end of the specification if the offense solicited or advised is actually committed.]

**7. Article 83 (10 U.S.C. 883)—Malingering**

a. *Text of statute.*

**Any person subject to this chapter who, with the intent to avoid work, duty, or service—**

**(1) feigns illness, physical disablement, mental lapse, or mental derangement; or**

**(2) intentionally inflicts self-injury; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused was assigned to, or was aware of prospective assignment to, or availability for, the performance of work, duty, or service;

(2) That the accused feigned illness, physical disablement, mental lapse, mental derangement, or intentionally inflicted injury upon himself or herself; and

(3) That the accused’s purpose or intent in doing so was to avoid the work, duty, or service.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element]

(4) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* The essence of this offense is the design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. Whether to avoid all duty, or only a particular job, it is the purpose to shirk which characterizes the offense. Hence, the nature or permanency of a self-inflicted injury is not material on the question of guilt. The seriousness of a sham physical or mental disability is also not material on the question of guilt. Evidence of the extent of the self-inflicted injury or feigned disability may, however, be relevant as a factor indicating the presence or absence of the purpose.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission which produces, prolongs, or aggravates any sickness or disability. Thus, voluntary starvation which results in debility is a self-inflicted injury and when done for the purpose of avoiding work, duty, or service constitutes a violation of this article.

**Discussion**

Bona fide suicide attempts should not be charged as criminal offenses. When making a determination whether the injury by the Servicemember was a bona fide suicide attempt, the convening authority should consider factors including, but not limited to, health conditions, personal stressors, and DoD policy related to suicide prevention.

d. *Maximum punishment.*

(1) *Feigning illness, physical disablement, mental lapse, or mental derangement.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Feigning illness, physical disablement, mental lapse, or mental derangement in a hostile fire pay zone or in time of war.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(3) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(4) *Intentional self-inflicted injury in a hostile fire pay zone or in time of war.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (in a hostile fire pay zone) (subject-matter jurisdiction data, if required) (on or about \_\_\_\_ 20 \_\_) (from about \_\_\_\_ 20 \_\_ to about \_\_\_\_ 20 \_\_), (a time of war) for the purpose of avoiding ((his) (her) duty as officer of the day) ((his) (her) duty as aircraft mechanic) (work in the mess hall) (service as an enlisted person) (\_\_\_\_\_) (feign (a headache) (a sore back) (illness) (mental lapse) (mental derangement) (\_\_\_\_)) (intentionally injure himself/herself by \_\_\_\_\_).

**8. Article 84 (10 U.S.C. 884)—Breach of medical quarantine**

a. *Text of statute.*

**Any person subject to this chapter—**

**(1) who is ordered into medical quarantine by a person authorized to issue such order; and**

**(2) who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before being released from the quarantine by proper authority;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That a certain person ordered the accused into medical quarantine;

(2) That the person was authorized to order the accused into medical quarantine;

(3) That the accused knew of this medical quarantine and the limits thereof; and

(4) That the accused went beyond the limits of the medical quarantine before being released therefrom by proper authority.

[Note: If the offense involved violation of a medical quarantine imposed in response to emergence of a “quarantinable communicable disease” as defined in 42 C.F.R. § 70.1, add the following element]

(5) That the medical quarantine was imposed in reference to a quarantinable communicable disease (to wit: \_\_\_\_\_) as defined in 42 C.F.R. § 70.1.

c. *Explanation.*

(1) *Distinguishing “quarantine” from “quarters” orders.* Putting a person “on quarters” or other otherwise excusing a person from duty because of illness does not of itself constitute a medical quarantine.

d. *Maximum punishment.*

(1) *Breach of medical quarantine involving a quarantinable communicable disease defined by 42 C.F.R. § 70.1.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Breach of medical quarantine—all other cases.* Bad-conduct discharge, forfeiture of two-thirds pay per month for 6 months, and confinement for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data) having been placed in medical quarantine by a person authorized to order the accused into medical quarantine (for a quarantinable communicable disease as defined

in 42 C.F.R. § 70.1, to wit: \_\_\_\_\_), having knowledge of the quarantine and the limits of the quarantine, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, break said medical quarantine.

**9. Article 85 (10 U.S.C. 885)—Desertion**

a. *Text of statute.*

**(a) Any member of the armed forces who—**

**(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;**

**(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or**

**(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;**

**is guilty of desertion.**

**(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.**

**(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.**

b. *Elements.*

(1) *Desertion with intent to remain away permanently.*

(a) That the accused absented himself or herself from his or her unit, organization, or place of duty;

(b) That such absence was without authority;

(c) That the accused, at the time the absence began or at some time during the absence, intended to remain away from his or her unit, organization, or place of duty permanently; and

(d) That the accused remained absent until the date alleged.

[Note: If the absence was terminated by apprehension, add the following element]

(e) That the accused's absence was terminated by apprehension.

(2) *Desertion with intent to avoid hazardous duty or to shirk important service.*

(a) That the accused quit his or her unit, organization, or other place of duty;

(b) That the accused did so with the intent to avoid a certain duty or shirk a certain service;

(c) That the duty to be performed was hazardous or the service important;

(d) That the accused knew that he or she would be required for such duty or service; and

(e) That the accused remained absent until the date alleged.

(3) *Desertion before notice of acceptance of resignation.*

(a) That the accused was a commissioned officer of an armed force of the United States, and had tendered his or her resignation;

(b) That before he or she received notice of the acceptance of the resignation, the accused quit his or her post or proper duties;

(c) That the accused did so with the intent to remain away permanently from his or her post or proper duties; and

(d) That the accused remained absent until the date alleged.

[Note: If the absence was terminated by apprehension, add the following element]

(e) That the accused's absence was terminated by apprehension.

(4) *Attempted desertion.*

(a) That the accused did a certain overt act;

(b) That the act was done with the specific intent to desert;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to effect the commission of the offense of desertion.

c. *Explanation.*

(1) *Desertion with intent to remain away permanently.*

(a) *In general.* Desertion with intent to remain away permanently is complete when the person absents

himself or herself without authority from his or her unit, organization, or place of duty, with the intent to remain away therefrom permanently. A prompt repentance and return, while material in extenuation, is no defense. It is not necessary that the person be absent entirely from military jurisdiction and control.

(b) *Absence without authority*—inception, duration, termination. See subparagraph 10.c.

(c) *Intent to remain away permanently.*

(i) The intent to remain away permanently from the unit, organization, or place of duty may be formed any time during the unauthorized absence. The intent need not exist throughout the absence, or for any particular period of time, as long as it exists at some time during the absence.

(ii) The accused must have intended to remain away permanently from the unit, organization, or place of duty. When the accused had such an intent, it is no defense that the accused also intended to report for duty elsewhere, or to enlist or accept an appointment in the same or a different armed force.

(iii) The intent to remain away permanently may be proved by circumstantial evidence. Among the circumstances from which an inference may be drawn that an accused intended to remain absent permanently are: that the period of absence was lengthy; that the accused attempted to, or did, dispose of uniforms or other military property; that the accused purchased a ticket for a distant point or was arrested, apprehended, or surrendered a considerable distance from the accused's station; that the accused could have conveniently surrendered to military control but did not; that the accused was dissatisfied with the accused's unit, ship, or with military service; that the accused made remarks indicating an intention to desert; that the accused was under charges or had escaped from confinement at the time of the absence; that the accused made preparations indicative of an intent not to return (for example, financial arrangements); or that the accused enlisted or accepted an appointment in the same or another armed force without disclosing the fact that the accused had not been regularly separated, or entered any foreign armed service without being authorized by the United States. On the other hand, the following are included in the circumstances which may tend to negate an inference that the accused intended to remain away permanently: previous long and excellent service; that the accused left valuable personal property in the unit or on the ship; or that the accused was under the influence of

alcohol or drugs during the absence. These lists are illustrative only.

(iv) Entries on documents, such as personnel accountability records, which administratively refer to an accused as a “deserter” are not evidence of intent to desert.

(v) Proof of, or a plea of guilty to, an unauthorized absence, even of extended duration, does not, without more, prove guilt of desertion.

(d) *Effect of enlistment or appointment in the same or a different armed force.* Article 85(a)(3) does not state a separate offense. Rather, it is a rule of evidence by which the prosecution may prove intent to remain away permanently. Proof of an enlistment or acceptance of an appointment in a Service without disclosing a preexisting duty status in the same or a different service provides the basis from which an inference of intent to permanently remain away from the earlier unit, organization, or place of duty may be drawn. Furthermore, if a person, without being regularly separated from one of the armed forces, enlists or accepts an appointment in the same or another armed force, the person’s presence in the military service under such an enlistment or appointment is not a return to military control and does not terminate any desertion or absence without authority from the earlier unit or organization, unless the facts of the earlier period of service are known to military authorities. If a person, while in desertion, enlists or accepts an appointment in the same or another armed force, and deserts while serving the enlistment or appointment, the person may be tried and convicted for each desertion.

(2) *Quitting unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service.*

(a) *Hazardous duty or important service.* “Hazardous duty” or “important service” may include service such as duty in a combat or other dangerous area; embarkation for certain foreign or sea duty; movement to a port of embarkation for that purpose; entrainment for duty on the border or coast in time of war or threatened invasion or other disturbances; strike or riot duty; or employment in aid of the civil power in, for example, protecting property, or quelling or preventing disorder in times of great public disaster. Such services as drill, target practice, maneuvers, and practice marches are not ordinarily “hazardous duty or important service.” Whether a duty is hazardous or a service is important depends upon the circumstances of

the particular case, and is a question of fact for the court-martial to decide.

(b) *Quits.* “Quits” in Article 85 means “goes absent without authority.”

(c) *Actual knowledge.* Article 85(a)(2) requires proof that the accused actually knew of the hazardous duty or important service. Actual knowledge may be proved by circumstantial evidence.

(3) *Attempting to desert.* Once the attempt is made, the fact that the person desists, voluntarily or otherwise, does not cancel the offense. The offense is complete, for example, if the person, intending to desert, hides in an empty freight car on a military reservation, intending to escape by being taken away in the car. Entering the car with the intent to desert is the overt act. For a more detailed discussion of attempts, see paragraph 4. For an explanation concerning intent to remain away permanently, see paragraph 9.c.(1)(c).

(4) *Prisoner with executed punitive discharge.* A prisoner whose dismissal or dishonorable or bad-conduct discharge has been executed is not a “member of the armed forces” within the meaning of Articles 85 or 86, although the prisoner may still be subject to military law under Article 2(a)(7). If the facts warrant, such a prisoner could be charged with escape from confinement under Article 87a or an offense under Article 134.

d. *Maximum punishment.*

(1) *Completed or attempted desertion with intent to avoid hazardous duty or to shirk important service.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Other cases of completed or attempted desertion.*

(a) Terminated by apprehension. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) Terminated otherwise. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *In time of war.* Death or such other punishment as a court-martial may direct.

e. *Sample specifications.*

(1) *Desertion with intent to remain away permanently.*

In that \_\_\_\_\_ (personal jurisdiction data), did, on or about \_\_\_\_ 20 \_\_, (a time of war) without authority and with intent to remain away therefrom permanently, absent himself/herself from (his) (her)

(unit) (organization) (place of duty), to wit: \_\_\_\_\_, located at (\_\_\_\_\_), and did remain so absent in desertion until ((he) (she) was apprehended) on or about \_\_\_\_ 20 \_\_.

(2) *Desertion with intent to avoid hazardous duty or shirk important service.*

In that \_\_\_\_\_ (personal jurisdiction data), knowing that (he) (she) would be required to perform (hazardous duty) (important service), namely: \_\_\_\_\_, did, on or about \_\_\_\_ 20 \_\_, (a time of war) with intent to (avoid said hazardous duty) (shirk said important service), quit (his) (her) (unit) (organization) (place of duty), to wit: \_\_\_\_\_, located at (\_\_\_\_\_), and did remain so absent in desertion until on or about \_\_\_\_ 20 \_\_.

(3) *Desertion prior to acceptance of resignation.*

In that \_\_\_\_\_ (personal jurisdiction data) having tendered (his) (her) resignation and prior to due notice of the acceptance of the same, did, on or about \_\_\_\_ 20 \_\_, (a time of war) without leave and with intent to remain away therefrom permanently, quit (his) (her) (post) (proper duties), to wit: \_\_\_\_\_, and did remain so absent in desertion until ((he) (she) was apprehended) on or about \_\_\_\_ 20 \_\_.

(4) *Attempted desertion.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), on or about \_\_\_\_ 20 \_\_, (a time of war) attempt to (absent himself/herself from (his) (her) (unit) (organization) (place of duty) to wit: \_\_\_\_\_, without authority and with intent to remain away therefrom permanently) (quit (his) (her) (unit) (organization) (place of duty), to wit: \_\_\_\_\_, located at \_\_\_\_\_, with intent to (avoid hazardous duty) (shirk important service) namely \_\_\_\_ (\_\_\_\_)).

## 10. Article 86 (10 U.S.C. 886)—Absence without leave

a. *Text of statute.*

**Any member of the armed forces who, without authority—**

**(1) fails to go to his appointed place of duty at the time prescribed;**

**(2) goes from that place; or**

**(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Failure to go to appointed place of duty.*

(a) That a certain authority appointed a certain time and place of duty for the accused;

(b) That the accused knew of that time and place; and

(c) That the accused, without authority, failed to go to the appointed place of duty at the time prescribed.

(2) *Going from appointed place of duty.*

(a) That a certain authority appointed a certain time and place of duty for the accused;

(b) That the accused knew of that time and place; and

(c) That the accused, without authority, went from the appointed place of duty after having reported at such place.

(3) *Absence from unit, organization, or place of duty.*

(a) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;

(b) That the absence was without authority from anyone competent to give him or her leave; and

(c) That the absence was for a certain period of time.

[Note: if the absence was terminated by apprehension, add the following element]

(d) That the absence was terminated by apprehension.

(4) *Abandoning watch or guard.*

(a) That the accused was a member of a guard, watch, or duty;

(b) That the accused absented himself or herself from his or her guard, watch, or duty section;

(c) That absence of the accused was without authority; and

[Note: If the absence was with intent to abandon the accused's guard, watch, or duty section, add the following element]

(d) That the accused intended to abandon his or her guard, watch, or duty section.

(5) *Absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises.*

(a) That the accused absented himself or herself from his or her unit, organization, or place of duty at which he or she was required to be;



(b) That the absence of the accused was without authority;

(c) That the absence was for a certain period of time;

(d) That the accused knew that the absence would occur during a part of a period of maneuvers or field exercises; and

(e) That the accused intended to avoid all or part of a period of maneuvers or field exercises.

c. *Explanation.*

(1) *In general.* This article is designed to cover every case not elsewhere provided for in which any member of the armed forces is through the member's own fault not at the place where the member is required to be at a prescribed time. It is not necessary that the person be absent entirely from military jurisdiction and control. The first part of this article—relating to the appointed place of duty—applies whether the place is appointed as a rendezvous for several or for one only.

(2) *Actual knowledge.* The offenses of failure to go to and going from appointed place of duty require proof that the accused actually knew of the appointed time and place of duty. The offense of absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises requires proof that the accused actually knew that the absence would occur during a part of a period of maneuvers or field exercises. Actual knowledge may be proved by circumstantial evidence.

(3) *Intent.* Specific intent is not an element of unauthorized absence. Specific intent is an element for certain aggravated unauthorized absences.

(4) *Aggravated forms of unauthorized absence.* There are variations of unauthorized absence under Article 86(3) which are more serious because of aggravating circumstances such as duration of the absence, a special type of duty from which the accused absents himself or herself, and a particular specific intent which accompanies the absence. These circumstances are not essential elements of a violation of Article 86. They simply constitute special matters in aggravation. The following are aggravated unauthorized absences:

(a) Unauthorized absence for more than 3 days (duration).

(b) Unauthorized absence for more than 30 days (duration).

(c) Unauthorized absence from a guard, watch, or duty (special type of duty).

(d) Unauthorized absence from guard, watch, or duty section with the intent to abandon it (special type of duty and specific intent).

(e) Unauthorized absence with the intent to avoid maneuvers or field exercises (special type of duty and specific intent).

(5) *Control by civilian authorities.* A member of the armed forces turned over to the civilian authorities upon request under Article 14 (see R.C.M. 106) is not absent without leave while held by them under that delivery. When a member of the armed forces, being absent with leave, or absent without leave, is held, tried, and acquitted by civilian authorities, the member's status as absent with leave, or absent without leave, is not thereby changed, regardless how long held. The fact that a member of the armed forces is convicted by the civilian authorities, or adjudicated to be a juvenile offender, or the case is "diverted" out of the regular criminal process for a probationary period does not excuse any unauthorized absence, because the member's inability to return was the result of willful misconduct. If a member is released by the civilian authorities without trial, and was on authorized leave at the time of arrest or detention, the member may be found guilty of unauthorized absence only if it is proved that the member actually committed the offense for which detained, thus establishing that the absence was the result of the member's own misconduct.

(6) *Inability to return.* The status of absence without leave is not changed by an inability to return through sickness, lack of transportation facilities, or other disabilities. But the fact that all or part of a period of unauthorized absence was in a sense enforced or involuntary is a factor in extenuation and should be given due weight when considering the initial disposition of the offense. When, however, a person on authorized leave, without fault, is unable to return at the expiration thereof, that person has not committed the offense of absence without leave.

(7) *Determining the unit or organization of an accused.* A person undergoing transfer between activities is ordinarily considered to be attached to the activity to which ordered to report. A person on temporary additional duty continues as a member of the regularly assigned unit and if the person is absent from the temporary duty assignment, the person becomes absent without leave from both units, and may be charged with being absent without leave from either unit.

(8) *Duration.* Unauthorized absence under Article 86(3) is an instantaneous offense. It is complete at the instant an accused absents himself or herself without authority. Duration of the absence is a matter in aggravation for the purpose of increasing the maximum punishment authorized for the offense. Even if the duration of the absence is not over 3 days, it is ordinarily alleged in an Article 86(3) specification. If the duration is not alleged or if alleged but not proved, an accused can be convicted of and punished for only 1 day of unauthorized absence.

(9) *Computation of duration.* In computing the duration of an unauthorized absence, any one continuous period of absence found that totals not more than 24 hours is counted as 1 day; any such period that totals more than 24 hours and not more than 48 hours is counted as 2 days, and so on. The hours of departure and return on different dates are assumed to be the same if not alleged and proved. For example, if an accused is found guilty of unauthorized absence from 0600 hours, 4 April, to 1000 hours, 7 April of the same year (76 hours), the maximum punishment would be based on an absence of 4 days. However, if the accused is found guilty simply of unauthorized absence from 4 April to 7 April, the maximum punishment would be based on an absence of 3 days.

(10) *Termination—methods of return to military control.*

(a) *Surrender to military authority.* A surrender occurs when a person presents himself or herself to any military authority, whether or not a member of the same armed force, notifies that authority of his or her unauthorized absence status, and submits or demonstrates a willingness to submit to military control. Such a surrender terminates the unauthorized absence.

(b) *Apprehension by military authority.* Apprehension by military authority of a known absentee terminates an unauthorized absence.

(c) *Delivery to military authority.* Delivery of a known absentee by anyone to military authority terminates the unauthorized absence.

(d) *Apprehension by civilian authorities at the request of the military.* When an absentee is taken into custody by civilian authorities at the request of military authorities, the absence is terminated.

(e) *Apprehension by civilian authorities without prior military request.* When an absentee is in the hands of civilian authorities for other reasons and these authorities make the absentee available for return to

military control, the absence is terminated when the military authorities are informed of the absentee's availability.

(11) *Findings of more than one absence under one specification.* An accused may properly be found guilty of two or more separate unauthorized absences under one specification, provided that each absence is included within the period alleged in the specification and provided that the accused was not misled. If an accused is found guilty of two or more unauthorized absences under a single specification, the maximum authorized punishment shall not exceed that authorized if the accused had been found guilty as charged in the specification.

d. *Maximum punishment.*

(1) *Failing to go to, or going from, the appointed place of duty.* Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(2) *Absence from unit, organization, or other place of duty.*

(a) *For not more than 3 days.* Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(b) *For more than 3 days but not more than 30 days.* Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

(c) *For more than 30 days.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(d) *For more than 30 days and terminated by apprehension.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(3) *From guard or watch.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(4) *From guard or watch with intent to abandon.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(5) *With intent to avoid maneuvers or field exercises.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specifications.*

(1) *Failing to go or leaving place of duty.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, without authority, (fail to go at the time prescribed to) (go from) (his) (her) appointed place of duty, to wit: (here set forth the appointed place of duty).

(2) *Absence from unit, organization, or place of duty.*

In that \_\_\_\_\_ (personal jurisdiction data), did, on or about \_\_\_\_\_ 20 \_\_, without authority, absent himself/herself from (his) (her) (unit) (organization) (place of duty at which (he) (she) was required to be), to wit: \_\_\_\_\_, located at \_\_\_\_\_, and did remain so absent until ((he) (she) was apprehended) on or about \_\_\_\_\_ 20 \_\_.

(3) *Absence from unit, organization, or place of duty with intent to avoid maneuvers or field exercises.*

In that \_\_\_\_\_ (personal jurisdiction data), did, on or about \_\_\_\_\_ 20 \_\_, without authority and with intent to avoid (maneuvers) (field exercises), absent himself/herself from (his) (her) (unit) (organization) (place of duty at which (he) (she) was required to be), to wit: \_\_\_\_\_ located at (\_\_\_\_\_), and did remain so absent until on or about \_\_\_\_\_ 20 \_\_.

(4) *Abandoning watch or guard.*

In that \_\_\_\_\_ (personal jurisdiction data), being a member of the \_\_\_\_\_ (guard) (watch) (duty section), did, (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, without authority, go from (his) (her) (guard) (watch) (duty section) (with intent to abandon the same).

**11. Article 87 (10 U.S.C. 887)—Missing movement; jumping from vessel***a. Text of statute.*

**(a) MISSING MOVEMENT.—Any person subject to this chapter who, through neglect or design, misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.**

**(b) JUMPING FROM VESSEL INTO THE WATER.—Any person subject to this chapter who wrongfully and intentionally jumps into the water from a vessel in use by the armed forces shall be punished as a court-martial may direct.**

*b. Elements.*(1) *Missing movement.*

(a) That the accused was required in the course of duty to move with a ship, aircraft, or unit;

(b) That the accused knew of the prospective movement of the ship, aircraft, or unit; and

(c) That the accused missed the movement through design or neglect.

(2) *Jumping from vessel into the water.*

(a) That the accused jumped from a vessel in use by the armed forces into the water; and

(b) That such act by the accused was wrongful and intentional.

*c. Explanation.*(1) *Missing movement.*

(a) *Movement.* “Movement” as used in Article 87 includes a move, transfer, or shift of a ship, aircraft, or unit involving a substantial distance and period of time. Whether a particular movement is substantial is a question to be determined by the court-martial considering all the circumstances. Changes which do not constitute a “movement” include practice marches of a short duration with a return to the point of departure, and minor changes in location of ships, aircraft, or units, as when a ship is shifted from one berth to another in the same shipyard or harbor or when a unit is moved from one barracks to another on the same post.

(b) *Mode of movement.*

(i) *Unit.* If a person is required in the course of duty to move with a unit, the mode of travel is not important, whether it be military or commercial, and includes travel by ship, train, aircraft, truck, bus, or walking. The word “unit” is not limited to any specific technical category such as those listed in a table of organization and equipment, but also includes units which are created before the movement with the intention that they have organizational continuity upon arrival at their destination regardless of their technical designation, and units intended to be disbanded upon arrival at their destination.

(ii) *Ship, aircraft.* If a person is assigned as a crew member or is ordered to move as a passenger aboard a particular ship or aircraft, military or chartered, then missing the particular sailing or flight is essential to establish the offense of missing movement.

(c) *Design.* “Design” means on purpose, intentionally, or according to plan and requires specific intent to miss the movement.

(d) *Neglect.* “Neglect” means the omission to take such measures as are appropriate under the circumstances to assure presence with a ship, aircraft, or unit at the time of a scheduled movement, or doing some act without giving attention to its probable consequences in connection with the prospective movement, such as a departure from the vicinity of the

prospective movement to such a distance as would make it likely that one could not return in time for the movement.

(e) *Actual knowledge.* In order to be guilty of the offense, the accused must have actually known of the prospective movement that was missed. Knowledge of the exact hour or even of the exact date of the scheduled movement is not required. It is sufficient if the approximate date was known by the accused as long as there is a causal connection between the conduct of the accused and the missing of the scheduled movement. Knowledge may be proved by circumstantial evidence.

(f) *Proof of absence.* That the accused actually missed the movement may be proved by documentary evidence, as by a proper entry or absence of entry in a log or a morning report. This fact may also be proved by the testimony of personnel of the ship, aircraft, or unit (or by other evidence) that the movement occurred at a certain time, together with evidence that the accused was physically elsewhere at that time.

(2) *Jumping from vessel into the water.* The phrase “in use by” means any vessel operated by or under the control of the armed forces. This offense may be committed at sea, at anchor, or in port.

### Discussion

Bona fide suicide attempts should not be charged as criminal offenses. When making a determination whether an action by the Servicemember was a bona fide suicide attempt, the convening authority should consider factors including, but not limited to, health conditions, personal stressors, and DoD policy related to suicide prevention.

#### d. *Maximum punishment.*

##### (1) *Missing movement.*

(a) *Design.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(b) *Neglect.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Jumping from vessel into the water.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

#### e. *Sample specifications.*

##### (1) *Missing movement*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_ 20 \_\_, through (neglect) (design) miss the movement of

(Aircraft No. \_\_\_\_\_) (Flight \_\_\_\_\_) (the USS \_\_\_\_\_) (Company A, 1st Battalion, 7th Infantry) (\_\_\_\_\_) with which (he) (she) was required in the course of duty to move.

##### (2) *Jumping from vessel into the water.*

In that \_\_\_\_\_ (personal jurisdiction data), did, on board \_\_\_\_\_, at (location), on or about \_\_\_\_ 20 \_\_, wrongfully and intentionally jump from \_\_\_\_\_, a vessel in use by the armed forces, into the (sea) (lake) (river).

### 12. Article 87a (10 U.S.C. 887a)—Resistance, flight, breach of arrest, and escape

#### a. *Text of statute.*

**Any person subject to this chapter who—**

- (1) resists apprehension;**
- (2) flees from apprehension;**
- (3) breaks arrest; or**
- (4) escapes from custody or confinement;**

**shall be punished as a court-martial may direct.**

#### b. *Elements.*

##### (1) *Resisting apprehension.*

(a) That a certain person attempted to apprehend the accused;

(b) That said person was authorized to apprehend the accused; and

(c) That the accused actively resisted the apprehension.

##### (2) *Flight from apprehension.*

(a) That a certain person attempted to apprehend the accused;

(b) That said person was authorized to apprehend the accused; and

(c) That the accused fled from the apprehension.

##### (3) *Breaking arrest.*

(a) That a certain person ordered the accused into arrest;

(b) That said person was authorized to order the accused into arrest; and

(c) That the accused went beyond the limits of arrest before being released from that arrest by proper authority.

##### (4) *Escape from custody.*

(a) That a certain person apprehended the accused;

(b) That said person was authorized to apprehend the accused; and

(c) That the accused freed himself or herself from custody before being released by proper authority.

(5) *Escape from confinement.*

(a) That a certain person ordered the accused into confinement;

(b) That said person was authorized to order the accused into confinement; and

(c) That the accused freed himself or herself from confinement before being released by proper authority.

[Note: If the escape was post-trial confinement, add the following element]

(d) That the confinement was the result of a court-martial conviction.

c. *Explanation.*

(1) *Resisting apprehension.*

(a) *Apprehension.* Apprehension is the taking of a person into custody. See R.C.M. 302.

(b) *Authority to apprehend.* See R.C.M. 302(b) concerning who may apprehend. Whether the status of a person authorized that person to apprehend the accused is a question of law to be decided by the military judge. Whether the person who attempted to make an apprehension had such a status is a question of fact to be decided by the factfinder.

(c) *Nature of the resistance.* The resistance must be active, such as assaulting the person attempting to apprehend. Mere words of opposition, argument, or abuse, and attempts to escape from custody after the apprehension is complete, do not constitute the offense of resisting apprehension although they may constitute other offenses.

(d) *Mistake.* It is a defense that the accused held a reasonable belief that the person attempting to apprehend did not have authority to do so. However, the accused's belief at the time that no basis exists for the apprehension is not a defense.

(e) *Illegal apprehension.* A person may not be convicted of resisting apprehension if the attempted apprehension is illegal, but may be convicted of other offenses, such as assault, depending on all the circumstances. An attempted apprehension by a person authorized to apprehend is presumed to be legal in the absence of evidence to the contrary. Ordinarily the legality of an apprehension is a question of law to be decided by the military judge.

(2) *Flight from apprehension.* The flight must be active, such as running or driving away.

(3) *Breaking arrest.*

(a) *Arrest.* There are two types of arrest: pretrial arrest under Article 9 (see R.C.M. 304) and arrest under Article 15 (see subparagraph 5.c.(3), Part V, MCM). This article prohibits breaking any arrest.

(b) *Authority to order arrest.* See R.C.M. 304(b) and paragraph 2 and subparagraph 5.b., Part V, MCM concerning authority to order arrest.

(c) *Nature of restraint imposed by arrest.* In arrest, the restraint is moral restraint imposed by orders fixing the limits of arrest.

(d) *Breaking.* Breaking arrest is committed when the person in arrest infringes the limits set by orders. The reason for the infringement is immaterial. For example, innocence of the offense with respect to which an arrest may have been imposed is not a defense.

(e) *Illegal arrest.* A person may not be convicted of breaking arrest if the arrest is illegal. An arrest ordered by one authorized to do so is presumed to be legal in the absence of some evidence to the contrary. Ordinarily, the legality of an arrest is a question of law to be decided by the military judge.

(4) *Escape from custody.*

(a) *Custody.* Custody is restraint of free locomotion imposed by lawful apprehension. The restraint may be physical or, once there has been a submission to apprehension or a forcible taking into custody, it may consist of control exercised in the presence of the prisoner by official acts or orders. Custody is temporary restraint intended to continue until other restraint (arrest, restriction, confinement) is imposed or the person is released.

(b) *Authority to apprehend.* See subparagraph (1)(b) of this paragraph.

(c) *Escape.* For a discussion of escape, see subparagraph c.(5)(c) of this paragraph.

(d) *Illegal custody.* A person may not be convicted of this offense if the custody was illegal. An apprehension effected by one authorized to apprehend is presumed to be lawful in the absence of evidence to the contrary. Ordinarily, the legality of an apprehension is a question of law to be decided by the military judge.

(e) *Correctional custody.* See paragraph 13.

(5) *Escape from confinement.*

(a) *Confinement.* Confinement is physical restraint imposed under R.C.M. 305, 1102, or subparagraph 5.b., Part V, MCM. For purposes of the element of post-trial confinement (subparagraph b.(5)(d)) and increased punishment therefrom (subparagraph e.(4)), the confinement must have been imposed pursuant to an adjudged sentence of a court-martial and not as a result of pretrial restraint or nonjudicial punishment.

(b) *Authority to order confinement.* See R.C.M. 304(b), 1102(b)(2); and paragraph 2 and subparagraph 5.b., Part V, MCM concerning who may order confinement.

(c) *Escape.* An escape may be either with or without force or artifice, and either with or without the consent of the custodian. However, where a prisoner is released by one with apparent authority to do so, the prisoner may not be convicted of escape from confinement. See also subparagraph 24.c.(2)(b). Any completed casting off of the restraint of confinement, before release by proper authority, is an escape, and lack of effectiveness of the restraint imposed is immaterial. An escape is not complete until the prisoner is momentarily free from the restraint. If the movement toward escape is opposed, or before it is completed, an immediate pursuit follows, there is no escape until opposition is overcome or pursuit is eluded.

(d) *Status when temporarily outside confinement facility.* A prisoner who is temporarily escorted outside a confinement facility for a work detail or other reason by a guard, who has both the duty and means to prevent that prisoner from escaping, remains in confinement.

(e) *Legality of confinement.* A person may not be convicted of escape from confinement if the confinement is illegal. Confinement ordered by one authorized to do so is presumed to be lawful in the absence of evidence to the contrary. Ordinarily, the legality of confinement is a question of law to be decided by the military judge.

d. *Maximum punishment.*

(1) *Resisting apprehension.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Flight from apprehension.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(3) *Breaking arrest.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(4) *Escape from custody, pretrial confinement, or confinement pursuant to Article 15.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(5) *Escape from post-trial confinement.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Resisting apprehension.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, resist being apprehended by \_\_\_\_\_, (an armed force policeman) (\_\_\_\_\_), a person authorized to apprehend the accused.

(2) *Flight from apprehension.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, flee apprehension by \_\_\_\_\_, (an armed force policeman) (\_\_\_\_\_), a person authorized to apprehend the accused.

(3) *Breaking arrest.*

In that \_\_\_\_\_ (personal jurisdiction data), having been placed in arrest (in quarters) (in (his) (her) company area) (\_\_\_\_\_) by a person authorized to order the accused into arrest, did, (at/on board—location) on or about \_\_\_\_ 20 \_\_, break said arrest.

(4) *Escape from custody.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, escape from the custody of \_\_\_\_\_, a person authorized to apprehend the accused.

(5) *Escape from confinement.*

In that \_\_\_\_\_ (personal jurisdiction data), having been placed in (post-trial) confinement in (place of confinement), by a person authorized to order said accused into confinement did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, escape from confinement.

**13. Article 87b (10 U.S.C. 887b)—Offenses against correctional custody and restriction**

a. *Text of statute.*

**(a) ESCAPE FROM CORRECTIONAL CUSTODY.—Any person subject to this chapter—**

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under physical restraint; and

(3) who escapes from the physical restraint before being released from the physical restraint by proper authority

shall be punished as a court-martial may direct.

(b) **BREACH OF CORRECTIONAL CUSTODY.**—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under restraint other than physical restraint; and

(3) who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority;

shall be punished as a court-martial may direct.

(c) **BREACH OF RESTRICTION.**—Any person subject to this chapter—

(1) who is ordered to be restricted to certain limits by a person authorized to do so; and

(2) who, with knowledge of the limits of the restriction, goes beyond those limits before being released by proper authority;

shall be punished as a court-martial may direct.

*b. Elements.*

(1) *Escape from correctional custody.*

(a) That the accused was placed in correctional custody by a person authorized to do so;

(b) That, while in such correctional custody, the accused was under physical restraint; and

(c) That the accused freed himself or herself from the physical restraint of this correctional custody before being released therefrom by proper authority.

(2) *Breach of correctional custody.*

(a) That the accused was placed in correctional custody by a person authorized to do so;

(b) That, while in correctional custody, a certain restraint was imposed upon the accused; and

(c) That the accused went beyond the limits of the restraint imposed before having been released from the correctional custody or relieved of the restraint by proper authority.

(3) *Breach of restriction.*

(a) That a certain person ordered the accused to be restricted to certain limits;

(b) That said person was authorized to order said restriction;

(c) That the accused knew of the restriction and the limits thereof; and

(d) That the accused went beyond the limits of the restriction before being released therefrom by proper authority.

*c. Explanation.*

(1) *Escape from correctional custody.* Escape from correctional custody is the act of a person undergoing the punishment of correctional custody pursuant to Article 15, who, before being set at liberty by proper authority, casts off any physical restraint imposed by the custodian or by the place or conditions of custody.

(2) *Breach of correctional custody.* Breach of restraint during correctional custody is the act of a person undergoing the punishment who, in the absence of physical restraint imposed by a custodian or by the place or conditions of custody, breaches any form of restraint imposed during this period.

(3) *Authority to impose correctional custody.* See Part V concerning who may impose correctional custody. Whether the status of a person authorized that person to impose correctional custody is a question of law to be decided by the military judge. Whether the person who imposed correctional custody had such a status is a question of fact to be decided by the factfinder.

(4) *Breach of restriction.* Restriction is the moral restraint of a person imposed by an order directing a person to remain within certain specified limits. "Restriction" includes restriction under R.C.M. 304(a)(2), restriction resulting from imposition of either nonjudicial punishment (see Part V) or the sentence of a court-martial (see R.C.M. 1003(b)(5)), and administrative restriction in the interest of training, operations, security, or safety.

*d. Maximum punishment.*

(1) *Escape from correctional custody.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Breach of correctional custody.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(3) *Breach of restriction.* Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

e. *Sample specifications.*(1) *Escape from correctional custody.*

In that \_\_\_\_\_ (personal jurisdiction data), while undergoing the punishment of correctional custody imposed by a person authorized to do so, did, (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, escape from correctional custody.

(2) *Breach of correctional custody.*

In that \_\_\_\_\_ (personal jurisdiction data), while duly undergoing the punishment of correctional custody imposed by a person authorized to do so, did, (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, breach the restraint imposed thereunder by \_\_\_\_\_.

(3) *Breach of restriction.*

In that \_\_\_\_\_ (personal jurisdiction data), having been restricted to the limits of \_\_\_\_\_, by a person authorized to do so, did, (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, break said restriction.

**14. Article 88 (10 U.S.C. 888)—Contempt toward officials**a. *Text of statute.*

**Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused was a commissioned officer of the United States armed forces;

(2) That the accused used certain words against an official or legislature named in the article;

(3) That by an act of the accused these words came to the knowledge of a person other than the accused; and

(4) That the words used were contemptuous, either in themselves or by virtue of the circumstances under which they were used.

[Note: If the words were against a Governor or legislature, add the following element]

(5) That the accused was then present in the State, Commonwealth, or possession of the Governor or legislature concerned.

c. *Explanation.*

The official or legislature against whom the words are used must be occupying one of the offices or be one of the legislatures named in Article 88 at the time of the offense. Neither “Congress” nor “legislature” includes its members individually. “Governor” does not include “lieutenant governor.” It is immaterial whether the words are used against the official in an official or private capacity. If not personally contemptuous, adverse criticism of one of the officials or legislatures named in the article in the course of a political discussion, even though emphatically expressed, may not be charged as a violation of the article. Similarly, expressions of opinion made in a purely private conversation should not ordinarily be charged. Giving broad circulation to a written publication containing contemptuous words of the kind made punishable by this article, or the utterance of contemptuous words of this kind in the presence of military subordinates, aggravates the offense. The truth or falsity of the statements is immaterial.

d. *Maximum punishment.* Dismissal, forfeiture of all pay and allowances, and confinement for 1 year.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, [use (orally and publicly) (\_\_\_\_) the following contemptuous words] [in a contemptuous manner, use (orally and publicly) (\_\_\_\_) the following words] against the [(President) (Vice President) (Congress) (Secretary of \_\_\_\_\_)] [(Governor) (legislature) of the (State of \_\_\_\_\_) (\_\_\_\_)], a (State) (\_\_\_\_) in which (he) (she), the said \_\_\_\_\_, was then (on duty), (present)], to wit: “\_\_\_\_\_,” or words to that effect.

**15. Article 89 (10 U.S.C. 889)—Disrespect toward superior commissioned officer; assault of superior commissioned officer**a. *Text of statute.*

**(a) DISRESPECT.—Any person subject to this chapter who behaves with disrespect toward that person’s superior commissioned officer shall be punished as a court-martial may direct.**

**(b) ASSAULT.—Any person subject to this chapter who strikes that person’s superior**



**commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer's office shall be punished—**

**(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and**

**(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.**

b. *Elements.*

(1) *Disrespect toward superior commissioned officer.*

(a) That the accused did or omitted certain acts or used certain language to or concerning a certain commissioned officer;

(b) That such behavior or language was directed toward that officer;

(c) That the officer toward whom the acts, omissions, or words were directed was the superior commissioned officer of the accused;

(d) That the accused then knew that the commissioned officer toward whom the acts, omissions, or words were directed was the accused's superior commissioned officer; and

(e) That, under the circumstances, the behavior or language was disrespectful to that commissioned officer.

(2) *Striking or assaulting superior commissioned officer.*

(a) That the accused struck, drew, or lifted up a weapon against, or offered violence against, a certain commissioned officer;

(b) That the officer was the superior commissioned officer of the accused;

(c) That the accused then knew that the officer was the accused's superior commissioned officer; and

(d) That the superior commissioned officer was then in the execution of office.

[Note: if the offense was committed in time of war, add the following element]

(e) That the offense was committed in time of war.

c. *Explanation.*

(1) *Superior Commissioned Officer.* See 10 U.S.C. § 801(5) ("The term 'superior commissioned officer' means a commissioned officer superior in rank or command.").

(2) *Disrespect toward superior commissioned officer.*

(a) *Knowledge.* If the accused did not know that the person against whom the acts or words were directed was the accused's superior commissioned officer, the accused may not be convicted of a violation of this article. Knowledge may be proved by circumstantial evidence.

(b) *Disrespect.* Disrespectful behavior is that which detracts from the respect due the authority and person of a superior commissioned officer. It may consist of acts or language, however expressed, and it is immaterial whether they refer to the superior as an officer or as a private individual. Disrespect by words may be conveyed by abusive epithets or other contemptuous or denunciatory language. Truth is no defense. Disrespect by acts includes neglecting the customary salute, or showing a marked disdain, indifference, insolence, impertinence, undue familiarity, or other rudeness in the presence of the superior officer.

(c) *Presence.* It is not essential that the disrespectful behavior be in the presence of the superior, but ordinarily one should not be held accountable under this article for what was said or done in a purely private conversation.

(d) *Special defense—unprotected victim.* A superior commissioned officer whose conduct in relation to the accused under all the circumstances departs substantially from the required standards appropriate to that officer's rank or position under similar circumstances loses the protection of this article. That accused may not be convicted of being disrespectful to the officer who has so lost the entitlement to respect protected by Article 89.

(3) *Striking or assaulting superior commissioned officer.*

(a) *Superior commissioned officer.* The definition in subparagraph 15.c.(1) of this paragraph, applies here.

(b) *Knowledge.* The explanation in subparagraph 15.c.(2)(a) of this paragraph applies here.

(c) *Strikes.* "Strikes" means an intentional contact and includes any offensive touching of the person of an officer, however slight.

(d) *Draws or lifts up any weapon against.* The phrase "draws or lifts up any weapon against" covers any simple assault committed in the manner stated. The drawing of any weapon in an aggressive manner or the

raising or brandishing of the same in a threatening manner in the presence of and at the superior is the sort of act proscribed. The raising in a threatening manner of a firearm, whether or not loaded, of a club, or of anything by which a serious blow or injury could be given is included in “lifts up.”

(e) *Offers any violence against.* The phrase “offers any violence against” includes any form of battery or of mere assault not embraced in the preceding more specific terms “strikes” and “draws or lifts up.” If not executed, the violence must be physically attempted or menaced. A mere threatening in words is not an offering of violence in the sense of this article.

(f) *Execution of office.* An officer is in the execution of office when engaged in any act or service required or authorized by treaty, statute, regulation, the order of a superior, or military usage. In general, any striking or use of violence against any superior commissioned officer by a person over whom it is the duty of that officer to maintain discipline at the time, would be striking or using violence against the officer in the execution of office. The commanding officer on board a ship or the commanding officer of a unit in the field is generally considered to be on duty at all times.

(g) *Defenses.* In a prosecution for striking or assaulting a superior commissioned officer in violation of this article, it is a defense that the accused acted in the proper discharge of some duty, or that the victim behaved in a manner toward the accused such as to lose the protection of this article (see subparagraph 15.c.(2)(d)). For example, if the victim initiated an unlawful attack on the accused, this would deprive the victim of the protection of this article, and, in addition, could excuse any lesser included offense of assault as done in self-defense, depending on the circumstances (see subparagraph 77.c.; R.C.M. 916(e)).

d. *Maximum punishment.*

(1) *Disrespect toward superior commissioned officer in command.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Disrespect toward superior commissioned officer superior in rank.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(3) *Striking, drawing or lifting up a weapon or offering any violence to superior commissioned officer in execution of office in time of war.* Death or such other punishment as a court-martial may direct.

(4) *Striking, drawing or lifting up a weapon or offering any violence to superior commissioned officer in execution of office at any other time.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specifications.*

(1) *Disrespect toward superior commissioned officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, behave himself/herself with disrespect toward \_\_\_\_\_, (his) (her) superior commissioned officer (in command) (in rank), then known by the said \_\_\_\_\_ to be (his) (her) superior commissioned officer (in command) (in rank), by (saying to (him) (her) “\_\_\_\_\_,” or words to that effect) (contemptuously turning from and leaving (him) (her) while (he) (she), the said \_\_\_\_\_, was talking to (him) (her), the said \_\_\_\_\_) (\_\_\_\_\_).

(2) *Striking superior commissioned officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, (a time of war) strike \_\_\_\_\_, (his) (her) superior commissioned officer (in command) (in rank), then known by the said \_\_\_\_\_ to be (his) (her) superior commissioned officer (in command) (in rank), who was then in the execution of (his) (her) office, (in) (on) the \_\_\_\_\_ with (a) ((his) (her)) \_\_\_\_\_.

(3) *Drawing or lifting up a weapon against superior commissioned officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, (a time of war) (draw) (lift up) a weapon, to wit: a \_\_\_\_\_, against \_\_\_\_\_, (his) (her) superior commissioned officer (in command) (in rank), then known by the said \_\_\_\_\_ to be (his) (her) superior commissioned officer (in command) (in rank), who was then in the execution of (his) (her) office.

(4) *Offering violence to superior commissioned officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, (a time of war) offer violence against \_\_\_\_\_, his/ her superior commissioned officer (in command) (in rank), then known by the said \_\_\_\_\_ to be (his) (her)

superior commissioned officer (in command) (in rank), who was then in the execution of (his) (her) office, by \_\_\_\_\_.

**16. Article 90 (10 U.S.C. 890)—Willfully disobeying superior commissioned officer**

a. *Text of statute.*

**Any person subject to this chapter who willfully disobeys a lawful command of that person's superior commissioned officer shall be punished—**

**(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and**

**(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.**

b. *Elements.*

(1) That the accused received a lawful command from a superior commissioned officer;

(2) That this officer was the superior commissioned officer of the accused;

(3) That the accused then knew that this officer was the accused's superior commissioned officer; and

(4) That the accused willfully disobeyed the lawful command.

[Note: if the offense was committed in time of war, add the following element]

(5) That the offense was committed in time of war.

c. *Explanation.*

(1) *Superior commissioned officer.* The definition in subparagraph 15.c.(1) applies here.

(2) *Disobeying superior commissioned officer.*

(a) *Lawfulness of the order.*

(i) *Inference of lawfulness.* An order requiring the performance of a military duty or act may be inferred to be lawful, and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.

(ii) *Determination of lawfulness.* The lawfulness of an order is a question of law to be determined by the military judge.

(iii) *Authority of issuing officer.* The commissioned officer issuing the order must have authority to give such an order. Authorization may be based on law, regulation, custom of the Service, or

applicable order to direct, coordinate, or control the duties, activities, health, welfare, morale, or discipline of the accused.

(iv) *Relationship to military duty.* The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the Service. The order may not, without such a valid military purpose, interfere with private rights or personal affairs. However, the dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. Disobedience of an order which has for its sole object the attainment of some private end, or which is given for the sole purpose of increasing the penalty for an offense which it is expected the accused may commit, is not punishable under this article.

(v) *Relationship to statutory or constitutional rights.* The order must not conflict with the statutory or constitutional rights of the person receiving the order.

(b) *Personal nature of the order.* The order must be directed specifically to the subordinate. Violations of regulations, standing orders or directives, or failure to perform previously established duties are not punishable under this article, but may violate Article 92.

(c) *Form and transmission of the order.* As long as the order is understandable, the form of the order is immaterial, as is the method by which it is transmitted to the accused.

(d) *Specificity of the order.* The order must be a specific mandate to do or not to do a specific act. An exhortation to "obey the law" or to perform one's military duty does not constitute an order under this article.

(e) *Knowledge.* The accused must have actual knowledge of the order and of the fact that the person issuing the order was the accused's superior commissioned officer. Actual knowledge may be proved by circumstantial evidence.

(f) *Nature of the disobedience.* "Willful disobedience" is an intentional defiance of authority. Failure to comply with an order through heedlessness, remissness, or forgetfulness is not a violation of this article but may violate Article 92.

(g) *Time for compliance.* When an order requires immediate compliance, an accused's declared intent

not to obey and the failure to make any move to comply constitutes disobedience. Immediate compliance is required for any order that does not explicitly or implicitly indicate that delayed compliance is authorized or directed. If an order requires performance in the future, an accused's present statement of intention to disobey the order does not constitute disobedience of that order, although carrying out that intention may.

(3) *Civilians and discharged prisoners.* A discharged prisoner or other civilian subject to military law (see Article 2) and under the command of a commissioned officer is subject to the provisions of this article.

d. *Maximum punishment.*

(1) *Willfully disobeying a lawful order of superior commissioned officer in time of war.* Death or such other punishment as a court-martial may direct.

(2) *At any other time.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), having received a lawful command from \_\_\_\_\_, (his) (her) superior commissioned officer, then known by the said \_\_\_\_\_ to be (his) (her) superior commissioned officer, to \_\_\_\_\_, or words to that effect, did, (at/on board—location), on or about \_\_\_\_ 20 \_\_, willfully disobey the same.

**17. Article 91 (10 U.S.C. 891)—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer**

a. *Text of statute.*

**Any warrant officer or enlisted member who—**

**(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;**

**(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or**

**(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Striking or assaulting warrant, noncommissioned, or petty officer.*

(a) That the accused was a warrant officer or enlisted member;

(b) That the accused struck or assaulted a certain warrant, noncommissioned, or petty officer;

(c) That the striking or assault was committed while the victim was in the execution of office; and

(d) That the accused then knew that the person struck or assaulted was a warrant, noncommissioned, or petty officer.

[Note: If the victim was the superior noncommissioned or petty officer of the accused, add the following elements]

(e) That the victim was the superior noncommissioned, or petty officer of the accused; and

(f) That the accused then knew that the person struck or assaulted was the accused's superior noncommissioned, or petty officer.

(2) *Disobeying a warrant, noncommissioned, or petty officer.*

(a) That the accused was a warrant officer or enlisted member;

(b) That the accused received a certain lawful order from a certain warrant, noncommissioned, or petty officer;

(c) That the accused then knew that the person giving the order was a warrant, noncommissioned, or petty officer;

(d) That the accused had a duty to obey the order; and

(e) That the accused willfully disobeyed the order.

(3) *Treating with contempt or being disrespectful in language or deportment toward a warrant, noncommissioned, or petty officer.*

(a) That the accused was a warrant officer or enlisted member;

(b) That the accused did or omitted certain acts, or used certain language;

(c) That such behavior or language was used toward and within sight or hearing of a certain warrant, noncommissioned, or petty officer;

(d) That the accused then knew that the person toward whom the behavior or language was directed was a warrant, noncommissioned, or petty officer;

(e) That the victim was then in the execution of office; and

(f) That under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to said warrant, noncommissioned, or petty officer.

[Note: If the victim was the superior noncommissioned, or petty officer of the accused, add the following elements]

(g) That the victim was the superior noncommissioned, or petty officer of the accused; and

(h) That the accused then knew that the person toward whom the behavior or language was directed was the accused's superior noncommissioned, or petty officer.

c. *Explanation.*

(1) *In general.* Article 91 has the same general objects with respect to warrant, noncommissioned, and petty officers as Articles 89 and 90 have with respect to commissioned officers, namely, to ensure obedience to their lawful orders, and to protect them from violence, insult, or disrespect. Unlike Articles 89 and 90, however, this article does not require a superior-subordinate relationship as an element of any of the offenses denounced. This article does not protect an acting noncommissioned officer or acting petty officer, nor does it protect military police or members of the shore patrol who are not warrant, noncommissioned, or petty officers.

(2) *Knowledge.* All of the offenses prohibited by Article 91 require that the accused have actual knowledge that the victim was a warrant, noncommissioned, or petty officer. Actual knowledge may be proved by circumstantial evidence.

(3) *Striking or assaulting a warrant, noncommissioned, or petty officer.* For a discussion of "strikes" and "in the execution of office," see subparagraph 15.c. For a discussion of "assault," see subparagraph 77.c. An assault by a prisoner who has been discharged from the Service, or by any other civilian subject to military law, upon a warrant, noncommissioned, or petty officer should be charged under Article 128 or 134.

(4) *Disobeying a warrant, noncommissioned, or petty officer.* See subparagraph 16.c for a discussion of lawfulness, personal nature, form, transmission, and specificity of the order, nature of the disobedience, and time for compliance with the order.

(5) *Treating with contempt or being disrespectful in language or deportment toward a warrant, noncommissioned, or petty officer.* "Toward" requires

that the behavior and language be within the sight or hearing of the warrant, noncommissioned, or petty officer concerned. For a discussion of "in the execution of his office," see subparagraph 15.c. For a discussion of "disrespect," see subparagraph 15.c.

d. *Maximum punishment.*

(1) *Striking or assaulting warrant officer.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Striking or assaulting superior noncommissioned or petty officer.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(3) *Striking or assaulting other noncommissioned or petty officer.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(4) *Willfully disobeying the lawful order of a warrant officer.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(5) *Willfully disobeying the lawful order of a noncommissioned or petty officer.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(6) *Contempt or disrespect to warrant officer.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 9 months.

(7) *Contempt or disrespect to superior noncommissioned or petty officer.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(8) *Contempt or disrespect to other noncommissioned or petty officer.* Forfeiture of two-thirds pay per month for 3 months, and confinement for 3 months.

e. *Sample specifications.*

(1) *Striking or assaulting warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (strike) (assault) \_\_\_\_\_, a \_\_\_\_\_ officer, then known to the said \_\_\_\_\_ to be a (superior) \_\_\_\_\_ officer who was then in the execution of (his) (her) office, by \_\_\_\_\_ (him) (her) (in) (on) (the \_\_\_\_\_) with (a) \_\_\_\_\_ ((his) (her)) \_\_\_\_\_.

(2) *Willful disobedience of warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data), having received a lawful order from \_\_\_\_\_, a \_\_\_\_\_ officer, then known by the said \_\_\_\_\_ to be a \_\_\_\_\_ officer, to \_\_\_\_\_, an order which it was (his) (her) duty to obey, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, willfully disobey the same.

(3) *Contempt or disrespect toward warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data) (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, [did treat with contempt] [was disrespectful in (language) (department) toward] \_\_\_\_\_, a \_\_\_\_\_ officer, then known by the said \_\_\_\_\_ to be a (superior) \_\_\_\_\_ officer, who was then in the execution of (his) (her) office, by (saying to (him) (her), “\_\_\_\_\_,” or words to that effect) (spitting at (his) (her) feet) (\_\_\_\_\_).

### 18. Article 92 (10 U.S.C. 892)—Failure to obey order or regulation

a. *Text of statute.*

**Any person subject to this chapter who—**

**(1) violates or fails to obey any lawful general order or regulation;**

**(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or**

**(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it; and

(c) That the accused violated or failed to obey the order or regulation.

(2) *Failure to obey other lawful order.*

(a) That a member of the armed forces issued a certain lawful order;

(b) That the accused had knowledge of the order;

(c) That the accused had a duty to obey the order; and

(d) That the accused failed to obey the order.

(3) *Dereliction in the performance of duties.*

(a) That the accused had certain duties;

(b) That the accused knew or reasonably should have known of the duties; and

(c) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

[Note: In cases where the dereliction of duty resulted in death or grievous bodily harm, add the following element as applicable]

(d) That such dereliction of duty resulted in death or grievous bodily harm to a person other than the accused.

c. *Explanation.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) *Authority to issue general orders and regulations.* General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department, and those orders or regulations generally applicable to the command of the officer issuing them throughout the command or a particular subdivision thereof which are issued by:

(i) an officer having general court-martial jurisdiction;

(ii) a general or flag officer in command; or

(iii) a commander superior to (i) or (ii).

(b) *Effect of change of command on validity of order.* A general order or regulation issued by a commander with authority under Article 92(1) retains its character as a general order or regulation when another officer takes command, until it expires by its own terms or is rescinded by separate action, even if it is issued by an officer who is a general or flag officer in command and command is assumed by another officer who is not a general or flag officer.

(c) *Lawfulness.* A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it. See the discussion of lawfulness in subparagraph 16.c.

(d) *Knowledge.* Knowledge of a general order or regulation need not be alleged or proved as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense.

(e) *Enforceability.* Not all provisions in general orders or regulations can be enforced under Article 92(1). Regulations which only supply general guidelines or advice for performing military functions may not be enforceable under Article 92(1).

(2) *Violation of or failure to obey other lawful order.*

(a) *Scope.* Article 92(2) includes all other lawful orders which may be issued by a member of the armed forces, violations of which are not chargeable under Article 90, 91, or 92(1). It includes the violation of written regulations which are not general regulations. See also subparagraph (1)(e) of this paragraph as applicable.

(b) *Knowledge.* In order to be guilty of this offense, a person must have had actual knowledge of the order or regulation. Knowledge of the order may be proved by circumstantial evidence.

(c) *Duty to obey order.*

(i) *From superior.* A member of one armed force who is senior in rank to a member of another armed force is the superior of that member with authority to issue orders which that member has a duty to obey under the same circumstances as a commissioned officer of one armed force is the superior commissioned officer of a member of another armed force for the purposes of Articles 89 and 90. See subparagraph 13.c.(1).

(ii) *From one not a superior.* Failure to obey the lawful order of one not a superior is an offense under Article 92(2), provided the accused had a duty to obey the order, such as one issued by a sentinel or a member of the armed forces police. See subparagraph 17.b.(2) if the order was issued by a warrant, noncommissioned, or petty officer in the execution of office.

(3) *Dereliction in the performance of duties.*

(a) *Duty.* A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the Service.

(b) *Knowledge.* Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the Service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.

(c) *Derelict.* A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person's duties or

when that person performs them in a culpably inefficient manner. "Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. "Negligently" means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. Culpable inefficiency is inefficiency for which there is no reasonable or just excuse.

(d) *Ineptitude.* A person is not derelict in the performance of duties if the failure to perform those duties is caused by ineptitude rather than by willfulness, negligence, or culpable inefficiency, and may not be charged under this article, or otherwise punished. For example, a recruit who has tried earnestly during rifle training and throughout record firing is not derelict in the performance of duties if the recruit fails to qualify with the weapon.

(e) *Grievous bodily harm.* For purposes of this offense, the term "grievous bodily harm" has the same meaning ascribed to it in Article 128 (paragraph 77).

(f) Where the dereliction of duty resulted in death or grievous bodily harm, the intent to cause death or grievous bodily harm is not required.

d. *Maximum punishment.*

(1) *Violation of or failure to obey lawful general order or regulation.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Violation of or failure to obey other lawful order.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(3) *Dereliction in the performance of duties.*

(A) *Through neglect or culpable inefficiency.* Forfeiture of two-thirds pay per month for 3 months and confinement for 3 months.

(B) *Through neglect or culpable inefficiency resulting in death or grievous bodily harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(C) *Willful.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(D) *Willful dereliction of duty resulting in death or grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

[Note: For (1) and (2) of this rule, the punishment set forth does not apply in the following cases: if, in the absence of the order or regulation which was violated or not obeyed, the accused would on the same facts be subject to conviction for another specific offense for which a lesser punishment is prescribed; or if the violation or failure to obey is a breach of restraint imposed as a result of an order. In these instances, the maximum punishment is that specifically prescribed elsewhere for that particular offense.]

e. *Sample specifications.*

(1) *Violation or failure to obey lawful general order or regulation.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (violate) (fail to obey) a lawful general (order) (regulation) which was (his)(her) duty to obey, to wit: paragraph \_\_ (Army) (Air Force) Regulation, dated \_\_\_\_ (Article, U.S. Navy Regulations, dated \_\_) (General Order No. \_\_, U.S. Navy, dated \_\_\_\_ (\_\_\_\_)), by (wrongfully \_\_\_\_\_).

(2) *Violation or failure to obey other lawful written order.*

In that \_\_\_\_\_ (personal jurisdiction data), having knowledge of a lawful order issued by \_\_\_\_\_, to wit: (paragraph, (the Combat Group Regulation No. \_\_) (USS \_\_, Regulation \_\_\_\_), dated \_\_\_\_ (\_\_\_\_)), an order which it was (his) (her) duty to obey, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, fail to obey the same by (wrongfully \_\_\_\_\_).

(3) *Failure to obey other lawful order.*

In that \_\_\_\_\_ (personal jurisdiction data) having knowledge of a lawful order issued by \_\_\_\_\_ (to submit to certain medical treatment) (to) (not to \_\_\_\_\_) (\_\_\_\_), an order which it was (his) (her) duty to obey (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, fail to obey the same (by (wrongfully \_\_\_\_\_).

(4) *Dereliction in the performance of duties.*

In that, \_\_\_\_\_ (personal jurisdiction data), who (knew) (should have known) of (his) (her) duties (at/on board—location) (subject-matter jurisdiction data, if required), (on or about \_\_\_\_ 20 \_\_) (from about \_\_\_\_ 20 \_\_ to about \_\_\_\_ 20 \_\_), was derelict in the performance of those duties in that (he) (she)

(negligently) (willfully) (by culpable inefficiency) failed \_\_\_\_\_, as it was (his) (her) duty to do [, and that such dereliction of duty resulted in (grievous bodily harm, to wit: (broken leg) (deep cut) (fractured skull) (\_\_\_\_) to \_\_\_\_\_) (the death of \_\_\_\_\_)].

**19. Article 93 (10 U.S.C. 893)—Cruelty and maltreatment**

a. *Text of statute.*

**Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That a certain person was subject to the orders of the accused; and

(2) That the accused was cruel toward, or oppressed, or maltreated that person.

c. *Explanation.*

(1) *Nature of victim.* “Any person subject to his orders” means not only those persons under the direct or immediate command of the accused but extends to all persons, subject to the UCMJ or not, who by reason of some duty are required to obey the lawful orders of the accused, regardless whether the accused is in the direct chain of command over the person.

(2) *Nature of act.* The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense. Sexual harassment includes influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. The imposition of necessary or proper duties and the exaction of their performance does not constitute this offense even though the duties are arduous or hazardous or both.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that (personal jurisdiction data), (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, (was cruel toward) did (oppress) (maltreat) \_\_\_\_\_, a person subject



to (his) (her) orders, by (kicking (him) (her) in the stomach) (confining (him) (her) for twenty-four hours without water) (\_\_\_\_\_).

**20. Article 93a (10 U.S.C. 893a)—Prohibited activities with military recruit or trainee by person in position of special trust**

a. *Text of statute.*

**(a) ABUSE OF TRAINING LEADERSHIP POSITION.—Any person subject to this chapter—**

**(1) who is an officer, a noncommissioned officer, or a petty officer;**

**(2) who is in a training leadership position with respect to a specially protected junior member of the armed forces; and**

**(3) who engages in prohibited sexual activity with such specially protected junior member of the armed forces;**

shall be punished as a court-martial may direct.

**(b) ABUSE OF POSITION AS MILITARY RECRUITER.—Any person subject to this chapter—**

**(1) who is a military recruiter and engages in prohibited sexual activity with an applicant for military service; or**

**(2) who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the armed forces who is enlisted under a delayed entry program;**

shall be punished as a court-martial may direct.

**(c) CONSENT.—Consent is not a defense for any conduct at issue in a prosecution under this section (article).**

**(d) DEFINITIONS.—In this section (article):**

**(1) SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES.—The term “specially protected junior member of the armed forces” means—**

**(A) a member of the armed forces who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;**

**(B) a member of the armed forces who is a cadet, a midshipman, an officer candidate, or a student in any other officer qualification program; and**

**(C) a member of the armed forces in any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.**

**(2) TRAINING LEADERSHIP POSITION.—The term “training leadership position” means, with respect to a specially protected junior member of the armed forces, any of the following:**

**(A) Any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers’ training corps unit, a training program for entry into the armed forces, or any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.**

**(B) Faculty and staff of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.**

**(3) APPLICANT FOR MILITARY SERVICE.—The term “applicant for military service” means a person who, under regulations prescribed by the Secretary concerned, is an applicant for original enlistment or appointment in the armed forces.**

**(4) MILITARY RECRUITER.—The term “military recruiter” means a person who, under regulations prescribed by the Secretary concerned, has the primary duty to recruit persons for military service.**

**(5) PROHIBITED SEXUAL ACTIVITY.—The term “prohibited sexual activity” means, as specified in regulations prescribed by the Secretary concerned, inappropriate physical intimacy under circumstances described in such regulations.**

b. *Elements.*

(1) *Abuse of training leadership position.*

(a) That the accused was a commissioned, warrant, noncommissioned, or petty officer;

(b) That the accused was in a training leadership position with respect to a specially protected member of the armed forces; and

(c) That the accused engaged in prohibited sexual activity with a person the accused knew, or reasonably should have known, was a specially protected junior member of the armed forces.

(2) *Abuse of position as a military recruiter.*

(a) That the accused was a commissioned, warrant, noncommissioned or petty officer;

(b) That the accused was performing duties as a military recruiter; and,

(c) That the accused engaged in prohibited sexual activity with a person the accused knew, or reasonably should have known, was an applicant for military service or;

(d) That the accused engaged in prohibited sexual activity with a person the accused knew, or reasonably should have known, was a specially protected junior member of the armed forces who is enlisted under a delayed entry program.

*c. Explanation.*

(1) *In general.* The prevention of inappropriate sexual activity by trainers, recruiters, and drill instructors with recruits, trainees, students attending service academies, and other potentially vulnerable persons in the initial training environment is crucial to the maintenance of good order and military discipline. Military law, regulation, and custom invest officers, non-commissioned officers, drill instructors, recruiters, cadre, and others with the right and obligation to exercise control over those they supervise. In this context, inappropriate sexual activity between recruits/trainees and their respective recruiters/trainers are inherently destructive to good order and discipline. The responsibility for identifying by regulation relationships subject to this offense and those outside the scope of this offense (e.g., a “training and leadership position” Servicemember and a “specially protected junior member of the armed forces” who were married prior to assuming those roles as defined by this offense) is entrusted to the individual Services to determine and specify by appropriate regulations.

(2) *Knowledge.* The accused must have actual or constructive knowledge that a person was a “specially protected junior member of the armed forces” or an “applicant for military service” (as those terms are defined in this offense). Knowledge may be proved by circumstantial evidence. Actual knowledge need not be shown if the accused reasonably should have known under the circumstances the status of the person as a “specially protected junior member of the armed forces” or an “applicant for military service.” This may be demonstrated by regulations, training or operating manuals, customs of the Service, or similar evidence.

(3) *Consent.* Consent is not a defense to this offense.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

*e. Sample specifications.*

(1) *Prohibited act with specially protected junior member of the armed forces.*

In that \_\_\_ (personal jurisdiction data), a (commissioned) (warrant) (noncommissioned) (petty) officer, while in a position of authority over \_\_\_, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_ 20 \_\_, engage in a prohibited act, to wit: \_\_\_\_\_ with \_\_\_\_\_, whom the accused (knew) (reasonably should have known) was a specially protected junior Servicemember in initial active duty training.

(2) *Prohibited act with an applicant for military service.*

In that \_\_\_ (personal jurisdiction data), a (commissioned) (warrant) (noncommissioned) (petty) officer, while in a position of authority over \_\_\_, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_ 20 \_\_, engage in a prohibited act, to wit: \_\_\_\_\_ with \_\_\_\_\_, whom the accused (knew) (reasonably should have known) was (an applicant to the armed forces via (\_\_\_\_\_)) (a specially protected junior enlisted member of the armed forces enlisted under a delayed entry program).

**21. Article 94 (10 U.S.C. 894)—Mutiny or sedition**

*a. Text of statute.*

**(a) Any person subject to this chapter who—**

**(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;**

**(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;**

**(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is**

**guilty of a failure to suppress or report a mutiny or sedition.**

**(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.**

b. *Elements.*

(1) *Mutiny by creating violence or disturbance.*

(a) That the accused created violence or a disturbance; and

(b) That the accused created this violence or disturbance with intent to usurp or override lawful military authority.

(2) *Mutiny by refusing to obey orders or perform duty.*

(a) That the accused refused to obey orders or otherwise do the accused's duty;

(b) That the accused in refusing to obey orders or perform duty acted in concert with another person or persons; and

(c) That the accused did so with intent to usurp or override lawful military authority.

(3) *Sedition.*

(a) That the accused created revolt, violence, or disturbance against lawful civil authority;

(b) That the accused acted in concert with another person or persons; and

(c) That the accused did so with the intent to cause the overthrow or destruction of that authority.

(4) *Failure to prevent and suppress a mutiny or sedition.*

(a) That an offense of mutiny or sedition was committed in the presence of the accused; and

(b) That the accused failed to do the accused's utmost to prevent and suppress the mutiny or sedition.

(5) *Failure to report a mutiny or sedition.*

(a) That an offense of mutiny or sedition occurred;

(b) That the accused knew or had reason to believe that the offense was taking place; and

(c) That the accused failed to take all reasonable means to inform the accused's superior commissioned officer or commander of the offense.

(6) *Attempted mutiny.*

(a) That the accused committed a certain overt act;

(b) That the act was done with specific intent to commit the offense of mutiny;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to effect the commission of the offense of mutiny.

c. *Explanation.*

(1) *Mutiny.* Article 94(a)(1) defines two types of mutiny, both requiring an intent to usurp or override military authority.

(a) *Mutiny by creating violence or disturbance.* Mutiny by creating violence or disturbance may be committed by one person acting alone or by more than one acting together.

(b) *Mutiny by refusing to obey orders or perform duties.* Mutiny by refusing to obey orders or perform duties requires collective insubordination and necessarily includes some combination of two or more persons in resisting lawful military authority. This concert of insubordination need not be preconceived, nor is it necessary that the insubordination be active or violent. It may consist simply of a persistent and concerted refusal or omission to obey orders, or to do duty, with an insubordinate intent, that is, with an intent to usurp or override lawful military authority. The intent may be declared in words or inferred from acts, omissions, or surrounding circumstances.

(2) *Sedition.* Sedition requires a concert of action in resistance to civil authority. This differs from mutiny by creating violence or disturbance. See subparagraph c.(1)(a) of this paragraph.

(3) *Failure to prevent and suppress a mutiny or sedition.* "Utmost" means taking those measures to prevent and suppress a mutiny or sedition which may properly be called for by the circumstances, including the rank, responsibilities, or employment of the person concerned. "Utmost" includes the use of such force, including deadly force, as may be reasonably necessary under the circumstances to prevent and suppress a mutiny or sedition.

(4) *Failure to report a mutiny or sedition.*

(a) *In general.* Failure to "take all reasonable means to inform" includes failure to take the most expeditious means available. When the circumstances known to the accused would have caused a reasonable person in similar circumstances to believe that a mutiny or sedition was occurring, this may establish that the accused had such "reason to believe" that mutiny or sedition was occurring. Failure to report an

impending mutiny or sedition is not an offense in violation of Article 94. But see subparagraph 18.c.(3) (dereliction of duty).

(b) *Superior commissioned officer.* For purposes of this paragraph, “a superior commissioned officer” means a superior commissioned officer in the chain of command.

(5) *Attempted mutiny.* For a discussion of attempts, see paragraph 4.

d. *Maximum punishment.* Death or such other punishment as a court-martial may direct.

e. *Sample specifications.*

(1) *Mutiny by creating violence or disturbance.*

In that \_\_\_\_\_ (personal jurisdiction data), with intent to (usurp) (override) (usurp and override) lawful military authority, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, create (violence) (a disturbance) by (attacking the officers of the said ship) (barricading himself/herself in Barracks T7, firing (his) (her) rifle at \_\_\_\_\_, and exhorting other persons to join (him) (her) in defiance of \_\_\_\_\_) (\_\_\_\_\_).

(2) *Mutiny by refusing to obey orders or perform duties.*

In that \_\_\_\_\_ (personal jurisdiction data), with intent to (usurp) (override) (usurp and override) lawful military authority, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, refuse, in concert with \_\_\_\_\_ (and \_\_\_\_\_) (others whose names are unknown), to (obey the orders of \_\_\_\_\_ to \_\_\_\_\_) (perform (his) (her) duty as \_\_\_\_\_).

(3) *Sedition.*

In that \_\_\_\_\_ (personal jurisdiction data), with intent to cause the (overthrow) (destruction) (overthrow and destruction) of lawful civil authority, to wit: \_\_\_\_\_, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, in concert with \_\_\_\_\_ (and \_\_\_\_\_) (others whose names are unknown), create (revolt) (violence) (a disturbance) against such authority by (entering the Town Hall of \_\_\_\_\_ and destroying property and records therein) (marching upon and compelling the surrender of the police of \_\_\_\_\_) (\_\_\_\_\_).

(4) *Failure to prevent and suppress a mutiny or sedition.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, fail to do (his) (her) utmost to prevent and suppress a (mutiny) (sedition) among the (Soldiers) (Sailors) (Airmen) (Marines) \_\_\_\_\_ of \_\_\_\_\_, which (mutiny) (sedition) was being committed in (his) (her) presence, in that ((he) (she) took no means to compel the dispersal of the assembly) ((he) (she) made no effort to assist \_\_\_\_\_ who was attempting to quell the mutiny) (\_\_\_\_\_).

(5) *Failure to report a mutiny or sedition.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, fail to take all reasonable means to inform (his) (her) superior commissioned officer or (his) (her) commander of a (mutiny) (sedition) among the (Soldiers) (Sailors) (Airmen) (Marines) \_\_\_\_\_ of \_\_\_\_\_, which (mutiny) (sedition) (he) (she), the said \_\_\_\_\_ (knew) (had reason to believe) was taking place.

(6) *Attempted mutiny.*

In that \_\_\_\_\_ (personal jurisdiction data), with intent to (usurp) (override) (usurp and override) lawful military authority, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, attempt to (create (violence) (a disturbance) by \_\_\_\_\_) (\_\_\_\_\_).

## 22. Article 95 (10 U.S.C. 895)—Offenses by sentinel or lookout

a. *Text of statute.*

**(a) DRUNK OR SLEEPING ON POST, OR LEAVING POST BEFORE BEING RELIEVED.—Any sentinel or lookout who is drunk on post, who sleeps on post, or who leaves post before being regularly relieved, shall be punished—**

**(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and**

**(2) if the offense is committed other than in time of war, by such punishment, other than death, as a court-martial may direct.**

**(b) LOITERING OR WRONGFULLY SITTING ON POST.—Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Drunk or sleeping on post, or leaving post before being relieved.*

(a) That the accused was posted or on post as a sentinel or lookout;

(b) That the accused was drunk while on post, was sleeping while on post, or left post before being regularly relieved.

[Note: If the offense was committed in time of war or while the accused was receiving special pay under 37 U.S.C. § 310, add the following element:]

(c) That the offense was committed (in time of war) (while the accused was receiving special pay under 37 U.S.C. § 310).

(2) *Loitering or wrongfully sitting on post.*

(a) That the accused was posted as a sentinel or lookout; and

(b) That while so posted, the accused loitered or wrongfully sat down on post.

[Note: If the offense was committed in time of war or while the accused was receiving special pay under 37 U.S.C. § 310, add the following element:]

(c) That the accused was so posted (in time of war) (while receiving special pay under 37 U.S.C. § 310).

c. *Explanation.*

(1) *Drunk or sleeping on post, or leaving post before being relieved.*

(a) *In general.* Article 95(a) defines three kinds of misbehavior committed by sentinels or lookouts: being drunk on post, sleeping on post, or leaving it before being regularly relieved. Article 95(a) does not include an officer or enlisted person of the guard, or of a ship's watch, not posted or performing the duties of a sentinel or lookout, nor does it include a person whose duties as a watchman or attendant do not require constant alertness.

(b) *Post.* "Post" is the area where the sentinel or lookout is required to be for the performance of duties. It is not limited by an imaginary line, but includes, according to orders or circumstances, such surrounding area as may be necessary for the proper performance of the duties for which the sentinel or lookout was posted. The offense of leaving post is not committed when a sentinel or lookout goes an immaterial distance from the post, unless it is such a distance that the ability to fully perform the duty for which posted is impaired.

(c) *On post.* A sentinel or lookout becomes "on post" after having been given a lawful order to go "on

post" as a sentinel or lookout and being formally or informally posted. The fact that a sentinel or lookout is not posted in the regular way is not a defense. It is sufficient, for example, if the sentinel or lookout has taken the post in accordance with proper instruction, whether or not formally given. A sentinel or lookout is "on post" within the meaning of the article not only when at a post physically defined, as is ordinarily the case in garrison or aboard ship, but also, for example, when stationed in observation against the approach of an enemy, or detailed to use any equipment designed to locate friend, foe, or possible danger, or at a designated place to maintain internal discipline, or to guard stores, or to guard prisoners while in confinement or at work.

(d) *Sentinel or lookout.* A "sentinel" or a "lookout" is a person whose duties include the requirement to maintain constant alertness, be vigilant, and remain awake, in order to observe for the possible approach of the enemy, or to guard persons, property, or a place and to sound the alert, if necessary.

(e) *Drunk.* For an explanation of "drunk," see subparagraph 51.c.(6).

(f) *Sleeping.* As used in this article, "sleeping" is that condition of insentience which is sufficient sensibly to impair the full exercise of the mental and physical faculties of a sentinel or lookout. It is not necessary to show that the accused was in a wholly comatose condition. The fact that the accused's sleeping resulted from a physical incapacity caused by disease or accident is an affirmative defense. See R.C.M. 916(i).

(2) *Loitering or wrongfully sitting on post by a sentinel or lookout.*

(a) *In general.* The discussion set forth in subparagraph 22.c.(1) applies to loitering or sitting down while posted as a sentinel or lookout in violation of Article 95(b) as well.

(b) *Loiter.* "Loiter" means to stand around, to move about slowly, to linger, or to lag behind when that conduct is in violation of known instructions or accompanied by a failure to give complete attention to duty.

d. *Maximum punishment.*

(1) *Drunk or sleeping on post, or leaving post before being relieved.*

(a) *In time of war.* Death or such other punishment as a court-martial may direct.

(b) *While receiving special pay under 37 U.S.C. § 310.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(c) *In all other places.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Loitering or wrongfully sitting on post by a sentinel or lookout.*

(a) *In time of war or while receiving special pay under 37 U.S.C. § 310.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(b) *Other cases.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specifications.*

(1) *Drunk or sleeping on post, or leaving post before being relieved.*

In that \_\_\_\_\_ (personal jurisdiction data), on or about \_\_\_\_ 20 \_\_ (a time of war) (at/on board—location), (while receiving special pay under 37 U.S.C. § 310), being (posted) (on post) as a (sentinel) (lookout) at (warehouse no. 7) (post no. 11) (for radar observation) (\_\_\_\_\_) (was (drunk) (sleeping) upon (his) (her) post) (did leave (his) (her) post before (he) (she) was regularly relieved).

(2) *Loitering or wrongfully sitting down on post by a sentinel or lookout.*

In that \_\_\_\_\_ (personal jurisdiction data), while posted as a (sentinel) (lookout), did, (at/on board—location) (while receiving special pay under 37 U.S.C. § 310) on or about \_\_\_\_ 20 \_\_, (a time of war) (loiter) (wrongfully sit down) on (his) (her) post.

### 23. Article 95a (10 U.S.C. 895a)—Disrespect toward sentinel or lookout

a. *Text of statute.*

(a) **DISRESPECTFUL LANGUAGE TOWARD SENTINEL OR LOOKOUT.**—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

(b) **DISRESPECTFUL BEHAVIOR TOWARD SENTINEL OR LOOKOUT.**—Any person subject to this chapter who, knowing that another person is

a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Disrespectful language toward sentinel or lookout.*

(a) That a certain person was a sentinel or lookout;

(b) That the accused knew that said person was a sentinel or lookout;

(c) That the accused used certain disrespectful language;

(d) That such language was wrongful;

(e) That such language was directed toward and within the hearing of the sentinel or lookout; and

(f) That said person was at the time in the execution of duties as a sentinel or lookout.

(2) *Disrespectful behavior toward sentinel or lookout.*

(a) That a certain person was a sentinel or lookout;

(b) That the accused knew that said person was a sentinel or lookout;

(c) That the accused behaved in a certain disrespectful manner;

(d) That such behavior was wrongful;

(e) That such behavior was directed toward and within the sight of the sentinel or lookout; and

(f) That said person was at the time in the execution of duties as a sentinel or lookout.

c. *Explanation.* See subparagraph 15.c.(2)(b) for a discussion of “disrespect.”

d. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

e. *Sample specification.*

(1) *Disrespectful language toward sentinel or lookout.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, then knowing that \_\_\_\_\_ was a sentinel or lookout, wrongfully use the following disrespectful language “\_\_\_\_\_,” or words to that effect, to \_\_\_\_\_, and that such language was directed toward and within the hearing

of \_\_\_\_\_, the (sentinel) (lookout) in the execution of (his) (her) duty.

(2) *Disrespectful behavior toward sentinel or lookout.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, then knowing that \_\_\_\_\_ was a sentinel or lookout, wrongfully behave in a disrespectful manner toward \_\_\_\_\_, by \_\_\_\_\_, and that such behavior was directed toward and within the sight of \_\_\_\_\_, the (sentinel) (lookout) in the execution of (his) (her) duty

**24. Article 96 (10 U.S.C. 896)—Release of prisoner without authority; drinking with prisoner**

a. *Text of statute.*

**(a) RELEASE OF PRISONER WITHOUT AUTHORITY.—Any person subject to this chapter—**

**(1) who, without authority to do so, releases a prisoner; or**

**(2) who, through neglect or design, allows a prisoner to escape; shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.**

**(b) DRINKING WITH PRISONER.—Any person subject to this chapter who unlawfully drinks any alcoholic beverage with a prisoner shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Releasing a prisoner without authority.*

(a) That a certain person was a prisoner; and

(b) That the accused released the prisoner without authority.

(2) *Allowing a prisoner to escape through neglect.*

(a) That a certain person was a prisoner;

(b) That the prisoner escaped;

(c) That the accused did not take such care to prevent the escape as a reasonably careful person, acting in the capacity in which the accused was acting, would have taken in the same or similar circumstances; and

(d) That the escape was the proximate result of the neglect.

(3) *Allowing a prisoner to escape through design.*

(a) That a certain person was a prisoner;

(b) That the design of the accused was to allow the escape of that prisoner; and

(c) That the prisoner escaped as a result of the carrying out of the design of the accused.

(4) *Drinking with prisoner.*

(a) That a certain person was a prisoner; and

(b) That the accused unlawfully drank any alcoholic beverage with that prisoner.

c. *Explanation.*

(1) *Prisoner.* A prisoner is a person who is in confinement or custody imposed under R.C.M. 302, 304, or 305, or under sentence of a court-martial who has not been set free by a person with authority to release the prisoner.

(2) *Releasing a prisoner without authority.*

(a) *Release.* The release of a prisoner is removal of restraint by the custodian rather than by the prisoner.

(b) *Authority to release.* See R.C.M. 305(g) as to who may release pretrial prisoners. Normally, the lowest authority competent to order release of a post-trial prisoner is the commander who convened the court-martial that sentenced the prisoner or the officer exercising general court-martial jurisdiction over the prisoner. See also R.C.M. 1103.

(3) *Allowing a prisoner to escape through neglect.*

(a) *Allow.* “Allow” means to permit; not to forbid or hinder.

(b) *Neglect.* “Neglect” is a relative term. It is the absence of conduct that would have been taken by a reasonably careful custodian in the same or similar circumstances.

(c) *Escape.* “Escape” is defined in subparagraph 12.c.(5)(c).

(d) *Status of prisoner after escape not a defense.* After escape, the fact that a prisoner returns, is captured, killed, or otherwise dies is not a defense.

(4) *Allowing a prisoner to escape through design.* An escape is allowed through design when it is intended by the custodian. Such intent may be inferred from conduct so wantonly devoid of care that the only reasonable inference which may be drawn is that the escape was contemplated as a probable result.

(5) *Drinking with prisoner.* For purposes of this section, “unlawful” is synonymous with “wrongful.” That is, it is unlawful to drink an alcoholic beverage with a prisoner unless the accused had a legal justification or excuse to do so. In this context, any

consumption of alcohol with a prisoner would be unlawful unless the accused had been granted specific authority to do so by competent authority (e.g., a commander of a confinement facility authorizing limited alcohol consumption by prisoners on a holiday or special occasion).

d. *Maximum punishment.*

(1) *Releasing a prisoner without authority.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Allowing a prisoner to escape through neglect.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *Allowing a prisoner to escape through design.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(4) *Drinking with prisoner.* Confinement for 1 year and forfeiture of two-thirds pay per month for 1 year.

e. *Sample specifications.*

(1) *Releasing a prisoner without authority.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, without authority, release \_\_\_\_\_, a prisoner.

(2) *Allowing a prisoner to escape through neglect or design.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, through (neglect) (design), allow \_\_\_\_\_, a prisoner, to escape.

(3) *Drinking with prisoner.*

In that \_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, unlawfully drink alcohol with \_\_\_\_\_, a prisoner.

**25. Article 97 (10 U.S.C. 897)—Unlawful detention**

a. *Text of statute.*

**Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused apprehended, arrested, or confined a certain person; and

(2) That the accused unlawfully exercised the accused's authority to do so.

c. *Explanation.*

(1) *Scope.* This article prohibits improper acts by those empowered by the UCMJ to arrest, apprehend, or confine. See Articles 7 and 9; R.C.M. 302, 304, 305, and 1103, and paragraph 2 and subparagraph 5.b., Part V. It does not apply to private acts of false imprisonment or unlawful restraint of another's freedom of movement by one not acting under such a delegation of authority under the UCMJ.

(2) *No force required.* The apprehension, arrest, or confinement must be against the will of the person restrained, but force is not required.

(3) *Defense.* A reasonable belief held by the person imposing restraint that it is lawful is a defense.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), did, (at/on board—location), on or about \_\_\_\_ 20 \_\_, unlawfully (apprehend \_\_\_\_\_) (place \_\_\_\_\_ in arrest) (confine \_\_\_\_\_ in \_\_\_\_\_).

**26. Article 98 (10 U.S.C. 898)—Misconduct as prisoner**

a. *Text of statute.*

**Any person subject to this chapter who, while in the hands of the enemy in time of war—**

**(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or**

**(2) while in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Acting without authority to the detriment of another for the purpose of securing favorable treatment.*

(a) That without proper authority the accused acted in a manner contrary to law, custom, or regulation;

(b) That the act was committed while the accused was in the hands of the enemy in time of war;



(c) That the act was done for the purpose of securing favorable treatment of the accused by the captors; and

(d) That other prisoners held by the enemy, either military or civilian, suffered some detriment because of the accused's act.

(2) *Maltreating prisoners while in a position of authority.*

(a) That the accused maltreated a prisoner held by the enemy;

(b) That the act occurred while the accused was in the hands of the enemy in time of war;

(c) That the accused held a position of authority over the person maltreated; and

(d) That the act was without justifiable cause.

c. *Explanation.*

(1) *Enemy.* For a discussion of "enemy," see subparagraph 27.c.(1)(b).

(2) *In time of war.* See R.C.M. 103(21).

(3) *Acting without authority to the detriment of another for the purpose of securing favorable treatment.*

(a) *Nature of offense.* Unauthorized conduct by a prisoner of war must be intended to result in improvement by the enemy of the accused's condition and must operate to the detriment of other prisoners either by way of closer confinement, reduced rations, physical punishment, or other harm. Examples of this conduct include reporting plans of escape being prepared by others or reporting secret food caches, equipment, or arms. The conduct of the prisoner must be contrary to law, custom, or regulation.

(b) *Escape.* Escape from the enemy is authorized by custom. An escape or escape attempt which results in closer confinement or other measures against fellow prisoners still in the hands of the enemy is not an offense under this article.

(4) *Maltreating prisoners while in a position of authority.*

(a) *Authority.* The source of authority is not material. It may arise from the military rank of the accused or—despite Service regulations or customs to the contrary—designation by the captor authorities, or voluntary election or selection by other prisoners for their self-government.

(b) *Maltreatment.* The maltreatment must be real, although not necessarily physical, and it must be without justifiable cause. Abuse of an inferior by

inflammatory and derogatory words may, through mental anguish, constitute this offense.

d. *Maximum punishment.* Any punishment other than death that a court-martial may direct.

e. *Sample specifications.*

(1) *Acting without authority to the detriment of another for the purpose of securing favorable treatment.*

In that \_\_\_\_\_ (personal jurisdiction data), while in the hands of the enemy, did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, a time of war, without proper authority and for the purpose of securing favorable treatment by (his) (her) captors, (report to the commander of Camp \_\_\_\_\_ the preparations by \_\_\_\_\_, a prisoner at said camp, to escape, as a result of which report the said \_\_\_\_ was placed in solitary confinement) (\_\_\_\_\_).

(2) *Maltreating prisoner while in a position of authority.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, a time of war, while in the hands of the enemy and in a position of authority over \_\_\_\_\_, a prisoner at \_\_\_\_\_, as (officer in charge of prisoners at \_\_\_\_\_) (\_\_\_\_\_), maltreat the said \_\_\_\_ by (depriving (him) (her) of \_\_\_\_\_) (\_\_\_\_\_), without justifiable cause.

## 27. Article 99 (10 U.S.C. 899)—Misbehavior before the enemy

a. *Text of statute.*

**Any member of the armed forces who before or in the presence of the enemy—**

**(1) runs away;**

**(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;**

**(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;**

**(4) casts away his arms or ammunition;**

**(5) is guilty of cowardly conduct;**

**(6) quits his place of duty to plunder or pillage;**

**(7) causes false alarms in any command, unit, or place under control of the armed forces;**

**(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or**

**(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle; shall be punished by death or such other punishment as a court-martial may direct.**

b. *Elements.*

(1) *Running away.*

(a) That the accused was before or in the presence of the enemy;

(b) That the accused misbehaved by running away; and

(c) That the accused intended to avoid actual or impending combat with the enemy by running away.

(2) *Shamefully abandoning, surrendering, or delivering up command.*

(a) That the accused was charged by orders or circumstances with the duty to defend a certain command, unit, place, ship, or military property;

(b) That, without justification, the accused shamefully abandoned, surrendered, or delivered up that command, unit, place, ship, or military property; and

(c) That this act occurred while the accused was before or in the presence of the enemy.

(3) *Endangering safety of a command, unit, place, ship, or military property.*

(a) That it was the duty of the accused to defend a certain command, unit, place, ship, or certain military property;

(b) That the accused committed certain disobedience, neglect, or intentional misconduct;

(c) That the accused thereby endangered the safety of the command, unit, place, ship, or military property; and

(d) That this act occurred while the accused was before or in the presence of the enemy.

(4)  *Casting away arms or ammunition.*

(a) That the accused was before or in the presence of the enemy; and

(b) That the accused cast away certain arms or ammunition.

(5) *Cowardly conduct.*

(a) That the accused committed an act of cowardice;

(b) That this conduct occurred while the accused was before or in the presence of the enemy; and

(c) That this conduct was the result of fear.

(6)  *Quitting place of duty to plunder or pillage.*

(a) That the accused was before or in the presence of the enemy;

(b) That the accused quit the accused's place of duty; and

(c) That the accused's intention in quitting was to plunder or pillage public or private property.

(7)  *Causing false alarms.*

(a) That an alarm was caused in a certain command, unit, or place under control of the armed forces of the United States;

(b) That the accused caused the alarm;

(c) That the alarm was caused without any reasonable or sufficient justification or excuse; and

(d) That this act occurred while the accused was before or in the presence of the enemy.

(8)  *Willfully failing to do utmost to encounter enemy.*

(a) That the accused was serving before or in the presence of the enemy;

(b) That the accused had a duty to encounter, engage, capture, or destroy certain enemy troops, combatants, vessels, aircraft, or a certain other thing; and

(c) That the accused willfully failed to do the utmost to perform that duty.

(9)  *Failing to afford relief and assistance.*

(a) That certain troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or an ally of the United States were engaged in battle and required relief and assistance;

(b) That the accused was in a position and able to render relief and assistance to these troops, combatants, vessels, or aircraft, without jeopardy to the accused's mission;

(c) That the accused failed to afford all practicable relief and assistance; and

(d) That, at the time, the accused was before or in the presence of the enemy.

c. *Explanation.*

(1) *Running away.*

(a) *Running away*. “Running away” means an unauthorized departure to avoid actual or impending combat. It need not, however, be the result of fear, and there is no requirement that the accused literally run.

(b) *Enemy*. Enemy includes organized forces of the enemy in time of war, any hostile body that our forces may be opposing, such as a rebellious mob or a band of renegades, and includes civilians as well as members of military organizations. Enemy is not restricted to the enemy government or its armed forces. All the citizens of one belligerent are enemies of the government and all the citizens of the other.

(c) *Before or in the presence of the enemy*. Whether a person is before or in the presence of the enemy is a question of tactical relation, not distance. For example, a member of an anti-aircraft gun crew charged with opposing anticipated attack from the air, or a member of a unit about to move into combat may be before the enemy although miles from the enemy lines. On the other hand, an organization some distance from the front or immediate area of combat which is not a part of a tactical operation then going on or in immediate prospect is not “before or in the presence of the enemy” within the meaning of this article.

(2) *Shamefully abandoning, surrendering, or delivering up of command*.

(a) *Scope*. This provision concerns primarily commanders chargeable with responsibility for defending a command, unit, place, ship or military property. Abandonment by a subordinate would ordinarily be charged as running away.

(b) *Shameful*. Surrender or abandonment without justification is shameful within the meaning of this article.

(c) *Surrender; deliver up*. “Surrender” and “deliver up” are synonymous for the purposes of this article.

(d) *Justification*. Surrender or abandonment of a command, unit, place, ship, or military property by a person charged with its defense can be justified only by the utmost necessity or extremity.

(3) *Endangering safety of a command, unit, place, ship, or military property*.

(a) *Neglect*. Neglect is the absence of conduct which would have been taken by a reasonably careful person in the same or similar circumstances.

(b) *Intentional misconduct*. Intentional misconduct does not include a mere error in judgment.

(4) *Casting away arms or ammunition*. Self-explanatory.

(5) *Cowardly conduct*.

(a) *Cowardice*. Cowardice is misbehavior motivated by fear.

(b) *Fear*. Fear is a natural feeling of apprehension when going into battle. The mere display of apprehension does not constitute this offense.

(c) *Nature of offense*. Refusal or abandonment of a performance of duty before or in the presence of the enemy as a result of fear constitutes this offense.

(d) *Defense*. Genuine and extreme illness, not generated by cowardice, is a defense.

(6) *Quitting place of duty to plunder or pillage*.

(a) *Place of duty*. Place of duty includes any place of duty, whether permanent or temporary, fixed or mobile.

(b) *Plunder or pillage*. “Plunder or pillage” means to seize or appropriate public or private property unlawfully.

(c) *Nature of offense*. The essence of this offense is quitting the place of duty with intent to plunder or pillage. Merely quitting with that purpose is sufficient, even if the intended misconduct is not done.

(7) *Causing false alarms*. This provision covers spreading of false or disturbing rumors or reports, as well as the false giving of established alarm signals.

(8) *Willfully failing to do utmost to encounter enemy*. Willfully refusing a lawful order to go on a combat patrol may violate this provision.

(9) *Failing to afford relief and assistance*.

(a) *All practicable relief and assistance*. “All practicable relief and assistance” means all relief and assistance which should be afforded within the limitations imposed upon a person by reason of that person’s own specific tasks or mission.

(b) *Nature of offense*. This offense is limited to a failure to afford relief and assistance to forces engaged in battle.

d. *Maximum punishment*. All offenses under Article 99. Death or such other punishment as a court-martial may direct.

e. *Sample specifications*.

(1) *Running away*.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the

presence of) the enemy, run away (from (his) (her) company) (and hide) (\_\_\_\_), (and did not return until after the engagement had been concluded) (\_\_\_\_\_).

(2) *Shamefully abandoning, surrendering, or delivering up command.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the presence of) the enemy, shamefully (abandon) (surrender) (deliver up) \_\_\_\_\_, which it was (his) (her) duty to defend.

(3) *Endangering safety of a command, unit, place, ship, or military property.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the presence of) the enemy, endanger the safety of \_\_\_\_\_, which it was (his) (her) duty to defend, by (disobeying an order from \_\_\_\_\_ to engage the enemy) (neglecting (his) (her) duty as a sentinel by engaging in a card game while on (his) (her) post) (intentional misconduct in that (he) (she) became drunk and fired flares, thus revealing the location of (his) (her) unit) (\_\_\_\_\_).

(4)  *Casting away arms or ammunition.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the presence of) the enemy, cast away (his) (her) (rifle) (ammunition) (\_\_\_\_\_).

(5) *Cowardly conduct.*

In that \_\_\_\_\_ (personal jurisdiction data), (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the presence of) the enemy, was guilty of cowardly conduct as a result of fear, in that \_\_\_\_\_.

(6)  *Quitting place of duty to plunder or pillage.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the presence of) the enemy, quit (his) (her) place of duty for the purpose of (plundering) (pillaging) (plundering and pillaging).

(7)  *Causing false alarms.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the

presence of) the enemy, cause a false alarm in (Fort \_\_\_\_\_) (the said ship) (the camp) (\_\_\_\_\_) by (needlessly and without authority (causing the call to arms to be sounded) (sounding the general alarm)) (\_\_\_\_\_).

(8)  *Willfully failing to do utmost to encounter enemy.*

In that \_\_\_\_\_ (personal jurisdiction data), being (before) (in the presence of) the enemy, did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, by, (ordering (his) (her) troops to halt their advance) (\_\_\_\_\_), willfully fail to do (his) (her) utmost to (encounter) (engage) (capture) (destroy), as it was (his) (her) duty to do, (certain enemy troops which were in retreat) (\_\_\_\_\_).

(9)  *Failing to afford relief and assistance.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (before) (in the presence of) the enemy, fail to afford all practicable relief and assistance to (the USS \_\_\_\_\_, which was engaged in battle and had run aground, in that (he) (she) failed to take her in tow) (certain troops of the ground forces of \_\_\_\_\_, which were engaged in battle and were pinned down by enemy fire, in that (he) (she) failed to furnish air cover) (\_\_\_\_\_)) as (he) (she) properly should have done.

## 28. Article 100 (10 U.S.C. 900)—Subordinate compelling surrender

a. *Text of statute.*

**Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.**

b. *Elements.*

(1) *Compelling surrender.*

(a) That a certain person was in command of a certain place, vessel, aircraft, or other military property or of a body of members of the armed forces;

(b) That the accused did an overt act which was intended to and did compel that commander to give it up to the enemy or abandon it; and

(c) That the place, vessel, aircraft, or other military property or body of members of the armed forces was actually given up to the enemy or abandoned.

(2) *Attempting to compel surrender.*

(a) That a certain person was in command of a certain place, vessel, aircraft, or other military property or of a body of members of the armed forces;

(b) That the accused did a certain overt act;

(c) That the act was done with the intent to compel that commander to give up to the enemy or abandon the place, vessel, aircraft, or other military property or body of members of the armed forces;

(d) That the act amounted to more than mere preparation; and

(e) That the act apparently tended to bring about the compelling of surrender or abandonment.

(3) *Striking the colors or flag.*

(a) That there was an offer of surrender to an enemy;

(b) That this offer was made by striking the colors or flag to the enemy or in some other manner;

(c) That the accused made or was responsible for the offer; and

(d) That the accused did not have proper authority to make the offer.

c. *Explanation.*

(1) *Compelling surrender.*

(a) *Nature of offense.* The offenses under this article are similar to mutiny or attempted mutiny designed to bring about surrender or abandonment. Unlike some cases of mutiny, however, concert of action is not an essential element of the offenses under this article. The offense is not complete until the place, military property, or command is actually abandoned or given up to the enemy.

(b) *Surrender.* “Surrender” and “to give it up to an enemy” are synonymous.

(c) *Acts required.* The surrender or abandonment must be compelled or attempted to be compelled by acts rather than words.

(2) *Attempting to compel surrender.* The offense of attempting to compel a surrender or abandonment does not require actual abandonment or surrender, but there must be some act done with this purpose in view, even if it does not accomplish the purpose.

(3) *Striking the colors or flag.*

(a) *In general.* To “strike the colors or flag” is to haul down the colors or flag in the face of the enemy or to make any other offer of surrender. It is traditional wording for an act of surrender.

(b) *Nature of offense.* The offense is committed when one assumes the authority to surrender a military force or position when not authorized to do so either by competent authority or by the necessities of battle. If continued battle has become fruitless and it is impossible to communicate with higher authority, those facts will constitute proper authority to surrender. The offense may be committed whenever there is sufficient contact with the enemy to give the opportunity of making an offer of surrender and it is not necessary that an engagement with the enemy be in progress. It is unnecessary to prove that the offer was received by the enemy or that it was rejected or accepted. The sending of an emissary charged with making the offer or surrender is an act sufficient to prove the offer, even though the emissary does not reach the enemy.

(4) *Enemy.* For a discussion of “enemy,” see subparagraph 27.c.(1)(b).

d. *Maximum punishment.* All offenses under Article 100. Death or such other punishment as a court-martial may direct.

e. *Sample specifications.*

(1) *Compelling surrender or attempting to compel surrender.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (attempt to) compel \_\_\_\_\_, the commander of \_\_\_\_\_, (to give up to the enemy) (to abandon) said \_\_\_\_\_, by \_\_\_\_\_.

(2) *Striking the colors or flag.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, offer to surrender to the enemy by (striking the (colors) (flag)) (\_\_\_\_\_).

**29. Article 101 (10 U.S.C. 901)—Improper use of countersign**

a. *Text of statute.*

**Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to**

**another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.**

b. *Elements.*

(1) *Disclosing the parole or countersign to one not entitled to receive it.*

(a) That, in time of war, the accused disclosed the parole or countersign to a person, identified or unidentified; and

(b) That this person was not entitled to receive it.

(2) *Giving a parole or countersign different from that authorized.*

(a) That, in time of war, the accused knew that the accused was authorized and required to give a certain parole or countersign; and

(b) That the accused gave to a person entitled to receive and use this parole or countersign a different parole or countersign from that which the accused was authorized and required to give.

c. *Explanation.*

(1) *Countersign.* A countersign is a word, signal, or procedure given from the principal headquarters of a command to aid guards and sentinels in their scrutiny of persons who apply to pass the lines. It consists of a secret challenge and a password, signal, or procedure.

(2) *Parole.* A parole is a word used as a check on the countersign; it is given only to those who are entitled to inspect guards and to commanders of guards.

(3) *Who may receive countersign.* The class of persons entitled to receive the countersign or parole will expand and contract under the varying circumstances of war. Who these persons are will be determined largely, in any particular case, by the general or special orders under which the accused was acting. Before disclosing such a word, a person subject to military law must determine at that person's peril that the recipient is a person authorized to receive it.

(4) *Intent, motive, negligence, mistake, ignorance not defense.* The accused's intent or motive in disclosing the countersign or parole is immaterial to the issue of guilt, as is the fact that the disclosure was negligent or inadvertent. It is no defense that the accused did not know that the person to whom the countersign or parole was given was not entitled to receive it.

(5) *How accused received countersign or parole.* It is immaterial whether the accused had received the countersign or parole in the regular course of duty or whether it was obtained in some other way.

(6) *In time of war.* See R.C.M. 103(21).

d. *Maximum punishment.* Death or such other punishment as a court-martial may direct.

e. *Sample specifications.*

(1) *Disclosing the parole or countersign to one not entitled to receive it.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, a time of war, disclose the (parole) (countersign), to wit: \_\_\_\_\_, to \_\_\_\_\_, a person who was not entitled to receive it.

(2) *Giving a parole or countersign different from that authorized.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, a time of war, give to \_\_\_\_\_, a person entitled to receive and use the (parole) (countersign), a (parole) (countersign), namely: \_\_\_\_\_ which was different from that which, to (his) (her) knowledge, (he) (she) was authorized and required to give, to wit: \_\_\_\_\_.

**30. Article 102 (10 U.S.C. 902)—Forcing a safeguard**

a. *Text of statute.*

**Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.**

b. *Elements.*

(1) That a safeguard had been issued or posted for the protection of a certain person or persons, place, or property;

(2) That the accused knew or should have known of the safeguard; and

(3) That the accused forced the safeguard.

c. *Explanation.*

(1) *Safeguard.* A safeguard is a detachment, guard, or detail posted by a commander for the protection of persons, places, or property of the enemy, or of a neutral affected by the relationship of belligerent forces in their prosecution of war or during circumstances amounting to a state of belligerency.

The term also includes a written order left by a commander with an enemy subject or posted upon enemy property for the protection of that person or property. A safeguard is not a device adopted by a belligerent to protect its own property or nationals or to ensure order within its own forces, even if those forces are in a theater of combat operations, and the posting of guards or of off-limits signs does not establish a safeguard unless a commander takes those actions to protect enemy or neutral persons or property. The effect of a safeguard is to pledge the honor of the nation that the person or property shall be respected by the national armed forces.

(2) *Forcing a safeguard.* “Forcing a safeguard” means to perform an act or acts in violation of the protection of the safeguard.

(3) *Nature of offense.* Any trespass on the protection of the safeguard will constitute an offense under this article, whether the safeguard was imposed in time of war or in circumstances amounting to a state of belligerency short of a formal state of war.

(4) *Knowledge.* Actual knowledge of the safeguard is not required. It is sufficient if an accused should have known of the existence of the safeguard.

d. *Maximum punishment.* Death or such other punishment as a court-martial may direct.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, force a safeguard, (known by (him) (her) to have been placed over the premises occupied by \_\_\_\_\_ at \_\_\_\_\_ by (overwhelming the guard posted for the protection of the same) (\_\_\_\_\_) (\_\_\_\_\_)).

### 31. Article 103 (10 U.S.C. 903)—Spies

a. *Text of statute.*

**Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death or such other punishment as a court-martial or a military commission may direct. This section does not apply to a military**

**commission established under chapter 47A of this title.**

b. *Elements.*

(1) That the accused was found in, about, or in and about a certain place, vessel, or aircraft within the control or jurisdiction of an armed force of the United States, or a shipyard, manufacturing or industrial plant, or other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere;

(2) That the accused was lurking, acting clandestinely or under false pretenses;

(3) That the accused was collecting or attempting to collect certain information;

(4) That the accused did so with the intent to convey this information to the enemy; and

(5) That this was done in time of war.

c. *Explanation.*

(1) *In time of war.* See R.C.M. 103(21).

(2) *Enemy.* For a discussion of “enemy,” see subparagraph 27.c.(1)(b).

(3) *Scope of offense.* The words “any person” bring within the jurisdiction of general courts-martial and military commissions all persons of whatever nationality or status who commit spying.

(4) *Nature of offense.* A person can be a spy only when, acting clandestinely or under false pretenses, that person obtains or seeks to obtain information with the intent to convey it to a hostile party. It is not essential that the accused obtain the information sought or that it be communicated. The offense is complete with lurking or acting clandestinely or under false pretenses with intent to accomplish these objects.

(5) *Intent.* It is necessary to prove an intent to convey information to the enemy. This intent may be inferred from evidence of a deceptive insinuation of the accused among our forces, but evidence that the person had come within the lines for a comparatively innocent purpose, as to visit family or to reach friendly lines by assuming a disguise, is admissible to rebut this inference.

(6) *Persons not included under “spying.”*

(a) Members of a military organization not wearing a disguise, dispatch drivers, whether members of a military organization or civilians, and persons in ships or aircraft who carry out their missions openly and who have penetrated enemy lines are not spies

because, while they may have resorted to concealment, they have not acted under false pretenses.

(b) A spy who, after rejoining the armed forces to which the spy belongs, is later captured by the enemy incurs no responsibility for previous acts of spying.

(c) A person living in occupied territory who, without lurking, or acting clandestinely or under false pretenses, merely reports what is seen or heard through agents to the enemy may be charged under Article 103a with giving intelligence to or communicating with the enemy, but may not be charged under this article as being a spy.

d. *Maximum punishment.* Death or such other punishment as a court-martial or military commission may direct.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), was, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20 \_\_, a time of war, found (lurking) (acting) as a spy (in) (about) (in and about) \_\_\_\_\_, (a (fortification) (port) (base) (vessel) (aircraft) (\_\_\_\_\_)) within the (control) (jurisdiction) (control and jurisdiction) of an armed force of the United States, to wit: \_\_\_\_\_ (a (shipyard) (manufacturing plant) (industrial plant) (\_\_\_\_\_)) engaged in work in aid of the prosecution of the war by the United States) (\_\_\_\_\_), for the purpose of (collecting) (attempting to collect) information in regard to the [(numbers) (resources) (operations) (\_\_\_)] of the armed forces of the United States [(military production) (\_\_\_\_\_)] of the United States [(\_\_\_\_\_)], with intent to impart the same to the enemy.

### 32. Article 103a (10 U.S.C. 903a)—Espionage

a. *Text of statute.*

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large

scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.



(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

b. *Elements.*

(1) *Espionage.*

(a) That the accused communicated, delivered, or transmitted any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense;

(b) That this matter was communicated, delivered, or transmitted to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject or citizen thereof, either directly or indirectly; and

(c) That the accused did so with intent or reason to believe that such matter would be used to the injury of the United States or to the advantage of a foreign nation.

(2) *Attempted espionage.*

(a) That the accused did a certain overt act;

(b) That the act was done with the intent to commit the offense of espionage;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to bring about the offense of espionage.

(3) *Espionage as a capital offense.*

(a) That the accused committed espionage or attempted espionage; and

(b) That the offense directly concerned (1) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (2) war plans, (3) communications intelligence or cryptographic information, or (4) any other major weapons system or major element of defense strategy.

c. *Explanation.*

(1) *Intent.* “Intent or reason to believe that the information is to be used to the injury of the United States or to the advantage of a foreign nation” means that the accused acted in bad faith and without lawful authority with respect to information that is not lawfully accessible to the public.

(2) *National defense information.* “Instrument, appliance, or information relating to the national defense” includes the full range of modern technology and matter that may be developed in the future, including chemical or biological agents, computer technology, and other matter related to the national defense.

(3) *Espionage as a capital offense.* Capital punishment is authorized if the government alleges and proves that the offense directly concerned (1) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (2) war plans, (3) communications intelligence or cryptographic information, or (4) any other major weapons system or major element of defense strategy. See R.C.M. 1004 concerning presentencing proceedings in capital cases.

d. *Maximum punishment.*

(1) *Espionage as a capital offense.* Death or such other punishment as a court-martial may direct.

(2) *Espionage or attempted espionage.* Any punishment, other than death, that a court-martial may direct.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, with intent or reason to believe it would be used to the injury of the United States or to the advantage of \_\_\_\_\_, a foreign nation, (attempt to) (communicate) (deliver) (transmit) \_\_\_\_\_ (description of item), (a document) (a writing) (a code book) (a sketch) (a photograph) (a photographic negative) (a blueprint) (a plan) (a map) (a model) (a note) (an instrument) (an appliance) (information) relating to the national defense, [(which directly concerned (nuclear weaponry) (military spacecraft) (military satellites) (early warning systems) (\_\_\_\_\_, a means of defense or retaliation against a large scale attack) (war plans) (communications intelligence) (cryptographic information) (\_\_\_\_\_, a major weapons system) (\_\_\_\_\_, a major element of defense strategy))] to \_\_\_\_\_ ((a representative of) (an officer of) (an agent of) (an employee of) (a subject of) (a citizen of)) ((a foreign

government) (a faction within a foreign country) (a party within a foreign country) (a military force within a foreign country) (a naval force within a foreign country)) (indirectly by \_\_\_\_\_).

**33. Article 103b (10 U.S.C. 903b)—Aiding the enemy**

a. *Text of statute.*

**Any person who—**

**(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or**

**(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;**

**shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.**

b. *Elements.*

(1) *Aiding the enemy.*

(a) That the accused aided the enemy; and

(b) That the accused did so with certain arms, ammunition, supplies, money, or other things.

(2) *Attempting to aid the enemy.*

(a) That the accused did a certain overt act;

(b) That the act was done with the intent to aid the enemy with certain arms, ammunition, supplies, money, or other things;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to bring about the offense of aiding the enemy with certain arms, ammunition, supplies, money, or other things.

(3) *Harboring or protecting the enemy.*

(a) That the accused, without proper authority, harbored or protected a person;

(b) That the person so harbored or protected was the enemy; and

(c) That the accused knew that the person so harbored or protected was an enemy.

(4) *Giving intelligence to the enemy.*

(a) That the accused, without proper authority, knowingly gave intelligence information to the enemy; and

(b) That the intelligence information was true, or implied the truth, at least in part.

(5) *Communicating with the enemy.*

(a) That the accused, without proper authority, communicated, corresponded, or held intercourse with the enemy; and;

(b) That the accused knew that the accused was communicating, corresponding, or holding intercourse with the enemy.

c. *Explanation.*

(1) *Scope of Article 103b.* This article denounces offenses by all persons whether or not otherwise subject to military law. Offenders may be tried by court-martial or by military commission.

(2) *Enemy.* For a discussion of “enemy,” see subparagraph 27.c.(1)(b).

(3) *Aiding or attempting to aid the enemy.* It is not a violation of this article to furnish prisoners of war subsistence, quarters, and other comforts or aid to which they are lawfully entitled.

(4) *Harboring or protecting the enemy.*

(a) *Nature of offense.* An enemy is harbored or protected when, without proper authority, that enemy is shielded, either physically or by use of any artifice, aid, or representation from any injury or misfortune which in the chance of war may occur.

(b) *Knowledge.* Actual knowledge is required, but may be proved by circumstantial evidence.

(5) *Giving intelligence to the enemy.*

(a) *Nature of offense.* Giving intelligence to the enemy is a particular case of corresponding with the enemy made more serious by the fact that the communication contains intelligence that may be useful to the enemy for any of the many reasons that make information valuable to belligerents. This intelligence may be conveyed by direct or indirect means.

(b) *Intelligence.* Intelligence imports that the information conveyed is true or implies the truth, at least in part.

(c) *Knowledge.* Actual knowledge is required but may be proved by circumstantial evidence.

(6) *Communicating with the enemy.*

(a) *Nature of the offense.* No unauthorized communication, correspondence, or intercourse with the enemy is permissible. The intent, content, and method of the communication, correspondence, or

intercourse are immaterial. No response or receipt by the enemy is required. The offense is complete the moment the communication, correspondence, or intercourse issues from the accused. The communication, correspondence, or intercourse may be conveyed directly or indirectly. A prisoner of war may violate this Article by engaging in unauthorized communications with the enemy. See also subparagraph 26.c.(3).

(b) *Knowledge.* Actual knowledge is required but may be proved by circumstantial evidence.

(c) *Citizens of neutral powers.* Citizens of neutral powers resident in or visiting invaded or occupied territory can claim no immunity from the customary laws of war relating to communication with the enemy. 12A.

d. *Maximum punishment.*

Death or such other punishment as a court-martial or military commission may direct.

e. *Sample specifications.*

(1) *Aiding or attempting to aid the enemy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (attempt to) aid the enemy with (arms) (ammunition) (supplies) (money) (\_\_\_\_), by (furnishing and delivering to \_\_\_\_\_, members of the enemy's armed forces \_\_\_\_\_) (\_\_\_\_).

(2) *Harboring or protecting the enemy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, knowingly (harbor) (protect) \_\_\_\_\_, an enemy, by (concealing the said \_\_\_\_ in (his) (her) house) (\_\_\_\_).

(3) *Giving intelligence to the enemy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, knowingly give intelligence to the enemy, by (informing a patrol of the enemy's forces of the whereabouts of a military patrol of the United States forces) (\_\_\_\_).

(4) *Communicating with the enemy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, knowingly (communicate with) (correspond with) (hold intercourse with) the enemy (by writing

and transmitting secretly through the lines to one \_\_\_\_\_, whom (he) (she), the said \_\_\_\_\_, knew to be (an officer of the enemy's armed forces) (\_\_\_\_) a communication in words and figures substantially as follows, to wit: \_\_\_\_\_) (indirectly by publishing in \_\_\_\_\_, a newspaper published at \_\_\_\_\_, a communication in words and figures as follows, to wit: \_\_\_\_\_, which communication was intended to reach the enemy) (\_\_\_\_).

### 34. Article 104 (10 U.S.C. 904)—Public records offenses

a. *Text of statute.*

**Any person subject to this chapter who, willfully and unlawfully—**

**(1) alters, conceals, removes, mutilates, obliterates, or destroys a public record; or**

**(2) takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused altered, concealed, removed, mutilated, obliterated, destroyed, or took with the intent to alter, conceal, remove, mutilate, obliterate, or destroy, a certain public record; and

(2) That the act of the accused was willful and unlawful.

c. *Explanation.* “Public records” include records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to which matters there was a duty to report. “Public records” include classified matters.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully and unlawfully [(alter) (conceal) (remove) (mutilate) (obliterate) (destroy)] [take with intent to (alter) (conceal) (remove) (mutilate) (obliterate) (destroy)] a public record, to wit: \_\_\_\_\_.

**35. Article 104a (10 U.S.C. 904a)—Fraudulent enlistment, appointment, or separation**

a. *Text of statute.*

**Any person who—**

**(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or**

**(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Fraudulent enlistment or appointment.*

(a) That the accused was enlisted or appointed in an armed force;

(b) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts regarding qualifications of the accused for enlistment or appointment;

(c) That the accused's enlistment or appointment was obtained or procured by that knowingly false representation or deliberate concealment; and

(d) That under this enlistment or appointment that accused received pay or allowances or both.

(2) *Fraudulent separation.*

(a) That the accused was separated from an armed force;

(b) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts about the accused's eligibility for separation; and

(c) That the accused's separation was obtained or procured by that knowingly false representation or deliberate concealment.

c. *Explanation.*

(1) *In general.* A fraudulent enlistment, appointment, or separation is one procured by either a knowingly false representation as to any of the qualifications prescribed by law, regulation, or orders for the specific enlistment, appointment, or separation, or a deliberate concealment as to any of those disqualifications. Matters that may be material to an enlistment, appointment, or separation include any information used by the recruiting, appointing, or separating officer in reaching a decision as to

enlistment, appointment, or separation in any particular case, and any information that normally would have been so considered had it been provided to that officer.

(2) *Receipt of pay or allowances.* A member of the armed forces who enlists or accepts an appointment without being regularly separated from a prior enlistment or appointment should be charged under Article 104a only if that member has received pay or allowances under the fraudulent enlistment or appointment. Acceptance of food, clothing, shelter, or transportation from the Government constitutes receipt of allowances. However, whatever is furnished the accused while in custody, confinement, arrest, or other restraint pending trial for fraudulent enlistment or appointment is not considered an allowance. The receipt of pay or allowances may be proved by circumstantial evidence.

(3) *One offense.* One who procures one's own enlistment, appointment, or separation by several misrepresentations or concealment as to qualifications for the one enlistment, appointment, or separation so procured, commits only one offense under Article 104a.

d. *Maximum punishment.*

(1) Fraudulent enlistment or appointment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) Fraudulent separation. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *For fraudulent enlistment or appointment.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, by means of [knowingly false representations that (here state the fact or facts material to qualification for enlistment or appointment which were represented), when in fact (here state the true fact or facts)] [deliberate concealment of the fact that (here state the fact or facts disqualifying the accused for enlistment or appointment which were concealed)], procure himself/herself to be (enlisted as a \_\_\_\_\_) (appointed as a \_\_\_\_\_) in the (here state the armed force in which the accused procured the enlistment or appointment), and did thereafter, (at/on board—location), receive (pay) (allowances) (pay and

allowances) under the enlistment) (appointment) so procured.

(2) *For fraudulent separation.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, by means of [knowingly false representations that (here state the fact or facts material to eligibility for separation which were represented), when in fact (here state the true fact or facts)] [deliberate concealment of the fact that (here state the fact or facts concealed which made the accused ineligible for separation)], procure himself/herself to be separated from the (here state the armed force from which the accused procured (his) (her) separation).

**36. Article 104b (10 U.S.C. 904b)—Unlawful enlistment, appointment, or separation**

a. *Text of statute.*

**Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused effected the enlistment, appointment, or separation of the person named;

(2) That this person was ineligible for this enlistment, appointment, or separation because it was prohibited by law, regulation, or order; and

(3) That the accused knew of the ineligibility at the time of the enlistment, appointment, or separation.

c. *Explanation.* It must be proved that the enlistment, appointment, or separation was prohibited by law, regulation, or order when effected and that the accused then knew that the person enlisted, appointed, or separated was ineligible for the enlistment, appointment, or separation.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, effect [the (enlistment) (appointment) of \_\_\_\_\_ as a

\_\_\_\_\_ in (here state the armed force in which the person was enlisted or appointed)] [the separation of \_\_\_\_\_ from (here state the armed force from which the person was separated)], then well knowing that the said \_\_\_\_\_ was ineligible for such (enlistment) (appointment) (separation) because (here state facts whereby the enlistment, appointment, or separation was prohibited by law, regulation, or order).

**37. Article 105 (10 U.S.C. 905)—Forgery**

a. *Text of statute.*

**Any person subject to this chapter who, with intent to defraud—**

**(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or**

**(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;**

**is guilty of forgery and shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Forgery—making or altering.*

(a) That the accused falsely made or altered a certain signature or writing;

(b) That the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice; and

(c) That the false making or altering was with the intent to defraud.

(2) *Forgery—uttering.*

(a) That a certain signature or writing was falsely made or altered;

(b) That the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice;

(c) That the accused uttered, offered, issued, or transferred the signature or writing;

(d) That at such time the accused knew that the signature or writing had been falsely made or altered; and

(e) That the uttering, offering, issuing or transferring was with the intent to defraud.

c. *Explanation.*

(1) *In general.* Forgery may be committed either by falsely making a writing or by knowingly uttering a falsely made writing. There are three elements common to both aspects of forgery: a writing falsely made or altered; an apparent capability of the writing as falsely made or altered to impose a legal liability on another or to change another's legal rights or liabilities to that person's prejudice; and an intent to defraud.

(2) *False.* "False" refers not to the contents of the writing or to the facts stated therein but to the making or altering of it. Hence, forgery is not committed by the genuine making of a false instrument even when made with intent to defraud. A person who, with intent to defraud, signs that person's own signature as the maker of a check drawn on a bank in which that person does not have money or credit does not commit forgery. Although the check falsely represents the existence of the account, it is what it purports to be, a check drawn by the actual maker, and therefore it is not falsely made. But see paragraph 70. Likewise, if a person makes a false signature of another to an instrument, but adds the word "by" with that person's own signature thus indicating authority to sign, the offense is not forgery even if no such authority exists. False recitals of fact in a genuine document, as an aircraft flight report which is "padded" by the one preparing it, do not make the writing a forgery. But see paragraph 41 concerning false official statements.

(3) *Signatures.* Signing the name of another to an instrument having apparent legal efficacy without authority and with intent to defraud is forgery as the signature is falsely made. The distinction is that in this case the falsely made signature purports to be the act of one other than the actual signer. Likewise, a forgery may be committed by a person signing that person's own name to an instrument. For example, when a check payable to the order of a certain person comes into the hands of another of the same name, forgery is committed if, knowing the check to be another's, that person indorses it with that person's own name intending to defraud. Forgery may also be committed by signing a fictitious name, as when Roe makes a check payable to Roe and signs it with a fictitious name—Doe—as drawer.

(4) *Nature of writing.* The writing must be one which would, if genuine, apparently impose a legal liability on another, as a check or promissory note, or change that person's legal rights or liabilities to that person's prejudice, as a receipt. Some other instruments which may be the subject of forgery are orders for the delivery of money or goods, railroad tickets, and military orders

directing travel. A writing falsely "made" includes an instrument that may be partially or entirely printed, engraved, written with a pencil, or made by photography or other device. A writing may be falsely "made" by materially altering an existing writing, by filling in a paper signed in blank, or by signing an instrument already written. With respect to the apparent legal efficacy of the writing falsely made or altered, the writing must appear either on its face or from extrinsic facts to impose a legal liability on another, or to change a legal right or liability to the prejudice of another. If under all the circumstances the instrument has neither real nor apparent legal efficacy, there is no forgery. Thus, the false making with intent to defraud of an instrument affirmatively invalid on its face is not forgery nor is the false making or altering, with intent to defraud, of a writing which could not impose a legal liability, as a mere letter of introduction. However, the false making of another's signature on an instrument with intent to defraud is forgery, even if there is no resemblance to the genuine signature and the name is misspelled.

(5) *Intent to defraud.* See subparagraph 70.c.(14). The intent to defraud need not be directed toward anyone in particular nor be for the advantage of the offender. It is immaterial that nobody was actually defrauded, or that no further step was made toward carrying out the intent to defraud other than the false making or altering of a writing.

(6) *Alteration.* The alteration must effect a material change in the legal tenor of the writing. Thus, an alteration which apparently increases, diminishes, or discharges any obligation is material. Examples of material alterations in the case of a promissory note are changing the date, amount, or place of payment. If a genuine writing has been delivered to the accused and while in the accused's possession is later found to be altered, it may be inferred that the writing was altered by the accused.

(7) *Uttering.* See subparagraph 70.c.(4).

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Forgery—making or altering.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with intent to defraud, falsely [make (in its entirety) (the signature of \_\_\_\_\_ as an indorsement to) (the signature of

\_\_\_\_\_ to) (\_\_\_\_\_) a certain (check) (writing) (\_\_\_\_\_) in the following words and figures, to wit: \_\_\_\_\_ ] [alter a certain (check) (writing) (\_\_\_\_\_) in the following words and figures, to wit: \_\_\_\_\_, by (adding thereto \_\_\_\_\_) (\_\_\_\_\_) ], which said (check) (writing) (\_\_\_\_\_) would, if genuine, apparently operate to the legal harm of another [\*and which \_\_\_\_\_ (could be) (was) used to the legal harm of \_\_\_\_\_, in that \_\_\_\_\_ ].

[\*Note: This allegation should be used when the document specified is not one which by its nature would clearly operate to the legal prejudice of another—for example, an insurance application. The manner in which the document could be or was used to prejudice the legal rights of another should be alleged in the last blank.]

(2) *Forgery—uttering.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, with intent to defraud, (utter) (offer) (issue) (transfer) a certain (check) (writing) (\_\_\_\_\_) in the following words and figures, to wit: \_\_\_\_\_, a writing which would, if genuine, apparently operate to the legal harm of another, (which said (check) (writing) (\_\_\_\_\_) (the signature to which said (check) (writing) (\_\_\_\_\_) (\_\_\_\_\_) was, as (he) (she), the said \_\_\_\_\_, then well knew, falsely (made) (altered) (\*and which \_\_\_\_\_ (could be) (was) used to the legal harm of \_\_\_\_\_, in that \_\_\_\_\_).

[\*Note: See the note following (1), of subparagraph e.]

**38. Article 105a (10 U.S.C. 905a)—False or unauthorized pass offenses**

a. *Text of statute.*

(a) **WRONGFUL MAKING, ALTERING, ETC.—Any person subject to this chapter who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.**

(b) **WRONGFUL SALE, ETC.—Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.**

(c) **WRONGFUL USE OR POSSESSION.—Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Wrongful making, altering, counterfeiting, or tampering with a military or official pass, permit, discharge certificate, or identification card.*

(a) That the accused wrongfully and falsely made, altered, counterfeited, or tampered with a certain military or official pass, permit, discharge certificate, or identification card; and

(b) That the accused then knew that the pass, permit, discharge certificate, or identification card was false or unauthorized.

(2) *Wrongful sale, gift, loan, or disposition of a military or official pass, permit, discharge certificate, or identification card.*

(a) That the accused wrongfully sold, gave, loaned, or disposed of a certain military or official pass, permit, discharge certificate, or identification card;

(b) That the pass, permit, discharge certificate, or identification card was false or unauthorized; and

(c) That the accused then knew that the pass, permit, discharge certificate, or identification card was false or unauthorized.

(3) *Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card.*

(a) That the accused wrongfully used or possessed a certain military or official pass, permit, discharge certificate, or identification card;

(b) That the pass, permit, discharge certificate, or identification card was false or unauthorized; and

(c) That the accused then knew that the pass, permit, discharge certificate, or identification card was false or unauthorized.

[Note: When there is intent to defraud or deceive, add the following element:]

(d) That the accused used or possessed the pass, permit, discharge certificate, or identification card with intent to defraud or deceive.

c. *Explanation.*

(1) *In general.* Military or official pass, permit, discharge certificate, or identification card includes, as well as the more usual forms of these documents, all documents issued by any governmental agency for the purpose of identification and copies thereof.

(2) *Intent to defraud or deceive.* See subparagraphs 70.c.(14) and (15).

d. *Maximum punishment.*

(1) *Possessing or using with intent to defraud or deceive, or making, altering, counterfeiting, tampering with, or selling.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *All other cases.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specifications.*

(1) *Wrongful making, altering, counterfeiting, or tampering with military or official pass, permit, discharge certificate, or identification card.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully and falsely (make) (forge) (alter by \_\_\_\_\_) (counterfeit) (tamper with by \_\_\_\_\_) (a certain instrument purporting to be) (a) (an) (another's) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (\_\_\_\_\_) in words and figures as follows \_\_\_\_\_.

(2) *Wrongful sale, gift, loan, or disposition of a military or official pass, permit, discharge certificate, or identification card.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (sell to \_\_\_\_\_) (give to \_\_\_\_\_) (loan to \_\_\_\_\_) (dispose of by \_\_\_\_\_) (a certain instrument purporting to be) (a) (an) (another's) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (\_\_\_\_\_) in words and figures as follows: \_\_\_\_\_, (he) (she), the said \_\_\_\_\_, then well knowing the same to be (false) (unauthorized).

(3) *Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (use) (possess) (with intent to (defraud) (deceive)) (a certain instrument purporting to be) (a) (an) (another's)

(naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (\_\_\_\_\_), (he) (she), the said \_\_\_\_\_, then well knowing the same to be (false) (unauthorized).

**39. Article 106 (10 U.S.C. 906)—Impersonation of officer, noncommissioned or petty officer, or agent or official**

a. *Text of statute.*

**(a) IN GENERAL.—Any person subject to this chapter who, wrongfully and willfully, impersonates—**

**(1) an officer, a noncommissioned officer, or a petty officer;**

**(2) an agent of superior authority of one of the armed forces; or**

**(3) an official of a government;**

**shall be punished as a court-martial may direct.**

**(b) IMPERSONATION WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and with intent to defraud, impersonates any person referred to in paragraph (1), (2), or (3) of subsection (a) shall be punished as a court-martial may direct.**

**(c) IMPERSONATION OF GOVERNMENT OFFICIAL WITHOUT INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused impersonated an officer, noncommissioned officer, or petty officer, or an agent of superior authority of one of the armed forces, or an official of a certain government, in a certain manner; and

(2) That the impersonation was wrongful and willful.

[Note 1: If intent to defraud is in issue, add the following element:]

(3) That the accused did so with the intent to defraud a certain person or organization in a certain manner.

[Note 2: If the accused is charged with impersonating an official of a certain government without an intent to defraud, use the following element:]



(3) That the accused committed one or more acts which exercised or asserted the authority of the office the accused claimed to have.

c. *Explanation.*

(1) *Nature of offense.* Impersonation does not depend upon the accused deriving a benefit from the deception or upon some third party being misled, although this is an aggravating factor.

(2) *Officer.* The term “officer” has the same meaning as that term carries in 10 U.S.C. § 101(b)(1).

(3) *Willfulness.* “Willful” means with the knowledge that one is falsely holding one’s self out as such.

(4) *Intent to defraud.* See subparagraph 70.c.(14).

d. *Maximum punishment.*

(1) With intent to defraud. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) All other cases. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully and willfully impersonate (a(n) (officer) (noncommissioned officer) (petty officer) (agent of superior authority) of the (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard)) (an official of the Government of \_\_\_\_\_) by (publicly wearing the uniform and insignia of rank of a (lieutenant of the \_\_\_\_\_) (\_\_\_\_)) (showing the credentials of \_\_\_\_\_) (\_\_\_\_) [\*with intent to defraud \_\_\_\_\_ by \_\_\_\_\_] [\*\*and (exercised) (asserted) the authority of \_\_\_\_\_ by \_\_\_\_\_].

[\*See subparagraph b note 1.]

[\*\*See subparagraph b note 2.]

**40. Article 106a (10 U.S.C. 906a)—Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button**

a. *Text of statute.*

**Any person subject to this chapter—**

**(1) who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and**

**(2) who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person’s uniform or civilian clothing; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused wore a certain insignia, decoration, badge, ribbon, device, or lapel button upon the accused’s uniform or civilian clothing;

(2) That the accused was not authorized to wear the item; and

(3) That the wearing was wrongful.

[Note: If applicable, add the following element]

(4) That the accused wore any of the following decorations: (Medal of Honor); (Distinguished Service Cross); (Navy Cross); (Air Force Cross); (Silver Star); (Purple Heart) (or any valor device on any personal award).

c. *Explanation.*

(1) *In general.* Authorization of the wearing of a military insignia, decoration, badge, ribbon, device, or lapel pin is governed by Department of Defense and Service regulations. The wearing of an item is “wrongful” where it is intentional and the accused knew that the accused was not entitled to wear it.

(2) *Scope of “unauthorized” wearing.* The wearing of an item is not unauthorized if the circumstances reveal it to be in jest or for an innocent or legitimate purpose—for instance, as part of a costume for dramatic or other reasons, or for legitimate law enforcement activities.

(3) *Wrongful.* Conduct is wrongful when it is done without legal justification or excuse. Actual knowledge that the accused was not authorized to wear the item in question is required. Knowledge may be proved by circumstantial evidence.

d. *Maximum punishment.*

(1) *Wrongful wearing of the Medal of Honor; Distinguished Service Cross; Navy Cross; Air Force Cross; Silver Star; Purple Heart; or a valor device on any personal award.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *All other cases.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if

required), on or about \_\_\_\_ 20 \_\_, wrongfully, without authority, wear upon (his) (her) (uniform) (civilian clothing) (the insignia or grade of a (master sergeant of \_\_\_\_\_) (chief gunner's mate of \_\_\_\_\_)) (Combat Infantryman Badge) (the Distinguished Service Cross) (the ribbon representing the Silver Star) (the lapel button representing the Legion of Merit) (\_\_\_\_\_).

**41. Article 107 (10 U.S.C. 907)—False official statements; false swearing**

*a. Text of statute.*

**(a) FALSE OFFICIAL STATEMENTS.—Any person subject to this chapter who, with intent to deceive—**

**(1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or**

**(2) makes any other false official statement knowing it to be false;**

**shall be punished as a court-martial may direct.**

**(b) FALSE SWEARING.—Any person subject to this chapter—**

**(1) who takes an oath that—**

**(A) is administered in a matter in which such oath is required or authorized by law; and**

**(B) is administered by a person with authority to do so; and**

**(2) who, upon such oath, makes or subscribes to a statement; if the statement is false and at the time of taking the oath, the person does not believe the statement to be true,**

**shall be punished as a court-martial may direct.**

*b. Elements.*

*(1) False official statements.*

(a) That the accused signed a certain official document or made a certain official statement;

(b) That the document or statement was false in certain particulars;

(c) That the accused knew it to be false at the time of signing it or making it; and

(d) That the false document or statement was made with the intent to deceive.

*(2) False swearing.*

(a) That the accused took an oath or equivalent;

(b) That the oath or equivalent was administered to the accused in a matter in which such oath or equivalent was required or authorized by law;

(c) That the oath or equivalent was administered by a person having authority to do so;

(d) That upon this oath or equivalent the accused made or subscribed a certain statement;

(e) That the statement was false; and

(f) That the accused did not then believe the statement to be true.

*c. Explanation.*

*(1) False official statements.*

(a) *Statements.* Statements may be made orally or in writing and include records, returns, regulations, orders, or other documents.

(b) *Official statements.* Official statements are those that affect military functions, which encompass matters within the jurisdiction of the military departments and Services. There are three broad categories of official statements under this offense:

(i) where the accused makes a statement while acting in the line of duty or where the statement bears a clear and direct relationship to the accused's official duties;

(ii) where the accused makes a statement to a military member who is carrying out a military duty at the time the statement is made; or

(iii) where the accused makes a statement to a civilian who is necessarily performing a military function at the time the accused makes the statement.

(c) *Status of victim of deception.* The rank or status of any person intended to be deceived is immaterial if that person was authorized in the execution of a particular duty to require or receive the statement from the accused. The Government may be the victim of this offense.

(d) *Intent to deceive.* The false representation must be made with the intent to deceive. It is not necessary that the false statement be material to the issue inquiry. If, however, the falsity is in respect to a material matter, it may be considered as some evidence of the intent to deceive, while immateriality may tend to show an absence of this intent.

(e) *Material gain.* The expectation of material gain is not an element of this offense. Such expectation or lack of it, however, is circumstantial evidence bearing on the element of intent to deceive.

(f) *Knowledge that the statement was false.* The false representation must be one which the accused actually knew was false. Actual knowledge may be proved by circumstantial evidence. An honest, although erroneous, belief that a statement made is true, is a defense.

(2) *False swearing.*

(a) *Nature of offense.* False swearing is the making under a lawful oath or equivalent of any false statement, oral or written, not believing the statement to be true. It does not include such statements made in a judicial proceeding or course of justice, as those are under Article 131, perjury (see paragraph 81). Unlike a false official statement, there is no requirement that the statement be made with an intent to deceive or that the statement be official.

(b) *Oath.* See Article 136 and R.C.M. 807 as to the authority to administer oaths, and see Section IX of Part III (Military Rules of Evidence) concerning proof of the signatures of persons authorized to administer oaths. An oath includes an affirmation when authorized in lieu of an oath.

d. *Maximum punishment.*

(1) *False official statement.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *False swearing.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specifications.*

(1) *False official statements.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with intent to deceive, [sign an official (record) (return) (\_\_\_\_)], to wit: \_\_\_\_\_ [make to \_\_\_\_\_, an official statement, to wit: \_\_\_\_\_], which (record) (return) (statement) (\_\_\_\_) was (totally false) (false in that \_\_\_\_\_), and was then known by the said \_\_\_\_\_ to be so false.

(2) *False swearing.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (in an affidavit) (in \_\_\_\_\_), (make) (subscribe) under lawful (oath) (affirmation) a false statement in substance as follows: \_\_\_\_\_, which statement (he) (she) did not then believe to be true.

**42. Article 107a (10 U.S.C. 907a)—Parole violation**

a. *Text of statute.*

**Any person subject to this chapter—**

**(1) who, having been a prisoner as the result of a court-martial conviction or other criminal proceeding, is on parole with conditions; and**

**(2) who violates the conditions of parole; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused was a prisoner as the result of a court-martial conviction or other criminal proceeding;

(2) That the accused was on parole;

(3) That there were certain conditions of parole that the parolee was bound to obey; and

(4) That the accused violated the conditions of parole by doing an act or failing to do an act.

c. *Explanation.*

(1) *“Prisoner”* refers only to those in confinement resulting from conviction at a court-martial or other criminal proceeding.

(2) *“Parole”* is defined as *“word of honor.”* A prisoner on parole, or parolee, has agreed to adhere to a parole plan and conditions of parole. A parole plan is a written or oral agreement made by the prisoner prior to parole to do or refrain from doing certain acts or activities. A parole plan may include a residence requirement stating where and with whom a parolee will live, and a requirement that the prisoner have an offer of guaranteed employment. Conditions of parole include the parole plan and other reasonable and appropriate conditions of parole, such as paying restitution, beginning or continuing treatment for alcohol or drug abuse, or paying a fine ordered executed as part of the prisoner’s court-martial sentence. In return for giving his or her word of honor to abide by a parole plan and conditions of parole, the prisoner is granted parole.

d. *Maximum punishment.* Bad-conduct discharge, confinement for 6 months, and forfeiture of two-thirds pay per month for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), a prisoner on parole, did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, violate the conditions of (his) (her) parole by \_\_\_\_\_.

**43. Article 108 (10 U.S.C. 908)—Military property of United States—Loss, damage, destruction, or wrongful disposition**

*a. Text of statute.*

**Any person subject to this chapter who, without proper authority—**

- (1) sells or otherwise disposes of;**
- (2) willfully or through neglect damages, destroys, or loses; or**
- (3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of; any military property of the United States, shall be punished as a court-martial may direct.**

*b. Elements.*

(1) *Selling or otherwise disposing of military property.*

(a) That the accused sold or otherwise disposed of certain property (which was a firearm or explosive);

(b) That the sale or disposition was without proper authority;

(c) That the property was military property of the United States; and

(d) That the property was of a certain value.

(2) *Damaging, destroying, or losing military property.*

(a) That the accused, without proper authority, damaged or destroyed certain property in a certain way, or lost certain property;

(b) That the property was military property of the United States;

(c) That the damage, destruction, or loss was willfully caused by the accused or was the result of neglect by the accused; and

(d) That the property was of a certain value or the damage was of a certain amount.

(3) *Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.*

(a) That certain property (which was a firearm or explosive) was lost, damaged, destroyed, sold, or wrongfully disposed of;

(b) That the property was military property of the United States;

(c) That the loss, damage, destruction, sale, or wrongful disposition was suffered by the accused, without proper authority, through a certain omission of duty by the accused;

(d) That the omission was willful or negligent; and

(e) That the property was of a certain value or the damage was of a certain amount.

*c. Explanation.*

(1) *Military property.* Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with Government property. The terms are not interchangeable. While all military property is Government property, not all Government property is military property. An item of Government property is not military property unless the item in question meets the definition provided in this paragraph. It is immaterial whether the property sold, disposed, destroyed, lost, or damaged had been issued to the accused, to someone else, or even issued at all. If it is proved by either direct or circumstantial evidence that items of individual issue were issued to the accused, it may be inferred, depending on all the evidence, that the damage, destruction, or loss proved was due to the neglect of the accused. Retail merchandise of Service exchange stores is not military property under this article.

(2) *Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.* “To suffer” means to allow or permit. The willful or negligent sufferance specified by this article includes: deliberate violation or intentional disregard of some specific law, regulation, or order; reckless or unwarranted personal use of the property; causing or allowing it to remain exposed to the weather, insecurely housed, or not guarded; permitting it to be consumed, wasted, or injured by other persons; or loaning it to a person, known to be irresponsible, by whom it is damaged.

(3) *Value and damage.* In the case of loss, destruction, sale, or wrongful disposition, the value of the property controls the maximum punishment which may be adjudged. In the case of damage, the amount of damage controls. As a general rule, the amount of damage is the estimated or actual cost of repair by the Government agency normally employed in such work, or the cost of replacement, as shown by Government price lists or otherwise, whichever is less.

(4) *Firearm or explosive.* For purposes of determining the maximum punishment for this offense (see subparagraphs d.(1)(b) and d.(3)(b)), the term “explosive” includes ammunition. See generally R.C.M. 103(11), (12).

*d. Maximum punishment.*

(1) Selling or otherwise disposing of military property.

(a) Of a value of \$1,000 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) Of a value of more than \$1,000 or any firearm or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) Through neglect damaging, destroying, or losing, or through neglect suffering to be lost, damaged, destroyed, sold, or wrongfully disposed of, military property.

(a) Of a value or damage of \$1,000 or less. Confinement for 6 months, and forfeiture of two-thirds pay per month for 6 months.

(b) Of a value or damage of more than \$1,000. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(3) Willfully damaging, destroying, or losing, or willfully suffering to be lost, damaged, destroyed, sold, or wrongfully disposed of, military property.

(a) Of a value or damage of \$1,000 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) Of a value or damage of more than \$1,000, or of any firearm or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specifications.*

(1) Selling or disposing of military property.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, (sell to \_\_\_\_\_) (dispose of by \_\_\_\_\_) \_\_\_\_\_, [(a firearm) (an explosive)] of a value of (about) \$ \_\_\_\_\_, military property of the United States.

(2) Damaging, destroying, or losing military property.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, (willfully) (through neglect) (damage by \_\_\_\_\_) (destroy by \_\_\_\_\_) (lose) \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, military property of the United States (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_).

(3) Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, without proper authority, (willfully) (through neglect) suffer \_\_\_\_\_, [(a firearm) (an explosive)] (of a value of (about) \$ \_\_\_\_\_) military property of the United States, to be (lost) (damaged by \_\_\_\_\_) (destroyed by \_\_\_\_\_) (sold to \_\_\_\_\_) (wrongfully disposed of by \_\_\_\_\_) (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_).

**44. Article 108a (10 U.S.C. 908a)—Captured or abandoned property**

a. *Text of statute.*

**(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.**

**(b) Any person subject to this chapter who—**

**(1) fails to carry out the duties prescribed in subsection (a);**

**(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or**

**(3) engages in looting or pillaging; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Failing to secure public property taken from the enemy.*

(a) That certain public property was taken from the enemy;

(b) That this property was of a certain value; and

(c) That the accused failed to do what was reasonable under the circumstances to secure this property for the service of the United States.

(2) *Failing to report and turn over captured or abandoned property.*

(a) That certain captured or abandoned public or private property came into the possession, custody, or control of the accused;

(b) That this property was of a certain value; and

(c) That the accused failed to give notice of its receipt and failed to turn over to proper authority, without delay, the captured or abandoned public or private property.

(3) *Dealing in captured or abandoned property.*

(a) That the accused bought, sold, traded, or otherwise dealt in or disposed of certain public or private captured or abandoned property;

(b) That this property was of certain value; and

(c) That by so doing the accused received or expected some profit, benefit, or advantage to the accused or to a certain person or persons connected directly or indirectly with the accused.

(4) *Looting or pillaging.*

(a) That the accused engaged in looting, pillaging, or looting and pillaging by unlawfully seizing or appropriating certain public or private property;

(b) That this property was located in enemy or occupied territory, or that it was on board a seized or captured vessel; and

(c) That this property was:

(i) left behind, owned by, or in the custody of the enemy, an occupied state, an inhabitant of an occupied state, or a person under the protection of the enemy or occupied state, or who, immediately prior to the occupation of the place where the act occurred, was under the protection of the enemy or occupied state; or

(ii) part of the equipment of a seized or captured vessel; or

(iii) owned by, or in the custody of the officers, crew, or passengers on board a seized or captured vessel.

c. *Explanation.*

(1) *Failing to secure public property taken from the enemy.*

(a) *Nature of property.* Unlike the remaining offenses under this article, failing to secure public property taken from the enemy involves only public property. Immediately upon its capture from the enemy public property becomes the property of the United States. Neither the person who takes it nor any other person has any private right in this property.

(b) *Nature of duty.* Every person subject to military law has an immediate duty to take such steps as are reasonably within that person's power to secure

public property for the service of the United States and to protect it from destruction or loss.

(2) *Failing to report and turn over captured or abandoned property.*

(a) *Reports.* Reports of receipt of captured or abandoned property are to be made directly or through such channels as are required by current regulations, orders, or the customs of the Service.

(b) *Proper authority.* "Proper authority" is any authority competent to order disposition of the property in question.

(3) *Dealing in captured or abandoned property.* "Disposed of" includes destruction or abandonment.

(4) *Looting or pillaging.* "Looting or pillaging" means unlawfully seizing or appropriating property which is located in enemy or occupied territory.

(5) *Enemy.* For a discussion of "enemy," see subparagraph 27.c.(1)(b).

(6) *Firearms or explosive.* For purposes of determining the maximum punishment for this offense (see subparagraph d.(1)(b)), the term "explosive" includes ammunition. See generally R.C.M. 103(11), (12).

d. *Maximum punishment.*

(1) *Failing to secure public property taken from the enemy; failing to secure, give notice and turn over, selling, or otherwise wrongfully dealing in or disposing of captured or abandoned property:*

(a) *Of a value of \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *Of a value of more than \$1,000 or any firearm or explosive.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Looting or pillaging.* Any punishment, other than death, that a court-martial may direct.

e. *Sample specifications.*

(1) *Failing to secure public property taken from the enemy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, fail to secure for the service of the United States certain public property taken from the enemy, to wit: \_\_, of a value of (about) \$ \_\_\_\_.

(2) *Failing to report and turn over captured or abandoned property.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, fail to give notice and turn over to proper authority without delay certain (captured) (abandoned) property which had come into (his) (her) (possession) (custody) (control), to wit: \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_.

(3) *Dealing in captured or abandoned property.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, (buy) (sell) (trade) (deal in) (dispose of) ( ) certain (captured) (abandoned) property, to wit: \_\_\_\_\_, (a firearm) (an explosive), of a value of (about) \$ \_\_\_\_\_, thereby (receiving) (expecting) a (profit) (benefit) (advantage) to (himself/herself) (\_\_\_\_\_, (his) (her) accomplice) (\_\_\_\_\_, (his) (her) brother) (\_\_\_\_\_).

(4) *Looting or pillaging.*

In that (personal jurisdiction data), did, (at/onboard—location) (subject-matter jurisdiction, if required), on or about (date), engage in (looting) (and) (pillaging) by unlawfully (seizing) (appropriating) \_\_\_\_\_, (property which had been left behind) (the property of \_\_\_\_\_), [(an inhabitant of \_\_\_\_\_) (\_\_\_\_\_)].

**45. Article 109 (10 U.S.C. 909)—Property other than military property of United States—waste, spoilage, or destruction**

a. *Text of statute.*

**Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Wasting or spoiling of non-military property.*

(a) That the accused willfully or recklessly wasted or spoiled certain real property in a certain manner;

(b) That the property was that of another person; and

(c) That the property was of a certain value.

(2) *Damaging non-military property.*

(a) That the accused willfully and wrongfully damaged certain personal property in a certain manner;

(b) that the property was that of another person; and

(c) that the damage inflicted on the property was of a certain amount.

(3) *Destroying non-military property.*

(a) That the accused willfully and wrongfully destroyed certain personal property in a certain manner;

(b) That the property was that of another person; and

(c) That the property was of a certain value.

c. *Explanation.*

(1) *Wasting or spoiling non-military property.* This portion of Article 109 proscribes willful or reckless waste or spoliation of the real property of another. The terms “wastes” and “spoils” as used in this article refer to such wrongful acts of voluntary destruction of or permanent damage to real property as burning down buildings, burning piers, tearing down fences, or cutting down trees. This destruction is punishable whether done willfully, that is intentionally, recklessly, or is through a culpable disregard of the foreseeable consequences of some voluntary act.

(2) *Destroying or damaging non-military property.* This portion of Article 109 proscribes the willful and wrongful destruction or damage of the personal property of another. To be destroyed, the property need not be completely demolished or annihilated, but must be sufficiently injured to be useless for its intended purpose. Damage consists of any physical injury to the property. To constitute an offense under this section, the destruction or damage of the property must have been willful and wrongful. As used in this section “willfully” means intentionally and “wrongfully” means contrary to law, regulation, lawful order, or custom. Willfulness may be proved by circumstantial evidence, such as the manner in which the acts were done.

(3) *Value and damage.* In the case of destruction, the value of the property destroyed controls the maximum punishment which may be adjudged. In the case of damage, the amount of the damage controls. As a general rule, the amount of damage is the estimated or actual cost of repair by artisans employed in this work who are available to the community wherein the owner resides, or the replacement cost, whichever is less. See also subparagraph 64.c.(1)(g).

d. *Maximum punishment.*

(1) *Wasting or spoiling, non-military property—real property.*

(a) *Of property valued at \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) *Of property valued at more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Damaging any property other than military property of the United States.*

(a) *Inflicting damage of \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) *Inflicting damage of more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Destroying any property other than military property of the United States.*

(a) *Destroying property valued at \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) *Destroying property valued at more than \$1,000.* Dishonorable discharge; forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Wasting or spoiling real property other than military property of the United States.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, [(willfully) recklessly) waste \_\_\_\_\_] [(willfully) (recklessly) spoil \_\_\_\_\_] (of a value of (about) \$ \_\_\_\_\_) (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_), the property of \_\_\_\_\_.

(2) *Damaging any property other than military property of the United States.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully and wrongfully damage by (method of damage) (identify property damaged \_\_\_\_\_) (the amount of said damage being in the sum of (about) \$ \_\_\_\_\_), the property of \_\_\_\_\_.

(3) *Destroying personal property other than military property of the United States.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully and wrongfully destroy (identify property destroyed

\_\_\_\_\_), of a value of (about) \$ \_\_\_\_\_ the property of \_\_\_\_\_.

**46. Article 109a (10 U.S.C. 909a)—Mail matter: wrongful taking, opening, etc.**

a. *Text of statute.*

**(a) TAKING.—Any person subject to this chapter who, with the intent to obstruct the correspondence of, or to pry into the business or secrets of, any person or organization, wrongfully takes mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.**

**(b) OPENING, SECRETING, DESTROYING, STEALING.—Any person subject to this chapter who wrongfully opens, secretes, destroys, or steals mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Taking.*

(a) That the accused took certain mail matter;

(b) That such taking was wrongful;

(c) That the mail matter was taken by the accused before it was delivered to or received by the addressee; and

(d) That such taking was with the intent to obstruct the correspondence or pry into the business or secrets of any person or organization.

(2) *Opening, secreting, destroying, or stealing.*

(a) That the accused opened, secreted, destroyed, or stole certain mail matter;

(b) That such opening, secreting, destroying, or stealing was wrongful; and

(c) That the mail matter was opened, secreted, destroyed, or stolen by the accused before it was delivered to or received by the addressee.

c. *Explanation.* These offenses are intended to protect the mail and mail system. “Mail matter” means any matter deposited in a postal system of any government or any authorized depository thereof or in official mail channels of the United States or an agency thereof including the armed forces. The value of the mail matter is not an element. See subparagraph 64.c.(1) concerning “steal.”



d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Taking.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully take certain mail matter, to wit: (a) (letter(s)) (postal card(s)) (package(s)), addressed to \_\_\_\_\_, (out of the (\_\_\_\_\_ Post Office \_\_\_\_\_) (orderly room of \_\_\_\_\_) (unit mail box of \_\_\_\_\_) (\_\_\_\_\_)) (from \_\_\_\_\_) before (it) (they) (was) (were) (delivered) (actually received) (to) (by) the (addressee) with intent to (obstruct the correspondence) (pry into the (business) (secrets)) of \_\_\_\_\_.

(2) *Opening, secreting, destroying, or stealing.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20 \_\_, (wrongfully (open) (secret) (destroy)) (steal) certain mail matter, to wit: (a) (letter(s)) (postal card(s)) (package(s)) addressed to \_\_\_\_\_, which said (letter(s)) (\_\_\_\_\_ (was) (were) then (in (the \_\_\_\_\_ Post Office \_\_\_\_\_) (orderly room of \_\_\_\_\_) (unit mail box of \_\_\_\_\_) (custody of \_\_\_\_\_) (\_\_\_\_\_)) (had previously been committed to \_\_\_\_\_, (a representative of \_\_\_\_\_, (an official agency for the transmission of communications)) before said (letter(s)) (\_\_\_\_\_ (was) (were) (delivered) (actually received) (to) (by) the (addressee).

#### 47. Article 110 (10 U.S.C. 910)—Improper hazarding of vessel or aircraft

a. *Text of statute.*

**(a) WILLFUL AND WRONGFUL HAZARDING.**—Any person subject to this chapter who, willfully and wrongfully, hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished by death or such other punishment as a court-martial may direct.

**(b) NEGLIGENT HAZARDING.**—Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished as a court-martial may direct.

b. *Elements.*

(1) That a vessel or aircraft of the armed forces was hazarded in a certain manner; and

(2) That the accused by certain acts or omissions, willfully and wrongfully, or negligently, caused or suffered the vessel or aircraft to be hazarded.

c. *Explanation.*

(1) *Hazard.* “Hazard” means to put in danger of loss or injury. Actual damage to, or loss of, a vessel or aircraft of the armed forces by collision, stranding, running upon a shoal or a rock, or by any other cause, is conclusive evidence that the vessel or aircraft was hazarded but not of the fact of culpability on the part of any particular person. “Strand” means run a vessel aground so that the vessel is fast for a time.

(2) *Willfully and wrongfully.* As used in this article, “willfully” means intentionally and “wrongfully” means contrary to law, regulation, lawful order, or custom.

(3) *Negligence.* “Negligence” as used in this article means the failure to exercise the care, prudence, or attention to duties which the interests of the Government require a prudent and reasonable person to exercise under the circumstances. This negligence may consist of the omission to do something the prudent and reasonable person would have done, or the doing of something which such a person would not have done under the circumstances. No person is relieved of culpability who fails to perform such duties as are imposed by the general responsibilities of that person’s grade or rank, or by the customs of the Service for the safety and protection of vessels and aircraft of the armed forces, simply because these duties are not specifically enumerated in a regulation or order. However, a mere error in judgment that a reasonably able person might have committed under the same circumstances does not constitute an offense under this article.

(4) *Suffer.* “To suffer” means to allow or permit. A ship or aircraft is willfully suffered to be hazarded by one who, although not in direct control of the vessel or aircraft, knows a danger to be imminent but takes no steps to prevent it, for example, as by a navigator of a ship under way who fails to report to the officer of the deck a radar target which is observed to be on a collision course with, and dangerously close to, the ship, or an aircraft’s copilot or navigator who similarly fails to report an imminent danger. A suffering through neglect implies an omission to take such measures as were appropriate under the circumstances to prevent a foreseeable danger.

(5) *Vessel*. See 1 U.S.C. § 3.

(6) *Aircraft*. See 18 U.S.C. § 31(a)(1). Additionally, aircraft includes remotely piloted aircraft and unmanned aerial vehicles.

d. *Maximum punishment*.

(1) *Willfully and wrongfully*. Death or such other punishment as a court-martial may direct.

(2) *Negligently*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specifications*.

(1) *Hazarding or suffering to be hazarded any vessel or aircraft, willfully and wrongfully*.

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), did, on \_\_\_\_\_ 20 \_\_, while serving as \_\_\_\_\_ (aboard) (on) the \_\_\_\_\_ in the vicinity of \_\_\_\_\_, willfully and wrongfully (hazard the said (vessel) (aircraft)) (suffer the said (vessel) (aircraft)) to be hazarded) by (causing the said (vessel) (aircraft) to collide with \_\_\_\_\_) (allowing the said vessel to run aground) (allowing said aircraft to ) (\_\_\_\_\_).

(2) *Hazarding of vessel or aircraft, negligently*.

(a) *Example 1*.

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), on \_\_\_\_\_ 20 \_\_, while serving (in command of the \_\_\_\_\_) (as the pilot of \_\_\_\_\_), (making entrance to (Boston Harbor)) (approaching (\_\_\_\_\_ Air Force Base) (\_\_\_\_\_ Air Field)) did negligently hazard the said (vessel) (aircraft) by failing and neglecting to maintain or cause to be maintained an accurate (running plot of the true position) (location) of said (vessel) (aircraft) while making said approach, as a result of which neglect the said \_\_\_\_\_, at or about \_\_\_\_\_, hours on the day aforesaid, became (stranded) (\_\_\_\_\_ ) in the vicinity of (Channel Buoy Number Three) (\_\_\_\_\_ runway) (\_\_\_\_\_).

(b) *Example 2*.

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), on \_\_\_\_\_ 20 \_\_, while serving as navigator of the \_\_\_\_\_, cruising on special service in the \_\_\_\_\_ Ocean off the coast of \_\_\_\_\_, notwithstanding the fact that at about midnight, \_\_\_\_\_ 20 \_\_, the northeast point of \_\_\_\_\_ Island bore abeam and was about six miles distant, the said ship being then under way and making a speed of about ten knots, and well knowing the

position of the said ship at the time stated, and that the charts of the locality were unreliable and the currents thereabouts uncertain, did then and there negligently hazard the said vessel or aircraft by failing and neglecting to exercise proper care and attention in navigating said ship while approaching \_\_\_\_\_ Island, in that (he) (she) neglected and failed to lay a course that would carry said ship clear of the last aforesaid island, and to change the course in due time to avoid disaster; and the said ship, as a result of said negligence on the part of said \_\_\_\_\_, ran upon a rock off the southwest coast of \_\_\_\_\_ Island, at about \_\_\_\_\_ hours, \_\_\_\_\_, 20 \_\_, in consequence of which the said \_\_\_\_\_ was lost.

(c) *Example 3*.

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), on \_\_\_\_\_ 20 \_\_, while serving as navigator of the \_\_\_\_\_ and well knowing that at about sunset of said day the said ship had nearly run her estimated distance from the \_\_\_\_\_ position, obtained and plotted by (him) (her), to the position of \_\_\_\_\_, and well knowing the difficulty of sighting \_\_\_\_\_, from a safe distance after sunset, did then and there negligently hazard the said vessel by failing and neglecting to advise (his) (her) commanding officer to lay a safe course for said ship to the northward before continuing on a westerly course, as it was the duty of said \_\_\_\_\_ to do; in consequence of which the said ship was, at about \_\_\_\_\_ hours on the day above mentioned, run upon \_\_\_\_\_ bank in the \_\_\_\_\_ Sea, about latitude \_\_ degrees, \_\_ minutes, north, and longitude \_\_ degrees, \_\_ minutes, west, and seriously injured.

(3) *Suffering a vessel or aircraft to be hazarded, negligently*.

(a) *Example 1*.

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), while serving as combat intelligence center officer on board the \_\_\_\_\_, making passage from Boston to Philadelphia, and having, between \_\_\_\_\_ and \_\_\_\_\_ hours on \_\_\_\_\_, 20 \_\_, been duly informed of decreasing radar ranges and constant radar bearing indicating that the said \_\_\_\_\_ was upon a collision course approaching a radar target, did then and there negligently suffer the said vessel or aircraft to be hazarded by failing and neglecting to report said collision course with said radar target to the officer of the deck, as it was (his) (her) duty to do, and (he) (she),

the said \_\_\_\_\_, through negligence, did cause the said \_\_\_\_\_ to collide with the \_\_\_\_\_ at or about \_\_\_\_\_ hours on said date, with resultant damage to \_\_\_\_\_.

(b) *Example 2.*

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction, if required), while serving as (navigator) (\_\_\_\_\_) on \_\_\_\_\_, transiting from (\_\_\_\_\_ Air Force Base) to (\_\_\_\_\_ Air Force Base), and having, between \_\_\_\_\_ and \_\_\_\_\_ hours on \_\_\_\_\_, 20 \_\_\_\_, becoming aware of (inclement weather conditions) (inaccurate fuel calculations) threatening said aircraft, did then and there negligently suffer the said aircraft to be hazarded by failing and neglecting to report said (weather conditions) (inaccurate fuel calculations) to the (pilot) (copilot), as it was (his) (her) duty to do, the said (navigator) (\_\_\_\_\_), through negligence, did cause the said aircraft to \_\_\_\_\_, at or about \_\_\_\_\_ hours on said date, with resultant damage to wit: \_\_\_\_\_.

#### 48. Article 111 (10 U.S.C. 911)—Leaving scene of vehicle accident

a. *Text of statute.*

(a) **DRIVER.**—Any person subject to this chapter—

(1) who is the driver of a vehicle that is involved in an accident that results in personal injury or property damage; and

(2) who wrongfully leaves the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

(b) **SENIOR PASSENGER.**—Any person subject to this chapter—

(1) who is a passenger in a vehicle that is involved in an accident that results in personal injury or property damage;

(2) who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and

(3) who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Driver.*

(a) That the accused was the driver of a vehicle;

(b) That while the accused was driving the vehicle was involved in an accident;

(c) That the accused knew that the vehicle had been in an accident;

(d) That the accused left the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) or (providing identification); and

(e) That such leaving was wrongful.

(2) *Senior passenger.*

(a) That the accused was a passenger in a vehicle which was involved in an accident;

(b) That the accused knew that said vehicle had been in an accident; and

(c) That the accused was the superior commissioned or noncommissioned officer of the driver, or commander of the vehicle, and wrongfully and unlawfully ordered, caused, or permitted the driver to leave the scene of the accident without (providing assistance to the victim who had been struck (and injured) by the said vehicle) (or) (providing identification).

c. *Explanation.*

(1) *Nature of offense.* This offense covers “hit and run” situations where there is damage to property other than the driver’s vehicle or injury to someone other than the driver or a passenger in the driver’s vehicle. It also covers accidents caused by the accused, even if the accused’s vehicle does not contact other people, vehicles, or property.

(2) *Knowledge.* Actual knowledge that an accident has occurred is an essential element of this offense. Actual knowledge may be proved by circumstantial evidence.

(3) *Passenger*. A passenger other than a senior passenger may also be liable under this paragraph. See paragraph 1 of this Part.

d. *Maximum punishment*. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specification*.

In that \_\_\_\_\_ (personal jurisdiction data), [the driver of] [\*a passenger in] [the senior officer/noncommissioned officer in] (\_\_\_\_ in) a vehicle at the time of an accident in which said vehicle was involved, and having knowledge of said accident, did, at \_\_\_\_\_ (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_ [wrongfully leave] [\*by \_\_\_\_\_, assist the driver of the said vehicle in wrongfully leaving] [wrongfully order, cause, or permit the driver to leave] the scene of the accident without (providing assistance to \_\_\_\_\_, who had been struck (and injured) by the said vehicle) (making (his) (her) (the driver's) identity known).

[\*Note: This language should be used when the accused was a passenger and is charged as a principal. See paragraph 1 of this Part.]

#### 49. Article 112 (10 U.S.C. 912)—Drunkness and other incapacitation offenses

a. *Text of statute*.

(a) **DRUNK ON DUTY.**—Any person subject to this chapter who is drunk on duty shall be punished as a court-martial may direct.

(b) **INCAPACITATION FOR DUTY FROM DRUNKENNESS OR DRUG USE.**—Any person subject to this chapter who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.

(c) **DRUNK PRISONER.**—Any person subject to this chapter who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.

b. *Elements*.

(1) *Drunk on duty*.

- (a) That the accused was on a certain duty; and
- (b) That the accused was drunk while on this duty.

(2) *Incapacitation for duty from drunkness or drug use*.

- (a) That the accused had certain duties to perform;

(b) That the accused was incapacitated for the proper performance of such duties; and

(c) That such incapacitation was the result of previous indulgence in intoxicating liquor or any drug.

(3) *Drunk prisoner*.

(a) That the accused was a prisoner; and

(b) That while in such status the accused was drunk.

c. *Explanation*.

(1) *Drunk on duty*.

(a) *Drunk*. “Drunk” means—

(i) the state of intoxication by alcohol that is sufficient to impair the rational and full exercise of mental or physical faculties; or

(ii) the state of meeting or exceeding a blood alcohol content limit with respect to alcohol concentration in a person's blood of 0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath of 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

(b) *Duty*. “Duty” as used in this article means military duty. Every duty which an officer or enlisted person may legally be required by superior authority to execute is necessarily a military duty. Within the meaning of this article, when in the actual exercise of command, the commander of a post, or of a command, or of a detachment in the field is constantly on duty, as is the commanding officer on board a ship. In the case of other officers or enlisted persons, “on duty” relates to duties or routine or detail, in garrison, at a station, or in the field, and does not relate to those periods when, no duty being required of them by orders or regulations, officers and enlisted persons occupy the status of leisure known as “off duty” or “on liberty.” In a region of active hostilities, the circumstances are often such that all members of a command may properly be considered as being continuously on duty within the meaning of this article. So also, an officer of the day and members of the guard, or of the watch, are on duty during their entire tour within the meaning of this article.

(c) *Nature of offense*. It is necessary that the accused be drunk while actually on the duty alleged, and the fact the accused became drunk before going on duty, although material in extenuation, does not affect the question of guilt. If, however, the accused does not undertake the responsibility or enter upon the duty at all, the accused's conduct does not fall within the terms

of this article, nor does that of a person who absents himself or herself from duty and is drunk while so absent. Included within the article is drunkenness while on duty of an anticipatory nature such as that of an aircraft crew ordered to stand by for flight duty, or of an enlisted person ordered to stand by for guard duty.

(d) *Defenses.* If the accused is known by superior authorities to be drunk at the time a duty is assigned, and the accused is thereafter allowed to assume that duty anyway, or if the drunkenness results from an accidental over dosage administered for medicinal purposes, the accused will have a defense to this offense.

(2) *Incapacitation for duty from drunkenness or drug use.*

(a) *Incapacitated.* “Incapacitated” means unfit or unable to properly perform duties as a result of previous alcohol consumption or drug use. Illness resulting from previous indulgence is an example of being “unable” to perform duties.

(b) *Affirmative defense.* The accused’s lack of knowledge of the duties assigned is an affirmative defense to this offense.

(3) *Drunk prisoner.*

(a) *Prisoner.* See subparagraph 24.c.(1).

(b) *Drunk.* See subparagraph 49.c.(1)(a).

d. *Maximum punishment.*

(1) *Drunk on duty.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 9 months.

(2) *Incapacitation for duty from drunkenness or drug use.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(3) *Drunk prisoner.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

e. *Sample specifications.*

(1) *Drunk on duty.*

In that \_\_\_\_\_ (personal jurisdiction data), was, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, found drunk while on duty as \_\_\_\_\_.

(2) *Incapacitation for duty from drunkenness or drug use.*

In that \_\_\_\_\_ (personal jurisdiction data), was, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, as a result of previous overindulgence in intoxicating liquor or drugs

incapacitated for the proper performance of (his) (her) duties.

(3) *Drunk prisoner.*

In that \_\_\_\_\_ (personal jurisdiction data), a prisoner, was (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, found drunk.

## 50. Article 112a (10 U.S.C. 912a)—Wrongful use, possession, etc., of controlled substances

a. *Text of statute.*

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. § 812).

b. *Elements.*

(1) *Wrongful possession of controlled substance.*

(a) That the accused possessed a certain amount of a controlled substance; and

(b) That the possession by the accused was wrongful.

(2) *Wrongful use of controlled substance.*

(a) That the accused used a controlled substance; and

(b) That the use by the accused was wrongful.

(3) *Wrongful distribution of controlled substance.*

(a) That the accused distributed a certain amount of a controlled substance; and

(b) That the distribution by the accused was wrongful.

(4) *Wrongful introduction of a controlled substance.*

(a) That the accused introduced onto a vessel, aircraft, vehicle, or installation used by the armed forces or under the control of the armed forces a certain amount of a controlled substance; and

(b) That the introduction was wrongful.

(5) *Wrongful manufacture of a controlled substance.*

(a) That the accused manufactured a certain amount of a controlled substance; and

(b) That the manufacture was wrongful.

(6) *Wrongful possession, manufacture, or introduction of a controlled substance with intent to distribute.*

(a) That the accused (possessed) (manufactured) (introduced) a certain amount of a controlled substance;

(b) That the (possession) (manufacture) (introduction) was wrongful; and

(c) That the (possession) (manufacture) (introduction) was with the intent to distribute.

(7) *Wrongful importation or exportation of a controlled substance.*

(a) That the accused (imported into the customs territory of) (exported from) the United States a certain amount of a controlled substance; and

(b) That the (importation) (exportation) was wrongful.

[Note: When any of the aggravating circumstances listed in subparagraph d. is alleged, it must be listed as an element.]

c. *Explanation.*

(1) *Controlled substance.* “Controlled substance” means amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana, methamphetamine, opium, phencyclidine, and barbituric acid, including phenobarbital and secobarbital. “Controlled substance” also means any substance that is included in Schedules I through V established by the Controlled Substances Act of 1970 (21 U.S.C. § 812).

(2) *Possess.* “Possess” means to exercise control of something. Possession may be direct physical custody like holding an item in one’s hand, or it may be constructive, as in the case of a person who hides an item in a locker or car to which that person may return to retrieve it. Possession must be knowing and

conscious. Possession inherently includes the power or authority to preclude control by others. It is possible, however, for more than one person to possess an item simultaneously, as when several people share control of an item. An accused may not be convicted of possession of a controlled substance if the accused did not know that the substance was present under the accused’s control. Awareness of the presence of a controlled substance may be inferred from circumstantial evidence.

(3) *Distribute, deliver.* “Distribute” means to deliver to the possession of another. “Deliver” means the actual, constructive, or attempted transfer of an item, whether or not there exists an agency relationship.

(4) *Manufacture.* “Manufacture” means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container. Production, as used in this subparagraph, includes the planting, cultivating, growing, or harvesting of a drug or other substance.

(5) *Wrongfulness.* To be punishable under Article 112a, possession, use, distribution, introduction, or manufacture of a controlled substance must be wrongful. Possession, use, distribution, introduction, or manufacture of a controlled substance is wrongful if it is without legal justification or authorization. Possession, distribution, introduction, or manufacture of a controlled substance is not wrongful if such act or acts are: (A) done pursuant to legitimate law enforcement activities (for example, an informant who receives drugs as part of an undercover operation is not in wrongful possession); (B) done by authorized personnel in the performance of medical duties; or (C) without knowledge of the contraband nature of the substance (for example, a person who possesses cocaine, but actually believes it to be sugar, is not guilty of wrongful possession of cocaine). Possession, use, distribution, introduction, or manufacture of a controlled substance may be inferred to be wrongful in the absence of evidence to the contrary. The burden of going forward with evidence with respect to any such exception in any court-martial or other proceeding under the UCMJ shall be upon the person claiming its benefit. If such an issue is raised by the evidence presented, then the burden of proof is upon the United

States to establish that the use, possession, distribution, manufacture, or introduction was wrongful.

(6) *Intent to distribute.* Intent to distribute may be inferred from circumstantial evidence. Examples of evidence which may tend to support an inference of intent to distribute are: possession of a quantity of substance in excess of that which one would be likely to have for personal use; market value of the substance; the manner in which the substance is packaged; and that the accused is not a user of the substance. On the other hand, evidence that the accused is addicted to or is a heavy user of the substance may tend to negate an inference of intent to distribute.

(7) *Certain amount.* When a specific amount of a controlled substance is believed to have been possessed, distributed, introduced, or manufactured by an accused, the specific amount should ordinarily be alleged in the specification. It is not necessary to allege a specific amount, however, and a specification is sufficient if it alleges that an accused possessed, distributed, introduced, or manufactured “some,” “traces of,” or “an unknown quantity of” a controlled substance.

(8) *Missile launch facility.* A missile launch facility includes the place from which missiles are fired and launch control facilities from which the launch of a missile is initiated or controlled after launch.

(9) *Customs territory of the United States.* Customs territory of the United States includes only the States, the District of Columbia, and Puerto Rico.

(10) *Use.* “Use” means to inject, ingest, inhale, or otherwise introduce into the human body, any controlled substance. Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused’s body or from other circumstantial evidence. This permissive inference may be legally sufficient to satisfy the Government’s burden of proof as to knowledge.

(11) *Deliberate ignorance.* An accused who consciously avoids knowledge of the presence of a controlled substance or the contraband nature of the substance is subject to the same criminal liability as one who has actual knowledge.

d. *Maximum punishment.*

(1) *Wrongful use, possession, manufacture, or introduction of controlled substance.*

(a) *Amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana (except possession of less than 30 grams or use of marijuana), methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, III controlled substances.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(b) *Marijuana (possession of less than 30 grams or use), phenobarbital, and Schedule IV and V controlled substances.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Wrongful distribution, possession, manufacture, or introduction of controlled substance with intent to distribute, or wrongful importation or exportation of a controlled substance.*

(a) *Amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana, methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, and III controlled substances.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(b) *Phenobarbital and Schedule IV and V controlled substances.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

When any offense under this paragraph is committed; while the accused is on duty as a sentinel or lookout; on board a vessel or aircraft used by or under the control of the armed forces; in or at a missile launch facility used by or under the control of the armed forces; while receiving special pay under 37 U.S.C. § 310; in time of war; or in a confinement facility used by or under the control of the armed forces, the maximum period of confinement authorized for such offense shall be increased by 5 years.

e. *Sample specifications.*

(1) *Wrongful possession, manufacture, or distribution of controlled substance.*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20 \_\_, wrongfully (possess) (distribute) (manufacture) \_\_\_\_\_ (grams) (ounces) (pounds) (\_\_\_\_\_) of \_\_\_\_\_ (a schedule (\_\_\_\_\_) controlled substance), (with the intent to distribute the said controlled substance) (while on duty as a sentinel or lookout) (while (on board a vessel/aircraft) (in or at a missile launch facility) used by the armed forces or under the control of the armed

forces, to wit: \_\_\_\_\_) (while receiving special pay under 37 U.S.C. § 310) (during time of war).

*(2) Wrongful use of controlled substance.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20 \_\_, wrongfully use \_\_\_\_\_ (a Schedule \_\_ controlled substance) (while on duty as a sentinel or lookout) (while (on board a vessel/aircraft) (in or at a missile launch facility) used by the armed forces or under the control of the armed forces, to wit: \_\_\_\_\_) (while receiving special pay under 37 U.S.C. § 310) (during time of war).

*(3) Wrongful introduction of controlled substance.*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20 \_\_, wrongfully introduce \_\_\_\_\_ (grams) (ounces) (pounds) (\_\_\_\_\_) of \_\_\_\_\_ (a Schedule (\_\_\_\_\_) controlled substance) onto a vessel, aircraft, vehicle, or installation used by the armed forces or under control of the armed forces, to wit: \_\_\_\_\_ (with the intent to distribute the said controlled substance) (while on duty as a sentinel or lookout) (while receiving special pay under 37 U.S.C. § 310) (during a time of war).

*(4) Wrongful importation or exportation of controlled substance.*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20 \_\_, wrongfully (import) (export) \_\_\_\_\_ (grams) (ounces) (pounds) (\_\_\_\_\_) of \_\_\_\_\_ (a Schedule (\_\_\_\_\_) controlled substance) (into the customs territory of) (from) the United States (while on board a vessel/aircraft used by the armed forces or under the control of the armed forces, to wit: \_\_\_\_\_) (during time of war).

**51. Article 113 (10 U.S.C. 913)—Drunken or reckless operation of a vehicle, aircraft, or vessel**

*a. Text of statute.*

**(a) Any person subject to this chapter who—**

**(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or**

**(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b), shall be punished as a court-martial may direct.**

**(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:**

**(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of—**

**(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or**

**(ii) the blood alcohol content limit specified in paragraph (3).**

**(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.**

**(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.**

**(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis. The Secretary may by regulation prescribe limits that are lower than the limits specified in the preceding sentence, if such lower limits are based on scientific developments, as reflected in Federal law of general applicability.**

**(4) In this subsection:**

**(A) The term “blood alcohol content limit” means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.**

**(B) The term “United States” includes the District of Columbia, the Commonwealth of Puerto**



**Rico, the Virgin Islands, Guam, and American Samoa and the term “State” includes each of those jurisdictions.**

*b. Elements.*

(1) That the accused was operating or in physical control of a vehicle, aircraft, or vessel; and

(2) That while operating or in physical control of a vehicle, aircraft, or vessel, the accused—

(a) did so in a wanton or reckless manner; or

(b) was drunk or impaired; or

(c) the alcohol concentration in the accused’s blood or breath equaled or exceeded the applicable limit under Article 113(b).

[Note: Add the following if applicable]

(3) That the accused thereby caused the vehicle, aircraft, or vessel to injure a person.

*c. Explanation.*

(1) *Vehicle.* See 1 U.S.C. § 4.

(2) *Vessel.* See 1 U.S.C. § 3.

(3) *Aircraft.* See 18 U.S.C. § 31(a)(1).

(4) *Operates.* Operating a vehicle, aircraft, or vessel includes not only driving or guiding a vehicle, aircraft, or vessel while it is in motion, either in person or through the agency of another, but also setting of its motive power in action or the manipulation of its controls so as to cause the particular vehicle, aircraft, or vessel to move.

(5) *Physical control and actual physical control.* These terms as used in the statute are synonymous. They describe the present capability and power to dominate, direct, or regulate the vehicle, vessel, or aircraft, either in person or through the agency of another, regardless of whether such vehicle, aircraft, or vessel is operated. For example, the intoxicated person seated behind the steering wheel of a vehicle with the keys of the vehicle in or near the ignition but with the engine not turned on could be deemed in actual physical control of that vehicle. However, the person asleep in the back seat with the keys in his or her pocket would not be deemed in actual physical control. Physical control necessarily encompasses operation.

(6) *Drunk or impaired.* Drunk and impaired mean any intoxication which is sufficient to impair the rational and full exercise of the mental or physical faculties. The term drunk is used in relation to intoxication by alcohol. The term impaired is used in relation to intoxication by a substance described in Article 112(a).

(7) *Reckless.* The operation or physical control of a vehicle, vessel, or aircraft is reckless when it exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. Recklessness is not determined solely by reason of the happening of an injury, or the invasion of the rights of another, nor by proof alone of excessive speed or erratic operation, but all these factors may be admissible and relevant as bearing upon the ultimate question: whether, under all the circumstances, the accused’s manner of operation or physical control of the vehicle, vessel, or aircraft was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others. It is operating or physically controlling a vehicle, vessel, or aircraft with such a high degree of negligence that if death were caused, the accused would have committed involuntary manslaughter, at least. The nature of the conditions in which the vehicle, vessel, or aircraft is operated or controlled, the time of day or night, the proximity and number of other vehicles, vessels, or aircraft and the condition of the vehicle, vessel, or aircraft, are often matters of importance in the proof of an offense charged under this article and, where they are of importance, may properly be alleged.

(8) *Wanton.* Wanton includes “reckless,” but in describing the operation or physical control of a vehicle, vessel, or aircraft, wanton may, in a proper case, connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(9) *Causation.* The accused’s drunken or reckless driving must be a proximate cause of injury for the accused to be guilty of drunken or reckless driving resulting in personal injury. To be proximate, the accused’s actions need not be the sole cause of the injury, nor must they be the immediate cause of the injury, that is, the latest in time and space preceding the injury. A contributing cause is deemed proximate only if it plays a material role in the victim’s injury.

(10) *Separate offenses.* While the same course of conduct may constitute violations of both paragraphs (a)(1) and (2) of Article 113, e.g., both drunken and reckless operation or physical control, this article proscribes the conduct described in both paragraphs (a)(1) and (2) as separate offenses, which may be charged separately. However, as recklessness is a relative matter, evidence of all the surrounding circumstances that made the operation dangerous, whether alleged or not, may be admissible. Thus, on a charge of reckless driving, for example, evidence of

drunkenness might be admissible as establishing one aspect of the recklessness, and evidence that the vehicle exceeded a safe speed, at a relevant prior point and time, might be admissible as corroborating other evidence of the specific recklessness charged. Similarly, on a charge of drunken driving, relevant evidence of recklessness might have probative value as corroborating other proof of drunkenness.

d. *Maximum punishment.*

(1) *Resulting in personal injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(2) *No personal injury involved.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, 20 \_\_, (in the motor pool area) (near the Officers' Club) (at the intersection of \_\_\_\_\_ and \_\_\_\_\_) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) (\_\_\_\_)] [an aircraft, to wit: (an AH-64 helicopter) (an F-14A fighter) (a KC-135 tanker) (\_\_\_\_)] [a vessel, to wit: (the aircraft carrier USS \_\_\_\_\_) (the Coast Guard Cutter \_\_\_\_\_) (\_\_\_\_)], [while drunk] [while impaired by \_\_\_\_\_] [while the alcohol concentration in (his) (her) (blood or breath) equaled or exceeded the applicable limit under subsection (b) of the text of the statute in paragraph 50 as shown by chemical analysis] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (ordering that the aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure \_\_\_\_\_)].

**52. Article 114 (10 U.S.C. 914)—Endangerment offenses**

a. *Text of statute.*

**(a) RECKLESS ENDANGERMENT.—Any person subject to this chapter who engages in conduct that—**

- (1) is wrongful and reckless or is wanton; and**
  - (2) is likely to produce death or grievous bodily harm to another person;**
- shall be punished as a court-martial may direct.**

**(b) DUELING.—Any person subject to this chapter—**

**(1) who fights or promotes, or is concerned in or connives at fighting, a duel; or**

**(2) who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority;**

**shall be punished as a court-martial may direct.**

**(c) FIREARM DISCHARGE, ENDANGERING HUMAN LIFE.—Any person subject to this chapter who, willfully and wrongly, discharges a firearm, under circumstances such as to endanger human life shall be punished as a court-martial may direct.**

**(d) CARRYING CONCEALED WEAPON.—Any person subject to this chapter who unlawfully carries a dangerous weapon concealed on or about his person shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Reckless endangerment.*

- (a) That the accused did engage in conduct;
- (b) That the conduct was wrongful and reckless or wanton; and
- (c) That the conduct was likely to produce death or grievous bodily harm to another person.

(2) *Dueling.*

- (a) That the accused fought another person with deadly weapons;
- (b) That the combat was for private reasons; and
- (c) That the combat was by prior agreement.

(3) *Promoting a duel.*

- (a) That the accused promoted a duel between certain persons; and
- (b) That the accused did so in a certain manner.

(4) *Conniving at fighting a duel.*

- (a) That certain persons intended to and were about to engage in a duel;
- (b) That the accused had knowledge of the planned duel; and
- (c) That the accused connived at the fighting of the duel in a certain manner.

(5) *Failure to report a duel.*

- (a) That a challenge to fight a duel had been sent or was about to be sent;

(b) That the accused had knowledge of this challenge; and

(c) That the accused failed to report this fact promptly to proper authority.

(6) *Firearm discharge, endangering human life.*

(a) That the accused discharged a firearm;

(b) That the discharge was willful and wrongful; and

(c) That the discharge was under circumstances such as to endanger human life.

(7) *Carrying concealed weapon.*

(a) That the accused carried a certain weapon concealed on or about the accused's person;

(b) That the carrying was unlawful; and

(c) That the weapon was a dangerous weapon.

### Discussion

For negligent discharge of a firearm, *see* paragraph 100.

#### c. *Explanation.*

(1) *Reckless endangerment.*

(a) *In general.* This offense is intended to prohibit and therefore deter reckless or wanton conduct that wrongfully creates a substantial risk of death or grievous bodily harm to others.

(b) *Wrongfulness.* Conduct is wrongful when it is without legal justification or excuse.

(c) *Recklessness.* “Reckless” conduct is conduct that exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. The accused need not intentionally cause a resulting harm or know that his conduct is substantially certain to cause that result. The ultimate question is whether, under all the circumstances, the accused's conduct was of that heedless nature that made it actually or imminently dangerous to the rights or safety of others.

(d) *Wantonness.* “Wanton” includes “reckless” but may connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(e) *Likely to produce.* When the natural or probable consequence of particular conduct would be death or grievous bodily harm, it may be inferred that the conduct is likely to produce that result.

(f) *Grievous bodily harm.* This phrase has the same meaning given it in subparagraph 77.c.(1)(c).

(g) *Death or injury not required.* It is not necessary that death or grievous bodily harm be actually inflicted to prove reckless endangerment.

(2) *Dueling.*

(a) *Duel.* A duel is combat between two persons for private reasons fought with deadly weapons by prior agreement.

(b) *Promoting a duel.* Urging or taunting another to challenge or to accept a challenge to duel, acting as a second or as carrier of a challenge or acceptance, or otherwise furthering or contributing to the fighting of a duel are examples of promoting a duel.

(c) *Conniving at fighting a duel.* Anyone who has knowledge that steps are being taken or have been taken toward arranging or fighting a duel and who fails to take reasonable preventive action thereby connives at the fighting of a duel.

(3) *Firearm discharge, endangering human life.* “Under circumstances such as to endanger human life” refers to a reasonable potentiality for harm to human beings in general. The test is not whether the life was in fact endangered but whether, considering the circumstances surrounding the wrongful discharge of the weapon, the act was unsafe to human life in general.

(4) *Carrying concealed weapon.*

(a) *Concealed weapon.* A weapon is concealed when it is carried by a person and intentionally covered or kept from sight.

(b) *Dangerous weapon.* For purposes of this paragraph, a weapon is dangerous if it was specifically designed for the purpose of doing grievous bodily harm, or it was used or intended to be used by the accused to do grievous bodily harm.

(c) *On or about.* “On or about” means the weapon was carried on the accused's person or was within the immediate reach of the accused.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

e. *Sample specifications.*

(1) *Reckless endangerment.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location)

(subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully and (recklessly)

(wantonly) engage in conduct, to wit: \_\_\_\_\_, conduct likely to cause death or grievous bodily harm to \_\_\_\_\_.

(2) *Dueling.*

(a) *Dueling.*

In that \_\_\_\_\_ (personal jurisdiction data) (and \_\_\_\_\_), did, (at/onboard—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, fight a duel (with \_\_\_\_\_), using as weapons therefor (pistols) (swords) (\_\_\_\_\_).

(b) *Promoting a duel.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, promote a duel between \_\_\_\_\_ and \_\_\_\_\_ by (telling said \_\_\_\_\_ (he) (she) would be a coward if (he) (she) failed to challenge said \_\_\_\_\_ to a duel) (knowingly carrying from said \_\_\_\_\_ to said \_\_\_\_\_ a challenge to fight a duel).

(c) *Conniving at fighting a duel.*

In that \_\_\_\_\_ (personal jurisdiction data), having knowledge that \_\_\_\_\_ and \_\_\_\_\_ were about to engage in a duel, did (at/onboard—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, connive at the fighting of said duel by (failing to take reasonable preventive action) (\_\_\_\_\_).

(d) *Failure to report a duel.*

In that \_\_\_\_\_ (personal jurisdiction data), having knowledge that a challenge to fight a duel (had been sent) (was about to be sent) by \_\_\_\_\_ to \_\_\_\_\_, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, fail to report that fact promptly to the proper authority.

(3) *Firearm discharge, endangering human life.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, wrongfully and willfully discharge a firearm, to wit: \_\_\_\_\_, (in the mess hall of \_\_\_\_\_) (\_\_\_\_\_), under circumstances such as to endanger human life.

(4) *Carrying concealed weapon.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, unlawfully carry on or about (his) (her) person a concealed weapon, to wit: a \_\_\_\_\_.

**53. Article 115 (10 U.S.C. 915)—Communicating threats**

a. *Text of statute.*

**(a) COMMUNICATING THREATS GENERALLY.—Any person subject to this chapter who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.**

**(b) COMMUNICATING THREAT TO USE EXPLOSIVE, ETC.—Any person subject to this chapter who wrongfully communicates a threat to injure the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct.**

**(c) COMMUNICATING FALSE THREAT CONCERNING USE OF EXPLOSIVE, ETC.—Any person subject to this chapter who maliciously communicates a false threat concerning injury to the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct. As used in the preceding sentence, the term “false threat” means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.**

b. *Elements.*

(1) *Threats generally.*

(a) That the accused communicated certain language expressing a present determination or intent to injure the person, property, or reputation of another person, presently or in the future;

(b) That the communication was made known to that person or to a third person; and

(c) That the communication was wrongful.

(2) *Threat to use explosive, etc.*

(a) That the accused communicated certain language;

(b) That the information communicated amounted to a threat;

(c) That the harm threatened was to be done by means of an explosive; weapon of mass destruction;

biological or chemical agent, substance, or weapon; or hazardous material; and

(d) That the communication was wrongful.

(3) *False threats concerning use of explosives, etc.*

(a) That the accused communicated or conveyed certain information;

(b) That the information communicated or conveyed concerned an attempt being made or to be made by means of an explosive; weapon of mass destruction; biological or chemical agent, substance, or weapon; or hazardous material, to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(c) That the information communicated or conveyed by the accused was false and that the accused then knew it to be false; and

(d) That the communication of the information by the accused was malicious.

c. *Explanation.*

(1) *Threat.* A “threat” means an expressed present determination or intent to kill, injure, or intimidate a person or to damage or destroy certain property presently or in the future. The communication must be one that a reasonable person would understand as expressing a present determination or intent to wrongfully injure the person, property, or reputation of another person, presently or in the future. Proof that the accused actually intended to kill, injure, intimidate, damage or destroy is not required.

(2) *Wrongful.* A communication must be wrongful in order to constitute this offense. The wrongfulness of the communication relates to the accused’s subjective intent. For purposes of this paragraph, the mental state requirement is satisfied if the accused transmitted the communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat. A statement made under circumstances that reveal it to be in jest or for an innocent or legitimate purpose that contradicts the expressed intent to commit the act is not wrongful. Nor is the offense committed by the mere statement of intent to commit an unlawful act not involving a threat.

(3) *Explosive.* “Explosive” means gunpowder, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or

grenade, fire bomb, or similar device, and any other explosive compound, mixture, or similar material.

(4) *Weapon of mass destruction.* A “weapon of mass destruction” means any device, explosive or otherwise, that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of: toxic or poisonous chemicals, or their precursors; a disease organism; or radiation or radioactivity.

(5) *Biological agent.* The term “biological agent” means any microorganism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such microorganism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(a) death, disease, or other biological malfunction in a human, an

animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or materials of

any kind; or

(c) deleterious alteration of the environment.

(6) *Chemical agent, substance, or weapon.* A “chemical agent, substance, or weapon” refers to a toxic chemical and its precursors or a munition or device, specifically designed to cause death or other harm through toxic properties of those chemicals that would be released as a result of the employment of such munition or device, and any equipment specifically designed for use directly in connection with the employment of such munitions or devices.

(7) *Hazardous material.* A substance or material (including explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas, or mixture thereof) or a group or class of material designated as hazardous by the Secretary of Transportation.

(8) *Malicious.* A communication is malicious if the accused believed that the information would probably interfere with the peaceful use of the building, vehicle, aircraft, or other property concerned, or would cause fear or concern to one or more persons.

d. *Maximum punishment.*

(1) *Threats and false threats generally.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *Threats and false threats concerning use of explosives, etc.* Dishonorable discharge, forfeitures of all pay and allowances, and confinement for 10 years.

e. *Sample specifications.*

(1) *Threats generally.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully communicate to \_\_\_\_\_ a threat (to injure \_\_\_\_\_ by \_\_\_\_\_) (to accuse \_\_\_\_\_ of having committed the offense of \_\_\_\_\_) (\_\_\_\_\_).

(2) *Threats concerning use of explosives, etc.*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully communicate certain information, to wit: \_\_\_\_\_, which language constituted a threat to harm a person or property by means of a(n) [explosive; weapon of mass destruction; biological agent, substance, or weapon; chemical agent, substance, or weapon; and/or (a) hazardous material(s)].

(3) *False threats concerning use of explosives, etc.*

In that \_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully [(kill) (injure) (intimidate) \_\_\_\_\_] [(damage) (destroy) \_\_\_\_\_] by means of a(n) [explosive; weapon of mass destruction; biological agent, substance, or weapon; chemical agent, substance, or weapon; and/or (a) hazardous material(s)], to wit: \_\_\_\_\_, which information was false and which the accused then knew to be false.

#### 54. Article 116 (10 U.S.C. 916)—Riot or breach of peace

a. *Text of statute.*

**Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Riot.*

(a) That the accused was a member of an assembly of three or more persons;

(b) That the accused and at least two other members of this group mutually intended to assist one another against anyone who might oppose them in doing an act for some private purpose;

(c) That the group or some of its members, in furtherance of such purpose, unlawfully committed a tumultuous disturbance of the peace in a violent or turbulent manner; and

(d) That these acts terrorized the public in general in that they caused or were intended to cause public alarm or terror.

(2) *Breach of the peace.*

(a) That the accused caused or participated in a certain act of a violent or turbulent nature; and

(b) That the peace was thereby unlawfully disturbed.

c. *Explanation.*

(1) *Riot.* A riot is a tumultuous disturbance of the peace by three or more persons assembled together in furtherance of a common purpose to execute some enterprise of a private nature by concerted action against anyone who might oppose them, committed in such a violent and turbulent manner as to cause or be calculated to cause public terror. The gravamen of the offense of riot is terrorization of the public. It is immaterial whether the act intended was lawful. Furthermore, it is not necessary that the common purpose be determined before the assembly. It is sufficient if the assembly begins to execute in a tumultuous manner a common purpose formed after it assembled.

(2) *Breach of the peace.* A breach of the peace is an unlawful disturbance of the peace by an outward demonstration of a violent or turbulent nature. The acts or conduct contemplated by this article are those which disturb the public tranquility or impinge upon the peace and good order to which the community is entitled. Engaging in an affray and unlawful discharge of firearms in a public street are examples of conduct which may constitute a breach of the peace. Loud speech and unruly conduct may also constitute a breach of the peace by the speaker. A speaker may also be guilty of causing a breach of the peace if the speaker uses language which can reasonably be expected to produce a violent or turbulent response and a breach of the peace results. The fact that the words are true or used under provocation is not a defense, nor is tumultuous conduct excusable because incited by others.

(3) *Community and public.* Community and public include a military organization, post, camp, ship, aircraft, or station.

d. *Maximum punishment.*

(1) *Riot.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Breach of the peace.* Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

e. *Sample specifications.*

(1) *Riot.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (cause) (participate in) a riot by unlawfully assembling with \_\_\_\_ (and \_\_\_\_ ) (and) (others to the number of about \_\_\_\_ whose names are unknown) for the purpose of (resisting the police of \_\_\_\_ ) (assaulting passers-by) (\_\_\_\_), and in furtherance of said purpose did (fight with said police) (assault certain persons, to wit: \_\_\_\_ ) (\_\_\_\_), to the terror and disturbance of \_\_\_\_\_.

(2) *Breach of the peace.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (cause) (participate in) a breach of the peace by (wrongfully engaging in a fist fight in the dayroom with \_\_\_\_\_) (using the following provoking language (toward \_\_\_\_), to wit: “\_\_\_\_,” or words to that effect) (wrongfully shouting and singing in a public place, to wit: \_\_\_\_ ) (\_\_\_\_).

**55. Article 117 (10 U.S.C. 917)—Provoking speeches or gestures**

a. *Text of statute.*

**Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused wrongfully used words or gestures toward a certain person;

(2) That the words or gestures used were provoking or reproachful; and

(3) That the person toward whom the words or gestures were used was a person subject to the UCMJ.

c. *Explanation.*

(1) *In general.* As used in this article, provoking and reproachful describe those words or gestures which are used in the presence of the person to whom they are directed and which a reasonable person would expect to induce a breach of the peace under the circumstances. These words and gestures do not include reprimands, censures, reproofs and the like which may properly be administered in the interests of training, efficiency, or discipline in the armed forces.

(2) *Knowledge.* It is not necessary that the accused have knowledge that the person toward whom the words or gestures are directed is a person subject to the UCMJ.

d. *Maximum punishment.* Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully use (provoking) (reproachful) (words, to wit: “\_\_\_\_\_” or words to that effect) (and) (gestures, to wit: \_\_\_\_\_) towards (Sergeant \_\_\_\_\_, U.S. Air Force) (\_\_\_\_\_).

[NOTE: For Article 117a, UCMJ, Wrongful broadcast, See Appendix 2, Article 117a, UCMJ]

**56. Article 118 (10 U.S.C. 918)—Murder**

a. *Text of statute.*

**Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—**

**(1) has a premeditated design to kill;**

**(2) intends to kill or inflict great bodily harm;**

**(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or**

**(4) is engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery or aggravated arson;**

**is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.**

b. *Elements.*(1) *Premeditated murder.*

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused had a premeditated design to kill.

(2) *Intent to kill or inflict great bodily harm.*

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused had the intent to kill or inflict great bodily harm upon a person.

(3) *Act inherently dangerous to another.*

(a) That a certain named or described person is dead;

(b) That the death resulted from the intentional act of the accused;

(c) That this act was inherently dangerous to another and showed a wanton disregard for human life;

(d) That the accused knew that death or great bodily harm was a probable consequence of the act; and

(e) That the killing was unlawful.

(4) *During certain offenses.*

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused was engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson.

c. *Explanation.*

(1) *In general.* Killing a human being is unlawful when done without justification or excuse. See R.C.M. 916. Whether an unlawful killing constitutes murder or a lesser offense depends upon the circumstances. The offense is committed at the place of the act or omission

although the victim may have died elsewhere. Whether death occurs at the time of the accused's act or omission, or at some time thereafter, it must have followed from an injury received by the victim which resulted from the act or omission.

(2) *Premeditated murder.*

(a) *Premeditation.* A murder is not premeditated unless the thought of taking life was consciously conceived and the act or omission by which it was taken was intended. Premeditated murder is murder committed after the formation of a specific intent to kill someone and consideration of the act intended. It is not necessary that the intention to kill have been entertained for any particular or considerable length of time. When a fixed purpose to kill has been deliberately formed, it is immaterial how soon afterwards it is put into execution. The existence of premeditation may be inferred from the circumstances.

(b) *Transferred premeditation.* When an accused with a premeditated design attempted to unlawfully kill a certain person, but, by mistake or inadvertence, killed another person, the accused is still criminally responsible for a premeditated murder, because the premeditated design to kill is transferred from the intended victim to the actual victim.

(c) *Intoxication.* Voluntary intoxication (see R.C.M. 916(1)(2)) not amounting to legal insanity may reduce premeditated murder (Article 118(1)) to unpremeditated murder (Article 118(2) or (3)) but it does not reduce either premeditated murder or unpremeditated murder to manslaughter (Article 119) or any other lesser offense.

(3) *Intent to kill or inflict great bodily harm.*

(a) *Intent.* An unlawful killing without premeditation is also murder when the accused had either an intent to kill or inflict great bodily harm. It may be inferred that a person intends the natural and probable consequences of an act purposely done. Hence, if a person does an intentional act likely to result in death or great bodily injury, it may be inferred that death or great bodily injury was intended. The intent need not be directed toward the person killed, or exist for any particular time before commission of the act, or have previously existed at all. It is sufficient that it existed at the time of the act or omission (except if death is inflicted in the heat of a sudden passion caused by adequate provocation – see paragraph 57). For example, a person committing housebreaking who strikes and kills the householder attempting to prevent flight can be guilty of murder even if the householder



was not seen until the moment before striking the fatal blow.

(b) *Great bodily harm*. “Great bodily harm” means serious injury; it does not include minor injuries such as a black eye or a bloody nose, but it does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries. It is synonymous with the term “grievous bodily harm.”

(c) *Intoxication*. Voluntary intoxication not amounting to legal insanity does not reduce unpremeditated murder to manslaughter (Article 119) or any other lesser offense.

(4) *Act inherently dangerous to others*.

(a) *Wanton disregard of human life*. Intentionally engaging in an act inherently dangerous to another—although without an intent to cause the death of or great bodily harm to any particular person, or even with a wish that death will not be caused—may also constitute murder if the act shows wanton disregard of human life. Such disregard is characterized by heedlessness of the probable consequences of the act or omission, or indifference to the likelihood of death or great bodily harm. Examples include throwing a live grenade toward another in jest or flying an aircraft very low over one or more persons to cause alarm.

(b) *Knowledge*. The accused must know that death or great bodily harm was a probable consequence of the inherently dangerous act. Such knowledge may be proved by circumstantial evidence.

(5) *During certain offenses*.

(a) *In general*. The commission or attempted commission of any of the offenses listed in Article 118(4) is likely to result in homicide, and when an unlawful killing occurs as a consequence of the perpetration or attempted perpetration of one of these offenses, the killing is murder. Under these circumstances it is not a defense that the killing was unintended or accidental.

(b) *Separate offenses*. The perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson may be charged separately from the homicide.

d. *Maximum punishment*.

(1) *Article 118(1) or (4)*—death. Mandatory minimum—imprisonment for life with the eligibility for parole.

(2) *Article 118(2) or (3)*—such punishment other than death as a court-martial may direct.

e. *Sample specification*.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on \_\_\_\_\_ board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (with premeditation) (while (perpetrating) (attempting to perpetrate) \_\_\_\_\_) murder \_\_\_\_\_ by means of (shooting (him) (her) with a rifle) (\_\_\_\_\_).

## 57. Article 119 (10 U.S.C. 919)—Manslaughter

a. *Text of statute*.

**(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.**

**(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—**

**(1) by culpable negligence; or**

**(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;**

**is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.**

b. *Elements*.

(1) *Voluntary manslaughter*.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused had the intent to kill or inflict great bodily harm upon the person killed.

[Note: Add the following if applicable]

(e) That the person killed was a child under the age of 16 years.

(2) *Involuntary manslaughter*.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson.

[Note: Add the following if applicable]

(e) That the person killed was a child under the age of 16 years.

c. *Explanation.*

(1) *Voluntary manslaughter.*

(a) *Nature of offense.* An unlawful killing, although done with an intent to kill or inflict great bodily harm, is not murder but voluntary manslaughter if committed in the heat of sudden passion caused by adequate provocation. Heat of passion may result from fear or rage. A person may be provoked to such an extent that in the heat of sudden passion caused by the provocation, although not in necessary defense of life or to prevent bodily harm, a fatal blow may be struck before self-control has returned. Although adequate provocation does not excuse the homicide, it does preclude conviction of murder.

(b) *Nature of provocation.* The provocation must be adequate to excite uncontrollable passion in a reasonable person, and the act of killing must be committed under and because of the passion. However, the provocation must not be sought or induced as an excuse for killing or doing harm. If, judged by the standard of a reasonable person, sufficient cooling time elapses between the provocation and the killing, the offense is murder, even if the accused's passion persists. Examples of acts which may, depending on the circumstances, constitute adequate provocation are the unlawful infliction of great bodily harm, unlawful imprisonment, and the sight by one spouse of an act of adultery committed by the other spouse. Insulting or abusive words or gestures, a slight blow with the hand or fist, and trespass or other injury to property are not, standing alone, adequate provocation.

(c) *When committed upon a child under 16 years of age.* The maximum punishment is increased when voluntary manslaughter is committed upon a child under 16 years of age. The accused's knowledge that the child was under 16 years of age at the time of the

offense is not required for the increased maximum punishment.

(2) *Involuntary manslaughter.*

(a) *Culpable negligence.*

(i) *Nature of culpable negligence.* Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. Thus, the basis of a charge of involuntary manslaughter may be a negligent act or omission which, when viewed in the light of human experience, might foreseeably result in the death of another, even though death would not necessarily be a natural and probable consequence of the act or omission. Acts which may amount to culpable negligence include negligently conducting target practice so that the bullets go in the direction of an inhabited house within range; pointing a pistol in jest at another and pulling the trigger, believing, but without taking reasonable precautions to ascertain, that it would not be dangerous; and carelessly leaving poisons or dangerous drugs where they may endanger life.

(ii) *Legal duty required.* When there is no legal duty to act there can be no neglect. Thus, when a stranger makes no effort to save a drowning person, or a person allows a beggar to freeze or starve to death, no crime is committed.

(b) *Offense directly affecting the person.* An "offense directly affecting the person" means an offense affecting some particular person as distinguished from an offense affecting society in general. Among offenses directly affecting the person are the various types of assault, battery, false imprisonment, voluntary engagement in an affray, and maiming.

(c) *When committed upon a child under 16 years of age.* The maximum punishment is increased when involuntary manslaughter is committed upon a child under 16 years of age. The accused's knowledge that the child was under 16 years of age at the time of the offense is not required for the increased maximum punishment.

d. *Maximum punishment.*

(1) *Voluntary manslaughter.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(2) *Involuntary manslaughter.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(3) *Voluntary manslaughter of a child under 16 years of age.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Involuntary manslaughter of a child under 16 years of age.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

e. *Sample specification.*

(1) *Voluntary manslaughter.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, willfully and unlawfully kill \_\_\_\_\_, (a child under 16 years of age) by \_\_\_\_\_ (him) (her) (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_.

(2) *Involuntary manslaughter.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, (by culpable negligence) (while (perpetrating) (attempting to perpetrate) an offense directly affecting the person of \_\_\_\_\_, to wit: (maiming) (a battery) (\_\_\_\_\_)) unlawfully kill \_\_\_\_\_, (a child under 16 years of age) by \_\_\_\_\_ (him) (her) (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_.

**58. Article 119a (10 U.S.C. 919a)—Death or injury of an unborn child**

a. *Text of statute.*

**(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.**

**(2) An offense under this section does not require proof that—**

**(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or**

**(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.**

**(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.**

**(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.**

**(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 926, 928, and 928a of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 126, 128, and 128a).**

**(c) Nothing in this section shall be construed to permit the prosecution—**

**(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;**

**(2) of any person for any medical treatment of the pregnant woman or her unborn child; or**

**(3) of any woman with respect to her unborn child.**

**(d) In this section, the term “unborn child” means a child in utero, and the term “child in utero” or “child, who is in utero” means a member of the species homo sapiens, at any stage of development, who is carried in the womb.**

b. *Elements.*

(1) *Injuring an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120(a))), (robbery (article 122)), (maiming (article 128a)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))]

(b) That the woman was then pregnant; and

(c) That the accused thereby caused bodily injury to the unborn child of that woman.

(2) *Killing an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120(a))), (robbery (article 122)), (maiming (article 128a)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby caused the death of the unborn child of that woman.

(3) *Attempting to kill an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120(a))), (robbery (article 122)), (maiming (article 128a)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby intended and attempted to kill the unborn child of that woman.

(4) *Intentionally killing an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120(a))), (robbery (article 122)), (maiming (article 128a)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby intentionally killed the unborn child of that woman.

c. *Explanation.*

(1) *Nature of offense.* This article makes it a separate, punishable crime to cause the death of or bodily injury to an unborn child while engaged in arson (article 126, UCMJ); murder (article 118, UCMJ); voluntary manslaughter (article 119(a), UCMJ); involuntary manslaughter (article 119(b)(2), UCMJ); rape (article 120(a), UCMJ); robbery (article 122, UCMJ); maiming (article 128a, UCMJ); or assault (article 128, UCMJ) against a pregnant woman. For all underlying offenses, except arson, this article requires that the victim of the underlying offense be the pregnant

mother. For purposes of arson, the pregnant mother must have some nexus to the arson such that she sustained some bodily injury due to the arson. For the purposes of this article the term “woman” means a female of any age. This article does not permit the prosecution of any—

(a) person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(b) person for any medical treatment of the pregnant woman or her unborn child; or

(c) woman with respect to her unborn child.

(2) *The offenses of injuring an unborn child and killing an unborn child do not require proof that—*

(a) the accused had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(b) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) The offense of attempting to kill an unborn child requires that the accused intended by his conduct to cause the death of the unborn child (see subparagraph b.(3)(c) of this paragraph).

(4) *Bodily injury.* For the purpose of this offense, the term “bodily injury” is that which is provided by section 1365 of title 18, to wit: a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; or any other injury to the body, no matter how temporary.

(5) *Unborn child.* “Unborn child” means a child in utero or a member of the species homo sapiens who is carried in the womb, at any stage of development, from conception to birth.

d. *Maximum punishment.* The maximum punishment for (1) Injuring an unborn child; (2) Killing an unborn child; (3) Attempting to kill an unborn child; or (4) Intentionally killing an unborn child is such punishment, other than death, as a court-martial may direct, but shall be consistent with the punishment had the bodily injury, death, attempt to kill, or intentional killing occurred to the unborn child’s mother.

d. Sample specifications.

(1) *Injuring an unborn child.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on \_\_\_\_\_ board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_

20 \_\_\_\_, cause bodily injury to the unborn child of a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(2) *Killing an unborn child.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, cause the death of the unborn child of a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(3) *Attempting to kill an unborn child.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, attempt to kill the unborn child of a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(4) *Intentionally killing an unborn child.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, intentionally kill the unborn child of a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

**59. Article 119b (10 U.S.C. 919b)—Child endangerment**

a. *Text of statute.*

**Any person subject to this chapter—**

**(1) who has a duty for the care of a child under the age of 16 years; and**

**(2) who, through design or culpable negligence, endangers the child’s mental or physical health, safety, or welfare;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused had a duty for the care of a certain child;

(2) That the child was under the age of 16 years; and

(3) That the accused endangered the child’s mental or physical health, safety, or welfare through design or culpable negligence.

c. *Explanation.*

(1) *Design.* “Design” means on purpose, intentionally, or according to plan and requires specific intent to endanger the child.

(2) *Culpable negligence.* Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. In the context of this offense, culpable negligence may include acts that, when viewed in the light of human experience, might foreseeably result in harm to a child. The age and maturity of the child, the conditions surrounding the neglectful conduct, the proximity of assistance available, the nature of the environment in which the child may have been left, the provisions made for care of the child, and the location of the parent or adult responsible for the child relative to the location of the child, among others, may be considered in determining whether the conduct constituted culpable negligence.

(3) *Harm.* Actual physical or mental harm to the child is not required. The offense requires that the accused’s actions reasonably could have caused physical or mental harm or suffering. However, if the accused’s conduct does cause actual physical or mental harm, the potential maximum punishment increases. See subparagraph 77.c.(1)(c) for an explanation of grievous bodily harm.

(4) *Endanger.* “Endanger” means to subject one to a reasonable probability of harm.

(5) *Age of victim as a factor.* While this offense may be committed against any child under 16, the age of the victim is a factor in the culpable negligence determination. Leaving a teenager alone for an evening may not be culpable (or even simple) negligence; leaving an infant or toddler for the same period might constitute culpable negligence. On the other hand, leaving a teenager without supervision for an extended

period while the accused was on temporary duty outside commuting distance might constitute culpable negligence.

(6) *Duty required.* The duty of care is determined by the totality of the circumstances and may be established by statute, regulation, legal parent-child relationship, mutual agreement, or assumption of control or custody by affirmative act. When there is no duty of care of a child, there is no offense under this paragraph. Thus, there is no offense when a stranger makes no effort to feed a starving child or an individual not charged with the care of a child does not prevent the child from running and playing in the street.

d. *Maximum punishment.*

(1) *Endangerment by design resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(2) *Endangerment by design resulting in harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Other cases by design.* Dishonorable discharge, forfeiture of all pay and allowances and confinement for 4 years.

(4) *Endangerment by culpable negligence resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(5) *Endangerment by culpable negligence resulting in harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(6) *Other cases by culpable negligence.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

e. *Sample specifications.*

(1) *Resulting in grievous bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), (at/on board—location) (subject-matter jurisdiction data, if required) on or about \_\_\_\_ 20 \_\_, had a duty for the care of \_\_\_\_\_, a child under the age of 16 years and did endanger the (mental health) (physical health) (safety) (welfare) of said \_\_\_\_\_, by (leaving the said \_\_\_\_\_ unattended in (his) (her) quarters for over \_\_\_\_\_ (hours) (days) with no adult present in the home) (by failing to obtain medical care for the said \_\_\_\_\_'s diabetic condition) (\_\_\_\_\_), and that such conduct (was by design) (constituted culpable negligence) (which resulted in grievous bodily harm, to wit: \_\_\_\_\_) (broken leg) (deep cut) (fractured skull)).

(2) *Resulting in harm.*

In that \_\_\_\_\_ (personal jurisdiction data), (at/on board—location) (subject-matter jurisdiction data, if required) on or about \_\_\_\_ 20 \_\_, had a duty for the care of \_\_\_\_\_, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said \_\_\_\_\_, by (leaving the said \_\_\_\_\_ unattended in (his) (her) quarters for over \_\_\_\_\_ (hours) (days) with no adult present in the home) (by failing to obtain medical care for the said \_\_\_\_\_'s diabetic condition) (\_\_\_\_\_), and that such conduct (was by design) (constituted culpable negligence) (which resulted in (harm, to wit: \_\_\_\_\_) (a black eye) (bloody nose) (minor cut)).

(3) *Other cases.*

In that \_\_\_\_\_ (personal jurisdiction data), (at/on board—location) (subject-matter jurisdiction data, if required) on or about \_\_\_\_ 20 \_\_, was responsible for the care of \_\_\_\_\_, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said \_\_\_\_\_, by (leaving the said \_\_\_\_\_ unattended in (his) (her) quarters for over \_\_\_\_\_ (hours) (days) with no adult present in the home) (by failing to obtain medical care for the said \_\_\_\_\_'s diabetic condition) (\_\_\_\_\_), and that such conduct (was by design) (constituted culpable negligence).

**60. Article 120 (10 U.S.C. 920)—Rape and sexual assault generally**

[Note: This statute applies to offenses committed on or after 1 January 2019. Previous versions of Article 120 are located as follows: for offenses committed on or before 30 September 2007, *see* Appendix 20; for offenses committed during the period 1 October 2007 through 27 June 2012, *see* Appendix 21; for offenses committed during the period 28 June 2012 through 31 December 2018, *see* Appendix 22.]

a. *Text of statute.*

**(a) RAPE.—Any person subject to this chapter who commits a sexual act upon another person by—**

**(1) using unlawful force against that other person;**

**(2) using force causing or likely to cause death or grievous bodily harm to any person;**

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) first rendering that other person unconscious; or

(5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) **SEXUAL ASSAULT.**—Any person subject to this chapter who—

(1) commits a sexual act upon another person by—

(A) threatening or placing that other person in fear;

(B) making a fraudulent representation that the sexual act serves a professional purpose; or

(C) inducing a belief by any artifice, pretense, or concealment that the person is another person;

(2) commits a sexual act upon another person—

(A) without the consent of the other person; or

(B) when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring;

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—

(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;

is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) **AGGRAVATED SEXUAL CONTACT.**—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of

aggravated sexual contact and shall be punished as a court-martial may direct.

(d) **ABUSIVE SEXUAL CONTACT.**—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) **PROOF OF THREAT.**—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) **DEFENSES.**—An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) **DEFINITIONS.**—In this section:

(1) **SEXUAL ACT.**—The term “sexual act” means—

(A) the penetration, however slight, of the penis into the vulva or anus or mouth;

(B) contact between the mouth and the penis, vulva, scrotum, or anus; or

(C) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) **SEXUAL CONTACT.**—The term “sexual contact” means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

(3) **GRIEVOUS BODILY HARM.**—The term “grievous bodily harm” means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(4) **FORCE.**—The term “force” means—

- (A) the use of a weapon;
- (B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or
- (C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(5) **UNLAWFUL FORCE.**—The term “unlawful force” means an act of force done without legal justification or excuse.

(6) **THREATENING OR PLACING THAT OTHER PERSON IN FEAR.**—The term “threatening or placing that other person in fear” means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(7) **CONSENT.**—

(A) The term “consent” means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in subparagraph (B) or (C) of subsection (b)(1).

(C) All the surrounding circumstances are to be considered in determining whether a person gave consent.

(8) **INCAPABLE OF CONSENTING.**—The term “incapable of consenting” means the person is—

(A) incapable of appraising the nature of the conduct at issue; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.

b. *Elements.*

(1) *Rape.*

(a) *By unlawful force.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so with unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.

(d) *By first rendering that other person unconscious.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by first rendering that other person unconscious.

(e) *By administering a drug, intoxicant, or other similar substance.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.

(2) *Sexual assault.*

(a) *By threatening or placing that other person in fear.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by threatening or placing that other person in fear.

(b) *By fraudulent representation.*



¶60.b.(2)(b)(i)

Article 120

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose.

(c) *By artifice, pretense, or concealment.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused was another person.

(d) *Without consent.*

(i) That the accused committed a sexual act upon another person; and

(ii) That the accused did so without the consent of the other person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.*

(i) That the accused committed a sexual act upon another person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(f) *When the other person is incapable of consenting.*

(i) That the accused committed a sexual act upon another person;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability; and

(iii) That the accused knew or reasonably should have known of that condition.

(3) *Aggravated sexual contact.*

(a) *By force.*

(i) That the accused committed sexual contact upon or by another person; and

(ii) That the accused did so with unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.

(d) *By first rendering that other person unconscious.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so by first rendering that other person unconscious.

(e) *By administering a drug, intoxicant, or other similar substance.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.

(4) *Abusive sexual contact.*

(a) *By threatening or placing that other person in fear.*

(i) That the accused committed sexual contact upon or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear.

(b) *By fraudulent representation.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose.

(c) *By artifice, pretense, or concealment.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused was another person.

(d) *Without consent.*

(i) That the accused committed sexual contact upon another person; and

(ii) That the accused did so without the consent of the other person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the contact is occurring.*

(i) That the accused committed sexual contact upon another person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual contact was occurring; and

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual contact was occurring.

(f) *When the other person is incapable of consenting.*

(i) That the accused committed sexual contact upon another person;

(ii) That the other person was incapable of consenting to the sexual contact due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability; and

(iii) That the accused knew or reasonably should have known of that condition.

c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: offenses against adults (Art. 120), offenses against children (Art. 120b), and other offenses (Art. 120c).

(2) *Definitions.* The terms are defined in subparagraph 60.a.(g).

(3) *Victim sexual behavior or predisposition and privilege.* See Mil. R. Evid. 412 concerning rules of evidence relating to the sexual behavior or predisposition of the victim of an alleged sexual offense. See Mil. R. Evid. 514 concerning rules of evidence relating to privileged communications between the victim and victim advocate.

(4) *Scope of “threatening or placing that other person in fear.”* For purposes of this offense, the phrase

“wrongful action” within Article 120(g)(6) (defining “threatening or placing that other person in fear”) includes an abuse of military rank, position, or authority in order to engage in a sexual act or sexual contact with a victim. This includes, but is not limited to, threats to initiate an adverse personnel action unless the victim submits to the accused’s requested sexual act or contact; and threats to withhold a favorable personnel action unless the victim submits to the accused’s requested sexual act or sexual contact. Superiority in rank is a factor in, but not dispositive of, whether a reasonable person in the position of the victim would fear that his or her noncompliance with the accused’s desired sexual act or sexual contact would result in the threatened wrongful action contemplated by the communication or action.

d. *Maximum punishment.*

(1) *Rape.* Forfeiture of all pay and allowances and confinement for life without eligibility for parole. Mandatory minimum – Dismissal or dishonorable discharge.

(2) *Sexual assault.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum – Dismissal or dishonorable discharge.

(3) *Aggravated sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Abusive sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

e. *Sample specifications.*

(1) *Rape.*

(a) *By force.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_ by [penetrating \_\_\_\_\_’s (vulva) (anus) (mouth) with \_\_\_\_\_’s penis] [causing contact between \_\_\_\_\_’s mouth and \_\_\_\_\_’s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_’s (vulva) (penis) (anus) with (\_\_\_\_\_)’s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by using unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction

data, if required), on or about \_\_\_\_\_ 20 \_\_, commit a sexual act upon \_\_\_\_\_ by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by using force likely to cause death or grievous bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, commit a sexual act upon \_\_\_\_\_ by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear) that \_\_\_\_\_ would be subjected to (death) (grievous bodily harm) (kidnapping).

(d) *By first rendering that other person unconscious.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, commit a sexual act upon \_\_\_\_\_ by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by first rendering \_\_\_\_\_ unconscious by \_\_\_\_\_.

(e) *By administering a drug, intoxicant, or other similar substance.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_,

commit a sexual act upon \_\_\_\_\_ by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by administering to \_\_\_\_\_ (by force) (by threat of force) (without the knowledge or permission of \_\_\_\_\_) a (drug) (intoxicant) (list other similar substance), to wit: \_\_\_\_\_, thereby substantially impairing the ability of \_\_\_\_\_ to appraise or control (his) (her) conduct.

(2) *Sexual assault.*

(a) *By threatening or placing that other person in fear.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, commit a sexual act upon \_\_\_\_\_, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear).

(b) *By fraudulent representation.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, commit a sexual act upon \_\_\_\_\_, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by making a fraudulent representation that the sexual act served a professional purpose, to wit: \_\_\_\_\_.

(c) *By false pretense.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, commit

a sexual act upon \_\_\_\_\_, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person.

(d) *Without consent.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus),] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], without the consent of \_\_\_\_\_.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], when (he) (she) knew or reasonably should have known that \_\_\_\_\_ was (asleep) (unconscious) (unaware the sexual act was occurring due to \_\_\_\_\_).

(f) *When the other person is incapable of consenting.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], when \_\_\_\_\_ was (incapable of consenting) because (he) (she) \_\_\_\_\_ (was impaired by (a drug, to wit: \_\_\_\_\_) (an intoxicant, to wit: \_\_\_\_\_) (\_\_\_\_\_)) [had a (mental disease, to wit: \_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_) (physical disability, to wit: \_\_\_\_\_)], and the accused (knew) (reasonably should have known) of that condition.

\_\_\_\_\_ 's mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], when \_\_\_\_\_ was incapable of consenting to the sexual act because (he) (she) [was impaired by (a drug, to wit: \_\_\_\_\_) (an intoxicant, to wit: \_\_\_\_\_) (\_\_\_\_\_)] [had a (mental disease, to wit: \_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_) (physical disability, to wit: \_\_\_\_\_)], and the accused (knew) (reasonably should have known) of that condition.

(3) *Aggravated sexual contact.*

(a) *By force.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_] by using unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by using force likely to cause death or grievous bodily harm to \_\_\_\_\_, to wit:\_\_\_\_\_.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit:\_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear) that \_\_\_\_\_

\_\_\_\_\_ would be subjected to (death) (grievous bodily harm) (kidnapping).

(d) *By first rendering that other person unconscious.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by rendering \_\_\_\_\_ unconscious by \_\_\_\_\_.

(e) *By administering a drug, intoxicant, or other similar substance.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by administering to \_\_\_\_\_ (by force) (by threat of force) (without the knowledge or permission of \_\_\_\_\_) a (drug) (intoxicant) (\_\_\_\_\_) thereby substantially impairing the ability of \_\_\_\_\_ to appraise or control (his) (her) conduct.

(4) *Abusive sexual contact.*

(a) *By threatening or placing that other person in fear.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear).

(b) *By fraudulent representation.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks)

of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by making a fraudulent representation that the sexual contact served a professional purpose, to wit: \_\_\_\_\_.

(c) *By false pretense.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person.

(d) *Without consent.*

In that \_\_\_\_\_ (person jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_] without the consent of \_\_\_\_\_.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], when (he) (she) (knew) (reasonably should have known) that \_\_\_\_\_ was (asleep) (unconscious) (unaware the sexual contact was occurring due to \_\_\_\_\_).

(f) *When that person is incapable of consenting.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (touch) (cause \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part)

(an object) to wit: \_\_\_\_\_] with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_], when \_\_\_\_\_ was incapable of consenting to the sexual contact because (he) (she) [was impaired by (a drug, to wit: \_\_\_\_\_) (an intoxicant, to wit: \_\_\_\_\_) (\_\_\_\_\_)] [had a (mental disease, to wit: \_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_) (physical disability, to wit: \_\_\_\_\_)] and the accused (knew) (reasonably should have known) of that condition.

**61. Article 120a (10 U.S.C. 920a)—Mails: deposit of obscene matter**

a. *Text of statute.*

**Any person subject to this chapter who, wrongfully and knowingly, deposits obscene matter for mailing and delivery shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused deposited or caused to be deposited in the mails certain matter for mailing and delivery;

(2) That the act was done wrongfully and knowingly; and

(3) That the matter was obscene.

c. *Explanation.* Whether something is obscene is a question of fact. Obscene is synonymous with indecent as the latter is defined in subparagraph 104.c. The matter must violate community standards of decency or obscenity and must go beyond customary limits of expression. “Knowingly” means the accused deposited the material with knowledge of its nature. Knowingly depositing obscene matter in the mails is wrongful if it is done without legal justification or authorization.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_ 20 \_\_\_\_, wrongfully and knowingly (deposit) (cause to be deposited) in the (United States) (\_\_\_\_\_) mails, for mailing and delivery a (letter) (picture) (\_\_\_\_\_) (containing) (portraying) (suggesting) (\_\_\_\_\_) certain obscene matters, to wit: \_\_\_\_\_.

**62. Article 120b (10 U.S.C. 920b)—Rape and sexual assault of a child**

[Note: This statute applies to offenses committed on or after 1 January 2019. Previous versions of child sexual offenses are located as follows: for offenses committed on or before 30 September 2007, *see* Appendix 20; for offenses committed during the period 1 October 2007 through 27 June 2012, *see* Appendix 21; for offenses committed during the period 28 June 2012 through 31 December 2018, *see* Appendix 22.]

a. *Text of statute.*

**(a) RAPE OF A CHILD.—Any person subject to this chapter who—**

**(1) commits a sexual act upon a child who has not attained the age of 12 years; or**

**(2) commits a sexual act upon a child who has attained the age of 12 years by—**

**(A) using force against any person;**

**(B) threatening or placing that child in fear;**

**(C) rendering that child unconscious; or**

**(D) administering to that child a drug, intoxicant, or other similar substance;**

**is guilty of rape of a child and shall be punished as a court-martial may direct.**

**(b) SEXUAL ASSAULT OF A CHILD.—Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.**

**(c) SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.**

**(d) AGE OF CHILD.—**

**(1) UNDER 12 YEARS.—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.**

**(2) UNDER 16 YEARS.—In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the**

evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) **PROOF OF THREAT.**—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) **MARRIAGE.**—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) **CONSENT.**—Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) **DEFINITIONS.**—In this section:

(1) **SEXUAL ACT AND SEXUAL CONTACT.**—The terms “sexual act” and “sexual contact” have the meanings given those terms in section 920(g) of this title (article 120(g)), except that the term “sexual act” also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(2) **FORCE.**—The term “force” means—

- (A) the use of a weapon;
- (B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or
- (C) inflicting physical harm.

In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) **THREATENING OR PLACING THAT CHILD IN FEAR.**—The term “threatening or placing that child in fear” means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) **CHILD.**—The term “child” means any person who has not attained the age of 16 years.

(5) **LEWD ACT.**—The term “lewd act” means—

- (A) any sexual contact with a child;
- (B) intentionally exposing one’s genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

b. *Elements*

(1) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12.*

(i) That the accused committed a sexual act upon a child; and

(ii) That at the time of the sexual act the child had not attained the age of 12 years.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child or any other person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening the child or another person or placing that child in fear.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance.

(2) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(3) *Sexual abuse of a child. That the accused committed a lewd act upon a child.*

c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: offenses against adults (120),

offenses against children (120b), and other offenses (120c).

(2) *Definitions.* Terms not defined in this paragraph are defined in subparagraph 60.a.(g), supra, except that the term “sexual act” also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

d. *Maximum punishment.*

(1) *Rape of a child.* Forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum—Dismissal or dishonorable discharge.

(2) *Sexual assault of a child.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum—Dismissal or dishonorable discharge.

(3) *Sexual abuse of a child.*

(a) *Cases involving sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

e. *Sample specifications.*

(1) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, a child who had not attained the age of 12 years, by [penetrating \_\_\_\_\_’s (vulva) (anus) (mouth) with \_\_\_\_\_’s penis] [causing contact between \_\_\_\_\_’s mouth and \_\_\_\_\_’s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_’s (vulva) (penis) (anus) with (\_\_\_\_\_’s body part) (an object) to wit:\_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]] [intentionally touching, not through the clothing, the genitalia of \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]].

(b) *Rape by force of a child who has attained the age of 12 years.*



In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]] [intentionally touching, not through the clothing, the genitalia of \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by using force against \_\_\_\_\_, to wit: \_\_\_\_\_.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]] [intentionally touching, not through the clothing, the genitalia of \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear).

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to

wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]] [intentionally touching, not through the clothing, the genitalia of \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by rendering \_\_\_\_\_ unconscious by \_\_\_\_\_.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]] [intentionally touching, not through the clothing, the genitalia of \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]], by administering to \_\_\_\_\_ a (drug) (intoxicant) (\_\_\_\_\_), to wit: \_\_\_\_\_.

(2) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 years.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by [penetrating \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis] [causing contact between \_\_\_\_\_'s mouth and \_\_\_\_\_'s (penis) (vulva) (scrotum) (anus)] [penetrating \_\_\_\_\_'s (vulva) (penis) (anus) with (\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]] [intentionally touching, not through the clothing, the genitalia of \_\_\_\_\_, with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_]].

(3) *Sexual abuse of a child.*

(a) *Sexual abuse of a child involving sexual contact.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by (touching) (causing \_\_\_\_\_ to touch) the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with [(\_\_\_\_\_'s body part) (an object) to wit: \_\_\_\_\_], with an intent to [(abuse) (humiliate) (harass) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_].

(b) *Sexual abuse of a child involving indecent exposure.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by intentionally exposing [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] to \_\_\_\_\_, with an intent to [(abuse) (humiliate) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_].

(c) *Sexual abuse of a child involving indecent communication.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by intentionally communicating to \_\_\_\_\_ indecent language to wit: \_\_\_\_\_, with an intent to [(abuse) (humiliate) (degrade) \_\_\_\_\_] [(arouse) (gratify) the sexual desire of \_\_\_\_\_].

(d) *Sexual abuse of a child involving indecent conduct.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by engaging in indecent conduct, to wit: \_\_\_\_\_, intentionally done (with) (in the presence of) \_\_\_\_\_, which conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

**63. Article 120c (10 U.S.C. 920c)—Other sexual misconduct**

[Previous versions of offenses included in Article 120c are located as follows: for the offense of indecent exposure committed on or before 30 September 2007, a previous version of Article 134, indecent exposure, applies and is located at Appendix 20; for the offense of forcible pandering committed on or before 30 September 2007, a previous version of Article 134, pandering and prostitution, applies and is located at Appendix 20; for Article 120c offenses committed during the period 1 October 2007 through 27 June 2012, see Appendix 21; for Article 120c offenses committed during the period 28 June 2012 through 31 December 2018, the previous version of Article 120c applies and is located at Appendix 22.]

a. *Text of Statute*

**(a) INDECENT VIEWING, VISUAL RECORDING, OR BROADCASTING.—Any person subject to this chapter who, without legal justification or lawful authorization—**

**(1) knowingly and wrongfully views the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy;**

**(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy; or**

**(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);**

**is guilty of an offense under this section and shall be punished as a court-martial may direct.**

**(b) FORCIBLE PANDERING.—Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court-martial may direct.**

**(c) INDECENT EXPOSURE.—Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.**

**(d) DEFINITIONS.—In this section:**

**(1) ACT OF PROSTITUTION.—**The term “act of prostitution” means a sexual act or sexual contact (as defined in section 920(g) of this title (article 120(g))) on account of which anything of value is given to, or received by, any person.

**(2) PRIVATE AREA.—**The term “private area” means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

**(3) REASONABLE EXPECTATION OF PRIVACY.—**The term “under circumstances in which that other person has a reasonable expectation of privacy” means—

**(A)** circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or

**(B)** circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

**(4) BROADCAST.—**The term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

**(5) DISTRIBUTE.—**The term “distribute” means delivering to the actual or constructive possession of another, including transmission by electronic means.

**(6) INDECENT MANNER.—**The term “indecent manner” means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

*b. Elements.*

*(1) Indecent viewing.*

(a) That the accused knowingly and wrongfully viewed the private area of another person;

(b) That said viewing was without the other person’s consent; and

(c) That said viewing took place under circumstances in which the other person had a reasonable expectation of privacy.

*(2) Indecent recording.*

(a) That the accused knowingly recorded (photographed, videotaped, filmed, or recorded by any means) the private area of another person;

(b) That said recording was without the other person’s consent; and

(c) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

*(3) Broadcasting of an indecent recording.*

(a) That the accused knowingly broadcast a certain recording of another person’s private area;

(b) That said recording was made without the other person’s consent;

(c) That the accused knew or reasonably should have known that the recording was made without the other person’s consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

*(4) Distribution of an indecent recording.*

(a) That the accused knowingly distributed a certain recording of another person’s private area;

(b) That said recording was made without the other person’s consent;

(c) That the accused knew or reasonably should have known that said recording was made without the other person’s consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

*(5) Forcible pandering.*

That the accused compelled another person to engage in an act of prostitution with any person.

*(6) Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the exposure was in an indecent manner; and

(c) That the exposure was intentional.

*c. Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: offenses against adults (120), offenses against children (120b), and other offenses (120c).

(2) *Definitions.*

(a) *Recording.* A recording is a still or moving visual image captured or recorded by any means.

(b) Other terms are defined in subparagraph 60.a.(g), *supra*.

d. *Maximum punishment.*

(1) Indecent viewing. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) Indecent recording. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) Broadcasting or distribution of an indecent recording. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

(4) Forcible pandering. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(5) Indecent exposure. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

e. *Sample specifications.*

(1) *Indecent viewing, recording, or broadcasting.*

(a) *Indecent viewing.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, knowingly and wrongfully view the private area of \_\_\_\_\_, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(b) *Indecent recording.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, knowingly (photograph) (videotape) (film) (make a recording of) the private area of \_\_\_\_\_, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(c) *Broadcasting or distributing an indecent recording.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if

required), on or about \_\_\_\_\_ 20\_\_, knowingly (broadcast) (distribute) a recording of the private area of \_\_\_\_\_, when the said accused knew or reasonably should have known that the said recording was made without the consent of \_\_\_\_\_ and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(2) *Forcible pandering.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, wrongfully compel \_\_\_\_\_ to engage in (a sexual act) (sexual contact) with \_\_\_\_\_, to wit: \_\_\_\_\_, for the purpose of receiving (money) (other compensation) (\_\_\_\_\_).

(3) *Indecent exposure.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20\_\_, intentionally expose [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] in an indecent manner, to wit: \_\_\_\_\_.

**64. Article 121 (10 U.S.C. 921)—Larceny and wrongful appropriation**

a. *Text of statute.*

**(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—**

**(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or**

**(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.**

**(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Larceny.*

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value; and

(d) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner.

[Note: If the property is alleged to be military property, as defined in subparagraph 64.c.(1)(h), add the following element]

(e) That the property was military property.

(2) *Wrongful appropriation.*

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value; and

(d) That the taking, obtaining, or withholding by the accused was with the intent temporarily to deprive or defraud another person of the use and benefit of the property or temporarily to appropriate the property for the use of the accused or for any person other than the owner.

c. *Explanation.*

(1) *Larceny.*

(a) *In general.* A wrongful taking with intent permanently to deprive includes the common law offense of larceny; a wrongful obtaining with intent permanently to defraud includes the offense formerly known as obtaining by false pretense; and a wrongful withholding with intent permanently to appropriate includes the offense formerly known as embezzlement. Any of the various types of larceny under Article 121 may be charged and proved under a specification alleging that the accused did steal the property in question.

(b) *Taking, obtaining, or withholding.* There must be a taking, obtaining, or withholding of the property by the thief. For instance, there is no taking if the property is connected to a building by a chain and the property has not been disconnected from the building; property is not obtained by merely acquiring title

thereto without exercising some possessory control over it. As a general rule, however, any movement of the property or any exercise of dominion over it is sufficient if accompanied by the requisite intent. Thus, if an accused enticed another's horse into the accused's stable without touching the animal, or procured a railroad company to deliver another's trunk by changing the check on it, or obtained the delivery of another's goods to a person or place designated by the accused, or had the funds of another transferred to the accused's bank account, the accused is guilty of larceny if the other elements of the offense have been proved. A person may obtain the property of another by acquiring possession without title, and one who already has possession of the property of another may obtain it by later acquiring title to it. A withholding may arise as a result of a failure to return, account for, or deliver property to its owner when a return, accounting, or delivery is due, even if the owner has made no demand for the property, or it may arise as a result of devoting property to a use not authorized by its owner. Generally, this is so whether the person withholding the property acquired it lawfully or unlawfully. See subparagraph c.(1)(f) of this paragraph. However, acts which constitute the offense of unlawfully receiving, buying, or concealing stolen property or of being an accessory after the fact are not included within the meaning of withholds. Therefore, neither a receiver of stolen property nor an accessory after the fact can be convicted of larceny on that basis alone. The taking, obtaining, or withholding must be of specific property. A debtor does not withhold specific property from the possession of a creditor by failing or refusing to pay a debt, for the relationship of debtor and creditor does not give the creditor a possessory right in any specific money or other property of the debtor.

(c) *Ownership of the property.*

(i) *In general.* Article 121 requires that the taking, obtaining, or withholding be from the possession of the owner or of any other person. Care, custody, management, and control are among the definitions of possession.

(ii) *Owner.* "Owner" refers to the person who, at the time of the taking, obtaining, or withholding, had the superior right to possession of the property in the light of all conflicting interests therein which may be involved in the particular case. For instance, an organization is the true owner of its funds as against the custodian of the funds charged with the larceny thereof.

(iii) *Any other person.* “Any other person” means any person—even a person who has stolen the property—who has possession or a greater right to possession than the accused. In pleading a violation of this article, the ownership of the property may be alleged to have been in any person, other than the accused, who at the time of the theft was a general owner or a special owner thereof. A general owner of property is a person who has title to it, whether or not that person has possession of it; a special owner, such as a borrower or hirer, is one who does not have title but who does have possession, or the right of possession, of the property.

(iv) *Person.* Person, as used in referring to one from whose possession property has been taken, obtained, or withheld, and to any owner of property, includes (in addition to a natural person) a government, a corporation, an association, an organization, and an estate. Such a person need not be a legal entity.

(d) *Wrongfulness of the taking, obtaining, or withholding.* The taking, obtaining, or withholding of the property must be wrongful. As a general rule, a taking or withholding of property from the possession of another is wrongful if done without the consent of the other, and an obtaining of property from the possession of another is wrongful if the obtaining is by false pretense. However, such an act is not wrongful if it is authorized by law or apparently lawful superior orders, or, generally, if done by a person who has a right to the possession of the property either equal to or greater than the right of one from whose possession the property is taken, obtained, or withheld. An owner of property who takes or withholds it from the possession of another, without the consent of the other, or who obtains it therefrom by false pretense, does so wrongfully if the other has a superior right—such as a lien—to possession of the property. A person who takes, obtains, or withholds property as the agent of another has the same rights and liabilities as does the principal, but may not be charged with a guilty knowledge or intent of the principal which that person does not share.

(e) *False pretense.* With respect to obtaining property by false pretense, the false pretense may be made by means of any act, word, symbol, or token. The pretense must be in fact false when made and when the property is obtained, and it must be knowingly false in the sense that it is made without a belief in its truth. A false pretense is a false representation of past or existing fact. In addition to other kinds of facts, the fact falsely represented by a person may be that person’s or

another’s power, authority, or intention. Thus, a false representation by a person that the person presently intends to perform a certain act in the future is a false representation of an existing fact—the intention—and thus a false pretense. Although the pretense need not be the sole cause inducing the owner to part with the property, it must be an effective and intentional cause of the obtaining. A false representation made after the property was obtained will not result in a violation of Article 121. A larceny is committed when a person obtains the property of another by false pretense and with intent to steal, even though the owner neither intended nor was requested to part with title to the property. Thus, a person who gets another’s watch by pretending that it will be borrowed briefly and then returned, but who really intends to sell it, is guilty of larceny.

(f) *Intent.*

(i) *In general.* The offense of larceny requires that the taking, obtaining, or withholding by the thief be accompanied by an intent permanently to deprive or defraud another of the use and benefit of property or permanently to appropriate the property to the thief’s own use or the use of any person other than the owner. These intents are collectively called an intent to steal. Although a person gets property by a taking or obtaining which was not wrongful or which was without a concurrent intent to steal, a larceny is nevertheless committed if an intent to steal is formed after the taking or obtaining and the property is wrongfully withheld with that intent. For example, if a person rents another’s vehicle, later decides to keep it permanently, and then either fails to return it at the appointed time or uses it for a purpose not authorized by the terms of the rental, larceny has been committed, even though at the time the vehicle was rented, the person intended to return it after using it according to the agreement.

(ii) *Inference of intent.* An intent to steal may be proved by circumstantial evidence. Thus, if a person secretly takes property, hides it, and denies knowing anything about it, an intent to steal may be inferred; if the property was taken openly and returned, this would tend to negate such an intent. Proof of sale of the property may show an intent to steal, and therefore, evidence of such a sale may be introduced to support a charge of larceny. An intent to steal may be inferred from a wrongful and intentional dealing with the property of another in a manner likely to cause that person to suffer a permanent loss thereof.

(iii) *Special situations.*

(A) *Motive does not negate intent.* The accused's purpose in taking an item ordinarily is irrelevant to the accused's guilt as long as the accused had the intent required under subparagraph c.(1)(f)(i) of this paragraph. For example, if the accused wrongfully took property as a joke or "to teach the owner a lesson" this would not be a defense, although if the accused intended to return the property, the accused would be guilty of wrongful appropriation, not larceny. When a person takes property intending only to return it to its lawful owner, as when stolen property is taken from a thief in order to return it to its owner, larceny or wrongful appropriation is not committed.

(B) *Intent to pay for or replace property not a defense.* An intent to pay for or replace the stolen property is not a defense, even if that intent existed at the time of the theft. If, however, the accused takes money or a negotiable instrument having no special value above its face value, with the intent to return an equivalent amount of money, the offense of larceny is not committed although wrongful appropriation may be.

(C) *Return of property not a defense.* Once a larceny is committed, a return of the property or payment for it is no defense. See subparagraph c.(2) of this paragraph when the taking, obtaining, or withholding is with the intent to return.

(g) *Value.*

(i) *In general.* Value is a question of fact to be determined on the basis of all of the evidence admitted.

(ii) *Government property.* When the stolen property is an item issued or procured from Government sources, the price listed in an official publication for that property at the time of the theft is admissible as evidence of its value. See Mil. R. Evid. 803(17). However, the stolen item must be shown to have been, at the time of the theft, in the condition upon which the value indicated in the official price list is based. The price listed in the official publication is not conclusive as to the value of the item, and other evidence may be admitted on the question of its condition and value.

(iii) *Other property.* As a general rule, the value of other stolen property is its legitimate market value at the time and place of the theft. If this property, because of its character or the place where it was stolen, had no legitimate market value at the time and place of the theft or if that value cannot readily be ascertained, its value may be determined by its

legitimate market value in the United States at the time of the theft, or by its replacement cost at that time, whichever is less. Market value may be established by proof of the recent purchase price paid for the article in the legitimate market involved or by testimony or other admissible evidence from any person who is familiar through training or experience with the market value in question. The owner of the property may testify as to its market value if familiar with its quality and condition. The fact that the owner is not an expert of the market value of the property goes only to the weight to be given that testimony, and not to its admissibility. See Mil. R. Evid. 701. When the character of the property clearly appears in evidence—for instance, when it is exhibited to the court-martial—the court-martial, from its own experience, may infer that it has some value. If as a matter of common knowledge the property is obviously of a value substantially in excess of \$1,000, the court-martial may find a value of more than \$1,000. Writings representing value may be considered to have the value—even though contingent—which they represented at the time of the theft.

(iv) *Limited interest in property.* If an owner of property or someone acting in the owner's behalf steals it from a person who has a superior, but limited, interest in the property, such as a lien, the value for punishment purposes shall be that of the limited interest.

(h) *Military property.* Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with Government property. The terms are not interchangeable. While all military property is Government property, not all Government property is military property. An item of Government property is not military property unless the item in question meets the definition provided in this paragraph. Retail merchandise of Service exchange stores is not military property under this article.

(i) *Miscellaneous considerations.*

(i) *Lost property.* A taking or withholding of lost property by the finder is larceny if accompanied by an intent to steal and if a clue to the identity of the general or special owner, or through which such identity may be traced, is furnished by the character, location, or marketing of the property, or by other circumstances.

(ii) *Multiple article larceny.* When a larceny of several articles is committed at substantially the same

time and place, it is a single larceny even though the articles belong to different persons. Thus, if a thief steals a suitcase containing the property of several persons or goes into a room and takes property belonging to various persons, there is but one larceny, which should be alleged in but one specification.

(iii) *Special kinds of property which may also be the subject of larceny.* Included in property which may be the subject of larceny is property which is taken, obtained, or withheld by severing it from real estate and writings which represent value such as commercial paper.

(iv) *Services.* Theft of services may not be charged under this paragraph. But see paragraph 66.

(v) *Credit, debit, and electronic transactions.* Wrongfully engaging in a credit, debit, or electronic transaction to obtain goods or money ordinarily should be charged under paragraph 65.

(2) *Wrongful appropriation.*

(a) *In general.* Wrongful appropriation requires an intent to temporarily—as opposed to permanently—deprive the owner of the use and benefit of, or appropriate to the use of another, the property wrongfully taken, withheld, or obtained. In all other respects wrongful appropriation and larceny are identical.

(b) *Examples.* Wrongful appropriation includes: taking another's automobile without permission or lawful authority with intent to drive it a short distance and then return it or cause it to be returned to the owner; obtaining a service weapon by falsely pretending to be about to go on guard duty with intent to use it on a hunting trip and later return it; and while driving a Government vehicle on a mission to deliver supplies, withholding the vehicle from Government service by deviating from the assigned route without authority, to visit a friend in a nearby town and later restore the vehicle to its lawful use. An inadvertent exercise of control over the property of another will not result in wrongful appropriation. For example, a person who fails to return a borrowed boat at the time agreed upon because the boat inadvertently went aground is not guilty of this offense.

d. *Maximum punishment.*

(1) *Larceny.*

(a) *Property of a value of \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(b) *Military property of a value of more than \$1,000 or of any military motor vehicle, aircraft, vessel, firearm, or explosive.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(c) *Property other than military property of a value of more than \$1,000 or any motor vehicle, aircraft, vessel, firearm, or explosive not included in subparagraph e.(1)(b).* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Wrongful appropriation.*

(a) *Of a value of \$1,000 or less.* Confinement for 3 months, and forfeiture of two-thirds pay per month for 3 months.

(b) *Of a value of more than \$1,000.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(c) *Of any motor vehicle, aircraft, vessel, firearm, explosive, or military property of a value of more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specifications.*

(1) *Larceny.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, steal \_\_\_\_\_, (military property), of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_.

(2) *Wrongful appropriation.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, wrongfully appropriate \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_.

**65. Article 121a (10 U.S.C. 921a)—Fraudulent use of credit cards, debit cards, and other access devices**

a. *Text of statute.*

**(a) IN GENERAL.—Any person subject to this chapter who, knowingly and with intent to defraud, uses—**

**(1) a stolen credit card, debit card, or other access device;**

**(2) a revoked, cancelled, or otherwise invalid credit card, debit card, or other access device; or**



(3) a credit card, debit card, or other access device without the authorization of a person whose authorization is required for such use; to obtain money, property, services, or anything else of value shall be punished as a court-martial may direct.

(b) ACCESS DEVICE DEFINED.—In this section (article), the term “access device” has the meaning given that term in section 1029 of title 18.

b. *Elements.*

(1) That the accused knowingly used a stolen credit card, debit card, or other access device; or

(2) That the accused knowingly used a revoked, cancelled, or otherwise invalid credit card, debit card; or

(3) That the accused knowingly used a credit card, debit card, or other access device without the authorization of a person whose authorization was required for such use;

(4) That the use was to obtain money, property, services, or anything else of value; and

(5) The use by the accused was with the intent to defraud.

c. *Explanation.*

(1) *In general.* This offense focuses on the intent of the accused and the technology used by the accused.

(2) *Intent to defraud.* See subparagraph 70.c.(14).

(3) *Inference of intent.* An intent to defraud may be proved by circumstantial evidence.

(4) *Use of a credit card, debit card, or other access device without the authorization of a person whose authorization was required for such use.* This provision applies to situations where an accused has no authorization to use the access device from a person whose authorization is required for such use, as well as situations where an accused exceeds the authorization of a person whose authorization is required for such use.

d. *Maximum punishment.*

(1) *Fraudulent use of a credit card, debit card, or other access device to obtain property of a value of \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Fraudulent use during any 1-year period of a credit card, debit card, or other access device to obtain property the aggregate value of which is more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, knowingly and with the intent to defraud, use a (debit card) (credit card) (access device, to wit: \_\_\_\_\_) (that was stolen) (that was revoked, cancelled, or otherwise invalid) (without the authorization of \_\_\_\_\_, a person whose authorization was required for such use), to obtain (money) (property) (services) (\_\_\_\_\_) (of a value of about \$ \_\_\_\_\_).

**66. Article 121b (10 U.S.C. 921b)—False pretenses to obtain services**

a. *Text of statute.*

**Any person subject to this chapter who, with intent to defraud, knowingly uses false pretenses to obtain services shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused wrongfully obtained certain services;

(2) That the obtaining was done by using false pretenses;

(3) That the accused then knew of the falsity of the pretenses;

(4) That the obtaining was with intent to defraud; and

(5) That the services were of a certain value, or of some value.

c. *Explanation.* This offense is similar to the offenses of larceny and wrongful appropriation by false pretenses, except that the object of the obtaining is services (for example, telephone service) rather than money, personal property, or articles of value of any kind as under Article 121. See paragraph 64.c. See paragraph 70.c.(14) for a definition of intent to defraud.

d. *Maximum punishment.* Obtaining services under false pretenses.

(1) *Of a value of \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Of a value of more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, with intent to defraud, falsely pretend to \_\_\_\_\_ that \_\_\_\_\_, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from \_\_\_\_\_ services, of a value of (about) \$ \_\_\_\_\_, to wit: \_\_\_\_\_.

### 67. Article 122 (10 U.S.C. 922)—Robbery

#### a. *Text of statute.*

**Any person subject to this chapter who takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.**

#### b. *Elements.*

(1) That the accused wrongfully took certain property from the person or from the possession and in the presence of a person named or described;

(2) That the taking was against the will of that person;

(3) That the taking was by means of force, violence, or force and violence, or putting the person in fear of immediate or future injury to that person, a relative, a member of the person's family, anyone accompanying the person at the time of the robbery, the person's property, or the property of a relative, family member, or anyone accompanying the person at the time of the robbery;

(4) That the property belonged to a person named or described; and

(5) That the property was of a certain or of some value.

[Note: If the robbery was committed with a dangerous weapon, add the following element]

(6) That the means of force or violence or of putting the person in fear was a dangerous weapon.

#### c. *Explanation.*

(1) *Taking in the presence of the victim.* It is not necessary that the property taken be located within any certain distance of the victim. If persons enter a house and force the owner by threats to disclose the hiding

place of valuables in an adjoining room, and, leaving the owner tied, go into that room and steal the valuables, they have committed robbery.

(2) *Force or violence.* For a robbery to be committed by force or violence, there must be actual force or violence to the person, preceding or accompanying the taking against the person's will, and it is immaterial that there is no fear engendered in the victim. Any amount of force is enough to constitute robbery if the force overcomes the actual resistance of the person robbed, puts the person in such a position that no resistance is made, or suffices to overcome the resistance offered by a chain or other fastening by which the article is attached to the person. The offense is not robbery if an article is merely snatched from the hand of another or a pocket is picked by stealth, no other force is used, and the owner is not put in fear. But if resistance is overcome in snatching the article, there is sufficient violence, as when an earring is torn from a person's ear. There is sufficient violence when a person's attention is diverted by being jostled by a confederate of a pickpocket, who is thus enabled to steal the person's watch, even though the person had no knowledge of the act; or when a person is knocked insensible and that person's pockets rifled; or when a guard steals property from the person of a prisoner in the guard's charge after handcuffing the prisoner on the pretext of preventing escape.

(3) *Fear.* For a robbery to be committed by putting the victim in fear, there need be no actual force or violence, but there must be a demonstration of force or menace by which the victim is placed in such fear that the victim is warranted in making no resistance. The fear must be a reasonable apprehension of present or future injury, and the taking must occur while the apprehension exists. The injury apprehended may be death or bodily injury to the person or to a relative or family member, or to anyone in the person's company at the time, or it may be the destruction of the person's habitation or other property or that of a relative or family member or anyone in the person's company at the time of sufficient gravity to warrant giving up the property demanded by the assailant.

(4) *Multiple-victim robberies.* Robberies of different persons at the same time and place are separate offenses and each such robbery should be alleged in a separate specification.

(5) *Dangerous weapon.* For purposes of qualifying for the maximum punishment for this offense as specified in subparagraph d.(1), the term "dangerous

weapon” has the same meaning as that ascribed to the term in subparagraph 77.c.(5)(a)(iii).

d. *Maximum punishment.*

(1) *When committed with a dangerous weapon.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(2) *All other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, by means of (force) (violence) (force and violence) (and) (putting (him) (her) in fear) [with a dangerous weapon, to wit: \_\_\_\_\_] seize from the (person) (presence) of \_\_\_\_\_, against (his) (her) will, (a watch) (\_\_\_\_\_ ) of value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_.

**68. Article 122a (10 U.S.C. 922a)—Receiving stolen property**

a. *Text of statute.*

**Any person subject to this chapter who wrongfully receives, buys, or conceals stolen property, knowing the property to be stolen property, shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused wrongfully received, bought, or concealed certain property of some value;

(2) That the property belonged to another person;

(3) That the property had been stolen; and

(4) That the accused knew that the property had been stolen.

c. *Explanation.*

(1) *In general.* The actual thief is not criminally liable for receiving the property stolen; however a principal to the larceny (see paragraph 1), when not the actual thief, may be found guilty of knowingly receiving the stolen property but may not be found guilty of both the larceny and receiving the property.

(2) *Knowledge.* Actual knowledge that the property was stolen is required.

Knowledge may be proved by circumstantial evidence.

(3) *Wrongfulness.* Receiving stolen property is wrongful if it is without justification or excuse. For example, it would not be wrongful for a person to receive stolen property for the purpose of returning it to its rightful owner, or for a law enforcement officer to seize it as evidence.

d. *Maximum punishment.*

(1) *Receiving, buying, or concealing stolen property of a value of \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Receiving, buying, or concealing stolen property of a value of more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully (receive) (buy) (conceal) \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_ which property, as (he) (she), the said \_\_\_\_\_, then knew, had been stolen.

**69. Article 123 (10 U.S.C. 923)—Offenses concerning Government computers**

a. *Text of statute.*

**(a) IN GENERAL.—Any person subject to this chapter who—**

**(1) knowingly accesses a Government computer, with an unauthorized purpose, and by doing so obtains classified information, with reason to believe such information could be used to the injury of the United States, or to the advantage of any foreign nation, and intentionally communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted such information to any person not entitled to receive it;**

**(2) intentionally accesses a Government computer, with an unauthorized purpose, and thereby obtains classified or other protected information from any such Government computer; or**

**(3) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization to a Government computer;**

shall be punished as a court-martial may direct.

(b) **DEFINITIONS.—In this section:**

(1) The term “computer” has the meaning given that term in section 1030 of title 18.

(2) The term “Government computer” means a computer owned or operated by or on behalf of the United States Government.

(3) The term “damage” has the meaning given that term in section 1030 of title 18.

b. *Elements.*

(1) *Unauthorized distribution of classified information obtained from a Government computer.*

(a) That the accused knowingly accessed a Government computer with an unauthorized purpose;

(b) That the accused obtained classified information;

(c) That the accused had reason to believe the information could be used to injure the United States or benefit a foreign nation; and

(d) That the accused intentionally communicated, delivered, transmitted, or caused to be communicated, delivered, or transmitted, such information to any person not entitled to receive it.

(2) *Unauthorized access of a Government computer and obtaining classified or other protected information.*

(a) That the accused intentionally accessed a Government computer with an unauthorized purpose; and

(b) That the accused thereby obtained classified or other protected information from any such Government computer.

(3) *Causing damage to a Government computer.*

(a) That the accused knowingly caused the transmission of a program, information, code, or command; and

(b) That the accused, as a result, intentionally and without authorization caused damage to a Government computer.

c. *Explanation.*

(1) *Access.* “Access” means to gain entry to, instruct, cause input to, cause output from, cause data processing with, or communicate with, the logical, arithmetical, or memory function resources of a computer.

(2) *With an unauthorized purpose.* The phrase “with an unauthorized purpose” may refer to more than one

unauthorized purpose, or an unauthorized purpose in conjunction with an authorized purpose. The phrase covers persons accessing Government computers without any authorization, i.e., “outsiders,” as well as persons with authorization who access Government computers for an improper purpose or who exceed their authorization, i.e., “insiders.” The key criterion to determine criminality is whether the person intentionally used the computer for a purpose that was clearly contrary to the interests or intent of the authorizing party.

(3) *Classified Information.* See 10 U.S.C. § 801(15).

(4) *Protected Information.* Non-classified protected information includes Personally Identifiable Information (PII), as well as information designated as Controlled Unclassified Information (CUI) by the Secretary of Defense, and information designated as For Official Use Only (FOUO), Law Enforcement Sensitive (LES), Unclassified Nuclear Information (UCNI), and Limited Distribution.

(5) *Damage.* The definition of “damage” is taken from 18 U.S.C. § 1030 and means any impairment to the integrity or availability of data, a program, a system, or information.

(6) *Computer.* The definition of “computer” is taken from 18 U.S.C. § 1030 and means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device. A portable computer, including a smartphone, is a computer.

d. *Maximum punishment.*

(1) *Unauthorized distribution of classified information obtained from a Government computer.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Unauthorized access of a Government computer and obtaining classified or other protected information.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Causing damage to a Government computer.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specification*

(1) *Unauthorized distribution of classified information obtained from a Government computer.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), (on or about \_\_\_\_ 20 \_\_) (from about \_\_\_\_ to about \_\_\_\_ 20 \_\_), knowingly access a government computer with an unauthorized purpose and obtained classified information, to wit: \_\_\_\_\_, with reason to believe the information could be used to injure the United States or benefit a foreign nation, and intentionally (communicated) (delivered) (transmitted) (caused to be communicated/delivered/transmitted) such information to \_\_\_\_\_, a person not entitled to receive it.

(2) *Accessing a computer and obtaining information.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), (on or about \_\_\_\_ 20 \_\_) (from about \_\_\_\_ to about \_\_\_\_ 20 \_\_), intentionally access a government computer with an unauthorized purpose and thereby knowingly obtained (classified) (protected) information, to wit: \_\_\_\_\_ from such government computer.

(3) *Causing damage by computer contaminant.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), (on or about \_\_\_\_ 20 \_\_) (from about \_\_\_\_ to about \_\_\_\_ 20 \_\_), knowingly cause the transmission of a program, information, code, or command, and as a result, intentionally and without authorization caused damage to a government computer.

**70. Article 123a (10 U.S.C. 923a)—Making, drawing, or uttering check, draft, or order without sufficient funds**

a. *Text of statute.*

**Any person subject to this chapter who—**

**(1) for the procurement of any article or thing of value, with intent to defraud; or**

**(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;**

**makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or**

**order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.**

b. *Elements.*

(1) *For the procurement of any article or thing of value, with intent to defraud.*

(a) That the accused made, drew, uttered, or delivered a check, draft, or order for the payment of money payable to a named person or organization;

(b) That the accused did so for the purpose of procuring an article or thing of value;

(c) That the act was committed with intent to defraud; and

(d) That at the time of making, drawing, uttering, or delivery of the instrument the accused knew that the accused or the maker or drawer had not or would not have sufficient funds in, or credit with, the bank or other depository for the payment thereof upon presentment.

(2) *For the payment of any past due obligation, or for any other purpose, with intent to deceive.*

(a) That the accused made, drew, uttered, or delivered a check, draft, or order for the payment of money payable to a named person or organization;

(b) That the accused did so for the purpose or purported purpose of effecting the payment of a past due obligation or for some other purpose;

(c) That the act was committed with intent to deceive; and

(d) That at the time of making, drawing, uttering, or delivering of the instrument, the accused knew that the accused or the maker or drawer had not or would not have sufficient funds in, or credit with, the bank or other depository for the payment thereof upon presentment.

c. *Explanation.*

(1) *Written instruments.* The written instruments covered by this article include any check, draft (including share drafts), or order for the payment of money drawn upon any bank or other depository, whether or not the drawer bank or depository is actually in existence. It may be inferred that every check, draft, or order carries with it a representation that the instrument will be paid in full by the bank or other depository upon presentment by a holder when due.

(2) *Bank or other depository.* Bank or other depository includes any business regularly but not necessarily exclusively engaged in public banking activities.

(3) *Making or drawing.* Making and drawing are synonymous and refer to the act of writing and signing the instrument.

(4) *Uttering or delivering.* Uttering and delivering have similar meanings. Both mean transferring the instrument to another, but uttering has the additional meaning of offering to transfer. A person need not personally be the maker or drawer of an instrument in order to violate this article if that person utters or delivers it. For example, if a person holds a check which that person knows is worthless, and utters or delivers the check to another, that person may be guilty of an offense under this article despite the fact that the person did not personally draw the check.

(5) *For the procurement.* “For the procurement” means for the purpose of obtaining any article or thing of value. It is not necessary that an article or thing of value actually be obtained, and the purpose of the obtaining may be for the accused’s own use or benefit or for the use or benefit of another.

(6) *For the payment.* “For the payment” means for the purpose or purported purpose of satisfying in whole or in part any past due obligation. Payment need not be legally effected.

(7) *For any other purpose.* For any other purpose includes all purposes other than the payment of a past due obligation or the procurement of any article or thing of value. For example, it includes paying or purporting to pay an obligation which is not yet past due. The check, draft, or order, whether made or negotiated for the procurement of an article or thing of value or for the payment of a past due obligation or for some other purpose, need not be intended or represented as payable immediately. For example, the making of a postdated check, delivered at the time of

entering into an installment purchase contract and intended as payment for a future installment, would, if made with the requisite intent and knowledge, be a violation of this article.

(8) *Article or thing of value.* Article or thing of value extends to every kind of right or interest in property, or derived from contract, including interests and rights which are intangible or contingent or which mature in the future.

(9) *Past due obligation.* A past due obligation is an obligation to pay money, which obligation has legally matured before making, drawing, uttering, or delivering the instrument.

(10) *Knowledge.* The accused must have knowledge, at the time the accused makes, draws, utters, or delivers the instrument, that the maker or drawer, whether the accused or another, has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of the instrument in full upon its presentment. Such knowledge may be proved by circumstantial evidence.

(11) *Sufficient funds.* “Sufficient funds” refers to a condition in which the account balance of the maker or drawer in the bank or other depository at the time of the presentment of the instrument for payment is not less than the face amount of the instrument and has not been rendered unavailable for payment by garnishment, attachment, or other legal procedures.

(12) *Credit.* “Credit” means an arrangement or understanding, express or implied, with the bank or other depository for the payment of the check, draft, or order. An absence of credit includes those situations in which an accused writes a check on a nonexistent bank or on a bank in which the accused has no account.

(13) *Upon its presentment.* “Upon its presentment” refers to the time the demand for payment is made upon presentation of the instrument to the bank or other depository on which it was drawn.

(14) *Intent to defraud.* “Intent to defraud” means an intent to obtain, through a misrepresentation, an article or thing of value and to apply it to one’s own use and benefit or to the use and benefit of another, either permanently or temporarily.

(15) *Intent to deceive.* “Intent to deceive” means an intent to mislead, cheat, or trick another by means of a misrepresentation made for the purpose of gaining an advantage for oneself or for a third person, or of bringing about a disadvantage to the interests of the

person to whom the representation was made or to interests represented by that person.

(16) *The relationship of time and intent.* Under this article, two times are involved: (a) when the accused makes, draws, utters, or delivers the instrument; and (b) when the instrument is presented to the bank or other depository for payment. With respect to (a), the accused must possess the requisite intent and must know that the maker or drawer does not have or will not have sufficient funds in, or credit with, the bank or the depository for payment of the instrument in full upon its presentment when due. With respect to (b), if it can otherwise be shown that the accused possessed the requisite intent and knowledge at the time the accused made, drew, uttered, or delivered the instrument, neither proof of presentment nor refusal of payment is necessary, as when the instrument is one drawn on a nonexistent bank.

(17) *Statutory rule of evidence.* The provision of this article with respect to establishing prima facie evidence of knowledge and intent by proof of notice and nonpayment within 5 days is a statutory rule of evidence. The failure of an accused who is a maker or drawer to pay the holder the amount due within 5 days after receiving either oral or written notice from the holder of a check, draft, or order, or from any other person having knowledge that such check, draft, or order was returned unpaid because of insufficient funds, is prima facie evidence (a) that the accused had the intent to defraud or deceive as alleged; and (b) that the accused knew at the time the accused made, drew, uttered, or delivered the check, draft, or order that the accused did not have or would not have sufficient funds in, or credit with, the bank or other depository for the payment of such check, draft, or order upon its presentment for payment. Prima facie evidence is that evidence from which the accused's intent to defraud or deceive and the accused's knowledge of insufficient funds in or credit with the bank or other depository may be inferred, depending on all the circumstances. The failure to give notice referred to in the article, or payment by the accused, maker, or drawer to the holder of the amount due within 5 days after such notice has been given, precludes the prosecution from using the statutory rule of evidence but does not preclude conviction of this offense if all the elements are otherwise proved.

(18) *Affirmative defense.* Honest mistake is an affirmative defense to offenses under this article. See R.C.M. 916(j).

d. *Maximum punishment.*

(1) *For the procurement of any article or thing of value, with intent to defraud, in the face amount of:*

(a) *\$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *More than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *For the payment of any past due obligation, or for any other purpose, with intent to deceive.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specifications.*

(1) *For the procurement of any article or thing of value, with intent to defraud.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, with intent to defraud and for the procurement of (lawful currency) (and) (\_\_\_\_\_ (an article) (a thing) of value), wrongfully and unlawfully ((make (draw)) (utter) (deliver) to \_\_\_\_\_,) a certain (check) (draft) (money order) upon the (\_\_\_\_\_ Bank) (\_\_\_\_\_ depository) in words and figures as follows, to wit: \_\_\_\_\_, then knowing that (he) (she) (\_\_\_\_\_), the (maker) (drawer) thereof, did not or would not have sufficient funds in or credit with such (bank) (depository) for the payment of the said (check) (draft) (order) in full upon its presentment.

(2) *For the payment of any past due obligation, or for any other purpose, with intent to deceive.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, with intent to deceive and for the payment of a past due obligation, to wit: \_\_\_\_\_ (for the purpose of \_\_\_\_\_) wrongfully and unlawfully ((make) (draw)) (utter) (deliver) to \_\_\_\_\_, a certain (check) (draft) (money order) for the payment of money upon (\_\_\_\_\_ Bank) (\_\_\_\_\_ depository), in words and figures as follows, to wit: \_\_\_\_\_, then knowing that (he) (she) (\_\_\_\_\_), the (maker) (drawer) thereof, did not or would not have sufficient funds in or credit with such (bank) (depository) for the payment of the said (check) (draft) (order) in full upon its presentment.

**71. Article 124 (10 U.S.C. 924)—Frauds against the United States***a. Text of statute.***Any person subject to this chapter—****(1) who, knowing it to be false or fraudulent—**

**(A) makes any claim against the United States or any officer thereof; or**

**(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;**

**(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—**

**(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;**

**(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or**

**(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;**

**(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or**

**(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;**

**shall, upon conviction, be punished as a court-martial may direct.**

*b. Elements.***(1) Making a false or fraudulent claim.**

**(a) That the accused made a certain claim against the United States or an officer thereof;**

**(b) That the claim was false or fraudulent in certain particulars; and**

**(c) That the accused then knew that the claim was false or fraudulent in these particulars.**

*(2) Presenting for approval or payment a false or fraudulent claim.*

**(a) That the accused presented for approval or payment to a certain person in the civil or military service of the United States having authority to approve or pay it a certain claim against the United States or an officer thereof;**

**(b) That the claim was false or fraudulent in certain particulars; and**

**(c) That the accused then knew that the claim was false or fraudulent in these particulars.**

*(3) Making or using a false writing or other paper in connection with a claim.*

**(a) That the accused made or used a certain writing or other paper;**

**(b) That certain material statements in the writing or other paper were false or fraudulent;**

**(c) That the accused then knew the statements were false or fraudulent; and**

**(d) That the act of the accused was for the purpose of obtaining the approval, allowance, or payment of a certain claim or claims against the United States or an officer thereof.**

*(4) False oath in connection with a claim.*

**(a) That the accused made an oath to a certain fact or to a certain writing or other paper;**

**(b) That the oath was false in certain particulars;**

**(c) That the accused then knew it was false; and**

**(d) That the act was for the purpose of obtaining the approval, allowance, or payment of a certain claim or claims against the United States or an officer thereof.**

*(5) Forgery of signature in connection with a claim.*

**(a) That the accused forged or counterfeited the signature of a certain person on a certain writing or other paper; and**

**(b) That the act was for the purpose of obtaining the approval, allowance, or payment of a certain claim against the United States or an officer thereof.**

*(6) Using forged signature in connection with a claim.*

**(a) That the accused used the forged or counterfeited signature of a certain person;**

**(b) That the accused then knew that the signature was forged or counterfeited; and**



(c) That the act was for the purpose of obtaining the approval, allowance, or payment of a certain claim against the United States or an officer thereof.

(7) *Delivering less than amount called for by receipt.*

(a) That the accused had charge, possession, custody, or control of certain money or property of the United States furnished or intended for the armed forces thereof;

(b) That the accused obtained a certificate or receipt for a certain amount or quantity of that money or property;

(c) That for the certificate or receipt the accused knowingly delivered to a certain person having authority to receive it, an amount or quantity of money or property less than the amount or quantity thereof specified in the certificate or receipt; and

(d) That the undelivered money or property was of a certain value.

(8) *Making or delivering receipt without having full knowledge that it is true.*

(a) That the accused was authorized to make or deliver a paper certifying the receipt from a certain person of certain property of the United States furnished or intended for the armed forces thereof;

(b) That the accused made or delivered to that person a certificate or receipt;

(c) That the accused made or delivered the certificate without having full knowledge of the truth of a certain material statement or statements therein;

(d) That the act was done with intent to defraud the United States; and

(e) That the property certified as being received was of a certain value.

c. *Explanation.*

(1) *Making a false or fraudulent claim.*

(a) *Claim.* A claim is a demand for a transfer of ownership of money or property and does not include requisitions for the mere use of property. This article applies only to claims against the United States or any officer thereof as such, and not to claims against an officer of the United States in that officer's private capacity.

(b) *Making a claim.* Making a claim is a distinct act from presenting it. A claim may be made in one place and presented in another. The mere writing of a paper in the form of a claim, without any further act to cause the paper to become a demand against the United States or an officer thereof, does not constitute making

a claim. However, any act placing the claim in official channels constitutes making a claim, even if that act does not amount to presenting a claim. It is not necessary that the claim be allowed or paid or that it be made by the person to be benefited by the allowance or payment. See also subparagraph c.(2).

(c) *Knowledge.* The claim must be made with knowledge of its fictitious or dishonest character. This article does not proscribe claims, however groundless they may be, that the maker believes to be valid, or claims that are merely made negligently or without ordinary prudence.

(2) *Presenting for approval or payment a false or fraudulent claim.*

(a) *False and fraudulent.* False and fraudulent claims include not only those containing some material false statement, but also claims that the claimant knows to have been paid or for some other reason the claimant knows the claimant is not authorized to present or upon which the claimant knows the claimant has no right to collect.

(b) *Presenting a claim.* The claim must be presented, directly or indirectly, to some person having authority to pay it. The person to whom the claim is presented may be identified by position or authority to approve the claim, and need not be identified by name in the specification. A false claim may be tacitly presented, as when a person who knows that there is no entitlement to certain pay accepts it nevertheless without disclosing a disqualification, even though the person may not have made any representation of entitlement to the pay. For example, a person cashing a pay check that includes an amount for a dependency allowance, knowing at the time that the entitlement no longer exists because of a change in that dependency status, has tacitly presented a false claim. See also subparagraph (1) of this paragraph.

(3) *Making or using a false writing or other paper in connection with a claim.* The false or fraudulent statement must be material, that is, it must have a tendency to mislead governmental officials in their consideration or investigation of the claim. The offense of making a writing or other paper known to contain a false or fraudulent statement for the purpose of obtaining the approval, allowance, or payment of a claim is complete when the writing or paper is made for that purpose, whether or not any use of the paper has been attempted and whether or not the claim has been presented. See also the explanation in subparagraphs (1) and (2) of this paragraph.

(4) *False oath in connection with a claim.* See subparagraphs (1) and (2) of this paragraph.

(5) *Forgery of signature in connection with a claim.* Any fraudulent making of the signature of another is forging or counterfeiting, whether or not an attempt is made to imitate the handwriting. See subparagraph 37.c. and subparagraphs (1) and (2) of this paragraph.

(6) *Delivering less than amount called for by receipt.* It is immaterial by what means—whether deceit, collusion, or otherwise—the accused effected the transaction, or what was the accused’s purpose.

(7) *Making or delivering receipt without having full knowledge that it is true.* When an officer or other person subject to military law is authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, and a receipt or other paper is presented for signature stating that a certain amount of supplies has been furnished by a certain contractor, it is that person’s duty before signing the paper to know that the full amount of supplies therein stated to have been furnished has in fact been furnished, and that the statements contained in the paper are true. If the person signs the paper with intent to defraud the United States and without that knowledge, that person is guilty of a violation of this section of the article. If the person signs the paper with knowledge that the full amount was not received, it may be inferred that the person intended to defraud the United States.

d. *Maximum punishment.*

(1) *Article 124 (1) and (2).* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *Article 124 (3) and (4).*

(a) *When amount is \$1,000 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *When amount is more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Making false claim.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (by preparing (a voucher) (\_\_\_\_\_) for presentation for approval or payment) (\_\_\_\_\_), make a claim against the (United States) (finance officer at \_\_\_\_\_) (\_\_\_\_\_) in the amount of \$ \_\_\_\_\_ for

(private property alleged to have been (lost) (destroyed) in the military service) (\_\_\_\_\_), which claim was (false) (fraudulent) (false and fraudulent) in the amount of \$ \_\_\_\_\_ in that \_\_\_\_\_ and was then known by the said \_\_\_\_\_ to be (false) (fraudulent) (false and fraudulent).

(2) *Presenting false claim.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, by presenting (a voucher) (\_\_\_\_\_) to \_\_\_\_\_, an officer of the United States duly authorized to (approve) (pay) (approve and pay) such claim, present for (approval) (payment) (approval and payment) a claim against the (United States) (finance officer at \_\_\_\_\_) (\_\_\_\_\_) in the amount of \$ \_\_\_\_\_ for (services alleged to have been rendered to the United States by \_\_\_\_\_ during \_\_\_\_\_) (\_\_\_\_\_), which claim was (false) (fraudulent) (false and fraudulent) in the amount of \$ \_\_\_\_\_ in that \_\_\_\_\_, and was then known by the said \_\_\_\_\_ to be (false) (fraudulent) (false and fraudulent).

(3) *Making or using false writing.*

In that \_\_\_\_\_ (personal jurisdiction data), for the purpose of obtaining the (approval) (allowance) (payment) (approval, allowance, and payment) of a claim against the United States in the amount of \$ \_\_\_\_\_, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (make) (use) (make and use) a certain (writing) (paper), to wit: \_\_\_\_\_, which said (writing) (paper), as (he) (she), the said \_\_\_\_\_, then knew, contained a statement that \_\_\_\_\_, which statement was (false) (fraudulent) (false and fraudulent) in that \_\_\_\_\_, and was then known by the said \_\_\_\_\_ to be (false) (fraudulent) (false and fraudulent).

(4) *Making false oath.*

In that \_\_\_\_\_ (personal jurisdiction data), for the purpose of obtaining the (approval) (allowance) (payment) (approval, allowance, and payment) of a claim against the United States, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, make an oath (to the fact that \_\_\_\_\_) (to a certain (writing) (paper), to wit: \_\_\_\_\_), to the effect that \_\_\_\_\_, which said oath was false in that \_\_\_\_\_, and was then known by the said \_\_\_\_\_ to be false.

(5) *Forging or counterfeiting signature.*

In that \_\_\_\_\_ (personal jurisdiction data), for the purpose of obtaining the (approval) (allowance) (payment) (approval, allowance, and payment) of a claim against the United States, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (forge) (counterfeit) (forge and counterfeit) the signature of \_\_\_\_\_ upon a \_\_\_\_\_ in words and figures as follows: \_\_\_\_\_.

(6) *Using forged signature.*

In that \_\_\_\_\_ (personal jurisdiction data), for the purpose of obtaining the (approval) (allowance) (payment) (approval, allowance, and payment) of a claim against the United States, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, use the signature of \_\_\_\_\_ on a certain (writing) (paper), to wit: \_\_\_\_\_, then knowing such signature to be (forged) (counterfeited) (forged and counterfeited).

(7) *Paying amount less than called for by a receipt.*

In that \_\_\_\_\_ (personal jurisdiction data), having (charge) (possession) (custody) (control) of (money) (\_\_\_\_\_) of the United States, (furnished) (intended) (furnished and intended) for the armed forces thereof, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, knowingly deliver to \_\_\_\_\_, the said \_\_\_\_\_ having authority to receive the same, (an amount) (\_\_\_\_\_), which, as (he) (she), \_\_\_\_\_, then knew, was (\$\_\_\_\_\_) (\_\_\_\_\_) less than the (amount) (\_\_\_\_\_) for which (he) (she) received a (certificate) (receipt) from the said \_\_\_\_\_.

(8) *Making receipt without knowledge of the facts.*

In that \_\_\_\_\_ (personal jurisdiction data), being authorized to (make) (deliver) (make and deliver) a paper certifying the receipt of property of the United States (furnished) (intended) (furnished and intended) for the armed forces thereof, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, without having full knowledge of the statement therein contained and with intent to defraud the United States, (make) (deliver) (make and deliver) to \_\_\_\_\_, such a writing, in words and figures as follows: \_\_\_\_\_, the property therein certified as received being of a value of about \$\_\_\_\_\_.

## 72. Article 124a (10 U.S.C. 924a)—Bribery

### a. *Text of statute.*

**(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—**

**(1) who occupies an official position or who has official duties; and**

**(2) who wrongfully asks, accepts, or receives a thing of value with the intent to have the person's decision or action influenced with respect to an official matter in which the United States is interested;**

**shall be punished as a court-martial may direct.**

**(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, with the intent to influence the decision or action of the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.**

### b. *Elements.*

#### (1) *Asking, accepting, or receiving.*

(a) That the accused wrongfully asked, accepted, or received a thing of value from a certain person or organization;

(b) That the accused then occupied a certain official position or had certain official duties;

(c) That the accused asked, accepted, or received this thing of value with the intent to have the accused's decision or action influenced with respect to a certain matter; and

(d) That this certain matter was an official matter in which the United States was interested.

#### (2) *Promising, offering, or giving.*

(a) That the accused wrongfully promised, offered, or gave a thing of value to a certain person;

(b) That this person then occupied a certain official position or had certain official duties;

(c) That this thing of value was promised, offered, or given with the intent to influence the decision or action of this person; and

(d) That this matter was an official matter in which the United States was interested.

c. *Explanation.* Bribery requires an intent to influence or be influenced in an official matter.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Asking, accepting, or receiving.*

In that \_\_\_\_\_ (personal jurisdiction data), being at the time (a contracting officer for \_\_\_\_\_) (the personnel officer of \_\_\_\_\_) (\_\_\_\_\_), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (ask) (accept) (receive) from \_\_\_\_\_, (a contracting company engaged in \_\_\_\_\_) (\_\_\_\_\_), (the sum of \$ \_\_\_\_\_) (\_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_) (\_\_\_\_\_), (with intent to have (his) (her) (decision) (action) influenced with respect to) ((as compensation for) (in recognition of)) service (rendered) (to be rendered).

(2) *Promising, offering, or giving.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (promise) (offer) (give) to \_\_\_\_\_, ((his) (her) commanding officer) (the claims officer of \_\_\_\_\_) (\_\_\_\_\_), (the sum of \$ \_\_\_\_\_) (\_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_) (\_\_\_\_\_), (with intent to influence the (decision) (action) of the said \_\_\_\_\_ with respect to) ((as compensation for) (in recognition of)) services (rendered) (to be rendered).

### 73. Article 124b (10 U.S.C. 924b)—Graft

a. *Text of statute.*

**(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—**

**(1) who occupies an official position or who has official duties; and**

**(2) who wrongfully asks, accepts, or receives a thing of value as compensation for or in recognition of services rendered or to be rendered by the person with respect to an official matter in which the United States is interested;**

**shall be punished as a court-martial may direct.**

**(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, as compensation for or in recognition of services rendered or to be rendered by the other person with**

**respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Asking, accepting, or receiving.*

(a) That the accused wrongfully asked, accepted, or received a thing of value from a certain person or organization;

(b) That the accused then occupied a certain official position or had certain official duties;

(c) That the accused asked, accepted, or received this thing of value as compensation for or in recognition of services rendered, to be rendered, or both, by the accused in relation to a certain matter; and

(d) That this certain matter was an official matter in which the United States was interested.

(2) *Promising, offering, or giving.*

(a) That the accused wrongfully promised, offered, or gave a thing of value to a certain person;

(b) That this person then occupied a certain official position or had certain official duties;

(c) That this thing of value was promised, offered, or given as compensation for or in recognition of services rendered, to be rendered, or both, by this person in relation to a certain matter; and

(d) That this matter was an official matter in which the United States was interested.

c. *Explanation.* Graft does not require an intent to influence or be influenced in an official matter. Graft involves compensation for services performed in an official matter when no compensation is due.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specifications.*

(1) *Asking, accepting, or receiving.*

In that \_\_\_\_\_ (personal jurisdiction data), being at the time (a contracting officer for \_\_\_\_\_) (the personnel officer of \_\_\_\_\_) (\_\_\_\_\_), did,(at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (ask) (accept) (receive) from \_\_\_\_\_, (a contracting company engaged in \_\_\_\_\_) (\_\_\_\_\_), (the sum of \$ \_\_\_\_\_) (\_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_) (\_\_\_\_\_), (rendered or to be rendered) by (him) (her) the said \_\_\_\_\_ in relation to) an official matter in which the United States was interested, to wit: (the purchasing of

military supplies from \_\_\_\_\_) (the transfer of \_\_\_\_\_ to duty with \_\_\_\_\_) (\_\_\_\_\_).

(2) *Promising, offering, or giving.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully (promise) (offer) (give) to \_\_\_\_\_, ((his) (her) commanding officer) (the claims officer of \_\_\_\_\_) (\_\_\_\_\_), (the sum of \$\_\_\_\_\_) (\_\_\_\_\_, of a value of (about) \$\_\_\_\_\_) (\_\_\_\_\_, (rendered or to be rendered) by the said \_\_\_\_\_ in relation to) an official matter in which the United States was interested, to wit: (the granting of leave to \_\_\_\_\_) (the processing of a claim against the United States in favor of \_\_\_\_\_) (\_\_\_\_\_).

#### 74. Article 125 (10 U.S.C. 925)—Kidnapping

a. *Text of statute.*

**Any person subject to this chapter who wrongfully—**

**(1) seizes, confines, inveigles, decoys, or carries away another person; and**

**(2) holds the other person against that person’s will;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused seized, confined, inveigled, decoyed, or carried away a certain person;

(2) That the accused then held such person against that person’s will; and

(3) That the accused did so wrongfully.

c. *Explanation.*

(1) *Inveigle, decoy.* “Inveigle” means to lure, lead astray, or entice by false representations or other deceitful means. For example, a person who entices another to ride in a car with a false promise to take the person to a certain destination has inveigled the passenger into the car. “Decoy” means to entice or lure by means of some fraud, trick, or temptation. For example, one who lures a child into a trap with candy has decoyed the child.

(2) *Held.* “Held” means detained. The holding must be more than a momentary or incidental detention. For example, a robber who holds the victim at gunpoint while the victim hands over a wallet, or a rapist who throws his victim to the ground, does not, by such acts, commit kidnapping. On the other hand, if, before or after such robbery or rape, the victim is involuntarily

transported some substantial distance, as from a housing area to a remote area of the base or post, this may be kidnapping, in addition to robbery or rape.

(3) *Against the will.* “Against that person’s will” means that the victim was held involuntarily. The involuntary nature of the detention may result from force, mental or physical coercion, or from other means, including false representations. If the victim is incapable of having a recognizable will, as in the case of a very young child or a mentally incompetent person, the holding must be against the will of the victim’s parents or legal guardian. Evidence of the availability or nonavailability to the victim of means of exit or escape is relevant to the voluntariness of the detention, as is evidence of threats or force, or lack thereof, by the accused to detain the victim.

(4) *Financial or personal gain.* The holding need not have been for financial or personal gain or for any other particular purpose. It may be an aggravating circumstance that the kidnapping was for ransom, however. See R.C.M. 1001(b)(4).

(5) *Wrongfully.* “Wrongfully” means without justification or excuse. For example, a law enforcement official may justifiably apprehend and detain, by force if reasonably necessary (see R.C.M. 302(d)(3)), a person reasonably believed to have committed an offense. An official who unlawfully uses the official’s authority to apprehend someone is not guilty of kidnapping, but may be guilty of unlawful detention. See paragraph 25.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.

e. *Sample specification.*

In that \_\_\_\_\_, (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully (seize) (confine) (inveigle) (decoy) (carry away) and hold \_\_\_\_\_ (a minor whose parent or legal guardian the accused was not) (a person not a minor) against (his) (her) will.

#### 75. Article 126 (10 U.S.C. 926)—Arson; burning property with intent to defraud

a. *Text of statute.*

**(a) AGGRAVATED ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets on fire an inhabited dwelling, or any other structure, movable or**

immovable, wherein, to the knowledge of that person, there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) **SIMPLE ARSON.**—Any person subject to this chapter who, willfully and maliciously, burns or sets fire to the property of another is guilty of simple arson and shall be punished as a court-martial may direct.

(c) **BURNING PROPERTY WITH INTENT TO DEFRAUD.**—Any person subject to this chapter who, willfully, maliciously, and with intent to defraud, burns or sets fire to any property shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Aggravated arson.*

(a) *Inhabited dwelling.*

(i) That the accused burned or set on fire an inhabited dwelling; and

(ii) That the act was willful and malicious.

(b) *Structure.*

(i) That the accused burned or set on fire a certain structure;

(ii) That the act was willful and malicious;

(iii) That there was a human being in the structure at the time; and

(iv) That the accused knew that there was a human being in the structure at the time.

(2) *Simple arson.*

(a) That the accused burned or set fire to certain property of another; and

(b) That the act was willful and malicious.

[Note: if the property is of a value of more than \$1,000, add the following element:]

(c) That the property is of a value of more than \$1,000.

(3) *Burning with the intent to defraud.*

(a) That the accused burned or set fire to certain property; and

(b) That the act was willful and malicious; and

(c) That such burning or setting on fire was with the intent to defraud a certain person or organization.

c. *Explanation.*

(1) *In general.* In aggravated arson, danger to human life is the essential element; in simple arson, it is injury to the property of another. In either case, it is

immaterial that no one is, in fact, injured. It must be shown that the accused set the fire willfully and maliciously, that is, not merely by negligence or accident. In burning with intent to defraud, it is the fraudulent intent motivating the burning of any property that is the essential element. It is immaterial to whom the property belonged; the focus is that the burning of that property was for a fraudulent purpose (e.g., the intent to file a false insurance claim for the property burned by the accused).

(2) *Aggravated arson.*

(a) *Inhabited dwelling.* “An inhabited dwelling” means the structure must be used for habitation, not that a human being must be present therein at the time the dwelling is burned or set on fire. It includes the outbuildings that form part of the cluster of buildings used as a residence. A shop or store is not an inhabited dwelling unless occupied as such, nor is a house that has never been occupied or that has been temporarily abandoned. A person may be guilty of aggravated arson of the person’s dwelling, whether as owner or tenant.

(b) *Structure.* Aggravated arson may also be committed by burning or setting on fire any other structure, movable or immovable, such as a theater, church, boat, trailer, tent, auditorium, or any other sort of shelter or edifice, whether public or private, when the offender knows that there is a human being inside at the time. It may be that the offender had this knowledge when the nature of the structure—as a department store or theater during hours of business, or other circumstances—are shown to have been such that a reasonable person would have known that a human being was inside at the time.

(c) *Damage to property.* It is not necessary that the dwelling or structure be consumed or materially injured; it is enough if fire is actually communicated to any part thereof. Any actual burning or charring is sufficient, but a mere scorching or discoloration by heat is not.

(d) *Value and ownership of property.* For the offense of aggravated arson, the value and ownership of the dwelling or other structure are immaterial, but may be alleged and proved to permit the finding in an appropriate case of the included offense of simple arson.

(3) *Simple arson.* Simple arson is the willful and malicious burning or setting fire to the property of another under circumstances not amounting to aggravated arson. The offense includes burning or

setting fire to real or personal property of someone other than the offender. See subparagraph 75.c.(1) for discussion of willful and malicious.

(4) *Burning with the intent to defraud.* See subparagraph 70.c.(14) for a discussion of intent to defraud.

d. *Maximum punishment.*

(1) *Aggravated arson.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 25 years.

(2) *Simple arson—*

(a) *Where the property is of some value.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(b) *Where the property is of a value of more than \$1,000.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(3) *Burning with intent to defraud.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specifications.*

(1) *Aggravated arson.*

(a) *Inhabited dwelling.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully and maliciously (burn) (set on fire) an inhabited dwelling, to wit: (a house) (an apartment) (\_\_\_\_\_).

(b) *Structure.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully and maliciously (burn) (set on fire), knowing that a human being was therein at the time, (the Post Theater) (\_\_\_\_\_).

(2) *Simple arson.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully and maliciously (burn) (set fire to) (an automobile) (\_\_\_\_\_), (of some value) (of a value of more than \$1,000), the property of another.

(3) *Burning with intent to defraud.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully

and maliciously (burn) (set fire to) (a dwelling) (a barn) (an automobile) (\_\_\_\_\_), with intent to defraud (the insurer thereof, to wit: \_\_\_\_\_) (\_\_\_\_\_).

76. Article 127 (10 U.S.C. 927)—Extortion

a. *Text of statute.*

**Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused communicated a certain threat to another; and

(2) That the accused intended to unlawfully obtain something of value, or any acquittance, advantage, or immunity.

c. *Explanation.*

(1) *In general.* Extortion is complete upon communication of the threat with the requisite intent. The actual or probable success of the extortion need not be proved.

(2) *Threat.* A threat may be communicated by any means but must be received by the intended victim. The threat may be: a threat to do any unlawful injury to the person or property of the person threatened or to any member of that person's family or any other person held dear to that person; a threat to accuse the person threatened, or any member of that person's family or any other person held dear to that person, of any crime; a threat to expose or impute any deformity or disgrace to the person threatened or to any member of that person's family or any other person held dear to that person; a threat to expose any secret affecting the person threatened or any member of that person's family or any other person held dear to that person; or a threat to do any other harm.

(3) *Acquittance.* An acquittance is a release or discharge from an obligation.

(4) *Advantage or immunity.* Unless it is clear from the circumstances, the advantage or immunity sought should be described in the specification. An intent to make a person do an act against that person's will is not, by itself, sufficient to constitute extortion.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specifications.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, with intent unlawfully to obtain (something of value, to wit: \_\_\_\_\_) (an acquittance) (an advantage, to wit: \_\_\_\_\_) (an immunity, to wit: \_\_\_\_\_), communicate to \_\_\_\_\_ a threat to (here describe the threat).

## 77. Article 128 (10 U.S.C. 928)—Assault

a. *Text of statute.*

(a) **ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—**

**(1) attempts to do bodily harm to another person;**

**(2) offers to do bodily harm to another person;**  
or

**(3) does bodily harm to another person;**

**is guilty of assault and shall be punished as a court-martial may direct.**

(b) **AGGRAVATED ASSAULT.—Any person subject to this chapter—**

**(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;**  
or

**(2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person;**

**is guilty of aggravated assault and shall be punished as a court-martial may direct.**

[NOTE: For additional statutory language of “strangulation” and “suffocation,” added as part of the FY19 NDAA, *See* Appendix 2, Article 128(b), UCMJ]

(c) **ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—**

**(1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.**

**(2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping.**

b. *Elements.*(1) *Simple assault.*

(a) That the accused attempted to do or offered to do bodily harm to a certain person;

(b) That the attempt or offer was done unlawfully; and

(c) That the attempt or offer was done with force or violence.

(2) *Assault consummated by a battery.*

(a) That the accused did bodily harm to a certain person;

(b) That the bodily harm was done unlawfully; and

(c) That the bodily harm was done with force or violence.

(3) *Assaults permitting increased punishment based on status of victim.*

(a) *Assault upon a commissioned, warrant, noncommissioned, or petty officer.*

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the attempt, offer, or bodily harm was done unlawfully;

(iii) That the attempt, offer, or bodily harm was done with force or violence;

(iv) That the person was a commissioned, warrant, noncommissioned, or petty officer; and

(v) That the accused then knew that the person was a commissioned, warrant, noncommissioned, or petty officer.

(b) *Assault upon a sentinel or lookout in the execution of duty, or upon a person in the execution of law enforcement duties.*

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the attempt, offer, or bodily harm was done unlawfully;

(iii) That the attempt, offer, or bodily harm was done with force or violence;

(iv) That the person was a sentinel or lookout in the execution of duty or was a person who then had and was in the execution of security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties; and

(v) That the accused then knew that the person was a sentinel or lookout in the execution of duty or was a person who then had and was in the execution of security police, military police, shore patrol, master at



arms, or other military or civilian law enforcement duties.

(c) *Assault consummated by a battery upon a child under 16 years, a spouse, intimate partner, or immediate family member.*

(i) That the accused did bodily harm to a certain person;

(ii) That the bodily harm was done unlawfully;

(iii) That the bodily harm was done with force or violence; and

(iv) That the person was then a child under the age of 16 years, or a spouse, intimate partner, or an immediate family member of the accused.

(4) *Aggravated assault.*

(a) *Assault with a dangerous weapon.*

(i) That the accused offered to do bodily harm to a certain person;

(ii) The offer was made with the intent to do bodily harm; and

(iii) That the accused did so with a dangerous weapon.

[Note: Add any of the following elements as applicable:]

(iv) That the dangerous weapon was a loaded firearm.

(v) That the person was a child under the age of 16 years, or a spouse, intimate partner, or an immediate family member of the accused.

(b) *Assault in which substantial bodily harm is inflicted.*

(i) That the accused assaulted a certain person; and

(ii) That substantial bodily harm was thereby inflicted upon such person.

[Note: Add any of the following elements as applicable:]

(iii) That the injury was inflicted with a loaded firearm.

(iv) That the person was a child under the age of 16 years, or a spouse, intimate partner, or an immediate family member of the accused.

(c) *Assault in which grievous bodily harm is inflicted.*

(i) That the accused assaulted a certain person; and

(ii) That grievous bodily harm was thereby inflicted upon such person.

[Note: Add any of the following elements as applicable:]

(iii) That the injury was inflicted with a loaded firearm.

(iv) That the person was a child under the age of 16 years, or a spouse, intimate partner, or an immediate family member of the accused.

(5) *Assault with intent to commit specified offenses.*

(a) That the accused assaulted a certain person; and

(b) That the accused, at the time of the assault, intended to: kill (as required for murder or voluntary manslaughter), or commit rape, rape of a child, sexual assault, sexual assault of a child, robbery, arson, burglary, or kidnapping.

c. *Explanation.*

(1) *Definitions of bodily harm.*

(a) “Bodily harm” means an offensive touching of another, however slight.

(b) “Substantial bodily harm” means a bodily injury that involves:

(i) a temporary but substantial disfigurement, or

(ii) a temporary but substantial loss or impairment of function of any bodily member, organ, or mental faculty.

(c) “Grievous bodily harm” means a bodily injury that involves:

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(2) *Simple assault.*

(a) *Definition of assault.* An assault is an unlawful attempt or offer, made with force or violence, to do bodily harm to another, whether or not the attempt or offer is consummated. It must be done without legal justification or excuse and without the lawful consent of the person affected.

(b) *Difference between attempt and offer type assaults.*

(i) *Attempt-type assault.* An attempt-type assault requires a specific intent to inflict bodily harm, and an overt act—that is, an act that amounts to more than mere preparation and apparently tends to effect the intended bodily harm. An attempt-type assault may be

committed even though the victim had no knowledge of the incident at the time.

(ii) *Offer-type assault.* An offer-type assault is an unlawful demonstration of violence, either by an intentional or by a culpably negligent act or omission, which creates in the mind of another a reasonable apprehension of receiving immediate bodily harm. Specific intent to inflict bodily harm is not required.

(iii) *Examples.*

(A) If Doe swings a fist at Roe's head intending to hit Roe but misses, Doe has committed an attempt-type assault, whether or not Roe is aware of the attempt.

(B) If Doe swings a fist in the direction of Roe's head either intentionally or as a result of culpable negligence, and Roe sees the blow coming and is thereby put in apprehension of being struck, Doe has committed an offer-type assault whether or not Doe intended to hit Roe.

(C) If Doe swings at Roe's head, intending to hit it, and Roe sees the blow coming and is thereby put in apprehension of being struck, Doe has committed both an offer- and an attempt-type assault.

(D) If Doe swings at Roe's head simply to frighten Roe, not intending to hit Roe, and Roe does not see the blow and is not placed in fear, then no assault of any type has been committed.

(c) *Situations not amounting to assault.*

(i) *Mere preparation.* Preparation not amounting to an overt act, such as picking up a stone without any attempt or offer to throw it, does not constitute an assault.

(ii) *Threatening words.* The use of threatening words alone does not constitute an assault. However, if the threatening words are accompanied by a menacing act or gesture, there may be an assault, since the combination constitutes a demonstration of violence.

(iii) *Circumstances negating intent to harm.* If the circumstances known to the person menaced clearly negate an intent to do bodily harm, there is no assault. Thus, if a person accompanies an apparent attempt to strike another by an unequivocal announcement in some form of an intention not to strike, there is no assault. For example, if Doe raises a stick and shakes it at Roe within striking distance saying, "If you weren't an old man, I would knock you down," Doe has committed no assault. However, an offer to inflict bodily injury upon another instantly if that person does not comply with a demand that the

assailant has no lawful right to make is an assault. Thus, if Doe points a pistol at Roe and says, "If you don't hand over your watch, I will shoot you," Doe has committed an assault upon Roe. See also paragraph 67 (Robbery) of this Part.

(d) *Situations not constituting defenses to assault.*

(i) *Assault attempt fails.* It is not a defense to a charge of assault that for some reason unknown to the assailant, an assault attempt was bound to fail. Thus, if a person loads a rifle with what is believed to be a good cartridge and, pointing it at another, pulls the trigger, that person may be guilty of assault although the cartridge was defective and did not fire. Likewise, if a person in a house shoots through the roof at a place where a policeman is believed to be, that person may be guilty of assault even though the policeman is at another place on the roof.

(ii) *Retreating victim.* An assault is complete if there is a demonstration of violence and an apparent ability to inflict bodily injury causing the person at whom it was directed to reasonably apprehend that unless the person retreats bodily harm will be inflicted. This is true even though the victim retreated and was never within actual striking distance of the assailant. There must, however, be an apparent present ability to inflict the injury. Thus, to aim a pistol at a person at such a distance that it clearly could not injure would not be an assault.

(3) *Battery.*

(a) *In general.* A battery is an assault in which the attempt or offer to do bodily harm is consummated by the infliction of that harm.

(b) *Application of force.* The force applied in a battery may have been directly or indirectly applied. Thus, a battery can be committed by inflicting bodily injury on a person through striking the horse on which the person is mounted causing the horse to throw the person, as well as by striking the person directly.

(c) *Examples of battery.* It may be a battery to spit on another, push a third person against another, set a dog at another that bites the person, cut another's clothes while the person is wearing them though without touching or intending to touch the person, shoot a person, cause a person to take poison, or drive an automobile into a person. A person who, although excused in using force, uses more force than is required, commits a battery. Throwing an object into a crowd may be a battery on anyone whom the object hits.

(d) *Situations not constituting battery.* If bodily harm is inflicted unintentionally and without culpable negligence, there is no battery. It is also not a battery to touch another to attract the other's attention or to prevent injury.

(4) *Assaults permitting increased punishment based on status of victims.*

(a) *Assault upon a commissioned, warrant, noncommissioned, or petty officer.* The maximum punishment is increased when assault is committed upon a commissioned officer of the armed forces of the United States, or of a friendly foreign power, or upon a warrant, noncommissioned, or petty officer of the armed forces of the United States. Knowledge of the status of the victim is an essential element of the offense and may be proved by circumstantial evidence. It is not necessary that the victim be superior in rank or command to the accused, that the victim be in the same armed force, or that the victim be in the execution of office at the time of the assault.

(b) *Assault upon a sentinel or lookout in the execution of duty, or upon a person in the execution of law enforcement duties.* The maximum punishment is increased when assault is committed upon a sentinel or lookout in the execution of duty or upon a person who was then performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties. Knowledge of the status of the victim is an essential element of this offense and may be proved by circumstantial evidence. See subparagraph 22.c.(1)(d) for the definition of sentinel or lookout.

(c) *Assault consummated by a battery upon a child under 16 years of age.* The maximum punishment is increased when assault consummated by a battery is committed upon a child under 16 years of age. Knowledge that the person assaulted was under 16 years of age is not an element of this offense.

(d) *Assault consummated by a battery against a spouse, intimate partner, or an immediate family member.* The maximum punishment is increased when assault consummated by a battery is committed upon an immediate family member; spouse; or intimate partner. For purposes of this paragraph, the terms immediate family member and intimate partner have the same meaning as in subparagraph 80.a.(b)(4) and (5) (Stalking) and include a spouse, a former spouse, or a former intimate partner.

(5) *Aggravated assault.*

(a) *Assault with a dangerous weapon.*

(i) *In general.* It must be proved that the accused specifically intended to do bodily harm. Culpable negligence will not suffice.

(ii) *Proving intent.* Specific intent may be proved by circumstantial evidence. When bodily harm has been inflicted by means of intentionally using force in a manner capable of achieving that result, it may be inferred that bodily harm was intended.

(iii) *Dangerous weapon.* A weapon is dangerous when used in a manner capable of inflicting death or grievous bodily harm. What constitutes a dangerous weapon depends not on the nature of the object itself but on its capacity, given the manner of its use, to kill or inflict grievous bodily harm. Thus, a bottle, beer glass, a rock, a bunk adaptor, a piece of pipe, a piece of wood, boiling water, drugs, or a rifle butt may be used in a manner capable of inflicting death or grievous bodily harm. Furthermore, under the appropriate circumstances, fists, teeth, feet, elbows, etc. may be considered a dangerous weapon when employed in a manner capable of inflicting death or grievous bodily harm.

(iv) *Injury not required.* It is not necessary that bodily harm be actually inflicted to prove assault with a dangerous weapon.

(v) *When committed upon a child under 16 years of age.* The maximum punishment is increased when assault with a dangerous weapon is committed upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(vi) *When committed upon a spouse, intimate partner, or an immediate family member.* The maximum punishment is increased when assault with a dangerous weapon is committed upon a spouse; an immediate family member; or intimate partner. For purposes of this paragraph, the terms immediate family member and intimate partner have the same meaning as in subparagraph 80.a.(b)(4) and (5) (Stalking).

(b) *Assault in which substantial or grievous bodily harm is inflicted.*

(i) *In general.* Assault in which substantial or grievous bodily harm is inflicted is a general intent crime which requires that the accused assaulted another person and that the assault resulted in substantial or grievous bodily harm. The offense does not require specific intent to cause substantial or grievous bodily harm. The focus of the offense is the degree of bodily harm resulting from an assault. This contrasts with the offense of assault with a dangerous

weapon, where the focus of the offense is the accused's intent to do bodily harm and the use of a dangerous weapon, regardless of whether any bodily harm results.

(ii) *When committed on a child under 16 years of age.* The maximum punishment is increased when assault involving infliction of substantial or grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(iii) *When committed on a spouse, intimate partner, or an immediate family member.* The maximum punishment is increased when assault involving infliction of substantial or grievous bodily harm is committed upon a spouse; an immediate family member; or intimate partner. For purposes of this paragraph, the terms immediate family member and intimate partner have the same meaning as in subparagraph 80.a.(b)(4) and (5) (Stalking).

(6) *Assault with intent to commit specified offenses.*

(a) *In general.* An assault with intent to commit any of the offenses referenced below is not necessarily the equivalent of an attempt to commit the intended offense, for an assault can be committed with intent to commit an offense without achieving that proximity to consummation of an intended offense that is essential to an attempt. See paragraph 4 of this Part.

(b) *Assault with intent to murder.* Assault with intent to commit murder is assault with the specific intent to kill. Actual infliction of injury is not necessary. To constitute an assault with intent to murder with a firearm, it is not necessary that the weapon be discharged. When the intent to kill exists, the fact that for some unknown reason the actual consummation of the murder by the means employed is impossible is not a defense if the means are apparently adapted to the end in view. The intent to kill need not be directed against the person assaulted if the assault is committed with intent to kill some person. For example, if a person, intending to kill Jones, shoots Smith, mistaking Smith for Jones, that person is guilty of assaulting Smith with intent to murder. If a person fires into a group with intent to kill anyone in the group, that person is guilty of an assault with intent to murder each member of the group.

(c) *Assault with intent to commit voluntary manslaughter.* Assault with intent to commit voluntary manslaughter is an assault committed with a specific intent to kill under such circumstances that, if death resulted therefrom, the offense of voluntary manslaughter would have been committed. There can

be no assault with intent to commit involuntary manslaughter, for it is not a crime capable of being intentionally committed.

(d) *Assault with intent to commit rape, rape of a child, sexual assault, and sexual assault of a child.* In assault with intent to commit any rape or sexual assault, the accused must have intended to complete the offense. Any lesser intent will not suffice. No actual touching is necessary. Once an assault with intent to commit rape is made, it is no defense that the accused voluntarily desisted.

(e) *Assault with intent to rob.* For assault with intent to rob, the fact that the accused intended to take money and that the person the accused intended to rob had none is not a defense.

d. *Maximum punishment.*

(1) *Simple assault.*

(a) *Generally.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(b) *When committed with an unloaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *Battery.*

(a) *Assault consummated by a battery.* Bad conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *Assault upon a commissioned officer of the armed forces of the United States or of a friendly foreign power, not in the execution of office.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(c) *Assault upon a warrant officer, not in the execution of office.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(d) *Assault upon a noncommissioned or petty officer, not in the execution of office.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(e) *Assault upon a sentinel or lookout in the execution of duty, or upon any person who, in the execution of office, is performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(f) *Assault consummated by a battery upon a child under 16 years, spouse, intimate partner, or an*

*immediate family member.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *Aggravated assault.*

(a) *Aggravated assault with a dangerous weapon.*

(i) *When committed with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *When committed upon a child under the age of 16 years, spouse, intimate partner, or an immediate family member.* Dishonorable discharge, total forfeitures, and confinement for 5 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) *Aggravated assault in which substantial bodily harm is inflicted.*

(i) *When the injury is inflicted with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *When the injury is inflicted upon a child under the age of 16 years, spouse, intimate partner, or an immediate family member.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 6 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(c) *Aggravated assault in which grievous bodily harm is inflicted.*

(i) *When the injury is inflicted with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(ii) *When the injury is inflicted upon a child under the age of 16 years, spouse, intimate partner, or an immediate family member.* Dishonorable discharge, total forfeitures, and confinement for 8 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years

(4) *Assault with intent to commit specified offenses.*

(a) *Assault with intent to commit murder, rape, or rape of a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, and*

*kidnapping.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

e. *Sample specifications.*

(1) *Simple assault.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, assault \_\_\_\_\_ by (striking at (him) (her) with a \_\_\_\_\_) (\_\_\_\_\_).

(2) *Assault consummated by a battery.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, unlawfully (strike) (\_\_\_\_\_ ) \_\_\_\_\_ (on) (in) the \_\_\_\_\_ with \_\_\_\_\_.

(3) *Assault upon a commissioned officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, assault \_\_\_\_\_, who then was and was then known by the accused to be a commissioned officer of (\_\_\_\_, a friendly foreign power) [the United States (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard) (\_\_\_\_)] by \_\_\_\_\_.

(4) *Assault upon a warrant, noncommissioned, or petty officer.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, assault \_\_\_\_\_, who then was and was then known by the accused to be a (warrant) (noncommissioned) (petty) officer of the [the United States (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard) (\_\_\_\_)] by \_\_\_\_\_.

(5) *Assault upon a sentinel or lookout.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, assault \_\_\_\_\_, who then was and was then known by the accused to be a (sentinel) (lookout) in the execution of (his) (her) duty, ((in) (on) the \_\_\_\_\_) by \_\_\_\_\_.

(6) *Assault upon a person in the execution of law enforcement duties.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, assault \_\_\_\_\_, who then was and was then known by the

accused to be a person then having and in the execution of (Air Force security police) (military police) (shore patrol) (master at arms) ((military) (civilian) law enforcement)) duties, by \_\_\_\_\_.

(7) *Assault consummated by a battery upon a child under 16 years, or the spouse, intimate partner or immediate family member of the accused.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, unlawfully (strike) (\_\_\_\_\_) \_\_\_\_\_ (a child under the age of 16 years) (the spouse of the accused) (the intimate partner of the accused) (an immediate family member of the accused), (in) (on) the \_\_\_\_ with \_\_\_\_\_.

(8) *Assault, aggravated—with a dangerous weapon.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with the intent to inflict bodily harm, commit an assault upon \_\_\_\_\_ [(a child under the age of 16 years) (spouse of the accused) (intimate partner of the accused) (an immediate family member of the accused)] by (shooting) (pointing) (striking) (cutting) (\_\_\_\_\_) (at (him) (her)) with a dangerous weapon to wit: a (loaded firearm) (pickax) (bayonet) (club) (\_\_\_\_\_).

(9) *Assault, aggravated—inflicting substantial bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, did commit an assault upon \_\_\_\_\_ [(a child under the age of 16 years) (spouse of the accused) (intimate partner of the accused) (an immediate family member of the accused)] by (shooting) (striking) (cutting) (\_\_\_\_\_) (him) (her) (on) the \_\_\_\_ with a (loaded firearm) (club) (rock) (brick) (\_\_\_\_\_) and did thereby inflict substantial bodily harm upon (him) (her), to wit: (severe bruising of the face) (head concussion) (temporary blindness) (\_\_\_\_\_).

(10) *Assault, aggravated—inflicting grievous bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, did commit an assault upon \_\_\_\_\_ [(a child under the age of 16 years) (spouse of the accused) (intimate partner of the accused) (an immediate family member of the

accused)] by (shooting) (striking) (cutting) (\_\_\_\_\_) (him) (her) (on) the \_\_\_\_ with a (loaded firearm) (club) (rock) (brick) (\_\_\_\_\_) and did thereby inflict grievous bodily harm upon (him) (her), to wit: a (broken leg) (deep cut) (fractured skull) (\_\_\_\_\_).

(11) *Assault with intent to commit specified offenses*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with intent to commit (murder) (voluntary manslaughter) (rape) (rape of a child) (sexual assault) (sexual assault of a child) (robbery) (arson) (burglary) (kidnapping), assault \_\_\_\_\_ by (striking at (him) (her) with a \_\_\_\_\_) (\_\_\_\_\_).

## 78. Article 128a (10 U.S.C. 928a)—Maiming

a. *Text of statute.*

**Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—**

**(1) seriously disfigures his person by any mutilation thereof;**

**(2) destroys or disables any member or organ of his body; or**

**(3) seriously diminishes his physical vigor by the injury of any member or organ;**

**is guilty of maiming and shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused inflicted a certain injury upon a certain person;

(2) That this injury seriously disfigured the person's body, destroyed or disabled an organ or member, or seriously diminished the person's physical vigor by the injury to an organ or member; and

(3) That the accused inflicted this injury with an intent to cause some injury to a person.

c. *Explanation.*

(1) *Nature of offense.* It is maiming to put out a person's eye, to cut off a hand, foot, or finger, or to knock out a tooth, as these injuries destroy or disable those members or organs. It is also maiming to injure an internal organ so as to seriously diminish the physical vigor of a person. Likewise, it is maiming to cut off an ear or to scar a face with acid, as these injuries seriously disfigure a person. A disfigurement need not mutilate any entire member to come within

the article, or be of any particular type, but must be such as to impair perceptibly and materially the victim's comeliness. The disfigurement, diminishment of vigor, or destruction or disablement of any member or organ must be a serious injury of a substantially permanent nature. However, the offense is complete if such an injury is inflicted even though there is a possibility that the victim may eventually recover the use of the member or organ, or that the disfigurement may be cured by surgery.

(2) *Means of inflicting injury.* To prove the offense it is not necessary to prove the specific means by which the injury was inflicted. However, such evidence may be considered on the question of intent.

(3) *Intent.* Maiming requires a specific intent to injure generally but not a specific intent to maim. Thus, one commits the offense who intends only a slight injury, if in fact there is infliction of an injury of the type specified in this article. Infliction of the type of injuries specified in this article upon the person of another may support an inference of the intent to injure, disfigure, or disable.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required) on or about \_\_\_\_ 20 \_\_, maim \_\_\_\_\_ by (crushing (his) (her) foot with a sledge hammer) (\_\_\_\_\_).

[NOTE: For Article 128b, UCMJ, Domestic Violence, added as part of the FY19 National Defense Authorization Act, See Appendix 2, Article 128b, UCMJ]

### 79. Article 129 (10 U.S.C. 929)—Burglary; unlawful entry

a. *Text of statute.*

(a) **BURGLARY.**—Any person subject to this chapter who, with intent to commit an offense under this chapter, breaks and enters the building or structure of another shall be punished as a court-martial may direct.

(b) **UNLAWFUL ENTRY.**—Any person subject to this chapter who unlawfully enters—

(1) the real property of another; or

(2) the personal property of another which amounts to a structure usually used for habitation or storage;

shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Burglary.*

(a) That the accused unlawfully broke and entered the building or structure of another; and

(b) That the breaking and entering were done with the intent to commit an offense punishable under the UCMJ.

[Note: If the breaking and entering were with the intent to commit an offense punishable under sections 918-920, 920b-921, 922, 925-928a, and 930 of this title (Article 118-120, 120b-121, 122, 125-128a, and 130), add the following element:]

(c) That the breaking and entering were with the intent to commit an offense punishable under Article 118-120, 120b-121, 122, 125-128a, and 130.

(2) *Unlawful entry.*

(a) That the accused entered—

(i) the real property of another; or

(ii) certain personal property of another which amounts to a structure usually used for habitation or storage; and

(b) That the entry was unlawful.

c. *Explanation.*

(1) *In general.* This article combines and consolidates the crimes of burglary, housebreaking, and unlawful entry. There is no requirement that an accused break and enter in the nighttime or that the structure entered constitute the dwelling house of another to commit the offense of burglary.

(2) *Breaking.* There must be a breaking, actual or constructive. Merely entering through a hole left in the wall or roof or through an open window or door will not constitute a breaking; but if a person moves any obstruction to entry of the house without which movement the person could not have entered, the person has committed a breaking. Opening a closed door or window or other similar fixture, opening wider a door or window already partly open but insufficient for the entry, or cutting out the glass of a window or the netting of a screen is a sufficient breaking. The breaking of an inner door by one who has entered the house without breaking, or by a person lawfully within the house who has no authority to enter the particular room, is a sufficient breaking, but unless such a

breaking is followed by an entry into the particular room with the requisite intent, burglary is not committed. There is a constructive breaking when the entry is gained by a trick, such as concealing oneself in a box; under false pretense, such as impersonating a gas or telephone inspector; by intimidating the occupants through violence or threats into opening the door; through collusion with a confederate, an occupant of the house; or by descending a chimney, even if only a partial descent is made and no room is entered.

(3) *Entry*. An entry must be effected before the offense is complete, but the entry of any part of the body, even a finger, is sufficient. Insertion into the house of a tool or other instrument is also a sufficient entry, unless the insertion is solely to facilitate the breaking or entry. An entry is unlawful if made without consent of any person authorized to consent to entry or without other lawful authority.

(4) *Building, structure*. Building includes room, shop, store, office, or apartment in a building. Structure refers only to those structures that are in the nature of a building or dwelling. Examples of these structures are a stateroom, hold, or other compartment of a vessel, an inhabitable trailer, an enclosed truck or freight car, a tent, and a houseboat. It is not necessary that the building or structure be in use at the time of the entry.

(5) *Intent to commit offense*.

(a) *Burglary*. Both the breaking and entry must be done with the intent to commit an offense punishable under the UCMJ in the building or structure. If, after the breaking and entering, the accused commits one or more of these offenses, it may be inferred that the accused intended to commit the offense or offenses at the time of the breaking and entering. If the evidence warrants, the intended offense may be separately charged. It is immaterial whether the offense intended is committed or even attempted. If the offense is intended, it is no defense that its commission was impossible. For example, if an accused enters a house with intent to murder a resident, but the resident is not present in the house, the accused may still be found guilty of burglary.

(b) *Unlawful entry*. Neither specific intent to commit an offense, nor breaking is required for this offense.

(6) *Property protected from unlawful entry*. The property protected against unlawful entry includes real property and the sort of personal property that amounts to a structure usually used for habitation or storage,

which would usually include vehicles expressly used for habitation, such as mobile homes and recreational vehicles. It would usually not include an aircraft, automobile, tracked vehicle, or a person's locker, even though used for storage purposes. However, depending on the circumstances, an intrusion into such property may be punishable under Article 134, UCMJ as conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.

(7) *Unlawfulness of entry*. An entry is unlawful if made without the consent of any person authorized to consent to entry or without other lawful authority.

d. *Maximum punishment*.

(1) *Burglary* (with the intent to commit an offense punishable under Article 118-120, 120b-121, 122, 125-128a, or 130). Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Burglary* (with intent to commit any other offense punishable under the UCMJ). Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Unlawful entry*. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specifications*.

(1) *Burglary*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, unlawfully break and enter the (building) (structure) of \_\_\_\_\_, to wit \_\_\_\_\_, with intent to commit an offense under the Uniform Code of Military Justice therein, to wit: \_\_\_\_\_.

(2) *Unlawful entry*.

In that \_\_\_\_\_, (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, unlawfully enter the (real property) (personal property) (a structure usually used for habitation or storage) of \_\_\_\_\_, to wit \_\_\_\_\_.

## 80. Article 130 (10 U.S.C. 930)—Stalking

a. *Text of statute*.

(a) **IN GENERAL.—Any person subject to this chapter—**

**(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily**



harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) **DEFINITIONS.—In this section:**

(1) The term “conduct” means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term “course of conduct” means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term “repeated”, with respect to conduct, means two or more occasions of such conduct.

(4) The term “immediate family”, in the case of a specific person, means—

(A) that person’s spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or marriage.

(5) The term “intimate partner”, in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or

has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

b. *Elements.*

(1) That the accused wrongfully engaged in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

(2) That the accused had knowledge, or should have had knowledge, that the specific person would be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner; and

(3) That the accused’s conduct induced reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner.

c. *Explanation.*

(1) *Bodily Harm.* “Bodily harm” means any offensive touching of another, however slight, including sexual assault. See subparagraph 77.c.(1).

(2) *Threat.* “Threat” means a communication, by words or conduct, of a present determination or intent to cause bodily harm to a specific person, an immediate family member of that person, or intimate partner of that person, presently or in the future. The threat may be made directly to or in the presence of the person it is directed at or towards, or the threat may be conveyed to such person in some manner. Actual intent to cause bodily harm is not required.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specifications.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), (on or about \_\_\_\_ 20 \_\_) (from about \_\_\_\_ to about \_\_\_\_ 20 \_\_), engage in a course of conduct directed at \_\_\_\_\_, that would cause a reasonable person to fear (death) (bodily harm, to

wit: \_\_\_\_\_), to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner); that the accused knew or should have known that the course of conduct would place \_\_\_\_\_ in reasonable fear of (death) (bodily harm, to wit \_\_\_\_\_) to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner); and that the accused's conduct placed \_\_\_\_\_ in reasonable fear of (death) (bodily harm, to wit: \_\_\_\_\_) to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner).

### 81. Article 131 (10 U.S.C. 931)—Perjury

#### a. Text of statute.

**Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—**

**(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or**

**(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry; is guilty of perjury and shall be punished as a court-martial may direct.**

#### b. Elements.

##### (1) Giving false testimony.

(a) That the accused took an oath or affirmation in a certain judicial proceeding or course of justice;

(b) That the oath or affirmation was administered to the accused in a matter in which an oath or affirmation was required or authorized by law;

(c) That the oath or affirmation was administered by a person having authority to do so;

(d) That upon the oath or affirmation that accused willfully gave certain testimony;

(e) That the testimony was material;

(f) That the testimony was false; and

(g) That the accused did not then believe the testimony to be true.

##### (2) Subscribing false statement.

(a) That the accused subscribed a certain statement in a judicial proceeding or course of justice;

(b) That in the declaration, certification, verification, or statement under penalty of perjury, the

accused declared, certified, verified, or stated the truth of that certain statement;

(c) That the accused willfully subscribed the statement;

(d) That the statement was material;

(e) That the statement was false; and

(f) That the accused did not then believe the statement to be true.

#### c. Explanation.

(1) *In general.* Judicial proceeding includes a trial by court-martial, and course of justice includes preliminary hearings conducted under Article 32. If the accused is charged with having committed perjury before a court-martial, it must be shown that the court-martial was duly constituted.

##### (2) Giving false testimony.

(a) *Nature.* The testimony must be false and must be willfully and corruptly given; that is, it must be proved that the accused gave the false testimony willfully and did not believe it to be true. A witness may commit perjury by testifying to the truth of a matter when in fact the witness knows nothing about it at all or is not sure about it, whether the thing is true or false in fact. A witness may also commit perjury in testifying falsely as to a belief, remembrance, or impression, or as to a judgment or opinion. It is no defense that the witness voluntarily appeared, that the witness was incompetent as a witness, or that the testimony was given in response to questions that the witness could have declined to answer.

(b) *Material matter.* The false testimony must be with respect to a material matter, but that matter need not be the main issue in the case. Thus, perjury may be committed by giving false testimony with respect to the credibility of a material witness or in an affidavit in support of a request for a continuance, as well as by giving false testimony with respect to a fact from which a legitimate inference may be drawn as to the existence or nonexistence of a fact in issue.

(c) *Proof.* The falsity of the allegedly perjured statement cannot be proved by circumstantial evidence alone, except with respect to matters which by their nature are not susceptible of direct proof. The falsity of the statement cannot be proved by the testimony of a single witness unless that testimony directly contradicts the statement and is corroborated by other evidence either direct or circumstantial, tending to prove the falsity of the statement. However, documentary evidence directly disproving the truth of

the statement charged to have been perjured need not be corroborated if: the document is an official record shown to have been well known to the accused at the time the oath was taken; or the documentary evidence originated from the accused—or had in any manner been recognized by the accused as containing the truth—before the allegedly perjured statement was made.

(d) *Oath.* The oath must be one recognized or authorized by law and must be duly administered by one authorized to administer it. When a form of oath has been prescribed, a literal following of that form is not essential; it is sufficient if the oath administered conforms in substance to the prescribed form. Oath includes an affirmation when the latter is authorized in lieu of an oath.

(e) *Belief of accused.* The fact that the accused did not believe the statement to be true may be proved by testimony of one witness without corroboration or by circumstantial evidence.

(3) *Subscribing false statement.* See subparagraphs (1) and (2), above, as applicable. Section 1746 of title 28, United States Code, provides for subscribing to the truth of a document by signing it expressly subject to the penalty for perjury. The signing must take place in a judicial proceeding or course of justice—for example, if a witness signs under penalty of perjury summarized testimony given at an Article 32 preliminary hearing. It is not required that the document be sworn before a third party. Section 1746 does not change the requirement that a deposition be given under oath or alter the situation where an oath is required to be taken before a specific person.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Giving false testimony.*

In that \_\_\_\_\_ (personal jurisdiction data), having taken a lawful (oath) (affirmation) in a (trial by \_\_\_\_\_ court-martial of \_\_\_\_\_) (trial by a court of competent jurisdiction, to wit: \_\_\_\_\_ of \_\_\_\_\_) (deposition for use in a trial by \_\_\_\_\_ of \_\_\_\_\_) (\_\_\_\_\_ that (he) (she) would (testify) (depose) truly, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, willfully, corruptly, and contrary to such (oath) (affirmation), (testify) (depose) falsely in substance that \_\_\_\_\_, which

(testimony) (deposition) was upon a material matter and which (he) (she) did not then believe to be true.

(2) *Subscribing false statement.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, in a (judicial proceeding) (course of justice), and in a (declaration) (certification) (verification) (statement) under penalty of perjury pursuant to section 1746 of title 28, United States Code, willfully and corruptly subscribed a false statement material to the (issue) (matter of inquiry), to wit: \_\_\_\_\_, which statement was false in that \_\_\_\_\_, and which statement (he) (she) did not then believe to be true.

## 82. Article 131a (10 U.S.C. 931a)—Subornation of perjury

a. *Text of statute.*

**(a) IN GENERAL.—Any person subject to this chapter who induces and procures another person—**

**(1) to take an oath; and**

**(2) to falsely testify, depose, or state upon such oath;**

**shall, if the conditions specified in subsection (b) are satisfied, be punished as a court-martial may direct.**

**(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:**

**(1) The oath is administered with respect to a matter for which such oath is required or authorized by law.**

**(2) The oath is administered by a person having authority to do so.**

**(3) Upon the oath, the other person willfully makes or subscribes a statement.**

**(4) The statement is material.**

**(5) The statement is false.**

**(6) When the statement is made or subscribed, the person subject to this chapter and the other person do not believe that the statement is true.**

b. *Elements.*

(1) That the accused induced and procured a certain person to take an oath or its equivalent and to falsely testify, depose, or state upon such oath or its equivalent concerning a certain matter;

(2) That the oath or its equivalent was administered to said person in a matter in which an oath or its equivalent was required or authorized by law;

(3) That the oath or its equivalent was administered by a person having authority to do so;

(4) That upon the oath or its equivalent said person willfully made or subscribed a certain statement;

(5) That the statement was material;

(6) That the statement was false; and

(7) That the accused and the said person did not then believe that the statement was true.

*c. Explanation.*

(1) See subparagraph 81.c for applicable principles.

(2) “Induce and procure” means to influence, persuade, or cause.

(3) The word “oath” includes affirmation, and sworn includes affirmed. See 1 U.S.C. § 1.

*d. Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, procure \_\_\_\_\_ to commit perjury by inducing (him) (her), the said \_\_\_\_\_, to take a lawful (oath) (affirmation) in a (trial by court-martial of \_\_\_\_\_) (trial by a court of competent jurisdiction, to wit: \_\_\_\_\_ of \_\_\_\_\_) (deposition for use in a trial by \_\_\_\_\_ of \_\_\_\_\_) (\_\_\_\_\_ that (he) (she), the said \_\_\_\_\_, would (testify) (depose) (\_\_\_\_\_ truly, and to (testify) (depose) (\_\_\_\_\_ willfully, corruptly, and contrary to such (oath) (affirmation) in substance that \_\_\_\_\_, which (testimony) (deposition) (\_\_\_\_\_ was upon a material matter and which the accused and the said \_\_\_\_\_ did not then believe to be true.

**83. Article 131b (10 U.S.C. 931b)—Obstructing justice**

*a. Text of statute.*

**Any person subject to this chapter who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending, with intent to influence, impede, or otherwise obstruct the due administration of justice shall be punished as a court-martial may direct.**

*b. Elements.*

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending; and

(3) That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice.

*c. Explanation.*

This offense may be based on conduct that occurred before preferral of charges. Actual obstruction of justice is not an element of this offense. Criminal proceedings include general courts-martial, special courts-martial, and all other criminal proceedings. For purposes of this paragraph, disciplinary proceedings include summary courts-martial as well as nonjudicial punishment proceedings under Part V of this Manual. Examples of obstruction of justice include wrongfully influencing, intimidating, impeding, or injuring a witness, a person acting on charges under this chapter, a preliminary hearing officer, or a party; and by means of bribery, intimidation, misrepresentation, or force or threat of force delaying or preventing communication of information relating to a violation of any criminal statute of the United States to a person authorized by a department, agency, or armed force of the United States to conduct or engage in investigations or prosecutions of such offenses; or endeavoring to do so. See also paragraph 87 and Article 37.

*d. Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully do a certain act, to wit: \_\_\_\_\_, with intent to (influence) (impede) (obstruct) the due administration of justice in the case of \_\_\_\_\_, against whom the accused had reason to believe that there were or would be (criminal) (disciplinary) proceedings pending.

**84. Article 131c (10 U.S.C. 931c)—Misprision of serious offense**

*a. Text of statute.*

**IN GENERAL.—Any person subject to this chapter—**

(1) who knows that another person has committed a serious offense; and

(2) wrongfully conceals the commission of the offense and fails to make the commission of the offense known to civilian or military authorities as soon as possible;

shall be punished as a court-martial may direct.

*b. Elements.*

(1) That a certain serious offense was committed by a certain person;

(2) That the accused knew that the said person had committed the serious offense; and

(3) That, thereafter, the accused wrongfully concealed the serious offense and failed to make it known to civilian or military authorities as soon as possible.

*c. Explanation.*

(1) *In general.* Misprision of a serious offense is the offense of concealing a serious offense committed by another but without such previous concert with or subsequent assistance to the principal as would make the accused an accessory. See paragraph 2. An intent to benefit the principal is not necessary to this offense.

(2) *Serious offense.* For purposes of this paragraph, a serious offense is any offense punishable under the authority of the UCMJ by death or by confinement for a term exceeding 1 year.

(3) *Positive act of concealment.* A mere failure or refusal to disclose the serious offense without some positive act of concealment does not make one guilty of this offense. Making a false entry in an account book for the purpose of concealing a theft committed by another is an example of a positive act of concealment.

*d. Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), having knowledge that \_\_\_\_\_ had actually committed a serious offense to wit: (the murder of \_\_\_\_\_) (\_\_\_\_\_), did, (at/on board—location) (subject-matter jurisdiction data, if required), from about \_\_\_\_ 20 \_\_, to about \_\_\_\_ 20 \_\_, wrongfully conceal such serious offense by \_\_\_\_\_ and fail to make the same known to the civil or military authorities as soon as possible.

**85. Article 131d (10 U.S.C. 931d)—Wrongful refusal to testify**

*a. Text of statute.*

Any person subject to this chapter who, in the presence of a court-martial, a board of officers, a military commission, a court of inquiry, preliminary hearing, or an officer taking a deposition, of or for the United States, wrongfully refuses to qualify as a witness or to answer a question after having been directed to do so by the person presiding shall be punished as a court-martial may direct.

*b. Elements.*

(1) That the accused was in the presence of a court-martial, board of officers, military commission, court of inquiry, an officer conducting a preliminary hearing under Article 32, or an officer taking a deposition, of or for the United States, at which a certain person was presiding;

(2) That the said person presiding directed the accused to qualify as a witness or, having so qualified, to answer a certain question;

(3) That the accused refused to qualify as a witness or answer said question; and

(4) That the refusal was wrongful.

*c. Explanation.* “To qualify as a witness” means that the witness declares that the witness will testify truthfully. See R.C.M. 807; Mil. R. Evid. 603. A good faith but legally incorrect belief in the right to remain silent does not constitute a defense to a charge of wrongful refusal to testify. See also Mil. R. Evid. 301 and Section V of the Military Rules of Evidence.

*d. Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), being in the presence of (a) (an) ((general) (special) (summary) court-martial) (board of officers) (military commission) (court of inquiry) (officer conducting a preliminary hearing under Article 32, Uniform Code of Military Justice) (officer taking a deposition) (\_\_\_\_\_) (of) (for) the United States, of which \_\_\_\_\_ was (military judge) (president), (\_\_\_\_\_), (and having been directed by the said \_\_\_\_\_ to qualify as a witness) (and having qualified as a witness and having been directed by the said \_\_\_\_\_ to answer the following question(s)

put to (him) (her) as a witness, “\_\_\_\_\_”), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully refuse (to qualify as a witness) (to answer said question(s)).

**86. Article 131e (10 U.S.C. 931e)—Prevention of authorized seizure of property**

a. *Text of statute.*

**Any person subject to this chapter who, knowing that one or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, destroys, removes, or otherwise disposes of the property with intent to prevent the seizure thereof shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That one or more persons authorized to make searches and seizures were seizing, about to seize, or endeavoring to seize certain property;

(2) That the accused destroyed, removed, or otherwise disposed of that property with intent to prevent the seizure thereof; and

(3) That the accused then knew that person(s) authorized to make searches were seizing, about to seize, or endeavoring to seize the property.

c. *Explanation.* See Mil. R. Evid. 316 concerning military personnel who may make seizures. It is not a defense that a search or seizure was technically defective.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, with intent to prevent its seizure, (destroy) (remove) (dispose of) \_\_\_\_\_, property which, as \_\_\_\_\_ then knew, (a) person(s) authorized to make searches and seizures were (seizing) (about to seize) (endeavoring to seize).

**87. Article 131f (10 U.S.C. 931f)—Noncompliance with procedural rules**

a. *Text of statute.*

**Any person subject to this chapter who—**

**(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or**

**(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Unnecessary delay in disposing of case.*

(a) That the accused was charged with a certain duty in connection with the disposition of a case of a person accused of an offense under the UCMJ;

(b) That the accused knew that the accused was charged with this duty;

(c) That delay occurred in the disposition of the case;

(d) That the accused was responsible for the delay; and

(e) That, under the circumstances, the delay was unnecessary.

(2) *Knowingly and intentionally failing to enforce or comply with provisions of the UCMJ.*

(a) That the accused failed to enforce or comply with a certain provision of the UCMJ regulating a proceeding before, during, or after a trial;

(b) That the accused had the duty of enforcing or complying with that provision of the UCMJ;

(c) That the accused knew that the accused was charged with this duty; and

(d) That the accused’s failure to enforce or comply with that provision was intentional.

c. *Explanation.*

(1) *Unnecessary delay in disposing of case.* The purpose of section (1) of Article 131f is to ensure expeditious disposition of cases of persons accused of offenses under the UCMJ. A person may be responsible for delay in the disposition of a case only when that person’s duties require action with respect to the disposition of that case.

(2) *Knowingly and intentionally failing to enforce or comply with provisions of the UCMJ.* Section (2) of Article 131f does not apply to errors made in good faith before, during, or after trial. It is designed to punish intentional failure to enforce or comply with the provisions of the UCMJ regulating the proceedings before, during, and after trial. Unlawful command

influence under Article 37 may be prosecuted under this Article. See also Article 31 and R.C.M. 104.

d. *Maximum punishment.*

(1) *Unnecessary delay in disposing of case.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(2) *Knowingly and intentionally failing to enforce or comply with provisions of the UCMJ.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Unnecessary delay in disposing of case.*

In that \_\_\_\_\_ (personal jurisdiction data), being charged with the duty of ((investigating) (taking immediate steps to determine the proper disposition of) charges preferred against \_\_\_\_\_, a person accused of an offense under the Uniform Code of Military Justice) (\_\_\_\_\_), was, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, responsible for unnecessary delay in (investigating said charges) (determining the proper disposition of said charges (\_\_\_\_\_), in that (he) (she) (did \_\_\_\_\_) (failed to \_\_\_\_\_) (\_\_\_\_\_).

(2) *Knowingly and intentionally failing to enforce or comply with provisions of the UCMJ.*

In that \_\_\_\_\_ (personal jurisdiction data), being charged with the duty of \_\_\_\_\_, did, (at/on board—location) (subject-matter jurisdiction, if required), on or about \_\_\_\_ 20 \_\_, knowingly and intentionally fail to (enforce) (comply with) Article \_\_\_\_\_, Uniform Code of Military Justice, in that (he) (she) \_\_\_\_\_.

**88. Article 131g (10 U.S.C. 931g)—Wrongful interference with adverse administrative proceeding**

a. *Text of statute.*

**Any person subject to this chapter who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this chapter, wrongfully acts with the intent—**

**(1) to influence, impede, or obstruct the conduct of the proceeding; or**

**(2) otherwise to obstruct the due administration of justice;**

**shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there was or would be an adverse administrative proceeding pending; and

(3) That the act was done with the intent to influence, impede, or obstruct the conduct of such administrative proceeding, or otherwise obstruct the due administration of justice.

c. *Explanation.* For purposes of this paragraph an adverse administrative proceeding includes any administrative proceeding or action, initiated against a Servicemember, that could lead to discharge, loss of special or incentive pay, administrative reduction in grade, loss of a security clearance, bar to reenlistment, or reclassification. Examples of wrongful interference include wrongfully influencing, intimidating, impeding, or injuring a witness, an investigator, or other person acting on an adverse administrative action; by means of bribery, intimidation, misrepresentation, or force or threat of force delaying or preventing communication of information relating to such administrative proceeding; and the wrongful destruction or concealment of information relevant to such adverse administrative proceeding.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (wrongfully endeavor to) [impede (an adverse administrative proceeding) (an investigation) (\_\_\_\_\_)] [influence the actions of \_\_\_\_\_, (an officer responsible for making a recommendation concerning the adverse administrative action) (an individual responsible for making a decision concerning an adverse administrative proceeding) (an individual responsible for processing an adverse administrative proceeding) (\_\_\_\_\_)] [(influence) (alter) the testimony of \_\_\_\_\_ a witness before (a board established to consider an administrative proceeding or elimination) (an investigating officer) (\_\_\_\_\_)] in the case of \_\_\_\_\_, by[(promising) (offering) (giving) to the said \_\_\_\_\_, (the sum of \$ \_\_\_\_\_) (\_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_)] [communicating to the said \_\_\_\_\_ a threat to \_\_\_\_\_] [ \_\_\_\_\_ ], (if) (unless) the said \_\_\_\_\_, would [recommend dismissal of the action against said \_\_\_\_\_] [(wrongfully refuse to testify) (testify falsely

concerning \_\_\_\_\_) (\_\_\_\_\_) [(at such administrative proceeding) (before such investigating officer) (before such administrative board)] [ \_\_\_\_\_ ].

### 89. Article 132 (10 U.S.C. 932)—Retaliation

#### a. Text of statute.

(a) **IN GENERAL.**—Any person subject to this chapter who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication—

(1) wrongfully takes or threatens to take an adverse personnel action against any person; or

(2) wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person;

shall be punished as a court-martial may direct.

(b) **DEFINITIONS.**—In this section:

(1) The term “protected communication” means the following:

(A) A lawful communication to a Member of Congress or an Inspector General.

(B) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(i) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) The term “Inspector General” has the meaning given that term in section 1034(j) of this title.

(3) The term “covered individual or organization” means any recipient of a communication specified in clauses (i) through (v) of section 1034(b)(1)(B) of this title.

(4) The term “unlawful discrimination” means discrimination on the basis of race, color, religion, sex, or national origin.

#### b. Elements.

#### (1) Retaliation

(a) That the accused wrongfully

(i) took or threatened to take an adverse personnel action against any person, or

(ii) withheld or threatened to withhold a favorable personnel action with respect to any person; and

(b) That, at the time of the action, the accused intended to retaliate against any person for reporting or planning to report a criminal offense, or for making or planning to make a protected communication.

(2) Discouraging a report of criminal offense or protected communication.

(a) That the accused wrongfully

(i) took or threatened to take an adverse personnel action against any person, or

(ii) withheld or threatened to withhold a favorable personnel action with respect to any person; and

(b) That, at the time of the action, the accused intended to discourage any person from reporting a criminal offense or making a protected communication.

#### c. Explanation.

(1) *In general.* This offense focuses upon the abuse of otherwise lawful military authority for the purpose of retaliating against any person for reporting or planning to report a criminal offense or for making or planning to make a protected communication or to discourage any person from reporting a criminal offense or for making or planning to make a protected communication. The offense prohibits personnel actions, either favorable or adverse, taken or withheld, or threatened to be taken or withheld, with the specific intent to retaliate against any person for reporting or planning to report a criminal offense or for making or planning to make a protected communication or to discourage any person from reporting a criminal offense or for making or planning to make a protected communication. The offense may be committed by any person subject to the UCMJ with the authority to initiate, forward, recommend, decide, or otherwise act on a favorable or adverse personnel action who takes such action wrongfully and with the requisite specific intent. This offense does not prohibit the lawful and appropriate exercise of command authority to discipline or reward Servicemembers.



(2) *Personnel action.* For purposes of this offense, “personnel action” means any action taken on a Servicemember that affects, or has the potential to affect, that Servicemember’s current position or career, including promotion, disciplinary or other corrective action, transfer or reassignment, performance evaluations, decisions concerning pay, benefits, awards, or training, relief and removal, separation, discharge, referral for mental health evaluations, and any other personnel actions as defined by law or regulation, such as 5 U.S.C. § 2302 and DoD Directive 7050.06 (17 April 2015).

(3) *Intent to retaliate.* An action is taken with the intent to retaliate when the personnel action taken or withheld, or threatened to be taken or withheld, is done for the purpose of reprisal, retribution, or revenge for reporting or planning to report a criminal offense or for making or planning to make a protected communication.

(4) *Threatens to take or withhold.* This offense requires that the accused had the intent to retaliate, but proof that the accused actually intended to take an adverse personnel action, or to withhold a favorable personnel action, is not required. A declaration made under circumstances which reveal it to be in jest or for an innocent or legitimate purpose, or which contradict the expressed intent to commit the act, does not constitute this offense. Nor is the offense committed by the mere statement of intent to commit an unlawful act not involving a favorable or adverse personnel action.

(5) *Criminal offense.* Criminal offense for purposes of this offense includes violations of the UCMJ, the United States Code, or state law.

(6) *Wrongful.* Taking or threatening to take adverse personnel action, or withholding or threatening to withhold favorable personnel action, is wrongful when used for the purpose of reprisal, rather than for purposes of lawful personnel administration.

(7) *Other retaliatory actions.* This offense does not prohibit the Secretary of Defense and Secretaries of the Military Services from proscribing other types or categories of prohibited retaliatory actions by regulation, which may be punished as violations of Article 92.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specifications.*

(1) *Retaliation*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with intent to retaliate against \_\_\_\_\_ for [(reporting) (planning to report) a criminal offense] [(making) (planning to make) a protected communication], wrongfully [(took) (threatened to take) an adverse personnel action against \_\_\_\_\_ to wit: \_\_\_\_\_] [(withheld) (threatened to withhold) a favorable personnel action with respect to \_\_\_\_\_ to wit: \_\_\_\_\_].

(2) *Discouraging a report of criminal offense or protected communication*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with intent to discourage \_\_\_\_\_ from (reporting a criminal offense) (making a protected communication), wrongfully [(took) (threatened to take) an adverse personnel action against \_\_\_\_\_, to wit: \_\_\_\_\_] [(withheld) (threatened to withhold) a favorable personnel action with respect to \_\_\_\_\_, to wit: \_\_\_\_\_].

## 90. Article 133 (10 U.S.C. 933)—Conduct unbecoming an officer and a gentleman

a. *Text of statute.*

**Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused did or omitted to do a certain act;

(2) That, under the circumstances, the act or omission constituted conduct unbecoming an officer and gentleman.

c. *Explanation.*

(1) *Gentleman.* As used in this article, gentleman includes both male and female commissioned officers, cadets, and midshipmen. The term “gentleman” connotes failings in an officer’s personal character, regardless of gender.

(2) *Nature of offense.* Conduct violative of this article is action or behavior in an official capacity which, in dishonoring or disgracing the person as an

officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer. There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty. Not everyone is or can be expected to meet unrealistically high moral standards, but there is a limit of tolerance based on customs of the Service and military necessity below which the personal standards of an officer, cadet, or midshipman cannot fall without seriously compromising the person's standing as an officer, cadet, or midshipman or the person's character as a gentleman. This article prohibits conduct by a commissioned officer, cadet, or midshipman which, taking all the circumstances into consideration, is thus compromising. This article includes acts made punishable by any other article, provided these acts amount to conduct unbecoming an officer and a gentleman. Thus, a commissioned officer who steals property violates both this article and Article 121. Whenever the offense charged is the same as a specific offense set forth in this Manual, the elements of proof are the same as those set forth in the paragraph which treats that specific offense, with the additional requirement that the act or omission constitutes conduct unbecoming an officer and gentleman.

(3) *Examples of offenses.* Instances of violation of this article include knowingly making a false official statement; dishonorable failure to pay a debt; cheating on an exam; opening and reading a letter of another without authority; using insulting or defamatory language to another officer in that officer's presence or about that officer to other military persons; being drunk and disorderly in a public place; public association with known prostitutes; committing or attempting to commit a crime involving moral turpitude; and failing without good cause to support the officer's family.

d. *Maximum punishment.* Dismissal, forfeiture of all pay and allowances, and confinement for a period not in excess of that authorized for the most analogous offense for which a punishment is prescribed in this Manual, or, if none is prescribed, for 1 year.

e. *Sample specifications.*

(1) *Copying or using examination paper.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction

data, if required), on or about \_\_\_\_ 20 \_\_, while undergoing a written examination on the subject of \_\_\_\_\_, wrongfully and dishonorably (receive) (request) unauthorized aid by ((using) (copying) the examination paper of \_\_\_\_).

(2) *Drunk or disorderly.*

In that \_\_\_\_\_ (personal jurisdiction data), was, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, in a public place, to wit: \_\_\_\_\_, (drunk) (disorderly) (drunk and disorderly) while in uniform, to the disgrace of the armed forces.

### 91. Article 134 (10 U.S.C. 934)—General article

a. *Text of statute.*

**Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. As used in the preceding sentence, the term "crimes and offenses not capital" includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.**

#### Discussion

The terminal element is merely the expression of one of the clauses under Article 134. See subparagraph c. for an explanation of the clauses and rules for drafting specifications. More than one clause may be alleged and proven; however, proof of only one clause will satisfy the terminal element. For clause 3 offenses, the military judge may judicially notice whether an offense is capital. See Mil. R. Evid. 202.

b. *Elements.* The proof required for conviction of an offense under Article 134 depends upon the nature of the misconduct charged. If the conduct is punished as a crime or offense not capital, the proof must establish every element of the crime or offense as required by the applicable law. All offenses under Article 134 require proof of a single terminal element.

(1) For clause 1 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts; and

(b) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces

(2) For clause 2 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts; and

(b) That, under the circumstances, the accused's conduct was of a nature to bring discredit upon the armed forces.

(3) For clause 3 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts that satisfy each element of the federal statute (including, in the case of a prosecution under 18 U.S.C. § 13, each element of the assimilated State, Territory, Possession, or District law); and

(b) That the offense charged was an offense not capital.

c. *Explanation.*

(1) *In general.* Article 134 makes punishable acts in three categories of offenses not specifically covered in any other article of the UCMJ. These are referred to as "clauses 1, 2, and 3" of Article 134. Clause 1 offenses involve disorders and neglects to the prejudice of good order and discipline in the armed forces. Clause 2 offenses involve conduct of a nature to bring discredit upon the armed forces. Clause 3 offenses involve noncapital crimes or offenses which violate federal civilian law including law made applicable through the Federal Assimilative Crimes Act, see subparagraph c.(4). If any conduct of this nature is specifically made punishable by another article of the UCMJ, it must be charged as a violation of that article. See subparagraph c.(5)(a). However, see subparagraph 90.c for offenses committed by commissioned officers, cadets, and midshipmen.

(2) *Disorders and neglects to the prejudice of good order and discipline in the armed forces (clause 1).*

(a) *To the prejudice of good order and discipline.* To the prejudice of good order and discipline refers only to acts directly prejudicial to good order and discipline and not to acts which are prejudicial only in a remote or indirect sense. Almost any irregular or

improper act on the part of a member of the military service could be regarded as prejudicial in some indirect or remote sense; however, this article does not include these distant effects. It is confined to cases in which the prejudice is reasonably direct and palpable. An act in violation of a local civil law or of a foreign law may be punished if it constitutes a disorder or neglect to the prejudice of good order and discipline in the armed forces. However, see R.C.M. 203 concerning subject-matter jurisdiction.

(b) *Breach of custom of the Service.* A breach of a custom of the Service may result in a violation of clause 1 of Article 134. In its legal sense, "custom" means more than a method of procedure or a mode of conduct or behavior which is merely of frequent or usual occurrence. Custom arises out of long established practices which by common usage have attained the force of law in the military or other community affected by them. No custom may be contrary to existing law or regulation. A custom which has not been adopted by existing statute or regulation ceases to exist when its observance has been generally abandoned. Many customs of the Service are now set forth in regulations of the various armed forces. Violations of these customs should be charged under Article 92 as violations of the regulations in which they appear if the regulation is punitive. See subparagraph 18.b.(1).

(3) *Conduct of a nature to bring discredit upon the armed forces (clause 2).* "Discredit" means to injure the reputation of. This clause of Article 134 makes punishable conduct which has a tendency to bring the service into disrepute or which tends to lower it in public esteem. Acts in violation of a local civil law or a foreign law may be punished if they are of a nature to bring discredit upon the armed forces. However, see R.C.M. 203 concerning subject-matter jurisdiction.

(4) *Crimes and offenses not capital (Article 134, clause 3).*

(a) *In general.* For the purpose of court-martial jurisdiction, the laws that may be applied under clause 3 of Article 134 are divided into two categories:

(1) Federal crimes and offenses according to the terms of jurisdiction set forth in the applicable federal criminal statute.

(i) Noncapital crimes and offenses prohibited by the United States Code that are punishable regardless where the wrongful act or omission occurred.

### Discussion

Counterfeiting is an example of a crime punishable regardless where the wrongful act or omission occurred. *See* 18 U.S.C. § 471.

(ii) Noncapital crimes and offenses prohibited by the United States Code within a limited jurisdiction that are punishable when committed within a specified area.

(iii) The Federal Assimilative Crimes Act (18 U.S.C. § 13) is an adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction, provided federal criminal law, including the UCMJ, has not defined an applicable offense for the misconduct committed. The Act applies to state laws validly existing at the time of the offense without regard to when these laws were enacted, whether before or after passage of the Act, and whether before or after the acquisition of the land where the offense was committed. For example, if a person committed an act on a military installation in the United States at a certain location over which the United States had either exclusive or concurrent jurisdiction, and it was not an offense specifically defined by federal law (including the UCMJ), that person could be punished for that act by a court-martial if it was a violation of a noncapital offense under the law of the State where the military installation was located. This is possible because the Act adopts the criminal law of the State wherein the military installation is located and applies it as though it were federal law. The text of the Act is as follows: “Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.”

(2) Conduct engaged in outside the United States that would constitute a noncapital federal crime or offense if the conduct had been engaged in “within the special maritime and territorial jurisdiction of the United States.” For purposes of this provision, the term “United States” is defined in section 5 of title 18, United States Code, and the term “special maritime and territorial jurisdiction of the United States” is defined in section 7 of title 18, United States Code.

### Discussion

If the direct prosecution of state and federal crimes under Article 134, clause 3 is unavailable because the offense is committed outside of otherwise applicable areas of jurisdiction, the substance of these crimes may still be prosecuted, in an appropriate case, under clause 1 or clause 2 of Article 134. In such a case, the Government would be required to prove the terminal element under clause 1 or clause 2 that the underlying misconduct was either prejudicial to good order and discipline; of a nature to bring discredit upon the armed forces; or both.

18 U.S.C. § 5 provides, “The term ‘United States’, as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.”

18 U.S.C. § 7 provides, “The term “special maritime and territorial jurisdiction of the United States”, as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

(9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act—

(a) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

(b) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.

Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.”

---

(5) *Limitations on Article 134.*

(a) *Preemption doctrine.* The preemption doctrine prohibits application of Article 134 to conduct covered by Articles 80 through 132. For example, larceny is covered in Article 121, and if an element of that offense is lacking—for example, intent—there can be no larceny or larceny-type offense, either under Article 121 or, because of preemption, under Article 134. Article 134 cannot be used to create a new kind of larceny offense, one without the required intent, where Congress has already set the minimum requirements for such an offense in Article 121.

**Discussion**

Although the preemption doctrine generally does not preclude charging Article 134, clause 3 offenses (crimes or offense, not capital), the preemption doctrine does preclude charging a federal “crime or offense, not capital” under Article 134 clause 3 where either direct legislative language or direct legislative history demonstrate that Congress intended a factually similar UCMJ punitive article to cover a class of offenses in a complete way.

---

(b) *Capital offense.* A capital offense may not be tried under Article 134.

(6) *Drafting specifications for Article 134 offenses.*

(a) *Specifications under clause 1 or 2.* When alleging a clause 1 or 2 violation, the specification must expressly allege that the conduct was “to the prejudice of good order and discipline” or that it was “of a nature to bring discredit upon the armed forces.” The same

conduct may be prejudicial to good order and discipline in the armed forces and at the same time be of a nature to bring discredit upon the armed forces. Both clauses may be alleged; however, only one must be proven to satisfy the terminal element. If conduct by an accused does not fall under any of the enumerated Article 134 offenses (paragraphs 92 through 109 of this Part), a specification not listed in this Manual may be used to allege the offense.

**Discussion**

Clauses 1 and 2 are theories of liability that must be expressly alleged in a specification so that the accused will have notice as to which clause or clauses to defend against. The words “to the prejudice of good order and discipline in the armed forces” encompass both subparagraph c.(2)(a), prejudice to good order and discipline, and subparagraph c.(2)(b), breach of custom of the Service.

If clauses 1 and 2 are alleged together in the terminal element, the word “and” should be used to separate them. Any clause not proven beyond a reasonable doubt should be excepted from the specification at findings. *See* R.C.M. 918(a)(1). *See also* Appendix 17 of this Manual, Art. 79.

Although using the conjunctive “and” to connect the two theories of liability is recommended, a specification connecting the two theories with the disjunctive “or” is sufficient to provide the accused reasonable notice of the charge against him. *See* Appendix 11 of this Manual, Art. 134. However, use of the term “or” as a charging mechanism for alleging the terminal element in an Article 134 specification (i.e. “such conduct was prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces”) is not recommended due to the risk of creating a vague and duplicitous specification, which may lead to uncertainty as to which theory of liability the members convicted the accused. To avoid ambiguity, an Article 134 clause 1 or 2 violation should be alleged as follows: (1) the conduct was prejudicial to good order and discipline; (2) the conduct was of a nature to bring discredit upon the armed forces; or (3) the conduct was prejudicial to good order and discipline and of a nature to bring discredit upon the armed forces.

*See* Appendix 12A for a chart of lesser included offenses.

---

(b) *Specifications under clause 3.* When alleging a clause 3 violation, each element of the federal statute (including, in the case of a prosecution under 18 U.S.C. § 13, each element of the assimilated State, Territory, Possession, or District law) must be alleged expressly or by necessary implication, and the specification must expressly allege that the conduct was “an offense not capital.” In addition, any applicable statutes should be identified in the specification.

**92. Article 134—(Animal abuse)**

a. *Text of statute.* *See* paragraph 91.

b. *Elements.*

(1) Abuse, neglect, or abandonment of an animal.

(a) That the accused wrongfully abused, neglected, or abandoned a certain (public\*) animal (and the accused caused serious injury or death of the animal\*); and

(b) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

[Note: Add these elements as applicable.]

(2) Sexual act with an animal.

(a) That the accused engaged in a sexual act with a certain animal; and

(b) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense prohibits intentional abuse, culpable neglect, and abandonment of an animal. This offense does not include legal hunting, trapping, or fishing; reasonable and recognized acts of training, handling, or disciplining of an animal; normal and accepted farm or veterinary practices; research or testing conducted in accordance with approved governmental protocols; protection of person or property from an unconfined animal; or authorized military operations or military training.

(2) *Definitions.* As used in this paragraph:

(a) “Abuse” means intentionally and unjustifiably overdriving, overloading, overworking, tormenting, beating, depriving of necessary sustenance, allowing to be housed in a manner that results in chronic or repeated serious physical harm, carrying or confining in or upon any vehicles in a cruel or reckless manner, or otherwise mistreating an animal. Abuse may include any sexual touching of an animal if not included in the definition of sexual act with an animal below.

(b) “Neglect” means knowingly allowing another to abuse an animal, or, having the charge or custody of any animal, knowingly, or through culpable negligence, failing to provide it with proper food,

drink, or protection from the weather consistent with the species, breed, and type of animal involved.

(c) “Abandon” means, while having the charge or custody of an animal, knowingly or through culpable negligence leaving of that animal at a location without providing minimum care for the animal.

(d) “Animal” means pets and animals of the type that are raised by individuals for resale to others, including: cattle, horses, sheep, pigs, goats, chickens, dogs, cats, and similar animals owned or under the control of any person. Animal does not include reptiles, insects, arthropods, or any animal defined or declared to be a pest by the administrator of the United States Environmental Protection Agency.

(e) “Public animal” means any animal owned or used by the United States or any animal owned or used by a local or State government in the United States, its territories or possessions. This would include, for example, drug detector dogs used by the Government.

(f) “Sexual act with an animal” means

(i) contact between the sex organ or anus of a person and the sex organ, anus, or mouth of an animal; or

(ii) contact between the sex organ or anus of an animal and a person or object manipulated by a person, if done with an intent to arouse or gratify the sexual desire of any person.

(g) “Serious injury of an animal” means physical harm that involves a temporary but substantial disfigurement; causes a temporary but substantial loss or impairment of the function of any bodily part or organ; causes a fracture of any bodily part; causes permanent maiming; causes acute pain of a duration that results in suffering; or carries a substantial risk of death. Serious injury includes burning, torturing, poisoning, or maiming.

d. *Maximum punishment.*

(1) *Abuse, neglect, or abandonment of an animal.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Abuse, neglect, or abandonment of a public animal.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *Sexual act with an animal or cases where the accused caused the serious injury or death of the animal.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_, (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_ (date), (wrongfully [abuse] [neglect] [abandon]) (\*engage in a sexual act, to wit: \_\_\_\_\_, with) a certain (\*public) animal (\*and caused [serious injury to] [the death of] the animal), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

### 93. Article 134—(Bigamy)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused had a living lawful spouse;

(2) That while having such spouse the accused wrongfully married another person; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* Bigamy is contracting another marriage by one who already has a living lawful spouse. If a prior marriage was void, it will have created no status of “lawful spouse.” A belief that a prior marriage has been terminated by divorce, death of the other spouse, or otherwise, constitutes a mistake of fact defense only if the belief was reasonable. See R.C.M. 916(j)(1).

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, at, (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully marry \_\_\_\_\_, having at the time of (his) (her) said marriage to a lawful spouse then living, to wit: \_\_\_\_\_, and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

### 94. Article 134—(Check, worthless making and uttering – by dishonorably failing to maintain funds)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused made and uttered a certain check;

(2) That the check was made and uttered for the purchase of a certain thing, in payment of a debt, or for a certain purpose;

(3) That the accused subsequently failed to place or maintain sufficient funds in or credit with the drawee bank for payment of the check in full upon its presentment for payment;

(4) That this failure was dishonorable; and

(5) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense differs from an Article 123a offense (paragraph 70) in that there need be no intent to defraud or deceive at the time of making, drawing, uttering, or delivery, and that the accused need not know at that time that the accused did not or would not have sufficient funds for payment. The gist of the offense lies in the conduct of the accused after uttering the instrument. Mere negligence in maintaining one’s bank balance is insufficient for this offense, for the accused’s conduct must reflect bad faith or gross indifference in this regard. As in the offense of dishonorable failure to pay debts (see paragraph 96), dishonorable conduct of the accused is necessary, and the other principles discussed in paragraph 96 also apply here.

d. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, make and utter to \_\_\_\_\_ a certain check, in words and figures as follows, to wit: \_\_\_\_\_, (for the purchase of \_\_\_\_\_) (in payment of a debt) (for

the purpose of \_\_\_\_\_), and did thereafter dishonorably fail to (place) (maintain) sufficient funds in the \_\_\_\_\_ Bank for payment of such check in full upon its presentment for payment, and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

### 95. Article 134—(Child pornography)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) *Possessing, receiving, or viewing child pornography.*

(a) That the accused knowingly and wrongfully possessed, received, or viewed child pornography; and

(b) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(2) *Possessing child pornography with intent to distribute.*

(a) That the accused knowingly and wrongfully possessed child pornography;

(b) That the possession was with the intent to distribute; and

(c) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(3) *Distributing child pornography.*

(a) That the accused knowingly and wrongfully distributed child pornography to another; and

(b) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(4) *Producing child pornography.*

(a) That the accused knowingly and wrongfully produced child pornography; and

(b) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* The Article 134 offense of child pornography is broader than the federal and state statutes referenced below and extends to visual depictions of what appear to be minors. That is, the images include sexually explicit images that may not actually involve minors, but either resemble or are staged to appear so. Article 134—Child pornography is not intended to preempt prosecution of other federal and state law child pornography and obscenity offenses which may be amenable to courts-martial via Article 134 clauses 2 and 3.

(2) *Federal “Child pornography” and “Obscenity” offenses.* Practitioners are advised that the Title 18, United States Code, criminalizes the production, distribution, possession with intent to distribute, possession, and receipt of sexually explicit images of actual children under the age of 18. See 18 U.S.C. §§ 2251; 2252A. Practitioners may charge these offenses utilizing Article 134, clause 3 (crimes and offenses not capital). Practitioners are further advised that Title 18 United States Code, Chapter 71, criminalizes the production of “obscene images,” that is, visual depictions of any kind, including a drawing, cartoon, sculpture, or painting. Such images are considered obscene under federal law when they depict minors involved in sexually explicit activity, and/or engaging in bestiality, sadistic or masochistic abuse. See 18 U.S.C. § 1466A. These federal obscenity offenses may likewise be prosecuted at courts-martial via Article 134, clause 3.

(3) *State “child pornography” and “obscenity” offenses.* If a Servicemember violates an applicable state child pornography or obscenity statute within the jurisdiction of a given state, the substance of that state child pornography and obscenity law may be charged via Article 134, clause 2 as conduct “of a nature to bring discredit upon the armed forces.” When so charged, the Article 134 charge should recite every applicable element under the state statute. The maximum punishment for such offenses is the



applicable maximum punishment prescribed for such an offense under state law.

(4) “Child pornography” means material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct.

(5) An accused may not be convicted of possessing, receiving, viewing, distributing, or producing child pornography if he was not aware that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct. Awareness may be inferred from circumstantial evidence such as the name of a computer file or folder, the name of the host website from which a visual depiction was viewed or received, search terms used, and the number of images possessed.

(6) “Distributing” means delivering to the actual or constructive possession of another.

(7) “Minor” means any person under the age of 18 years.

(8) “Possessing” means exercising control of something. Possession may be direct physical custody like holding an item in one’s hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.

(9) “Producing” means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.

(10) “Sexually explicit conduct” means actual or simulated:

(a) sexual intercourse or sodomy, including genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex;

(b) bestiality;

(c) masturbation;

(d) sadistic or masochistic abuse; or

(e) lascivious exhibition of the genitals or pubic area of any person.

(11) Visual depiction includes any developed or undeveloped photograph, picture, film, or video; any digital or computer image, picture, film, or video made by any means, including those transmitted by any means including streaming media, even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image.

(12) *Wrongfulness*. Any facts or circumstances that show that a visual depiction of child pornography was unintentionally or inadvertently acquired are relevant to wrongfulness, including, but not limited to, the method by which the visual depiction was acquired, the length of time the visual depiction was maintained, and whether the visual depiction was promptly, and in good faith, destroyed or reported to law enforcement.

(13) On motion of the Government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Maximum punishment*.

(1) *Possessing, receiving, or viewing child pornography*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Possessing child pornography with intent to distribute*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(3) *Distributing child pornography*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Producing child pornography*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

e. *Sample specification*.

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_ knowingly and wrongfully (possess) (receive) (view) (distribute) (produce) child pornography, to wit: a (photograph) (picture) (film) (video) (digital image) (computer image) of a minor, or what appears to be a minor, engaging in sexually explicit conduct (with intent to distribute the said child pornography), and that said

conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

**96. Article 134—(Debt, dishonorably failing to pay)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused was indebted to a certain person or entity in a certain sum;

(2) That this debt became due and payable on or about a certain date;

(3) That while the debt was still due and payable the accused dishonorably failed to pay this debt; and

(4) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* More than negligence in nonpayment is necessary. The failure to pay must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate nonpayment or grossly indifferent attitude toward one's just obligations. For a debt to form the basis of this offense, the accused must not have had a defense, or an equivalent offset or counterclaim, either in fact or according to the accused's belief, at the time alleged. The offense should not be charged if there was a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation of the accused to pay. The offense is not committed if the creditor or creditors involved are satisfied with the conduct of the debtor with respect to payment. The length of the period of nonpayment and any denial of indebtedness which the accused may have made may tend to prove that the accused's conduct was dishonorable, but the court-martial may convict only if it finds from all of the evidence that the conduct was in fact dishonorable.

d. *Maximum punishment.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), being indebted to \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ for \_\_\_\_\_, which amount became due and payable (on) \_\_\_\_\_, which amount became due and payable (on) \_\_\_\_\_ (about) (on or about) \_\_\_\_\_ 20 \_\_, did (at/on board—location) (subject-matter jurisdiction data, if required), from \_\_\_\_\_ 20 \_\_, to \_\_\_\_\_ 20 \_\_, dishonorably fail to pay said debt, and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

**97. Article 134—(Disloyal statements)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused made a certain statement;

(2) That the statement was communicated to another person;

(3) That the statement was disloyal to the United States;

(4) That the statement was made with the intent to promote disloyalty or disaffection toward the United States by any member of the armed forces or to interfere with or impair the loyalty to the United States or good order and discipline of any member of the armed forces; and

(5) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* Certain disloyal statements by military personnel may not constitute an offense under 18 U.S.C. §§ 2385, 2387, and 2388, but may, under the circumstances, be punishable under this article. Examples include praising the enemy, attacking the war aims of the United States, or denouncing our form of government with the intent to promote disloyalty or disaffection among members of the armed Services. A declaration of personal belief can amount to a disloyal statement if it disavows allegiance owed to the United States by the declarant. The disloyalty involved for this offense must be to the United States as a political entity and not merely to a department or other agency that is a part of its administration.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction), on or about \_\_\_\_ 20 \_\_, with intent to (promote (disloyalty) (disaffection) (disloyalty and disaffection)) ((interfere with) (impair) the (loyalty) (good order and discipline)) of any member of the armed forces of the United States communicate to \_\_\_\_\_, a statement, to wit: “\_\_\_\_\_,” or words to that effect, which statement was disloyal to the United States, and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

**98. Article 134—(Disorderly conduct, drunkenness)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused was drunk, disorderly, or drunk and disorderly on board ship or in some other place; and

(2) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Drunkenness.* See subparagraph 49.c.(1)(a) for a discussion of drunk.

(2) *Disorderly.* Disorderly conduct is conduct of such a nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment thereby. It includes conduct that endangers public morals or outrages public decency and any disturbance of a contentious or turbulent character.

(3) *Service discrediting.* Conduct of a nature to bring discredit upon the armed forces must be included in the specification and proved in order to authorize the higher maximum punishment when the offense is Service discrediting.

d. *Maximum punishment.*

(1) *Disorderly conduct.*

(a) Under such circumstances as to bring discredit upon the military Service. Confinement for 4 months and forfeiture of two-thirds pay per month for 4 months.

(b) Other cases. Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(2) *Drunkenness.*

(a) Aboard ship or under such circumstances as to bring discredit upon the military Service. Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(b) Other cases. Confinement for 1 month and forfeiture of two-thirds pay per month for 1 month.

(3) *Drunk and disorderly.*

(a) Aboard ship. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) Under such circumstances as to bring discredit upon the military Service. Confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

(c) Other cases. Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), was, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (drunk) (disorderly) (drunk and disorderly) (which conduct was of a nature to bring discredit upon the armed forces), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

**99. Article 134—(Extramarital sexual conduct)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused wrongfully engaged in extramarital conduct as described in subparagraph c.(2) with a certain person;

(2) That, at the time, the accused knew that the accused or the other person was married to someone else; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

*c. Explanation.*

(1) *Conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.* To constitute an offense under the UCMJ, the extramarital conduct must either be directly prejudicial to good order and discipline or service discrediting or both. Extramarital conduct that is directly prejudicial to good order and discipline includes conduct that has an obvious, and measurably divisive effect on unit or organization discipline, morale, or cohesion, or is clearly detrimental to the authority or stature of or respect toward a Servicemember, or both. Extramarital conduct may be Service discrediting, even though the conduct is only indirectly or remotely prejudicial to good order and discipline. “Discredit” means to injure the reputation of the armed forces and includes extramarital conduct that has a tendency, because of its open or notorious nature, to bring the Service into disrepute, make it subject to public ridicule, or lower it in public esteem. While extramarital conduct that is private and discreet in nature may not be service discrediting by this standard, under the circumstances, it may be determined to be conduct prejudicial to good order and discipline. Commanders should consider all relevant circumstances, including but not limited to the following factors, when determining whether extramarital conduct is prejudicial to good order and discipline or is of a nature to bring discredit upon the armed forces, or both:

(a) The accused’s marital status, military rank, grade, or position

(b) The co-actor’s marital status, military rank, grade, and position, or relationship to the armed forces

(c) The military status of the accused’s spouse or the spouse of the co-actor, or their relationship to the armed forces;

(d) The impact, if any, of the extramarital conduct on the ability of the accused, the co-actor, or the spouse of either to perform their duties in support of the armed forces;

(e) The misuse, if any, of Government time and resources to facilitate the commission of the conduct;

(f) Whether the conduct persisted despite counseling or orders to desist; the flagrancy of the conduct, such as whether any notoriety ensued; and whether the extramarital conduct was accompanied by other violations of the UCMJ;

(g) The negative impact of the conduct on the units or organizations of the accused, the co-actor or the spouse of either of them, such as a detrimental effect on unit or organization morale, teamwork, and efficiency;

(h) Whether the accused’s or co-actor’s marriage was pending legal dissolution, which is defined as an action with a view towards divorce proceedings, such as the filing of a petition for divorce; and

(i) Whether the extramarital conduct involves an ongoing or recent relationship or is remote in time.

(2) *Extramarital conduct.* The conduct covered under this paragraph means any of the following acts engaged in by persons of the same or opposite sex:

(a) genital to genital sexual intercourse;

(b) oral to genital sexual intercourse;

(c) anal to genital sexual intercourse; and

(d) oral to anal sexual intercourse.

(3) *Marriage.* A marriage exists until it is dissolved in accordance with the laws of a competent state or foreign jurisdiction.

(4) *Legal Separation.* It is an affirmative defense to the offense of Extramarital sexual conduct that the accused, co-actor, or both were legally separated by order of a court of competent jurisdiction. The affirmative defense does not apply unless all parties to the conduct are either legally separated or unmarried at the time of the conduct.

(5) *Mistake of fact:* A defense of mistake of fact exists if the accused had an honest and reasonable belief either that the accused and the co-actor were both unmarried or legally separated, or that they were lawfully married to each other. If this defense is raised by the evidence, then the burden of proof is upon the United States to establish that the accused’s belief was unreasonable or not honest.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), (a married person), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about

\_\_\_\_\_ 20 \_\_\_\_, wrongfully engage in extramarital conduct, (to wit: \_\_\_\_\_) with \_\_\_\_\_, (a person the accused knew was married to a person other than the accused) (a person the accused knew was not the accused's spouse), and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

**100. Article 134—(Firearm, discharging—through negligence)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused discharged a firearm;

(2) That such discharge was caused by the negligence of the accused; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* For a discussion of negligence, see subparagraph 103.c.(2).

d. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, through negligence, discharge a (service rifle) ( ) in the (squadron) (tent) (barracks) ( ) of \_\_\_\_\_, and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

**101. Article 134—(Fraternization)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused was a commissioned or warrant officer;

(2) That the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner;

(3) That the accused then knew the person(s) to be (an) enlisted member(s);

(4) That such fraternization violated the custom of the accused's Service that officers shall not fraternize with enlisted members on terms of military equality; and

(5) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* The gist of this offense is a violation of the custom of the armed forces against fraternization. Not all contact or association between officers and enlisted persons is an offense. Whether the contact or association in question is an offense depends on the surrounding circumstances. Factors to be considered include whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale. The facts and circumstances must be such as to lead a reasonable person experienced in the problems of military leadership to conclude that the good order and discipline of the armed forces has been prejudiced by their tendency to compromise the respect of enlisted persons for the professionalism, integrity, and obligations of an officer.

(2) *Regulations.* Regulations, directives, and orders may also govern conduct between officer and enlisted personnel on both a Service-wide and a local basis. Relationships between enlisted persons of different ranks, or between officers of different ranks may be similarly covered. Violations of such regulations, directives, or orders may be punishable under Article 92. See paragraph 18.

d. *Maximum punishment.* Dismissal, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_, knowingly fraternize with \_\_\_\_\_, an enlisted person, on

terms of military equality, to wit: \_\_\_\_\_, in violation of the custom of (the Naval Service of the United States) (the United States Army) (the United States Air Force) (the United States Coast Guard) that officers shall not fraternize with enlisted persons on terms of military equality, and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

**102. Article 134—(Gambling with subordinate)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused gambled with a certain Servicemember;

(2) That the accused was then a noncommissioned or petty officer;

(3) That the Servicemember was not then a noncommissioned or petty officer and was subordinate to the accused;

(4) That the accused knew that the Servicemember was not then a noncommissioned or petty officer and was subordinate to the accused; and

(5) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense can only be committed by a noncommissioned or petty officer gambling with an enlisted person of less than noncommissioned or petty officer rank. Gambling by an officer with an enlisted person may be a violation of Article 133. See also paragraph 90.

d. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, gamble with \_\_\_\_\_, then knowing that the said \_\_\_\_\_ was not a noncommissioned or petty officer and was subordinate to the said \_\_\_\_\_, and

that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

**103. Article 134—(Homicide, negligent)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That a certain person is dead;

(2) That this death resulted from the act or failure to act of the accused;

(3) That the killing by the accused was unlawful;

(4) That the act or failure to act of the accused which caused the death amounted to simple negligence; and

(5) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* Negligent homicide is any unlawful homicide which is the result of simple negligence. An intent to kill or injure is not required.

(2) *Simple negligence.* Simple negligence is the absence of due care, that is, an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care of the safety of others which a reasonably careful person would have exercised under the same or similar circumstances. Simple negligence is a lesser degree of carelessness than culpable negligence. See subparagraph 57.c.(2)(a).

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, unlawfully kill \_\_\_\_\_, (by negligently \_\_\_\_\_ the said \_\_\_\_\_ (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_) (by driving a (motor vehicle) (\_\_\_\_\_) against the said \_\_\_\_\_ in a negligent manner) (\_\_\_\_\_), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed

forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

#### 104. Article 134—(Indecent conduct)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

- (1) That the accused engaged in certain conduct;
- (2) That the conduct was indecent; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) “Indecent” means that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(2) Indecent conduct includes offenses previously proscribed by “Indecent acts with another” except that the presence of another person is no longer required. For purposes of this offense, the words “conduct” and “act” are synonymous. For child offenses, some indecent conduct may be included in the definition of lewd act and preempted by Article 120b(c). See subparagraph 91.c.(5)(a).

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, commit indecent conduct, to wit: \_\_\_\_\_, and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

#### 105. Article 134—(Indecent language)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused orally or in writing communicated to another person certain language;

(2) That such language was indecent; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

[Note: If applicable, add the following additional element:]

(4) That the person to whom the language was communicated was a child under the age of 16.

c. *Explanation.* Indecent language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 62 if the communication was made in the physical presence of a child.

d. *Maximum punishment.*

(1) *Communicated to any child under the age of 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Other cases.* Bad-conduct discharge; forfeiture of all pay and allowances, and confinement for 6 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, (orally) (in writing) communicate to \_\_\_\_\_, (a child under the age of 16 years), certain indecent language, to wit: \_\_\_\_\_, and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

#### 106. Article 134—(Pandering and prostitution)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

- (1) Prostitution.

(a) That the accused engaged in a sexual act with another person not the accused's spouse;

(b) That the accused did so for the purpose of receiving money or other compensation;

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(2) Patronizing a prostitute.

(a) That the accused engaged in a sexual act with another person not the accused's spouse;

(b) That the accused compelled, induced, enticed, or procured such person to engage in a sexual act in exchange for money or other compensation;

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(3) Pandering by inducing, enticing, or procuring act of prostitution.

(a) That the accused induced, enticed, or procured a certain person to engage in a sexual act for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

(4) Pandering by arranging or receiving consideration for arranging for a sexual act.

(a) That the accused arranged for, or received valuable consideration for arranging for, a certain person to engage in a sexual act;

(b) That the arranging (and receipt of consideration) was wrongful; and

(c) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Sexual act.* Sexual act as used in this paragraph shall be as defined in paragraph 60.a.(g)(1).

(2) *Other regulations.* This offense does not preempt any other lawful regulations or orders prescribed by a proper authority that proscribe other forms of sexual conduct for compensation by military personnel. Violations of such regulations or orders may be punishable under Article 92. See paragraph 18.

d. *Maximum punishment.*

(1) *Prostitution and patronizing a prostitute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specifications.*

(1) *Prostitution.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully engage in (a sexual act) (sexual acts), to wit: \_\_\_\_\_, with \_\_\_\_\_, a person not (his) (her) spouse, for the purpose of receiving (money) (\_\_\_\_), and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

(2) *Patronizing a prostitute.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (compel) (induce) (entice) (procure) \_\_\_\_\_, a person not (his) (her) spouse, to engage in (a sexual act) (sexual acts), to wit: \_\_\_\_\_, with the accused in exchange for (money) (\_\_\_\_), and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).



(3) *Inducing, enticing, or procuring act of prostitution.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (induce) (entice) (procure) \_\_\_\_\_ to engage in (a sexual act) (sexual acts), to wit: \_\_\_\_\_, for hire and reward with persons to be directed to (him) (her) by the said \_\_\_\_\_, and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

(4) *Arranging, or receiving consideration for arranging for a sexual act.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully (arrange for) (receive valuable consideration, to wit: \_\_\_\_\_ on account of arranging for) \_\_\_\_\_ to engage in (a sexual act) (sexual acts) to wit: \_\_\_\_\_, with \_\_\_\_\_, and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

### 107. Article 134—(Self-injury without intent to avoid service)

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused intentionally inflicted injury upon himself or herself;

(2) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element:]

(3) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* This offense differs from malingering (see paragraph 7) in that for this offense, the accused need not have harbored a design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. This offense is characterized by intentional self-injury under such circumstances as prejudice good order and discipline or discredit the armed forces. It is not required that the accused be unable to perform duties, or that the accused actually be absent from his or her place of duty as a result of the injury. For example, the accused may inflict the injury while on leave or pass. The circumstances and extent of injury, however, are relevant to a determination that the accused's conduct was prejudicial to good order and discipline, or Service discrediting.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission that produces, prolongs, or aggravates a sickness or disability. Thus, voluntary starvation that results in debility is a self-inflicted injury. Similarly, the injury may be inflicted by another at the accused's request.

### Discussion

Bona fide suicide attempts should not be charged as criminal offenses. When making a determination whether the injury by the Servicemember was a bona fide suicide attempt, the convening authority should consider factors including, but not limited to, health conditions, personal stressors, and DoD policy related to suicide prevention.

d. *Maximum punishment.*

(1) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Intentional self-inflicted injury in time of war or in a hostile fire pay zone.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required) (in a hostile fire pay zone) on or about \_\_\_\_ 20 \_\_, (a time of war,) intentionally injure (himself) (herself) by \_\_\_\_\_ (nature and circumstances of injury), and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed

forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

**108. Article 134—(Straggling)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused, while accompanying the accused's organization on a march, maneuvers, or similar exercise, straggled;

(2) That the straggling was wrongful; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.* "Straggle" means to wander away, to stray, to become separated from, or to lag or linger behind.

d. *Maximum punishment.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data) (subject-matter jurisdiction data, if required), did, at \_\_\_\_\_, on or about \_\_\_\_\_ 20 \_\_, while accompanying (his) (her) organization on (a march) (maneuvers) (\_\_\_\_\_), wrongfully straggle, and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces).

THIS PAGE LEFT INTENTIONALLY BLANK

## PART V

### NONJUDICIAL PUNISHMENT PROCEDURE

#### 1. General

a. *Authority.* Nonjudicial punishment in the United States Armed Forces is authorized by Article 15.

b. *Nature.* Nonjudicial punishment is a disciplinary measure more serious than the administrative corrective measures discussed in paragraph 1g, but less serious than trial by court-martial.

c. *Purpose.* Nonjudicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in Servicemembers without the stigma of a court-martial conviction.

d. *Policy.*

(1) *Commander's responsibility.* Commanders are responsible for good order and discipline in their commands. Generally, discipline can be maintained through effective leadership including, when necessary, administrative corrective measures. Nonjudicial punishment is ordinarily appropriate when administrative corrective measures are inadequate due to the nature of the minor offense or the record of the Servicemember, unless it is clear that only trial by court-martial will meet the needs of justice and discipline. Nonjudicial punishment shall be considered on an individual basis. Commanders considering nonjudicial punishment should consider the nature of the offense, the record of the Servicemember, the needs for good order and discipline, and the effect of nonjudicial punishment on the Servicemember and the Servicemember's record.

(2) *Commander's discretion.* A commander who is considering a case for disposition under Article 15 will exercise personal discretion in evaluating each case, both as to whether nonjudicial punishment is appropriate, and, if so, as to the nature and amount of punishment appropriate. No superior may direct that a subordinate authority impose nonjudicial punishment in a particular case, issue regulations, orders, or "guides" which suggest to subordinate authorities that certain categories of minor offenses be disposed of by nonjudicial punishment instead of by court-martial or administrative corrective measures, or that predetermined kinds or amounts of punishments be imposed for certain classifications of offenses that the subordinate considers appropriate for disposition by nonjudicial punishment.

(3) *Commander's suspension authority.* Commanders should consider suspending all or part of any punishment selected under Article 15, particularly in the case of first offenders or when significant extenuating or mitigating matters are present. Suspension provides an incentive to the offender and gives an opportunity to the commander to evaluate the offender during the period of suspension.

e. *Minor offenses.* Nonjudicial punishment may be imposed for acts or omissions that are minor offenses under the punitive article (*see* Part IV). Whether an offense is minor depends on several factors: the nature of the offense and the circumstances surrounding its commission; the offender's age, rank, duty assignment, record and experience; and the maximum sentence imposable for the offense if tried by general court-martial. Ordinarily, a minor offense is an offense for which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than 1 year if tried by general court-martial. The decision whether an offense is "minor" is a matter of discretion for the commander imposing nonjudicial punishment, but nonjudicial punishment for an offense other than a minor offense (even though thought by the commander to be minor) is not a bar to trial by court-martial for the same offense. *See* R.C.M. 907(b)(2)(D)(iii). However, the accused may show at trial that nonjudicial punishment was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence. *See* Article 15(f); R.C.M. 1001(d)(1)(B).

f. *Limitations on nonjudicial punishment.*

(1) *Double punishment prohibited.* When nonjudicial punishment has been imposed for an offense, punishment may not again be imposed for the same offense under Article 15. *But see* paragraph 1e concerning trial by court-martial.

(2) *Increase in punishment prohibited.* Once nonjudicial punishment has been imposed, it may not be increased, upon appeal or otherwise.

(3) *Multiple punishment prohibited.* When a commander determines that nonjudicial punishment is appropriate for a particular Servicemember, all known offenses determined to be appropriate for disposition by nonjudicial punishment and ready to be considered at that time, including all such offenses arising from a single incident or course of conduct, shall ordinarily be

## ¶1.f.(4)

considered together, and not made the basis for multiple punishments.

(4) *Statute of limitations.* Except as provided in Article 43(d), nonjudicial punishment may not be imposed for offenses which were committed more than 2 years before the date of imposition, unless knowingly and voluntarily waived by the member. *See* Article 43(c).

(5) *Civilian courts.* Nonjudicial punishment may not be imposed for an offense tried by a court which derives its authority from the United States. Nonjudicial punishment may not be imposed for an offense tried by a State or foreign court unless authorized by regulations of the Secretary concerned.

g. *Relationship of nonjudicial punishment to administrative corrective measures.* Article 15 and Part V of this Manual do not apply to, include, or limit use of administrative corrective measures that promote efficiency and good order and discipline such as counseling, admonitions, reprimands, exhortations, disapprovals, criticisms, censures, reproofs, rebukes, extra military instruction, and administrative withholding of privileges. *See also* R.C.M. 306. Administrative corrective measures are not punishment and they may be used for acts or omissions which are not offenses under the code and for acts or omissions which are offenses under the code.

h. *Applicable standards.* Unless otherwise provided, the Service regulations and procedures of the Servicemember shall apply.

i. *Effect of errors.* Failure to comply with any of the procedural provisions of Part V of this Manual shall not invalidate a punishment imposed under Article 15, unless the error materially prejudiced a substantial right of the Servicemember on whom the punishment was imposed.

## 2. Who may impose nonjudicial punishment

The following persons may serve as a nonjudicial punishment authority for the purposes of administering nonjudicial punishment proceedings under this Part:

a. *Commander.* As provided by regulations of the Secretary concerned, a commander may impose nonjudicial punishment upon any military personnel of that command. "Commander" means a commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area, which under pertinent official directives is

recognized as a "command." "Commander" includes a commander of a joint command. Subject to subparagraph 1d(2) and any regulations of the Secretary concerned, the authority of a commander to impose nonjudicial punishment as to certain types of offenses, certain categories of persons, or in specific cases, or to impose certain types of punishment, may be limited or withheld by a superior commander or by the Secretary concerned.

b. *Officer in charge.* If authorized by regulations of the Secretary concerned, an officer in charge may impose nonjudicial punishment upon enlisted persons assigned to that unit.

c. *Principal assistant.* If authorized by regulations of the Secretary concerned, a commander exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate that commander's powers under Article 15 to a principal assistant. The Secretary concerned may define "principal assistant."

## 3. Right to demand trial

Except in the case of a person attached to or embarked in a vessel, punishment may not be imposed under Article 15 upon any member of the armed forces who has, before the imposition of nonjudicial punishment, demanded trial by court-martial in lieu of nonjudicial punishment. This right may also be granted to a person attached to or embarked in a vessel if so authorized by regulations of the Secretary concerned. A person is "attached to" or "embarked in" a vessel if, at the time nonjudicial punishment is imposed, that person is assigned or attached to the vessel, is on board for passage, or is assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regularly organized body.

## 4. Procedure

a. *Notice.* If, after a preliminary inquiry (*see* R.C.M. 303), the nonjudicial punishment authority determines that disposition by nonjudicial punishment proceedings is appropriate (*see* R.C.M. 306; paragraph 1 of this Part), the nonjudicial punishment authority shall cause the Servicemember to be notified. The notice shall include:

(1) a statement that the nonjudicial punishment authority is considering the imposition of nonjudicial punishment;

(2) a statement describing the alleged offenses—including the article of the code—which the member is alleged to have committed;

(3) a brief summary of the information upon which the allegations are based or a statement that the member may, upon request, examine available statements and evidence;

(4) a statement of the rights that will be accorded to the Servicemember under subparagraphs 4c(1) and (2) of this Part;

(5) unless the right to demand trial is not applicable (*see* paragraph 3 of this Part), a statement that the member may demand trial by court-martial in lieu of nonjudicial punishment, a statement of the maximum punishment which the nonjudicial punishment authority may impose by nonjudicial punishment; a statement that, if trial by court-martial is demanded, charges could be referred for trial by summary, special, or general court-martial; that the member may not be tried by summary court-martial over the member's objection; and that at a special or general court-martial the member has the right to be represented by counsel.

*b. Decision by Servicemember.*

(1) *Demand for trial by court-martial.* If the Servicemember demands trial by court-martial (when this right is applicable), the nonjudicial proceedings shall be terminated. It is within the discretion of the commander whether to forward or refer charges for trial by court-martial (*see* R.C.M. 306; 307; 401–407) in such a case, but in no event may nonjudicial punishment be imposed for the offenses affected unless the demand is voluntarily withdrawn.

(2) *No demand for trial by court-martial.* If the Servicemember does not demand trial by court-martial within a reasonable time after notice under paragraph 4a of this Part, or if the right to demand trial by court-martial is not applicable, the nonjudicial punishment authority may proceed under paragraph 4c of this Part.

*c. Nonjudicial punishment proceeding accepted.*

(1) *Personal appearance requested; procedure.* Before nonjudicial punishment may be imposed, the Servicemember shall be entitled to appear personally before the nonjudicial punishment authority who offered nonjudicial punishment, except when appearance is prevented by the unavailability of the nonjudicial punishment authority or by extraordinary circumstances, in which case the Servicemember shall be entitled to appear before a person designated by the

nonjudicial punishment authority who shall prepare a written summary of any proceedings before that person and forward it and any written matter submitted by the Servicemember to the nonjudicial punishment authority. If the Servicemember requests personal appearance, the Servicemember shall be entitled to:

(A) Be informed in accordance with Article 31(b);

(B) Be accompanied by a spokesperson provided or arranged for by the member unless the punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand. Such a spokesperson need not be qualified under R.C.M. 502(d); such spokesperson is not entitled to travel or similar expenses, and the proceedings need not be delayed to permit the presence of a spokesperson; the spokesperson may speak for the Servicemember, but may not question witnesses except as the nonjudicial punishment authority may allow as a matter of discretion;

(C) Be informed orally or in writing of the information against the Servicemember and relating to the offenses alleged;

(D) Be allowed to examine documents or physical objects against the Servicemember that the nonjudicial punishment authority has examined in connection with the case and on which the nonjudicial punishment authority intends to rely in deciding whether and how much nonjudicial punishment to impose;

(E) Present matters in defense, extenuation, and mitigation orally, or in writing, or both;

(F) Have present witnesses, including those adverse to the Servicemember, upon request, if their statements will be relevant and they are reasonably available. For purposes of this subparagraph, a witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or, if a military witness, cannot be excused from other important duties;

(G) Have the proceeding open to the public unless the nonjudicial punishment authority determines that the proceeding should be closed for good cause, such as military exigencies or security interests, or unless the punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand; however, nothing in this subparagraph requires special arrangements to be made to facilitate access to the proceeding.

¶4.c.(2)

(2) *Personal appearance waived; procedure.* Subject to the approval of the nonjudicial punishment authority, the Servicemember may request not to appear personally under subparagraph 4c(1) of this Part. If such request is granted, the Servicemember may submit written matters for consideration by the nonjudicial punishment authority before such authority's decision under subparagraph 4c(4) of this Part. The Servicemember shall be informed of the right to remain silent and that matters submitted may be used against the member in a trial by court-martial.

(3) *Evidence.* The Military Rules of Evidence (Part III), other than with respect to privileges, do not apply at nonjudicial punishment proceedings. Any relevant matter may be considered, after compliance with subparagraphs 4c(1)(C) and (D) of this Part.

(4) *Decision.* After considering all relevant matters presented, if the nonjudicial punishment authority—

(A) does not conclude that the Servicemember committed the offenses alleged, the nonjudicial punishment authority shall so inform the member and terminate the proceedings;

(B) concludes that the Servicemember committed one or more of the offenses alleged, the nonjudicial punishment authority shall:

- (i) so inform the Servicemember;
- (ii) inform the Servicemember of the punishment imposed; and
- (iii) inform the Servicemember of the right to appeal (*see* paragraph 7 of this Part).

d. *Nonjudicial punishment based on record of court of inquiry or other investigative body.* Nonjudicial punishment may be based on the record of a court of inquiry or other investigative body, in which proceeding the member was accorded the rights of a party. No additional proceeding under subparagraph 4c(1) of this Part is required. The Servicemember shall be informed in writing that nonjudicial punishment is being considered based on the record of the proceedings in question, and given the opportunity, if applicable, to refuse nonjudicial punishment. If the Servicemember does not demand trial by court-martial or has no option, the Servicemember may submit, in writing, any matter in defense, extenuation, or mitigation, to the officer considering imposing nonjudicial punishment, for consideration by that officer to determine whether the member committed the offenses in question, and, if so, to determine an appropriate punishment.

## 5. Punishments

a. *General limitations.* The Secretary concerned may limit the power granted by Article 15 with respect to the kind and amount of the punishment authorized. Subject to paragraphs 1 and 4 of this Part and to regulations of the Secretary concerned, the kinds and amounts of punishment authorized by Article 15(b) may be imposed upon Servicemembers as provided in this paragraph.

b. *Authorized maximum punishments.* In addition to or in lieu of admonition or reprimand, the following disciplinary punishments, subject to the limitation of paragraph 5d of this Part, may be imposed upon Servicemembers:

(1) *Upon commissioned officers and warrant officers—*

(A) By any commanding officer—restriction to specified limits, with or without suspension from duty for not more than 30 consecutive days;

(B) If imposed by an officer exercising general court-martial jurisdiction, an officer of general or flag rank in command, or a principal assistant as defined in paragraph 2c of this Part—

- (i) arrest in quarters for not more than 30 consecutive days;
- (ii) forfeiture of not more than one-half of one month's pay per month for 2 months;
- (iii) restriction to specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(2) *Upon other military personnel of the command—*

- (A) By any nonjudicial punishment authority—
  - (i) if imposed upon a person attached to or embarked in a vessel, confinement for not more than 3 consecutive days;
  - (ii) correctional custody for not more than 7 consecutive days;
  - (iii) forfeiture of not more than 7 days' pay;
  - (iv) reduction to the next inferior grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
  - (v) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(vi) restriction to specified limits with or without suspension from duty, for not more than 14 consecutive days;

(B) If imposed by a commanding officer of the grade of major or lieutenant commander or above or a principal assistant as defined in paragraph 2c of this Part—

(i) if imposed upon a person attached to or embarked in a vessel, confinement for not more than 3 consecutive days;

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of 1 month's pay per month for 2 months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but enlisted members in pay grades above E-4 may not be reduced more than one pay grade, except that during time of war or national emergency this category of persons may be reduced two grades if the Secretary concerned determines that circumstances require the removal of this limitation;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to specified limits, with or without suspension from duty, for not more than 60 consecutive days.

*c. Nature of punishment.*

(1) *Admonition and reprimand.* Admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a person's conduct. A reprimand is a more severe form of censure than an admonition. When imposed as nonjudicial punishment, the admonition or reprimand is considered to be punitive, unlike the nonpunitive admonition and reprimand provided for in paragraph 1g of this Part. In the case of commissioned officers and warrant officers, admonitions and reprimands given as nonjudicial punishment must be administered in writing. In other cases, unless otherwise prescribed by the Secretary concerned, they may be administered either orally or in writing.

(2) *Restriction.* Restriction is the least severe form of deprivation of liberty. Restriction involves moral rather than physical restraint. The severity of this type of restraint depends on its duration and the geographical limits specified when the punishment is

imposed. A person undergoing restriction may be required to report to a designated place at specified times if reasonably necessary to ensure that the punishment is being properly executed. Unless otherwise specified by the nonjudicial punishment authority, a person in restriction may be required to perform any military duty.

(3) *Arrest in quarters.* As in the case of restriction, the restraint involved in arrest in quarters is enforced by a moral obligation rather than by physical means. This punishment may be imposed only on officers. An officer undergoing this punishment may be required to perform those duties prescribed by the Secretary concerned. However, an officer so punished is required to remain within that officer's quarters during the period of punishment unless the limits of arrest are otherwise extended by appropriate authority. The quarters of an officer may consist of a military residence, whether a tent, stateroom, or other quarters assigned, or a private residence when government quarters have not been provided.

(4) *Correctional custody.* Correctional custody is the physical restraint of a person during duty or nonduty hours, or both, imposed as a punishment under Article 15, and may include extra duties, fatigue duties, or hard labor as an incident of correctional custody. A person may be required to serve correctional custody in a confinement facility, but, if practicable, not in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial. A person undergoing correctional custody may be required to perform those regular military duties, extra duties, fatigue duties, and hard labor which may be assigned by the authority charged with the administration of the punishment. The conditions under which correctional custody is served shall be prescribed by the Secretary concerned. In addition, the Secretary concerned may limit the categories of enlisted members upon whom correctional custody may be imposed. The authority competent to order the release of a person from correctional custody shall be as designated by the Secretary concerned.

(5) *Confinement.* Confinement may be imposed upon a person attached to or embarked on a vessel. Confinement involves confinement for not more than three consecutive days in places where the person so confined may communicate only with authorized personnel. The categories of enlisted personnel upon whom this type of punishment may be imposed may be limited by the Secretary concerned.



¶5.c.(6)

(6) *Extra duties.* Extra duties involve the performance of duties in addition to those normally assigned to the person undergoing the punishment. Extra duties may include fatigue duties. Military duties of any kind may be assigned as extra duty. However, no extra duty may be imposed which constitutes a known safety or health hazard to the member or which constitutes cruel or unusual punishment or which is not sanctioned by customs of the Service concerned. Extra duties assigned as punishment of noncommissioned officers, petty officers, or any other enlisted persons of equivalent grades or positions designated by the Secretary concerned, should not be of a kind which demeans their grades or positions.

(7) *Reduction in grade.* Reduction in grade is one of the most severe forms of nonjudicial punishment and it should be used with discretion. As used in Article 15, the phrase “if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction,” does not refer to the authority to promote the person concerned but to the general authority to promote to the grade held by the person to be punished.

(8) *Forfeiture of pay.* “Forfeiture” means a permanent loss of entitlement to the pay forfeited. “Pay,” as used with respect to forfeiture of pay under Article 15, refers to the basic pay of the person or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, plus any sea or hardship duty pay. “Basic pay” includes no element of pay other than the basic pay fixed by statute for the grade and length of service of the person concerned and does not include special pay for a special qualification, incentive pay for the performance of hazardous duties, proficiency pay, subsistence and quarters allowances, and similar types of compensation. If the punishment includes both reduction, whether or not suspended, and forfeiture of pay, the forfeiture must be based on the grade to which reduced. The amount to be forfeited will be expressed in whole dollar amounts only and not in a number of day’s pay or fractions of monthly pay. If the forfeiture is to be applied for more than 1 month, the amount to be forfeited per month and the number of months should be stated. Forfeiture of pay may not extend to any pay accrued before the date of its imposition.

d. *Limitations on combination of punishments.*

(1) Arrest in quarters may not be imposed in combination with restriction;

(2) Confinement may not be imposed in combination with correctional custody, extra duties, or restriction;

(3) Correctional custody may not be imposed in combination with restriction or extra duties;

(4) Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum imposable for extra duties;

(5) Subject to the limits in subparagraphs 5d(1) through (4) all authorized punishments may be imposed in a single case in the maximum amounts.

e. *Punishments imposed on reserve component personnel while on inactive-duty training.* When a punishment under Article 15 amounting to a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters) is imposed on a member of a reserve component during a period of inactive-duty training, the punishment may be served during one or both of the following:

(1) A normal period of inactive-duty training; or

(2) A subsequent period of active duty (not including a period of active duty under Article 2(d)(1), unless such active duty was approved by the Secretary concerned).

Unserviced punishments may be carried over to subsequent periods of inactive-duty training or active duty. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty.

f. *Punishments imposed on reserve component personnel when ordered to active duty for disciplinary purposes.* When a punishment under Article 15 is imposed on a member of a reserve component during a period of active duty to which the reservist was ordered pursuant to R.C.M. 204 and which constitutes a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters), the punishment may be served during any or all of the following:

(1) That period of active duty to which the reservist was ordered pursuant to Article 2(d), but only where the order to active duty was approved by the Secretary concerned;

(2) A subsequent normal period of inactive-duty training; or

(3) A subsequent period of active duty (not including a period of active duty pursuant to R.C.M. 204 which was not approved by the Secretary concerned).

Unserv'd punishments may be carried over to subsequent periods of inactive-duty training or active duty. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty.

*g. Effective date and execution of punishments.* Reduction and forfeiture of pay, if unsuspended, take effect on the date the commander imposes the punishments. Other punishments, if unsuspended, will take effect and be carried into execution as prescribed by the Secretary concerned.

## **6. Suspension, mitigation, remission, and setting aside**

*a. Suspension.* The nonjudicial punishment authority who imposed nonjudicial punishment, the commander who imposes nonjudicial punishment, or a successor in command over the person punished, may, at any time, suspend any part or amount of the unexecuted punishment imposed and may suspend a reduction in grade or a forfeiture, whether or not executed, subject to the following rules:

(1) An executed punishment of reduction or forfeiture of pay may be suspended only within a period of 4 months after the date of execution.

(2) Suspension of a punishment may not be for a period longer than 6 months from the date of the suspension, and the expiration of the current enlistment or term of service of the Servicemember involved automatically terminates the period of suspension.

(3) Unless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension.

(4) Unless otherwise stated, an action suspending a punishment includes a condition that the Servicemember not violate any punitive article of the code. The nonjudicial punishment authority may specify in writing additional conditions of the suspension.

(5) A suspension may be vacated by any nonjudicial punishment authority or commander competent to impose upon the Servicemember concerned punishment of the kind and amount involved in the vacation of suspension. Vacation of suspension may be based only on a violation of the conditions of suspension which occurs within the period of suspension. Before a suspension may be vacated, the Servicemember ordinarily shall be notified and given

an opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment is of the kind set forth in Article 15(e)(1)-(7), the Servicemember should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate suspension of the punishment to present any matters in defense, extenuation, or mitigation of the violation on which the vacation action is to be based. Vacation of a suspended nonjudicial punishment is not itself nonjudicial punishment, and additional action to impose nonjudicial punishment for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby.

*b. Mitigation.* Mitigation is a reduction in either the quantity or quality of a punishment, its general nature remaining the same. Mitigation is appropriate when the offender's later good conduct merits a reduction in the punishment, or when it is determined that the punishment imposed was disproportionate. The nonjudicial punishment authority who imposes nonjudicial punishment, the commander who imposes nonjudicial punishment, or a successor in command

may, at any time, mitigate any part or amount of the unexecuted portion of the punishment imposed. The nonjudicial punishment authority who imposes nonjudicial punishment, the commander who imposes nonjudicial punishment, or a successor in command may also mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay, but the amount of the forfeiture may not be greater than the amount that could have been imposed by the officer who initially imposed the nonjudicial punishment. Reduction in grade may be mitigated to forfeiture of pay only within 4 months after the date of execution.

When mitigating—

(1) arrest in quarters to restriction;

(2) confinement to correctional custody;

(3) correctional custody or confinement to extra duties or restriction, or both; or

(4) extra duties to restriction, the mitigated punishment may not be for a greater period than the punishment mitigated. As restriction is the least severe form of deprivation of liberty, it may not be mitigated to a lesser period of another form of deprivation of liberty, as that would mean an increase in the quality of the punishment.

*c. Remission.* Remission is an action whereby any portion of the unexecuted punishment is cancelled. Remission is appropriate under the same

## ¶6.d.

circumstances as mitigation. The nonjudicial punishment authority who imposes punishment, the commander who imposes nonjudicial punishment, or a successor in command may, at any time, remit any part or amount of the unexecuted portion of the punishment imposed. The expiration of the current enlistment or term of service of the Servicemember automatically remits any unexecuted punishment imposed under Article 15.

d. *Setting aside.* Setting aside is an action whereby the punishment, or any part or amount thereof, whether executed or unexecuted, is set aside and any property, privileges, or rights affected by the portion of the punishment set aside are restored. The nonjudicial punishment authority who imposed punishment, the commander who imposes nonjudicial punishment, or a successor in command may set aside punishment. The power to set aside punishments and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the authority considering the case believes that, under all circumstances of the case, the punishment has resulted in clear injustice. Also, the power to set aside an executed punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed. In this connection, 4 months is a reasonable time in the absence of unusual circumstances.

## 7. Appeals

a. *In general.* Any Servicemember punished under Article 15 who considers the punishment to be unjust or disproportionate to the offense may appeal through the proper channels to the next superior authority.

b. *Who may act on appeal.* A “superior authority,” as prescribed by the Secretary concerned, may act on an appeal. When punishment has been imposed under delegation of a commander’s authority to administer nonjudicial punishment (*see* paragraph 2c of this Part), the appeal may not be directed to the commander who delegated the authority.

c. *Format of appeal.* Appeals shall be in writing and may include the appellant’s reasons for regarding the punishment as unjust or disproportionate.

d. *Time limit.* An appeal shall be submitted within 5 days of imposition of punishment, or the right to appeal shall be waived in the absence of good cause shown. A Servicemember who has appealed may be required to undergo any punishment imposed while the appeal is pending, except that if action is not taken on the appeal

within 5 days after the appeal was submitted, and if the Servicemember so requests, any unexecuted punishment involving restraint or extra duty shall be stayed until action on the appeal is taken.

e. *Legal review.* Before acting on an appeal from any punishment of the kind set forth in Article 15(e)(1)-(7), the authority who is to act on the appeal shall refer the case to a judge advocate or to a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under Article 15. When the case is referred, the judge advocate or lawyer is not limited to an examination of any written matter comprising the record of proceedings and may make any inquiries and examine any additional matter deemed necessary.

f. *Action by superior authority.*

(1) *In general.* In acting on an appeal, the superior authority may exercise the same power with respect to the punishment imposed as may be exercised under Article 15(d) and paragraph 6 of this Part by the officer who imposed the punishment. The superior authority may take such action even if no appeal has been filed.

(2) *Matters considered.* When reviewing the action of an officer who imposed nonjudicial punishment, the superior authority may consider the record of the proceedings, any matters submitted by the Servicemember, any matters considered during the legal review, if any, and any other appropriate matters.

(3) *Additional proceedings.* If the superior authority sets aside a nonjudicial punishment due to a procedural error, that authority may authorize additional proceedings under Article 15, to be conducted by the officer who imposed the nonjudicial punishment, the commander, or a successor in command, for the same offenses involved in the original proceedings. Any punishment imposed as a result of these additional proceedings may be no more severe than that originally imposed.

(4) *Notification.* Upon completion of action by the superior authority, the Servicemember upon whom punishment was imposed shall be promptly notified of the result.

(5) *Delegation to principal assistant.* If authorized by regulation of the Secretary concerned a superior authority who is a commander exercising general court-martial jurisdiction, or is an officer of general or flag rank in command, may delegate the power under Article 15(e) and this paragraph to a principal assistant.

**8. Records of nonjudicial punishment**

The content, format, use, and disposition of records of nonjudicial punishment may be prescribed by regulations of the Secretary concerned.

THIS PAGE LEFT INTENTIONALLY BLANK

# APPENDIX 1

## CONSTITUTION OF THE UNITED STATES—1787

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution of the United States of America.

### ARTICLE I

**Section 1.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

**Section 2.** The House of Representatives shall be composed of Members chosen every second year by the people of the several states, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

<sup>1</sup> Representative and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years in such Manner as they shall by Law direct. The Number of Representative shall not exceed one for every thirty Thousand, but each state shall have at Least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose the Speaker and other officers; and shall have the sole power of Impeachment.

**Section 3.** <sup>2</sup> The Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof, for six Years and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise during the Recess of the Legislature of any State, the Executive thereof may

make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no Vote unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice-President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgement in Cases of Impeachment shall not extend further than to removal from Office and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

**Section 4.** The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof: but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

<sup>3</sup> The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

**Section 5.** Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and with the Concurrence of two-thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members either House on any question shall, at the Desire of one fifth of those Present be entered on the Journal.

Neither House, during the Session of Congress shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

**Section 6.** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid

<sup>1</sup> This clause has been affected by the 14th and 16th amendments.

<sup>2</sup> This section has been affected by the 17th amendment.

<sup>3</sup> This clause has been affected by the 20th amendment.

## APPENDIX 1

out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he is elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

**Section 7.** All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which is shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of Both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representative may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

**Section 8.** The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the Supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the States in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

**Section 9.** The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety require it.

No Bill of Attainder or ex post facto Law shall be passed. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

**Section 10.** No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money;

## CONSTITUTION OF THE UNITED STATES—1787

emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

### ARTICLE II

**Section 1.** The executive Power shall be vested in a President of the United States and, together with the Vice President, chosen for the same Term, be elected as follows.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

<sup>4</sup> The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the states shall be necessary to a choice. In every case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice President.

The Congress may determine the Time of the choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be

eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within a Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

**Section 2.** The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law. But the Congress may by law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

**Section 3.** He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

**Section 4.** The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for,

<sup>4</sup> This clause has been affected by the 12th amendment.



## APPENDIX 1

and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III

**Section 1.** The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

**Section 2.** The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers, and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States, between a State and Citizens of another State, between Citizens of different States, between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens, or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State the Trial shall be at such Place or Places as the Congress may by Law have directed.

**Section 3.** Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.

### ARTICLE IV

**Section 1.** Full Faith and Credit shall be given in each State to the public Act, Records, and judicial Proceedings of every other State. And the Congress may, by general Laws, prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

**Section 2.** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall, on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having

Jurisdiction of the Crime.

No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

**Section 3.** New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

**Section 4.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

### ARTICLE V

The Congress, whenever two thirds of both House shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid, to all intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

### ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, Anything in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound, by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## CONSTITUTION OF THE UNITED STATES—1787

### ARTICLE VII

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

*Articles in Addition to, and Amendment of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Legislatures of the Several States Pursuant to the Fifth Article of the Original Constitution*

### AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### AMENDMENT II

A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### AMENDMENT III

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

### AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service, in time of War, or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

### AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise reexamined in any Court of the United States than according to the rules of the common law.

### AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

### AMENDMENT IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

### AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

### AMENDMENT XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of any Foreign State.

### AMENDMENT XII

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign, and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for a President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, the Vice-President shall act as President, as in case of death, or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the

## APPENDIX 1

whole number of Senators; a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

### AMENDMENT XIII

**Section 1.** Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Section 2.** Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XIV

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a Member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations,

and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

### AMENDMENT XV

**Section 1.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

**Section 2.** The Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.

### AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

### AMENDMENT XVIII

<sup>5</sup>

**Section 1.** After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

**Section 2.** The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

**Section 3.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years of the date of the submission hereof to the States by Congress.

---

<sup>5</sup> This article was replaced by the 21st amendment.

## CONSTITUTION OF THE UNITED STATES—1787

### AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XX

**Section 1.** The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

**Section 2.** The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

**Section 3.** If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

**Section 4.** The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

**Section 5.** Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

**Section 6.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by three fourths of the several States within seven years from the date of its submission.

### AMENDMENT XXI

**Section 1.** The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

**Section 2.** The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

**Section 3.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years

from the date of the submission hereof to the States by the Congress.

### AMENDMENT XXII

**Section 1.** No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which his Article becomes operative from holding the office of President or acting as President during the remainder of such term.

**Section 2.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

### AMENDMENT XXIII

**Section 1.** The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representative in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

**Section 2.** The Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XXIV

**Section 1.** The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

**Section 2.** The Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XXV

**Section 1.** In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

**Section 2.** Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

## APPENDIX 1

**Section 3.** Whenever the President transmits to the President pro tempore of the Senate and the Speakers of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

**Section 4.** Whenever the Vice President and a majority of either the principal officers of the Executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty one days after Congress is required to assemble, determines by two thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

### AMENDMENT XXVI

**Section 1.** The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

**Section 2.** The Congress shall have the power to enforce this article by appropriate legislation.

### AMENDMENT XXVII

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

## APPENDIX 2

### UNIFORM CODE OF MILITARY JUSTICE

#### CHAPTER 47. UNIFORM CODE OF MILITARY JUSTICE

Subchapter	Sec.	Art.
I. General Provisions.	801	1
II. Apprehension and Restraint.	807	7
III. Non-Judicial Punishment.	815	15
IV. Court-Martial Jurisdiction.	816	16
V. Composition of Courts-Martial.	822	22
VI. Pre-trial Procedure.	830	30
VII. Trial Procedure.	836	36
VIII. Sentences.	855	55
IX. Post-Trial Procedure and Review of Courts-Martial.	859	59
X. Punitive Articles.	877	77
XI. Miscellaneous Provisions.	935	135
XII. Court of Appeals for the Armed Forces.	941	141

#### SUBCHAPTER I—GENERAL PROVISIONS

Sec.	Art.
801.	1. Definitions.
802.	2. Persons subject to this chapter.
803.	3. Jurisdiction to try certain personnel.
804.	4. Dismissed officer's right to trial by court-martial.
805.	5. Territorial applicability of this chapter.
806.	6. Judge advocates and legal officers.
806a.	6a. Investigations and disposition of matters pertaining to the fitness of military judges.
806b.	6b. Rights of the victim of an offense under this chapter.

#### §801. Art. 1. Definitions

In this chapter (the Uniform Code of Military justice):

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term "military judge" means a judge advocate designated under section 826(c) of this title (article 26(c)) who is detailed under section 826(a) or section 830a of this title (article 26(a) or 30a)).

(11) Repealed. Pub. L. 109-241, title II, §218(a)(1), July 11, 2006, 120 Stat. 526.

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army, the Navy, or the Air Force;

(B) an officer of the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term "record", when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term "national security" means the national defense and foreign relations of the United States.

#### §802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

## APPENDIX 2

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) a preliminary hearing under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

### §803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

### §804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial

## UNIFORM CODE OF MILITARY JUSTICE

so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

### §805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

### §806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c)(1) No person who, with respect to a case, serves in a capacity specified in paragraph (2) may later serve as a staff judge advocate or legal officer to any reviewing or convening authority upon the same case.

(2) The capacities referred to in paragraph (1) are, with respect to the case involved, any of the following:

(A) Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge.

(B) Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States

under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

### §806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military appellate judge, military judge, or military magistrate to perform the duties of the position involved. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

### §806b. Art. 6b. Rights of the victim of an offense under this chapter

(a) RIGHTS OF A VICTIM OF AN OFFENSE UNDER THIS CHAPTER.—A victim of an offense under this chapter has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.

(C) A court-martial relating to the offense.

(D) A public proceeding of the service clemency and parole board relating to the offense.

(E) The release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

(4) The right to be reasonably heard at any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A sentencing hearing relating to the offense.

(C) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).

(6) The right to receive restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.



## APPENDIX 2

(b) VICTIM OF AN OFFENSE UNDER THIS CHAPTER DEFINED.—In this section, the term “victim of an offense under this chapter” means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter.

(c) APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS FOR CERTAIN VICTIMS.—In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim’s estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section. However, in no event may the individual so designated be the accused.

(d) RULE OF CONSTRUCTION.—Nothing in this section (article) shall be construed—

(1) to authorize a cause of action for damages;

(2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages; or

(3) to impair the exercise of discretion under sections 830 and 834 of this title (articles 30 and 34).

(e) ENFORCEMENT BY COURT OF CRIMINAL APPEALS.—

(1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

(3)(A) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, subject to section 830a of this title (article 30a).

(B) To the extent practicable, a petition for a writ of mandamus described in this subsection shall have priority over all proceedings before the Court of Criminal Appeals.

(C) Review of any decision of the Court of criminal Appeals on a petition for writ of mandamus described in this subsection shall have priority in the Court of Appeals for the Armed Forces, as determined under the rules of the Court of Appeals for the Armed Forces.

(4) Paragraph (1) applies with respect to the protections afforded by the following:

(A) This section (article).

(B) Section 832 (article 32) of this title.

(C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim’s sexual background.

(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(f) COUNSEL FOR ACCUSED INTERVIEW OF VICTIM OF ALLEGED OFFENSE.—

(1) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an offense under this chapter who counsel for the Government intends to call as a witness at a proceeding under this chapter, counsel for the accused shall make any request to interview the victim through the Special Victim’s Counsel or other counsel for the victim, if applicable.

(2) If requested by an alleged victim who is subject to a request for interview under paragraph (1), any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the Government, a counsel for the victim, or, if applicable, a victim advocate.

## SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec. Art.

807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged.
811.	11.	Reports and receiving of prisoners.
812.	12.	Prohibition of confinement of members of the Armed forces with enemy prisoners and certain
813.	13.	Punishment prohibited before trail.
814.	14.	Delivery of offenders to civil authorities.

### §807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

### §808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

### §809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers,

## UNIFORM CODE OF MILITARY JUSTICE

or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

### §810. Art. 10. Restraint of persons charged

(a) IN GENERAL.—

(1) Subject to paragraph (2), any person subject to this chapter who is charged with an offense under this chapter may be ordered into arrest or confinement as the circumstances require.

(2) When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered into confinement.

(b) NOTIFICATION TO ACCUSED AND RELATED PROCEDURES.—

(1) When a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken—

(A) to inform the person of the specific offense of which the person is accused; and

(B) to try the person or to dismiss the charges and release the person.

(2) To facilitate compliance with paragraph (1), the President shall prescribe regulations setting forth procedures relating to referral for trial, including procedures for prompt forwarding of the charges and specifications and, if applicable, the preliminary hearing report submitted under section 832 of this title (article 32).

### §811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

### §812. Art. 12. Prohibition of confinement of members of the armed forces with enemy prisoners and certain others

No member of the armed forces may be placed in confinement in immediate association with—

(1) enemy prisoners; or

(2) other individuals—

(A) who are detained under the law of war and are foreign nationals; and

(B) who are not members of the armed forces.

### §813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

### §814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

## SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

Sec. Art.

815. 15. Commanding officer's non-judicial punishment.

### §815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

## APPENDIX 2

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months. Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement to correctional custody;

(3) correctional custody or confinement to extra duties or restriction, or both; or

(4) extra duties to restriction; the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay; the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

## UNIFORM CODE OF MILITARY JUSTICE

### SUBCHAPTER IV. COURT-MARTIAL JURISDICTION

Sec. Art.

- 816. 16. Courts-martial classified.
- 817. 17. Jurisdiction of courts-martial in general.
- 818. 18. Jurisdiction of general courts-martial.
- 819. 19. Jurisdiction of special courts-martial.
- 820. 20. Jurisdiction of summary courts-martial.
- 821. 21. Jurisdiction of courts-martial not exclusive.

#### §816. Art. 16. Courts-martial classified

(a) IN GENERAL.—The three kinds of courts-martial in each of the armed forces are the following:

- (1) General courts-martial, as described in subsection (b).
- (2) Special courts-martial, as described in subsection (c).
- (3) Summary courts-martial, as described in subsection (d).

(b) GENERAL COURTS-MARTIAL.—General courts-martial are of the following three types:

(1) A general court-martial consisting of a military judge and eight members, subject to sections 825(d)(3) and 829 of this title (articles 25(d)(3) and 29).

(2) In a capital case, a general court-martial consisting of a military judge and the number of members determined under section 825a of this title (article 25a), subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(3) A general court-martial consisting of a military judge alone, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(c) SPECIAL COURTS-MARTIAL.—Special courts-martial are of the following two types:

(1) A special court-martial, consisting of a military judge and four members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) A special court-martial consisting of a military judge alone—

(A) if the case is so referred by the convening authority, subject to section 819 of this title (article 19) and such limitations as the President may prescribe by regulation; or

(B) if the case is referred under paragraph (1) and, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(d) SUMMARY COURT-MARTIAL.—A summary court-martial consists of one commissioned officer.

#### §817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

#### §818. Art. 18. Jurisdiction of general courts-martial

(a) Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

(b) A general court-martial of the kind specified in section 816(b)(3) of this title (article 16(b)(3)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(c) Consistent with sections 819 and 820 of this title (articles 19 and 20), only general courts-martial have jurisdiction over the following offenses:

(1) A violation of subsection (a) or (b) of section 920 of this title (article 120).

(2) A violation of subsection (a) or (b) of section 920b of this title (article 120b).

(3) An attempt to commit an offense specified in paragraph (1) or (2) that is punishable under section 880 of this title (article 80).

#### §819. Art. 19. Jurisdiction of special courts-martial

(a) IN GENERAL.—Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

(b) ADDITIONAL LIMITATION.—Neither a bad-conduct discharge, nor confinement for more than six months, nor forfeiture of pay for more than six months may be adjudged if charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)).

(c) MILITARY MAGISTRATE.—If charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)), the military judge, with the consent of the parties, may designate a military magistrate to preside over the special court-martial.

#### §820. Art. 20. Jurisdiction of summary courts-martial

(a) IN GENERAL.—Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this

## APPENDIX 2

chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(b) NON-CRIMINAL FORUM.—A summary court-martial is a non-criminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.

### §821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

## SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
825.	25.	Who may serve on courts-martial.
825a.	25a	Number of court-martial members in capital cases
826.	26.	Military judge of a general or special courts-martial.
826a.	26a	Military magistrates
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Assembly and impaneling of members; detail of new members and military judges.

### §822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

- (1) the President of the United States;
- (2) the Secretary of Defense;
- (3) the commanding officer of a unified or specified combatant command;
- (4) the Secretary concerned;
- (5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
- (6) the commander of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

### §823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

### §824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

- (1) any person who may convene a general or special court-martial;
- (2) the commanding officer of a detached company, or other detachment of the Army;
- (3) the commanding officer of a detached squadron or other detachment of the Air Force; or
- (4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

## UNIFORM CODE OF MILITARY JUSTICE

### §825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, are not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his

authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

### §825a. Art. 25a. Number of court-martial members in capital cases

(a) IN GENERAL.—In a case in which the accused may be sentenced to death, the number of members shall be 12.

(b) CASE NO LONGER CAPITAL.—Subject to section 829 of this title (article 29)—

(1) if a case is referred for trial as a capital case and, before the members are impaneled, the accused may no longer be sentenced to death, the number of members shall be eight; and

(2) if a case is referred for trial as a capital case and, after the members are impaneled, the accused may no longer be sentenced to death, the number of members shall remain 12.

### §826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c)(1) In accordance with regulations prescribed under subsection (a), a military judge of a general or special court-martial shall be designated for detail by the Judge Advocate General of the armed force of which the military judge is a member.

(2) Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to the military judge's performance of duty as a military judge.

(3) A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial—

(A) may perform such duties only when the officer is assigned and directly responsible to the Judge Advocate General of the armed force of which the military judge is a member; and

(B) may perform duties of a judicial or nonjudicial nature other than those relating to the officer's primary duty as a military judge of a general court-martial when such duties are assigned to the officer by or with the approval of that Judge Advocate General.

(4) In accordance with regulations prescribed by the President, assignments of military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial

## APPENDIX 2

counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge may be detailed under subsection (a) to a court-martial or a proceeding under section 830a of this title (article 30a) that is convened in a different armed force, when so permitted by the Judge Advocate General of the armed force of which the military judge is a member.

(g) In accordance with regulations prescribed by the President, each Judge Advocate General shall designate a chief trial judge from among the members of the applicable trial judiciary.

### §826a. Art. 26a. Military magistrates

(a) QUALIFICATIONS.—A military magistrate shall be a commissioned officer of the armed forces who—

(1) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

(2) is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the Judge Advocate General of the armed force of which the officer is a member.

(b) DUTIES.—In accordance with regulations prescribed by the Secretary concerned, in addition to duties when designated under section 819 of this title or section 830a of this title (articles 19 or 30a), a military magistrate may be assigned to perform other duties of a nonjudicial nature.

### §827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

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

(b) Trial counsel, defense counsel, or assistant defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c)(1) Defense counsel and assistant defense counsel detailed for a special court-martial shall have the qualifications set forth in subsection (b).

(2) Trial counsel and assistant trial counsel detailed for a special court-martial and assistant trial counsel detailed for a general court-martial must be determined to be competent to perform such duties

by the Judge Advocate General, under such rules as the President may prescribe.

(d) To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

### §828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

### §829. Art. 29. Assembly and impaneling of members; detail of new members and military judges

(a) ASSEMBLY.—The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused—

(1) as a result of a challenge;

(2) under subsection (b)(1)(B); or

(3) by order of the military judge or the convening authority for disability or other good cause.

(b) IMPANELING.—

(1) Under rules prescribed by the President, the military judge of a general or special court-martial with members shall—

(A) after determination of challenges, impanel the court-martial; and

(B) excuse the members who, having been assembled, are not impaneled.

(2) In a general court-martial, the military judge shall impanel—

(A) 12 members in a capital case; and

(B) eight members in a noncapital case.

(3) In a special court-martial, the military judge shall impanel four members.

(c) ALTERNATE MEMBERS.—In addition to members under subsection (b), the military judge shall impanel alternate members, if the convening authority authorizes alternate members.

(d) DETAIL OF NEW MEMBERS.—

(1) If, after members are impaneled, the membership of the court-martial is reduced to—

(A) fewer than 12 members with respect to a general court-martial in a capital case;

(B) fewer than six members with respect to a general court-martial in a noncapital case; or

(C) fewer than four members with respect to a special court-martial; the trial may not proceed unless the convening authority

## UNIFORM CODE OF MILITARY JUSTICE

details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2).

(2) The membership referred to in paragraph (1) is as follows:

(A) 12 members with respect to a general court-martial in a capital case.

(B) At least six but not more than eight members with respect to a general court-martial in a noncapital case.

(C) Four members with respect to a special court-martial.

(e) **DETAIL OF NEW MILITARY JUDGE.**—If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.

(f) **EVIDENCE.**—

(1) In the case of new members under subsection (d), the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.

(2) In the case of a new military judge under subsection (e), the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

### SUBCHAPTER VI. PRE-TRIAL PROCEDURE

Sec.	Art.
830.	30. Charges and specifications.
830a.	30a. Certain proceedings conducted before referral.
831.	31. Compulsory self-incrimination prohibited.
832.	32. Preliminary hearing required before referral to general court-martial.
833.	33. Disposition guidance.
834.	34. Advice to convening authority before reference for trial.
835.	35. Service of charges; commencement of trial.

#### **§830. Art. 30. Charges and specifications**

(a) **IN GENERAL.**—Charges and specifications—

(1) may be preferred only by a person subject to this chapter; and

(2) shall be preferred by presentment in writing, signed under oath before a commissioned officer of the armed forces who is authorized to administer oaths.

(b) **REQUIRED CONTENT.**—The writing under subsection (a) shall state that—

(1) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

(2) the matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

(c) **DUTY OF PROPER AUTHORITY.**—When charges and specifications are preferred under subsection (a), the proper authority shall, as soon as practicable—

(1) inform the person accused of the charges and specifications; and

(2) determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

#### **§830a. Art. 30a. Certain proceedings conducted before referral**

(a) **IN GENERAL.**—

(1) Proceedings may be conducted to review, or otherwise act on the following matters before referral of charges and specifications to court-martial for trial in accordance with regulations prescribed by the President:

(A) Pre-referral investigative subpoenas.

(B) Pre-referral warrants or orders for electronic communications.

(C) Pre-referral matters referred by an appellate court.

(D) Pre-referral matters under subsection (c) and (e) of section 806b of this title (article 6b).

(2) The regulations prescribed under paragraph (1) shall—

(A) include procedures for the review of such rulings that may be ordered under this section as the President considers appropriate; and

(B) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.

(3) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

(b) **DETAIL OF MILITARY JUDGE.**—The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed to proceedings under subsection (a)(1).

(c) **DISCRETION TO DESIGNATE MAGISTRATE TO PRESIDE.**—In accordance with regulations prescribed by the Secretary concerned, a military judge detailed to a proceeding under subsection (a)(1), other than a proceeding described in subparagraph (B) of that subsection, may designate a military magistrate to preside over the proceeding.

#### **§831. Art. 31. Compulsory self-incrimination prohibited**

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.



## APPENDIX 2

### §832. Art. 32. Preliminary hearing required before referral to general court-martial

(a) IN GENERAL.—

(1)(A) Except as provided in subparagraph (B), a preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial. The preliminary hearing shall be conducted by an impartial hearing officer, detailed by the convening authority in accordance with subsection (b).

(B) Under regulations prescribed by the President, a preliminary hearing need not be held if the accused submits a written waiver to the convening authority and the convening authority determines that a hearing is not required.

(2) The purpose of the preliminary hearing shall be limited to determining the following:

(A) Whether or not the specification alleges an offense under this chapter.

(B) Whether or not there is probable cause to believe that the accused committed the offense charged.

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense.

(D) A recommendation as to the disposition that should be made of the case.

(b) HEARING OFFICER.—

(1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who—

(A) whenever practicable, shall be a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)); or

(B) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of a hearing officer under paragraph (1)(B), a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)) shall be available to provide legal advice to the hearing officer.

(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the Government at the preliminary hearing.

(c) REPORT TO CONVENING AUTHORITY.—After a preliminary hearing under this section, the hearing officer shall submit to the convening authority a written report (accompanied by a recording of the preliminary hearing under subsection (e)) that includes the following:

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a)(2), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial.

(2) Recommendations for any necessary modifications to the form of the charges or specifications.

(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that, under such rules as the President may prescribe, is relevant to disposition under sections 830 and 834 of this title (articles 30 and 34).

(4) A statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (f).

(d) RIGHTS OF ACCUSED AND VICTIM.—(1) The accused shall be advised of the charges against the accused and of the accused's right

to be represented by counsel at the preliminary hearing under this section. The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence that is relevant to the issues for determination under subsection (a)(2).

(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing. A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).

(4) The presentation of evidence and examination (including cross-examination) of witnesses at a preliminary hearing shall be limited to the matters relevant to determinations under subsection (a)(2).

(e) RECORDING OF PRELIMINARY HEARING.—A preliminary hearing under subsection (a) shall be recorded by a suitable recording device. The victim may request the recording and shall have access to the recording under such rules as the President may prescribe.

(f) EFFECT OF EVIDENCE OF UNCHARGED OFFENSE.—If evidence adduced in a preliminary hearing under subsection (a) indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused—

(1) is present at the preliminary hearing;

(2) is informed of the nature of each uncharged offense considered; and

(3) is afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (d).

(g) EFFECT OF VIOLATION.—The requirements of this section are binding on all persons administering this chapter, but failure to follow the requirements does not constitute jurisdictional error. A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.

(h) VICTIM DEFINED.—In this section, the term “victim” means a person who—

(1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and

(2) is named in one of the specifications.

### §833. Art. 33. Disposition guidance

The President shall direct the Secretary of Defense to issue, in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy, non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

## UNIFORM CODE OF MILITARY JUSTICE

### §834. Art. 34. Advice to convening authority before referral for trial

#### (a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense.

(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(c) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

(1) to correct errors in form; and

(2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

(d) REFERRAL DEFINED.—In this section, the term “referral” means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.

### §835. Art. 35. Service of charges; commencement of trial

(a) IN GENERAL.—Trial counsel detailed for a court-martial under section 827 of this title (article 27) shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

#### (b) COMMENCEMENT OF TRIAL.—

(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a))) may be held over the objection of the accused—

(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

## SUBCHAPTER VII—TRIAL PROCEDURE

Sec. Art.

836.	36.	President may prescribe rules.
837.	37.	Unlawfully influencing action of court.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
841.	41.	Challenges.
842.	42.	Oaths.
843.	43.	Statute of limitations.
844.	44.	Former jeopardy.
845.	45.	Pleas of the accused.
846.	46.	Opportunity to obtain witnesses and other evidence in trials by court-martial.
847.	47.	Refusal of person not subject to chapter to appear, testify, or produce evidence.
848.	48.	Contempt.
849.	49.	Depositions.
850.	50.	Admissibility of sworn testimony from records of courts of inquiry.
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Votes required for conviction, sentencing, and other matters.
853.	53.	Findings and sentencing.
853.	53a.	Plea agreements.
854.	54.	Record of trial.

### §836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not, except as provided in chapter 47A of this title, be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable, except insofar as applicable to military commissions established under chapter 47A of this title.

### §837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action

## APPENDIX 2

of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

### **§838. Art. 38. Duties of trial counsel and defense counsel**

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at a preliminary hearing under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define “reasonably available” for the purpose of paragraph (3)(B) and

establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860, 860a, or 860b of this title (article 60, 60a, or 60b); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

### **§839. Art. 39. Sessions**

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) holding the arraignment and receiving the pleas of the accused;

(4) conducting a sentencing proceeding and sentencing the accused; and sentencing the accused under section 853(b)(1) of this title (article 53(b)(1)); and

(5) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

(b) Proceedings under subsection (a) shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29). If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence

## UNIFORM CODE OF MILITARY JUSTICE

required by this subsection may otherwise be established by audiovisual technology (such as video conferencing technology).

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

(d) The findings, holdings, interpretations, and other precedents of military commissions under chapter 47A of this title—

(1) may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial under this chapter; and

(2) may not form the basis of any holding, decision, or other determination of a court-martial.

### §840. Art. 40. Continuances

The military judge or a summary court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

### §841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

### §842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be

performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

### §843. Art. 43. Statute of limitations

(a) NO LIMITATIONS FOR CERTAIN OFFENSES.—A person charged with absence without leave or missing movement in time of war, with murder, rape or sexual assault, or rape or sexual assault of a child, or with any other offense punishable by death, may be tried and punished at any time without limitation.

(b) FIVE-YEAR LIMITATION FOR TRIAL BY COURT-MARTIAL.—

(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2)(A) A person charged with having committed a child abuse offense against a child is liable to be tried by court-martial if the sworn charges and specifications are received during the life of the child or within ten years after the date on which the offense was committed, whichever provides a longer period, by an officer exercising summary court-martial jurisdiction with respect to that person.

(B) In subparagraph (A), the term “child abuse offense” means an act that involves abuse of a person who has not attained the age of 16 years and constitutes any of the following offenses:

(i) Any offense in violation of section 920, 920a, 920b, 920c, or 930 of this title (article 120, 120a, 120b, 120c, or 130), unless the offense is covered by subsection (a).

(ii) Maiming in violation of section 928a of this title (article 128a).

(iii) Aggravated assault, assault consummated by a battery, or assault with intent to commit specified offenses in violation of section 928 of this title (article 128).

(iv) Kidnapping in violation of section 925 of this title (article 125).

(C) In subparagraph (A), the term “child abuse offense” includes an act that involves abuse of a person who has not attained the age of 18 years and would constitute an offense under chapter 110 or 117 of title 18 or under section 1591 of that title.

(3) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) TOLLING FOR ABSENCE WITHOUT LEAVE OR FLIGHT FROM JUSTICE.—Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) TOLLING FOR ABSENCE FROM US OR MILITARY JURISDICTION.—Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

## APPENDIX 2

(e) **EXTENSION FOR OFFENSES IN TIME OF WAR DETRIMENTAL TO PROSECUTION OF WAR.**—For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) **EXTENSION FOR OTHER OFFENSES IN TIME OF WAR.**—When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g) **DEFECTIVE OR INSUFFICIENT CHARGES.**—

(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(h) **FRAUDULENT ENLISTMENT OR APPOINTMENT.**—A person charged with fraudulent enlistment or fraudulent appointment under section 904a(1) of this title (article 104a(1)) may be tried by court-martial if the sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction with respect to that person, as follows:

(1) In the case of an enlisted member, during the period of the enlistment or five years, whichever provides a longer period.

(2) In the case of an officer, during the period of the appointment or five years, whichever provides a longer period.

(i) **DNA EVIDENCE.**—If DNA testing implicates an identified person in the commission of an offense punishable by confinement for more than one year, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

### §844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c)(1) A court-martial with a military judge alone is a trial in the sense of this section (article) if, without fault of the accused—

(A) after introduction of evidence; and

(B) before announcement of findings under section 853 of this title (article 53); the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

(B) before announcement of findings under section 853 of this title (article 53); the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

### §845. Art. 45. Pleas of the accused

(a) **IRREGULAR AND SIMILAR PLEAS.**—If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) **PLEAS OF GUILTY.**—A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty is mandatory. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) **HARMLESS ERROR.**—A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

### §846. Art. 46. Opportunity to obtain witnesses and other evidence in trial by court-martial

(a) **OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.**—In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) **SUBPOENA AND OTHER PROCESS GENERALLY.**—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

## UNIFORM CODE OF MILITARY JUSTICE

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

(1) before a court-martial, military commission, or court of inquiry;

(2) at a deposition under section 849 of this title (article 49); or

(3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

(A) for a court-martial, military commission, or court of inquiry;

(B) for a deposition under section 849 of this title (article 49);

(C) for an investigation of an offense under this chapter; or

(D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a), may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

(1) order that the subpoena or other process be modified or withdrawn, as appropriate; or

(2) order the person to comply with the subpoena or other process.

### § 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence

(a) IN GENERAL.—

(1) Any person described in paragraph (2)—

(A) who willfully neglects or refuses to appear; or

(B) who willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce; is guilty of an offense against the United States.

(2) The persons referred to in paragraph (1) are the following:

(A) Any person not subject to this chapter who—

(i) is issued a subpoena or other process described in subsection (c) of section 846 of this title (article 46); and

(ii) is provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage.

(B) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (d) of section 846 of this title (article 46).

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, board, or convening authority, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

### §848. Art. 48. Contempt

(a) AUTHORITY TO PUNISH.—

(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) may punish for contempt any person who—

(A) uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

(B) disturbs the proceeding by any riot or disorder; or

(C) willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

(2) A judicial officer referred to in paragraph (1) is any of the following:

(A) Any judge of the Court of Appeals for the Armed Forces and any judge of a Court of Criminal Appeals under section 866 of this title (article 66).

(B) Any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under this chapter.

(C) Any military magistrate designated to preside under section 819 of this title (article 19).

(D) The president of a court of inquiry.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of \$1,000, or both.

(c) REVIEW.—A punishment under this section—

(1) if imposed by a military judge or military magistrate, may be reviewed by the Court of Criminal Appeals in accordance with the uniform rules of procedure for the Courts of Criminal Appeals under section 866(h) of this title (article 66(h));

(2) if imposed by a judge of the Court of Appeals for the Armed Forces or a judge of a Court of Criminal Appeals, shall constitute a judgment of the court, subject to review under the applicable provisions of section 867 or 867a of this title (article 67 or 67a); and

(3) if imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the President.

## APPENDIX 2

(d) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

### §849. Art. 49. Depositions

(a) IN GENERAL.—

(1) Subject to paragraph (2), a convening authority or a military judge may order depositions at the request of any party.

(2) A deposition may be ordered under paragraph (1) only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.

(3) A party who requests a deposition under this section shall give to every other party reasonable written notice of the time and place for the deposition.

(4) A deposition under this section shall be taken before, and authenticated by, an impartial officer, as follows:

(A) Whenever practicable, by an impartial judge advocate certified under section 827(b) of this title (article 27(b)).

(B) In exceptional circumstances, by an impartial military or civil officer authorized to administer oaths by (i) the laws of the United States or (ii) the laws of the place where the deposition is taken.

(b) REPRESENTATION BY COUNSEL.—Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under section 827 of this title (article 27). In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as such counsel are provided for in section 838(b) of this title (article 38(b)).

(c) ADMISSIBILITY AND USE AS EVIDENCE.—A deposition order under subsection (a) does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as provided by subsection (d), a party may use all or part of a deposition as provided by the rules of evidence.

(d) CAPITAL CASES.—Testimony by deposition may be presented in capital cases only by the defense.

### §850. Art. 50. Admissibility of sworn testimony from records of courts of inquiry

(a) USE AS EVIDENCE BY ANY PARTY— In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence. This section does not apply to a military commission established under chapter 47A of this title.

(b) USE AS EVIDENCE BY DEFENSE— Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) USE IN COURTS OF INQUIRY AND MILITARY BOARDS— Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) AUDIOTAPE OR VIDEOTAPE.—Sworn testimony that—

(1) is recorded by audiotape, videotape, or similar method; and

(2) is contained in the duly authenticated record of proceedings of a court of inquiry;

is admissible before a court-martial, military commission, court of inquiry, or military board, to the same extent as sworn testimony may be read in evidence before any such body under subsection (a), (b), or (c).

### §850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

### §851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.

## UNIFORM CODE OF MILITARY JUSTICE

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

### **§852. Art. 52. Votes required for conviction, sentencing, and other matters**

(a) IN GENERAL.—No person may be convicted of an offense in a general or special court-martial, other than—

(1) after a plea of guilty under section 845(b) of this title (article 45(b));

(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

(b) LEVEL OF CONCURRENCE REQUIRED.—

(1) IN GENERAL.—Except as provided in subsection (a) and in paragraph (2), all matters to be decided by members of a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) SENTENCING.—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.

### **§853. Art. 53. Findings and sentencing**

(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) SENTENCING GENERALLY.—

(1) GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the

accused is convicted of an offense in a trial the military judge shall sentence the accused.

(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense by general or special court-martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.

(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.

(2) SUMMARY COURTS-MARTIAL.—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

(c) SENTENCING FOR CAPITAL OFFENSES.—

(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the members shall determine whether the sentence for that offense shall be death or a lesser punishment.

(2) LESSER AUTHORIZED PUNISHMENT.—In accordance with regulations prescribed by the President, the court-martial may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

(3) OTHER NON-CAPITAL OFFENSES.—In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

### **§853a. Art. 53a. Plea agreements**

(a) IN GENERAL.—

(1) At any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(b) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2)); (4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.

(c) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and



## APPENDIX 2

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(d) **BINDING EFFECT OF PLEA AGREEMENT.**—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties and the court-martial.

### §854. Art. 54. Record of trial

(a) **GENERAL AND SPECIAL COURTS-MARTIAL.**—Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a court-reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the President may prescribe by regulation.

(b) **SUMMARY COURT-MARTIAL.**—Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be certified in the manner required by such regulations as the President may prescribe.

(c) **CONTENTS OF RECORD.**—

(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation.

(2) In accordance with regulations prescribed by the President, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(d) **COPY TO ACCUSED.**— A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is certified.

(e) **COPY TO VICTIM.**—In the case of a general or special court-martial, upon request, a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are certified. The victim shall be notified of the opportunity to receive the records of the proceedings.

## SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Sentencing.
857.	57.	Effective date of sentences.
858.	58.	Execution of confinement.
858a.	58a	Sentences: reduction in enlisted grade upon approval.
858b.	58b	Sentences: forfeiture of pay and allowances during confinement.

### §855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this

chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

### §856. Art. 56. Sentencing

(a) **SENTENCE MAXIMUMS.**—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) **SENTENCE MINIMUMS FOR CERTAIN OFFENSES.**—(1) Except as provided in subsection (d) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

(c) **IMPOSITION OF SENTENCE.**—

(1) **IN GENERAL.**—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on—

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence—

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

(iv) to promote adequate deterrence of misconduct;

(v) to protect others from further crimes by the accused;

(vi) to rehabilitate the accused; and

(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service;

(D) the sentences available under this chapter.

(2) **SENTENCING BY MILITARY JUDGE.**—In announcing the sentence in a general or special court-martial in which the accused is sentenced by military judge alone under section 853 of this title (article 53), the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any and the amount of fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall

## UNIFORM CODE OF MILITARY JUSTICE

specify whether the terms of confinement are to run consecutively or concurrently.

(3) SENTENCING BY MEMBERS.—In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.

(4) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—

(A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(i) the sentence is set aside or otherwise modified as a result of—

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure and review under any other provision of subchapter IX of this chapter;

(ii) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(iii) the accused is pardoned.

(d) APPEAL OF SENTENCE BY THE UNITED STATES.—

(1) With the approval of the Judge Advocate General concerned and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

(A) the sentence violates the law; or

(B) the sentence is plainly unreasonable as determined in accordance with standards and procedures prescribed by the President.

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

### §857. Art. 57. Effective date of sentences

(a) EXECUTION OF SENTENCES.—A court-martial sentence shall be executed and take effect as follows:

(1) FORFEITURE AND REDUCTION.—A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) CONFINEMENT.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such

a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) DEFERRAL OF SENTENCES.—

(1) IN GENERAL.—On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) DEFERRAL OF CERTAIN PERSONS SENTENCED TO CONFINEMENT.—In any case in which a court-martial sentences a person referred to in paragraph (3) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(3) COVERED PERSONS.—Paragraph (2) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(4) STATE DEFINED.—In this subsection, the term 'State' includes the District of Columbia and any Commonwealth, territory, or possession of the United States.

(5) DEFERRAL WHILE REVIEW PENDING.—In any case in which a court-martial sentences a person to confinement, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is

## APPENDIX 2

pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(c) APPELLATE REVIEW.—

(1) COMPLETION OF APPELLATE REVIEW.—Appellate review is complete under this section when—

(A) a review under section 865 of this title (article 65) is completed; or

(B) a review under section 866 of this title (article 66) is completed by a Court of Criminal Appeals and—

(i) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(ii) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(iii) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(I) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) such a petition is rejected by the Supreme Court; or

(III) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) COMPLETION AS FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

### §858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(b) The omission of the words “hard labor” from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

### §858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as set forth in the judgment of the court-martial entered into the record under section 860c of this title (article 60c), that includes—

(1) a dishonorable or bad-conduct discharge;

(2) confinement; or

(3) hard labor without confinement;

reduces that member to pay grade E-1, if such reduction is authorized by regulation prescribed by the President. The reduction

in pay grade shall take effect on the date on which the judgment is so entered.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or reduced, or, as finally affirmed, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

### §858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857 of this title (article 57) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

(A) confinement for more than six months or death; or

(B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860a or 860b of this title (article 60a or 60b) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

## SUBCHAPTER IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.
859.	59. Error of law; lesser included offense.
860.	60. Post-trial processing in general and special courts-martial.
860a.	60a Limited authority to act on sentence in specified post-trial circumstances.
860b.	60b Post-trial actions in summary courts-martial and certain general and special courts-martial.
860c.	60c Entry of judgment.
81.	61. Waiver of rights to appeal; withdrawal of appeal.
862.	62. Appeal by the United States.
863.	63. Rehearings.
864.	64. Judge advocate review of finding of guilty in

## UNIFORM CODE OF MILITARY JUSTICE

- summary court-martial.
865. 65. Transmittal and review of records.
866. 66. Courts of Criminal Appeals.
867. 67. Review by the Court of Appeals for the Armed Forces.
- 867a. 67a Review by Supreme Court.
868. 68. Branch offices.
869. 69. Review by Judge Advocate General.
870. 70. Appellate counsel.
871. 71. [Repealed.]
872. 72. Vacation of suspension.
873. 73. Petition for a new trial.
874. 74. Remission and suspension.
875. 75. Restoration.
876. 76. Finality of proceedings, findings, and sentences.
- 876a. 76a Leave required to be taken pending review of certain court-martial convictions.
- 876b. 76b Leave of mental capacity or mental responsibility; commitment of accused for examination and treatment.

### **§859. Art. 59. Error of law; lesser included offense**

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

### **§860. Art. 60. Post-trial processing in general and special courts-martial**

(a) STATEMENT OF TRIAL RESULTS.—

(1) The military judge of a general or special court-martial shall enter into the record of trial a document entitled ‘Statement of Trial Results’, which shall set forth—

- (A) each plea and finding;
- (B) the sentence, if any; and

(C) such other information as the President may prescribe by regulation.

(2) Copies of the Statement of Trial Results shall be provided promptly to the convening authority, the accused, and any victim of the offense.

(b) POST-TRIAL MOTIONS.—In accordance with regulations prescribed by the President, the military judge in a general or special court-martial shall address all post-trial motions and other post-trial matters that—

(1) may affect a plea, a finding, the sentence, the Statement of Trial Results, the record of trial, or any post-trial action by the convening authority; and

(2) are subject to resolution by the military judge before entry of judgment.

### **§860a. Art. 60a. Limited authority to act on sentence in specified post-trial circumstances**

(a) IN GENERAL.—

(1) The convening authority of a general or special court-martial described in paragraph (2)—

(A) may act on the sentence of the court-martial only as provided in subsection (b), (c), or (d); and

(B) may not act on the findings of the court-martial.

(2) The courts-martial referred to in paragraph (1) are the following:

(A) A general or special court-martial in which the maximum sentence of confinement established under subsection (a) of section 856 of this title (article 56) for any offense of which the accused is found guilty is more than two years.

(B) A general or special court-martial in which the total of the sentences of confinement imposed, running consecutively, is more than six months.

(C) A general or special court-martial in which the sentence imposed includes a dismissal, dishonorable discharge, or bad-conduct discharge.

(D) A general or special court-martial in which the accused is found guilty of a violation of subsection (a) or (b) of section 920 of this title (article 120), section 920b of this title (article 120b), or such other offense as the Secretary of Defense may specify by regulation.

(3) Except as provided in subsection (d), the convening authority may act under this section only before entry of judgment.

(4) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(b) REDUCTION, COMMUTATION, AND SUSPENSION OF SENTENCES GENERALLY.—

(1) Except as provided in subsection (c) or (d), the convening authority may not reduce, commute, or suspend any of the following sentences:

(A) A sentence of confinement, if the total period of confinement imposed for all offenses involved, running consecutively, is greater than six months.

(B) A sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

(C) A sentence of death.

(2) The convening authority may reduce, commute, or suspend any sentence not specified in paragraph (1).

(c) SUSPENSION OF CERTAIN SENTENCES UPON RECOMMENDATION OF MILITARY JUDGE.—

(1) Upon recommendation of the military judge, as included in the Statement of Trial Results, together with an explanation of the facts supporting the recommendation, the convening authority may suspend—

(A) a sentence of confinement, in whole or in part; or

(B) a sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

(2) The convening authority may not, under paragraph (1)—

(A) suspend a mandatory minimum sentence; or

(B) suspend a sentence to an extent in excess of the suspension recommended by the military judge.

(d) REDUCTION OF SENTENCE FOR SUBSTANTIAL ASSISTANCE BY ACCUSED.—

(1) Upon a recommendation by the trial counsel, if the accused, after sentencing and before entry of judgment, provides substantial assistance in the investigation or prosecution of another person, the

## APPENDIX 2

convening authority may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

(2) Upon a recommendation by a trial counsel, designated in accordance with rules prescribed by the President, if the accused, after entry of judgment, provides substantial assistance in the investigation or prosecution of another person, a convening authority, designated under such regulations, may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

(3) In evaluating whether the accused has provided substantial assistance under this subsection, the convening authority may consider the presentence assistance of the accused.

### (e) SUBMISSIONS BY ACCUSED AND VICTIM.—

(1) In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of an offense. Such rules shall include—

(A) procedures for notice of the opportunity to make such submissions;

(B) the deadlines for such submissions; and

(C) procedures for providing the accused and any victim of an offense with a copy of the recording of any open sessions of the court-martial and copies of, or access to, any admitted, unsealed exhibits.

(2) The convening authority shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

### (f) DECISION OF CONVENING AUTHORITY.—

(1) The decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If, under this section, the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall include a written explanation of the reasons for such action.

(3) If, under subsection (d)(2), the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall be forwarded to the chief trial judge for appropriate modification of the entry of judgment, which shall be transmitted to the Judge Advocate General for appropriate action.

## **§860b. Art. 60b. Post-trial actions in summary courts-martial and certain general and special courts-martial**

### (a) IN GENERAL.—

(1) In a court-martial not specified in subsection (a)(2) of section 860a of this title (article 60a), the convening authority may—

(A) dismiss any charge or specification by setting aside the finding of guilty;

(B) change a finding of guilty to a charge or specification to a finding of guilty to a lesser included offense;

(C) disapprove the findings and the sentence and dismiss the charges and specifications;

(D) disapprove the findings and the sentence and order a rehearing as to the findings and the sentence;

(E) disapprove, commute, or suspend the sentence, in whole or in part; or

(F) disapprove the sentence and order a rehearing as to the sentence.

(2) In a summary court-martial, the convening authority shall approve the sentence or take other action on the sentence under paragraph (1).

(3) Except as provided in paragraph (4), the convening authority may act under this section only before entry of judgment.

(4) The convening authority may act under this section after entry of judgment in a general or special court-martial in the same manner as the convening authority may act under section 860a(d)(2) of this title (article 60a(d)(2)). Such action shall be forwarded to the chief trial judge, who shall ensure appropriate modification to the entry of judgment and shall transmit the entry of judgment to the Judge Advocate General for appropriate action.

(5) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(b) LIMITATIONS ON REHEARINGS.—The convening authority may not order a rehearing under this section—

(1) as to the findings, if there is insufficient evidence in the record to support the findings;

(2) to reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; or

(3) to reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter.

(c) SUBMISSIONS BY ACCUSED AND VICTIM.—In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of the offense. Such rules shall include the matter required by section 860a(e) of this title (article 60a(e)).

### (d) DECISION OF CONVENING AUTHORITY.—

(1) In a general or special court-martial, the decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If the convening authority acts on the findings or the sentence under subsection (a)(1), the decision of the convening authority shall include a written explanation of the reasons for such action.

## **§860c. Art 60c. Entry of judgment**

### (a) ENTRY OF JUDGMENT OF GENERAL OR SPECIAL COURT-MARTIAL.—

(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60).

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

(i) any post-trial action by the convening authority; or

## UNIFORM CODE OF MILITARY JUSTICE

(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

(2) Under rules prescribed by the President, the judgment under paragraph (1) shall be—

(A) provided to the accused and to any victim of the offense; and

(B) made available to the public.

(b) SUMMARY COURT-MARTIAL JUDGMENT.—The findings and sentence of a summary court-martial, as modified by any post-trial action by the convening authority under section 860b of this title (article 60b), constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the President.

### **§861. Art. 61. Waiver of right to appeal; withdrawal of appeal**

(a) WAIVER OF RIGHT TO APPEAL.—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appeal. Such a waiver shall be —

(1) signed by the accused and by defense counsel; and

(2) attached to the record of trial.

(b) WITHDRAWAL OF APPEAL.—In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) DEATH PENALTY CASE EXCEPTION.—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

(d) WAIVER OR WITHDRAWAL AS BAR.—A waiver or withdrawal under this section bars review under section 866 of this title (article 66).

### **§862. Art. 62. Appeal by the United States**

(a)(1) In a trial by general or special court-martial or in a pretrial proceeding under section 830a of this title (article 30a), the United States may appeal the following:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(G) An order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.

(2)(A) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling

appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(B) An appeal of an order or ruling may not be taken when prohibited by section 844 of this title (article 44).

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(d) The United States may appeal a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(e) The provisions of this article shall be liberally construed to effect its purposes.

### **§863. Art. 63. Rehearings**

(a) Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be adjudged, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

(b) If the sentence adjudged by the first court-martial was in accordance with a plea agreement under section 853a of this title (article 53a) and the accused at the rehearing does not comply with the agreement, or if a plea of guilty was entered for an offense at the first court-martial and a plea of not guilty was entered at the rehearing, the sentence as to those charges or specifications may include any punishment not in excess of that which could have been adjudged at the first court-martial, subject to limitations as the President may prescribe by regulation.

(c) If, after appeal by the Government under section 856(d) of this title (article 56(d)), the sentence adjudged is set aside and a rehearing on sentence is ordered by the Court of Criminal Appeals or Court of Appeals for the Armed Forces, the court-martial may impose any sentence that is in accordance with the order or ruling setting aside the adjudged sentence, subject to such limitations as the President may prescribe by regulation.

### **§864. Art. 64. Judge advocate review of finding of guilty in summary court-martial**

(a) IN GENERAL.—Under regulations prescribed by the Secretary concerned, each summary court-martial in which there is a finding of guilty shall be reviewed by a judge advocate. A judge advocate may not review a case under this subsection if the judge advocate has acted in the same case as an accuser, preliminary hearing officer,

## APPENDIX 2

member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

- (1) Conclusions as to whether—
  - (A) the court had jurisdiction over the accused and the offense;
  - (B) the charge and specification stated an offense; and
  - (C) the sentence was within the limits prescribed as a matter of law.

- (2) A response to each allegation of error made in writing by the accused.

- (3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) RECORD.—The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

- (1) the judge advocate who reviewed the case recommends corrective action; or

- (2) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

- (A) disapprove or approve the findings or sentence, in whole or in part;

- (B) remit, commute, or suspend the sentence in whole or in part;

- (C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

- (D) dismiss the charges.

- (2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

- (3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869 of this title (article 69).

### §865. Art. 65. Transmittal and review of records

(a) TRANSMITTAL OF RECORDS.—

- (1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

- (2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(b) CASES ELIGIBLE FOR DIRECT APPEAL—

- (1) AUTOMATIC REVIEW.—If the judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward the record

of trial to the Court of Criminal Appeals for review under section 866(b)(3) of this title (article 66(b)(3)).

(2) CASES ELIGIBLE FOR DIRECT APPEAL REVIEW.—

(A) IN GENERAL.—If the case is eligible for direct review under section 866(b)(1) of this title (article 66(b)(1)), the Judge Advocate General shall—

- (i) forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, upon request of the accused, to represent the accused before the Court of Criminal Appeals; and

- (ii) upon written request of the accused, forward a copy of the record of trial to civilian counsel provided by the accused.

(B) INAPPLICABILITY.—Subparagraph (A) shall not apply if the accused—

- (i) waives the right to appeal under section 861 of this title (article 61); or

- (ii) declines in writing the detailing of appellate defense counsel under paragraph (A)(i).

(c) NOTICE OF RIGHT TO APPEAL.—

- (1) IN GENERAL.—The Judge Advocate General shall provide notice to the accused of the right to file an appeal under section 866(b)(1) of this title (article 66(b)(1)) by means of depositing in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the official service record of the accused.

- (2) INAPPLICABILITY UPON WAIVER OF APPEAL.—Paragraph (1) shall not apply if the accused waives the right to appeal under section 861 of this title (article 61).

(d) REVIEW BY JUDGE ADVOCATE GENERAL.—

- (1) BY WHOM.—A review conducted under this subsection may be conducted by an attorney within the Office of the Judge Advocate General or another attorney designated under regulations prescribed by the Secretary concerned.

- (2) REVIEW OF CASES NOT ELIGIBLE FOR DIRECT APPEAL.—

- (A) A review under subparagraph (B) shall be completed in each general and special court-martial that is not eligible for direct appeal under paragraph (1) or (3) of section 866(b) of this title (article 66(b)).

- (B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision providing each of the following:

- (i) A conclusion as to whether the court had jurisdiction over the accused and the offense.

- (ii) A conclusion as to whether the charge and specification stated an offense.

- (iii) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.

- (iv) A response to each allegation of error made in writing by the accused.

- (3) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN OR NOT FILED.—

- (A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial if—

- (i) the accused waives the right to appeal or withdraws appeal under section 861 of this title (article 61); or

## UNIFORM CODE OF MILITARY JUSTICE

(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph (A), (B) or (C) of section 866(b)(1) of this title (article 66(b)(1)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing conclusions on the matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B).

(c) REMEDY.—

(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

(2) REHEARING.—In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(3) REMEDY WITHOUT REHEARING.—

(A) DISMISSAL WHEN NO REHEARING ORDERED.—If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(B) DISMISSAL WHEN REHEARING IMPRACTICAL.— If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

### §866. Art. 66. Courts of Criminal Appeals

(a) COURTS OF CRIMINAL APPEALS.—Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (h). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel. In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(b) REVIEW.—

(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction of a timely appeal from the judgment of a court-martial, entered into the record under section 860c of this title (article 60c), as follows:

(A) On appeal by the accused in a case in which the sentence extends to confinement for more than six months and the case is not subject to automatic review under paragraph (3)

(B) On appeal by the accused in a case in which the Government previously filed an appeal under section-862 of this title (article 62).

(C) On appeal by the accused in a case that the Judge Advocate General has sent to the Court of Criminal Appeals for review of the sentence under section 856(d) of this title (article 56(d))

(D) In a case in which the accused filed an application for review with the Court under section 869(d)(1)(B) of this title (article 69(d)(1)(B)) and the application has been granted by the Court.

(2) REVIEW OF CERTAIN SENTENCES.—A Court of Criminal Appeals shall have jurisdiction over all cases that the Judge Advocate General orders sent to the Court for review under section 856(d) of this title (article 56(d)).

(3) AUTOMATIC REVIEW.—A Court of Criminal Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under section 860(c) of this title (article 60c) includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more.

(c) TIMELINESS.—An appeal under subsection (b) is timely if it is filed as follows:

(1) In the case of an appeal by the accused under subsection (b)(1)(A) or (b)(1)(B), if filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); or

(B) the date set by the Court of Criminal Appeals by rule or order.

(2) In the case of an appeal by the accused under subsection (b)(1)(C), if filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is notified that the application for review has been granted by letter placed in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record; or

(B) the date set by the Court of Criminal Appeals by rule or order.

(d) DUTIES.—

(1) CASES APPEALED BY ACCUSED.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witness, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(2) ERROR OR EXCESSIVE DELAY.—In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).

(e) CONSIDERATION OF AN APPEAL OF SENTENCE BY THE UNITED STATES.—

(1) IN GENERAL.—In considering a sentence on appeal or review as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

(A) whether the sentence violates the law; and



## APPENDIX 2

(B) whether the sentence is plainly unreasonable.

(2) RECORD ON APPEAL OR REVIEW.—In an appeal or review under this subsection or section 856(d) of this title (article 56(d)), the record on appeal or review shall consist of—

(A) any portion of the record in the case that is designated as pertinent by either of the parties;

(B) the information submitted during the sentencing proceeding; and

(C) any information required by regulation prescribed by the President or by rule or order of the Court of Criminal Appeals.

(f) LIMITS OF AUTHORITY.—

(1) SET ASIDE OF FINDINGS —

(A) IN GENERAL.—If the Court of Criminal Appeals sets aside the findings, the Court—

(i) may affirm any lesser included offense; and

(ii) may, except when prohibited by section 844 of this title (article 44), order a rehearing.

(B) DISMISSAL WHEN NO REHEARING ORDERED.—If the Court of Criminal Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.

(C) DISMISSAL WHEN REHEARING IMPRACTICABLE.—If the Court of Criminal Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

(2) SET ASIDE OF SENTENCE.—If the Court of Criminal Appeals sets aside the sentence, the Court may—

(A) modify the sentence to a lesser sentence; or

(B) order a rehearing

(3) ADDITIONAL PROCEEDINGS.—If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the president may prescribe. If the Court of Appeals for the Armed Forces determines that additional proceedings are warranted, the Court of Criminal Appeals shall order a hearing or other proceeding in accordance with the direction of the court of Appeals for the Armed Forces.

(g) ACTION IN ACCORDANCE WITH DECISIONS OF COURTS.—The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the appropriate authority to take action in accordance with the decision of the Court of Criminal Appeals.

(h) RULES OF PROCEDURE.—The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(i) PROHIBITION ON EVALUATION OF OTHER MEMBERS OF COURTS.—No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(j) INELIGIBILITY OF MEMBERS OF COURTS TO REVIEW RECORDS OF CASES INVOLVING CERTAIN PRIOR MEMBER SERVICE.—No member of a Court of Criminal Appeals shall be eligible to review the record

of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

### §867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General, after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps, orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c)(1) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to—

(A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or

(B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals.

(2) In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him.

(3) In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review.

(4) The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further

## UNIFORM CODE OF MILITARY JUSTICE

action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

### §867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

### §868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

### §869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused and subject to subsections (b), (c), and (d), the Judge Advocate General may modify or set aside, in whole or in part, the findings and sentence in a court-martial that is not reviewed under section 866 of this title (article 66).

(b) TIMING.—To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than one year after the date of completion of review under section 864 or 865 of this title (article 64 or 65), as the case may be. The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.

(c) SCOPE.—

(1)(A) In a case reviewed under section 864 or section 865(d) of this title (article 64 or 65(d)), the Judge Advocate General may set aside the findings or sentence, in whole or in part, on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (Article 44).

(C) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(D) If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(2) In a case reviewed under section 865(d) of this title (article 65(d)), review under this section is limited to the issue of whether the waiver, withdrawal, or failure to file an appeal was invalid under the law. If the Judge Advocate General determines that the waiver, withdrawal, or failure to file an appeal was invalid, the Judge Advocate General shall order appropriate corrective action under rules prescribed by the President.

(d) COURT OF CRIMINAL APPEALS.—

(1) A Court of Criminal Appeals may review the action taken by the Judge Advocate General under subsection (c)—

(A) in a case sent to the Court of Criminal Appeals by order of the Judge Advocate General; or

(B) in a case submitted to the Court of Criminal Appeals by the accused in an application for review.

(2) The Court of Criminal Appeals may grant an application under paragraph (1)(B) only if—

(A) the application demonstrates a substantial basis for concluding that the action on review under subsection (c) constituted prejudicial error; and

(B) the application is filed not later than the earlier of—

(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or

(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

(3) The submission of an application for review under this subsection does not constitute a proceeding before the Court of Criminal Appeals for purposes of section 870(c)(1) of this title (article 70(c)(1)).

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under subsection (d), the Court may take action only with respect to matters of law.

### §870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

## APPENDIX 2

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(f) To the greatest extent practicable, in any capital case, at least one defense counsel under subsection (c) shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

### §872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 857 of this title (article 57)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

### §873. Art. 73. Petition for a new trial

At any time within three years after the date of the entry of judgment under section 860c of this title (article 60c), the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

### §874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

### §875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) The President shall prescribe regulations, with such limitations as the President considers appropriate, governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

### §876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

### §876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date of the entry of judgment under section 860c of this title (article 60c) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

## UNIFORM CODE OF MILITARY JUSTICE

### **§876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment**

#### (a) PERSONS INCOMPETENT TO STAND TRIAL.—

(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

#### (b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—

(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

#### (c) GENERAL PROVISIONS.—

(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

#### (d) APPLICABILITY.—

(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

## SUBCHAPTER X—PUNITIVE ARTICLES

Sec. Art.

- |       |      |   |
|-------|------|---|
| 877.  | 77.  | Principals.   |
| 878.  | 78.  | Accessory after the fact.   |
| 879.  | 79.  | Conviction of offense, lesser included offenses, and attempts                             |
| 880.  | 80.  | Attempts.   |
| 881.  | 81.  | Conspiracy.   |
| 882.  | 82.  | Soliciting commission of offenses.  |
| 883.  | 83.  | Malingering.  |
| 884.  | 84.  | Breach of medical quarantine.   |
| 885.  | 85.  | Desertion.  |
| 886.  | 86.  | Absence without leave.  |
| 887.  | 87.  | Missing movement; jumping from vessel.  |
| 887a. | 87a. | Resistance, flight, breach of arrest, and escape.   |
| 887b. | 87b. | Offenses against correctional custody and restriction.                                    |
| 888.  | 88.  | Contempt toward officials.  |
| 889.  | 89.  | Disrespect toward superior commissioned officer; assault of superior commissioned officer |
| 890.  | 90.  | Willfully disobeying superior commissioned officer.                                       |
| 891.  | 91.  | Insubordinate conduct toward warrant officer, Noncommissioned officer, or petty officer.  |
| 892.  | 92.  | Failure to obey order or regulation.  |

## APPENDIX 2

893. 93. Cruelty and maltreatment.  
893a. 93a. Prohibited activities with military recruit or trainee  
By person in position of special trust.  
894. 94. Mutiny or sedition.  
895. 95. Offenses by sentinel or lookout.  
895a. 95a. Disrespect toward sentinel or lookout.  
896. 96. Release of prisoner without authority; drinking with  
prisoner  
897. 97. Unlawful detention.  
898. 98. Misconduct as prisoner.  
899. 99. Misbehavior before the enemy.  
900. 100. Subordinate compelling surrender.  
901. 101. Improper use of countersign.  
902. 102. Forcing a safeguard.  
903. 103. Spies.  
903a. 103a. Espionage.  
903b. 103b. Aiding the enemy.  
904. 104. Public records offenses.  
904a. 104a. Fraudulent enlistment, appointment, or separation.  
904b. 104b. Unlawful enlistment, appointment, or separation.  
905. 105. Forgery.  
905a. 105a. False or unauthorized pass offenses.  
906. 106. Impersonation of officer, noncommissioned officer,  
or agent or official.  
907. 107. False official statements; false swearing.  
907a. 107a. Parole violation.  
908. 108. Military property of United States—Loss, damage,  
destruction, or wrongful disposition.  
908a. 108a. Captured or abandoned property.  
909. 109. Property other than military property of United  
States—Waste, spoilage, or destruction.  
909a. 109a. Mail matter: wrongful taking, opening, etc.  
910. 110. Improper hazarding of vessel or aircraft.  
911. 111. Leaving scene of vehicle accident.  
912. 112. Drunkenness and other incapacitation offenses.  
912a. 112a. Wrongful use, possession, etc., of controlled  
substances  
913. 113. Drunken or reckless operation of vehicle, aircraft or  
vessel.  
914. 114. Endangerment offenses.  
915. 115. Communicating threats.  
916. 116. Riot or breach of peace.  
917. 117. Provoking speeches or gestures.  
918. 118. Murder.  
919. 119. Manslaughter.  
919a. 119a. Death or injury of an unborn child.  
919b. 119b. Child endangerment.  
920. 120. Rape and sexual assault generally.  
920a. 120a. Mails: deposit of obscene matter.  
920b. 120b. Rape and sexual assault of a child.  
920c. 120c. Other sexual misconduct.  
921. 121. Larceny and wrongful appropriation.  
921a. 121a. Fraudulent use of credit cards, debit cards, and other  
access devices  
921b. 121b. False pretenses to obtain services.  
922. 122. Robbery.  
922a. 122a. Receiving stolen property.  
923. 123. Offenses concerning Government computers.  
923a. 123a. Making, drawing, or uttering check, draft, or order  
without sufficient funds  
924. 124. Frauds against the United States.  
924a. 124a. Bribery.  
924b. 124b. Graft.  
925. 125. Kidnapping.  
926. 126. Arson; burning property with intent to defraud.

927. 127. Extortion.  
928. 128. Assault.  
928a. 128a. Maiming.  
929. 129. Burglary; unlawful entry.  
930. 130. Stalking.  
931. 131. Perjury.  
931a. 131a. Subornation of perjury.  
931b. 131b. Obstruction justice.  
931c. 131c. Misprision of serious offense.  
931d. 131d. Wrongful refusal to testify.  
931e. 131e. Prevention of authorized seizure of property.  
931f. 131f. Noncompliance with procedural rules.  
932. 132g. Retaliation.  
933. 133. Conduct unbecoming an officer and a gentleman.  
934. 134. General article.

### §877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

### §878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

### §879. Art. 79. Conviction of offense charged, lesser included offenses, and attempts

(a) IN GENERAL.—An accused may be found guilty of any of the following:

(1) The offense charged.

(2) A lesser included offense.

(3) An attempt to commit the offense charged.

(4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.

(b) DEFINITION.—In this section (article), the term “lesser included offense” means—

(1) an offense that is necessarily included in the offense charged; and

(2) any lesser included offense so designated by regulation prescribed by the President.

(c) REGULATORY AUTHORITY.—Any designation of a lesser included offense in a regulation referred to in subsection (b) shall be reasonably included in the greater offense.

### §880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

## UNIFORM CODE OF MILITARY JUSTICE

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

### §881. Art. 81. Conspiracy

(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.

### §882. Art. 82. Soliciting commission of offenses

(a) SOLICITING COMMISSION OF OFFENSES GENERALLY.—Any person subject to this chapter who solicits or advises another to commit an offense under this chapter (other than an offense specified in subsection (b)) shall be punished as a court-martial may direct.

(b) SOLICITING DESERTION, MUTINY, SEDITION, OR MISBEHAVIOR BEFORE THE ENEMY.—Any person subject to this chapter who solicits or advises another to violate section 885 of this title (article 85), section 894 of this title (article 94), or section 899 of this title (article 99)—

(1) if the offense solicited or advised is attempted or is committed, shall be punished with the punishment provided for the commission of the offense; and

(2) if the offense solicited or advised is not attempted or committed, shall be punished as a court-martial may direct.

### §883. Art. 83. Malingering

Any person subject to this chapter who, with the intent to avoid work, duty, or service—

(1) feigns illness, physical disablement, mental lapse, or mental derangement; or

(2) intentionally inflicts self-injury; shall be punished as a court-martial may direct.

### §884. Art. 84. Breach of medical quarantine

Any person subject to this chapter—

(1) who is ordered into medical quarantine by a person authorized to issue such order; and

(2) who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before being released from the quarantine by proper authority; shall be punished as a court-martial may direct.

### §885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

### §886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct.

### §887. Art. 87. Missing movement; jumping from vessel

(a) MISSING MOVEMENT.—Any person subject to this chapter who, through neglect or design, misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.

(b) JUMPING FROM VESSEL INTO THE WATER.—Any person subject to this chapter who wrongfully and intentionally jumps into the water from a vessel in use by the armed forces shall be punished as a court-martial may direct.

### §887a. Art. 87a. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement; shall be punished as a court-martial may direct.

## APPENDIX 2

### **§887b. Art. 87b. Offenses against correctional custody and restriction**

(a) ESCAPE FROM CORRECTIONAL CUSTODY.—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under physical restraint; and

(3) who escapes from the physical restraint before being released from the physical restraint by proper authority; shall be punished as a court-martial may direct.

(b) BREACH OF CORRECTIONAL CUSTODY.—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under restraint other than physical restraint; and

(3) who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority;

shall be punished as a court-martial may direct.

(c) BREACH OF RESTRICTION.—Any person subject to this chapter—

(1) who is ordered to be restricted to certain limits by a person authorized to do so; and

(2) who, with knowledge of the limits of the restriction, goes beyond those limits before being released by proper authority; shall be punished as a court-martial may direct.

### **§888. Art. 88. Contempt toward officials**

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

### **§889. Art. 89. Disrespect toward superior commissioned officer; assault of superior commissioned officer**

(a) DISRESPECT.—Any person subject to this chapter who behaves with disrespect toward that person's superior commissioned officer shall be punished as a court-martial may direct.

(b) ASSAULT.—Any person subject to this chapter who strikes that person's superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer's office shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

### **§890. Art. 90. Willfully disobeying superior commissioned officer**

Any person subject to this chapter who willfully disobeys a lawful command of that person's superior commissioned officer shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

### **§891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer**

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office; shall be punished as a court-martial may direct.

### **§892. Art. 92. Failure to obey order or regulation**

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

### **§893. Art. 93. Cruelty and maltreatment**

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

### **§893a. Art. 93a. Prohibited activities with military recruit or trainee by person in position of special trust**

(a) ABUSE OF TRAINING LEADERSHIP POSITION.—Any person subject to this chapter—

(1) who is an officer, a noncommissioned officer, or a petty officer;

(2) who is in a training leadership position with respect to a specially protected junior member of the armed forces; and

(3) who engages in prohibited sexual activity with such specially protected junior member of the armed forces;

shall be punished as a court-martial may direct.

(b) ABUSE OF POSITION AS MILITARY RECRUITER.—Any person subject to this chapter—

(1) who is a military recruiter and engages in prohibited sexual activity with an applicant for military service; or

## UNIFORM CODE OF MILITARY JUSTICE

(2) who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the armed forces who is enlisted under a delayed entry program; shall be punished as a court-martial may direct.

(c) CONSENT.—Consent is not a defense for any conduct at issue in a prosecution under this section (article).

(d) DEFINITIONS.—In this section (article):

(1) SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES.—The term “specially protected junior member of the armed forces” means—

(A) a member of the armed forces who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;

(B) a member of the armed forces who is a cadet, a midshipman, an officer candidate, or a student in any other officer qualification program; and

(C) a member of the armed forces in any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

(2) TRAINING LEADERSHIP POSITION.—The term “training leadership position” means, with respect to a specially protected junior member of the armed forces, any of the following:

(A) Any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers’ training corps unit, a training program for entry into the armed forces, or any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

(B) Faculty and staff of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.

(3) APPLICANT FOR MILITARY SERVICE.—The term “applicant for military service” means a person who, under regulations prescribed by the Secretary concerned, is an applicant for original enlistment or appointment in the armed forces.

(4) MILITARY RECRUITER.—The term “military recruiter” means, a person who, under regulations prescribed by the Secretary concerned, has the primary duty to recruit persons for military service.

(5) PROHIBITED SEXUAL ACTIVITY.—The term “prohibited sexual activity” means, as specified in regulations prescribed by the Secretary concerned, inappropriate physical intimacy under circumstances described in such regulations.

### **§894. Art. 94. Mutiny or sedition**

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has

reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

### **§895. Art. 95. Offenses by sentinel or lookout**

(a) DRUNK OR SLEEPING ON POST, OR LEAVING POST BEFORE BEING RELIEVED.—Any sentinel or lookout who is drunk on post, who sleeps on post, or who leaves post before being regularly relieved, shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed other than in time of war, by such punishment, other than death, as a court-martial may direct.

(b) LOITERING OR WRONGFULLY SITTING ON POST.—Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.

### **§895a. Art. 95a. Disrespect toward sentinel or lookout**

(a) DISRESPECTFUL LANGUAGE TOWARD SENTINEL OR LOOKOUT.—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

(b) DISRESPECTFUL BEHAVIOR TOWARD SENTINEL OR LOOKOUT.—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

### **§896. Art. 96. Release of prisoner without authority; drinking with prisoner**

(a) RELEASE OF PRISONER WITHOUT AUTHORITY.—Any person subject to this chapter—

(1) who, without authority to do so, releases a prisoner; or

(2) who, through neglect or design, allows a prisoner to escape; shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.

(b) DRINKING WITH PRISONER.—Any person subject to this chapter who unlawfully drinks any alcoholic beverage with a prisoner shall be punished as a court-martial may direct.

### **§897. Art. 97. Unlawful detention**

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

### **§898. Art. 98. Misconduct as prisoner**

Any person subject to this chapter who, while in the hands of the enemy in time of war—



## APPENDIX 2

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

### **§899. Art. 99. Misbehavior before the enemy**

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle; shall be punished by death or such other punishment as a court-martial may direct.

### **§900. Art. 100. Subordinate compelling surrender**

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

### **§901. Art. 101. Improper use of countersign**

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

### **§902. Art. 102. Forcing a safeguard**

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

### **§903. Art. 103. Spies**

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death or such other punishment as a court-martial or a military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

### **§903a. Art. 103a. Espionage**

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

## UNIFORM CODE OF MILITARY JUSTICE

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

### §903b. Art. 103b. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

### §904. Art. 104. Public records offenses

Any person subject to this chapter who, willfully and unlawfully—

(1) alters, conceals, removes, mutilates, obliterates, or destroys a public record; or

(2) takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record; shall be punished as a court-martial may direct.

### §904a. Art. 104a. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

### §904b. Art. 104b. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

### §905. Art. 105. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

### §905a. Art. 105a. False or unauthorized pass offenses

(a) WRONGFUL MAKING, ALTERING, ETC.—Any person subject to this chapter who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

(b) WRONGFUL SALE, ETC.—Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(c) WRONGFUL USE OR POSSESSION.—Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

### §906. Art. 106. Impersonation of officer, noncommissioned or petty officer, or agent or official

(a) IN GENERAL.—Any person subject to this chapter who, wrongfully and willfully, impersonates—

(1) an officer, a noncommissioned officer, or a petty officer;

(2) an agent of superior authority of one of the armed forces; or

(3) an official of a government; shall be punished as a court-martial may direct.

(b) IMPERSONATION WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and with intent to defraud, impersonates any person referred to in paragraph (1), (2), or (3) of subsection (a) shall be punished as a court-martial may direct.

(c) IMPERSONATION OF GOVERNMENT OFFICIAL WITHOUT INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.

### §906a. Art. 106a. Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button

Any person subject to this chapter—

(1) who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and

(2) who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person's uniform or civilian clothing; shall be punished as a court-martial may direct.

## APPENDIX 2

### **§907. Art. 107. False official statements; false swearing**

(a) FALSE OFFICIAL STATEMENTS.—Any person subject to this chapter who, with intent to deceive—

(1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or

(2) makes any other false official statement knowing it to be false; shall be punished as a court-martial may direct.

(b) FALSE SWEARING.—Any person subject to this chapter—

(1) who takes an oath that—

(A) is administered in a matter in which such oath is required or authorized by law; and

(B) is administered by a person with authority to do so; and

(2) who, upon such oath, makes or subscribes to a statement; if the statement is false and at the time of taking the oath, the person does not believe the statement to be true, shall be punished as a court-martial may direct.

### **§907a. Art. 107a. Parole violation**

Any person subject to this chapter—

(1) who, having been a prisoner as the result of a court-martial conviction or other criminal proceeding, is on parole with conditions; and

(2) who violates the conditions of parole; shall be punished as a court-martial may direct.

### **§908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition**

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of; any military property of the United States, shall be punished as a court-martial may direct.

### **§908a. Art. 108a. Captured or abandoned property**

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging; shall be punished as a court-martial may direct.

### **§909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction**

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

### **§909a. Art. 109a. Mail matter: wrongful taking, opening, etc.**

(a) TAKING.—Any person subject to this chapter who, with the intent to obstruct the correspondence of, or to pry into the business or secrets of, any person or organization, wrongfully takes mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

(b) OPENING, SECRETING, DESTROYING, STEALING.—Any person subject to this chapter who wrongfully opens, secretes, destroys, or steals mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

### **§910. Art. 110. Improper hazarding of vessel or aircraft**

(a) WILLFUL AND WRONGFUL HAZARDING.—Any person subject to this chapter who, willfully and wrongfully, hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished by death or such other punishment as a court-martial may direct.

(b) NEGLIGENT HAZARDING.—Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished as a court-martial may direct.

### **§911. Art. 111. Leaving scene of vehicle accident**

(a) DRIVER.—Any person subject to this chapter—

(1) who is the driver of a vehicle that is involved in an accident that results in personal injury or property damage; and

(2) who wrongfully leaves the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

(b) SENIOR PASSENGER.—Any person subject to this chapter—

(1) who is a passenger in a vehicle that is involved in an accident that results in personal injury or property damage;

(2) who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and

(3) who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities; shall be punished as a court-martial may direct.

## UNIFORM CODE OF MILITARY JUSTICE

### §912. Art. 112. Drunkenness and other incapacitation offenses

- (a) DRUNK ON DUTY.—Any person subject to this chapter who is drunk on duty shall be punished as a court-martial may direct.
- (b) INCAPACITATION FOR DUTY FROM DRUNKENNESS OR DRUG USE.—Any person subject to this chapter who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.
- (c) DRUNK PRISONER.—Any person subject to this chapter who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.

### §912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

- (a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.
- (b) The substances referred to in subsection (a) are the following:
- (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.
- (2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.
- (3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

### §913. Art. 113. Drunken or reckless operation of a vehicle, aircraft, or vessel

- (a) Any person subject to this chapter who—
- (1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or
- (2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b),
- shall be punished as a court-martial may direct.
- (b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:
- (A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of—
- (i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or
- (ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis. The Secretary may by regulation prescribe limits that are lower than the limits specified in the preceding sentence, if such lower limits are based on scientific developments, as reflected in Federal law of general applicability.

(4) In this subsection:

(A) The term "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term "State" includes each of those jurisdictions.

### §914. Art. 114. Endangerment offenses

(a) RECKLESS ENDANGERMENT.—Any person subject to this chapter who engages in conduct that—

(1) is wrongful and reckless or is wanton; and

(2) is likely to produce death or grievous bodily harm to another person; shall be punished as a court-martial may direct.

(b) DUELING.—Any person subject to this chapter—

(1) who fights or promotes, or is concerned in or connives at fighting a duel; or

(2) who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority; shall be punished as a court-martial may direct.

(c) FIREARM DISCHARGE, ENDANGERING HUMAN LIFE.—Any person subject to this chapter who, willfully and wrongly, discharges a firearm, under circumstances such as to endanger human life shall be punished as a court-martial may direct.

(d) CARRYING CONCEALED WEAPON.—Any person subject to this chapter who unlawfully carries a dangerous weapon concealed on or about his person shall be punished as a court-martial may direct.

### §915. Art. 115. Communicating threats

(a) COMMUNICATING THREATS GENERALLY.—Any person subject to this chapter who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.

(b) COMMUNICATING THREAT TO USE EXPLOSIVE, ETC.—Any person subject to this chapter who wrongfully communicates a threat to injure the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct.

## APPENDIX 2

(c) COMMUNICATING FALSE THREAT CONCERNING USE OF EXPLOSIVE, ETC.—Any person subject to this chapter who maliciously communicates a false threat concerning injury to the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct. As used in the preceding sentence, the term “false threat” means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.

### §916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

### §917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

### §917. Art. 117a. Wrongful broadcast or distribution of intimate visual images

(a) PROHIBITION. Any person subject to this chapter—

(1) who knowingly and wrongfully broadcasts or distributes an intimate visual image of another person or a visual image of sexually explicit conduct involving a person who—

(A) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;

(B) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself, or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and

(C) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(2) who knows or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted in the intimate visual image or visual image of sexually explicit conduct retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(3) who knows or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct is likely—

(A) to cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(B) to harm substantially the depicted person with respect to that person’s health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(4) whose conduct, under the circumstances, had a reasonably direct and palpable connection to a military mission or military environment, is guilty of wrongful distribution of intimate visual images or visual images of sexually explicit conduct and shall be punished as a court-martial may direct.

(b) DEFINITIONS. In this section:

(1) BROADCAST. The term ‘broadcast’ means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(2) DISTRIBUTE. The term ‘distribute’ means to deliver to the actual or constructive possession of another person, including transmission by mail or electronic means.

(3) INTIMATE VISUAL IMAGE. The term ‘intimate visual image’ means a visual image that depicts a private area of a person.

(4) PRIVATE AREA. The term ‘private area’ means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(5) REASONABLE EXPECTATION OF PRIVACY. The term ‘reasonable expectation of privacy’ means circumstances in which a reasonable person would believe that a private area of the person, or sexually explicit conduct involving the person, would not be visible to the public.

(6) SEXUALLY EXPLICIT CONDUCT. The term ‘sexually explicit conduct’ means actual or simulated genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, bestiality, masturbation, or sadistic or masochistic abuse.

(7) VISUAL IMAGE. The term ‘visual image’ means the following:

(A) Any developed or undeveloped photograph, picture, film, or video.

(B) Any digital or computer image, picture, film, or video made by any means, including those transmitted by any means, including streaming media, even if not stored in a permanent format.

(C) Any digital or electronic data capable of conversion into a visual image.

### §918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

### §919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title

## UNIFORM CODE OF MILITARY JUSTICE

(article 118), directly affecting the person; is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

### §919a. Art. 119a. Death or injury of an unborn child

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 926, 928, and 928a of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 126, 128, and 128a).

(c) Nothing in this section shall be construed to permit the prosecution—

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term “unborn child” means a child in utero, and the term “child in utero” or “child, who is in utero” means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

### §919b. Art. 119b. Child endangerment

Any person subject to this chapter—

(1) who has a duty for the care of a child under the age of 16 years; and

(2) who, through design or culpable negligence, endangers the child's mental or physical health, safety, or welfare; shall be punished as a court-martial may direct.

### §920. Art. 120. Rape and sexual assault generally

(a) RAPE.—Any person subject to this chapter who commits a sexual act upon another person by—

(1) using unlawful force against that other person;

(2) using force causing or likely to cause death or grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) first rendering that other person unconscious; or

(5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT.—Any person subject to this chapter who—

(1) commits a sexual act upon another person by—

(A) threatening or placing that other person in fear;

(B) making a fraudulent representation that the sexual act serves a professional purpose; or

(C) inducing a belief by any artifice, pretense, or concealment that the person is another person;

(2) commits a sexual act upon another person—

(A) without the consent of the other person; or

(B) when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—

(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person; is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) AGGRAVATED SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(d) ABUSIVE SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) DEFENSES.—An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) DEFINITIONS.—In this section:

(1) SEXUAL ACT.—The term “sexual act” means—

(A) the penetration, however, slight, of the penis into the vulva or anus or mouth;

## APPENDIX 2

(B) contact between the mouth and the penis, vulva, scrotum, or anus; or

(C) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) Sexual contact.—The term “sexual contact” means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

(3) GRIEVOUS BODILY HARM.—The term “grievous bodily harm” means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(4) FORCE.—The term “force” means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(5) UNLAWFUL FORCE.—The term “unlawful force” means an act of force done without legal justification or excuse.

(6) THREATENING OR PLACING THAT OTHER PERSON IN FEAR.—The term “threatening or placing that other person in fear” means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(7) CONSENT.—

(A) The term “consent” means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).

(C) All the surrounding circumstances are to be considered in determining whether a person gave consent.

(8) Incapable of consenting.—The term “incapable of consenting” means the person is—

(A) incapable of appraising the nature of the conduct at issue; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.

### §920a. Art. 120a. Mails: deposit of obscene matter

Any person subject to this chapter who, wrongfully and knowingly, deposits obscene matter for mailing and delivery shall be punished as a court-martial may direct.

### §920b. Art. 120b. Rape and sexual assault of a child

(a) RAPE OF A CHILD.—Any person subject to this chapter who—

(1) commits a sexual act upon a child who has not attained the age of 12 years; or

(2) commits a sexual act upon a child who has attained the age of 12 years by—

(A) using force against any person;

(B) threatening or placing that child in fear;

(C) rendering that child unconscious; or

(D) administering to that child a drug, intoxicant, or other similar substance; is guilty of rape of a child and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT OF A CHILD.—Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.

(c) SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) AGE OF CHILD.—

(1) UNDER 12 YEARS.—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) UNDER 16 YEARS.—In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) MARRIAGE.—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) CONSENT.—Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally

## UNIFORM CODE OF MILITARY JUSTICE

married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) DEFINITIONS.—In this section:

(1) SEXUAL ACT AND SEXUAL CONTACT.—The terms “sexual act” and “sexual contact” have the meanings given those terms in section 920(g) of this title (article 120(g)), except that the term “sexual act” also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(2) FORCE.—The term “force” means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or

(C) inflicting physical harm.

In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) THREATENING OR PLACING THAT CHILD IN FEAR.—The term “threatening or placing that child in fear” means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) CHILD.—The term “child” means any person who has not attained the age of 16 years.

(5) LEWD ACT.—The term “lewd act” means—

(A) any sexual contact with a child;

(B) intentionally exposing one’s genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

### §920c. Art. 120c. Other sexual misconduct

(a) INDECENT VIEWING, VISUAL RECORDING, OR BROADCASTING.—Any person subject to this chapter who, without legal justification or lawful authorization—

(1) knowingly and wrongfully views the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy;

(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; or

(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);

is guilty of an offense under this section and shall be punished as a court-martial may direct.

(b) FORCIBLE PANDERING.—Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(c) INDECENT EXPOSURE.—Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(d) DEFINITIONS.—In this section:

(1) ACT OF PROSTITUTION.—The term “act of prostitution” means a sexual act or sexual contact (as defined in section 920(g) of this title (article 120(g))) on account of which anything of value is given to, or received by, any person.

(2) PRIVATE AREA.—The term “private area” means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(3) REASONABLE EXPECTATION OF PRIVACY.—The term “under circumstances in which that other person has a reasonable expectation of privacy” means—

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or

(B) circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

(4) BROADCAST.—The term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(5) DISTRIBUTE.—The term “distribute” means delivering to the actual or constructive possession of another, including transmission by electronic means.

(6) INDECENT MANNER.—The term “indecent manner” means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

### §921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.



## APPENDIX 2

### **§921a. Art. 121a. Fraudulent use of credit cards, debit cards, and other access devices**

(a) IN GENERAL.—Any person subject to this chapter who, knowingly and with intent to defraud, uses—

- (1) a stolen credit card, debit card, or other access device;
- (2) a revoked, cancelled, or otherwise invalid credit card, debit card, or other access device; or
- (3) a credit card, debit card, or other access device without the authorization of a person whose authorization is required for such use; to obtain money, property, services, or anything else of value shall be punished as a court-martial may direct.

(b) ACCESS DEVICE DEFINED.—In this section (article), the term “access device” has the meaning given that term in section 1029 of title 18.

### **§921b. Art. 121b. False pretenses to obtain services**

Any person subject to this chapter who, with intent to defraud, knowingly uses false pretenses to obtain services shall be punished as a court-martial may direct.

### **§922. Art. 122. Robbery**

Any person subject to this chapter who takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

### **§922a. Art. 122a. Receiving stolen property**

Any person subject to this chapter who wrongfully receives, buys, or conceals stolen property, knowing the property to be stolen property, shall be punished as a court-martial may direct.

### **§923. Art. 123. Offenses concerning Government computers**

(a) IN GENERAL.—Any person subject to this chapter who—

- (1) knowingly accesses a Government computer, with an unauthorized purpose, and by doing so obtains classified information, with reason to believe such information could be used to the injury of the United States, or to the advantage of any foreign nation, and intentionally communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted such information to any person not entitled to receive it;
- (2) intentionally accesses a Government computer, with an unauthorized purpose, and thereby obtains classified or other protected information from any such Government computer; or
- (3) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a Government computer; shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

- (1) The term “computer” has the meaning given that term in section 1030 of title 18.

(2) The term “Government computer” means a computer owned or operated by or on behalf of the United States Government.

(3) The term “damage” has the meaning given that term in section 1030 of title 18.

### **§923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds**

Any person subject to this chapter who—

- (1) for the procurement of any article or thing of value, with intent to defraud; or
- (2) for the payment of any past due obligation, or for any other purpose, with intent to deceive; makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee’s possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word “credit” means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

### **§924. Art. 124. Frauds against the United States**

Any person subject to this chapter—

- (1) who, knowing it to be false or fraudulent—
  - (A) makes any claim against the United States or any officer thereof; or
  - (B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;
- (2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—
  - (A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;
  - (B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or
  - (C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;
- (3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or
- (4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the

## UNIFORM CODE OF MILITARY JUSTICE

United States; shall, upon conviction, be punished as a court-martial may direct.

### §924a. Art. 124a. Bribery

(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

(1) who occupies an official position or who has official duties; and

(2) who wrongfully asks, accepts, or receives a thing of value with the intent to have the person's decision or action influenced with respect to an official matter in which the United States is interested; shall be punished as a court-martial may direct.

(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, with the intent to influence the decision or action of the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.

### §924b. Art. 124b. Graft

(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

(1) who occupies an official position or who has official duties; and

(2) who wrongfully asks, accepts, or receives a thing of value as compensation for or in recognition of services rendered or to be rendered by the person with respect to an official matter in which the United States is interested; shall be punished as a court-martial may direct.

(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, as compensation for or in recognition of services rendered or to be rendered by the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.

### §925. Art. 125. Kidnapping

Any person subject to this chapter who wrongfully—

(1) seizes, confines, inveigles, decoys, or carries away another person; and

(2) holds the other person against that person's will; shall be punished as a court-martial may direct.

### §926. Art. 126. Arson; burning property with intent to defraud

(a) AGGRAVATED ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein, to the knowledge of that person, there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) SIMPLE ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets fire to the property of another is guilty of simple arson and shall be punished as a court-martial may direct.

(c) BURNING PROPERTY WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, willfully, maliciously, and with intent to defraud, burns or sets fire to any property shall be punished as a court-martial may direct.

### §927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

### §928. Art. 128. Assault

(a) ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—

(1) attempts to do bodily harm to another person;

(2) offers to do bodily harm to another person; or

(3) does bodily harm to another person; is guilty of assault and shall be punished as a court-martial may direct.

(b) AGGRAVATED ASSAULT.—Any person subject to this chapter—

(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;

(2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person; or

(3) who commits an assault by strangulation or suffocation; is guilty of aggravated assault and shall be punished as a court-martial may direct.

(c) ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—

(1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.

(2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping.

### §928a. Art. 128a. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ; is guilty of maiming and shall be punished as a court-martial may direct.

### §928b. Art. 128b. Domestic Violence

Any person who—

(1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;

(2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—

(A) commits an offense under this chapter against any person; or

## APPENDIX 2

(B) commits an offense under this chapter against any property, including an animal;

(3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;

(4) with intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person, violates a protection order; or

(5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating shall be punished as a court-martial may direct.

### **§929. Art. 129. Burglary; unlawful entry**

(a) BURGLARY.—Any person subject to this chapter who, with intent to commit an offense under this chapter, breaks and enters the building or structure of another shall be punished as a court-martial may direct.

(b) UNLAWFUL ENTRY.—Any person subject to this chapter who unlawfully enters—

(1) the real property of another; or

(2) the personal property of another which amounts to a structure usually used for habitation or storage; shall be punished as a court-martial may direct.

### **930. Art. 130. Stalking**

(a) IN GENERAL.—Any person subject to this chapter—

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term “conduct” means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term “course of conduct” means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term “repeated”, with respect to conduct, means two or more occasions of such conduct.

(4) The term “immediate family”, in the case of a specific person, means—

(A) that person’s spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or marriage.

(5) The term “intimate partner”, in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### **§931. Art. 131. Perjury**

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry; is guilty of perjury and shall be punished as a court-martial may direct.

### **§931a. Art. 131a. Subornation of perjury**

(a) IN GENERAL.—Any person subject to this chapter who induces and procures another person—

(1) to take an oath; and

(2) to falsely testify, depose, or state upon such oath; shall, if the conditions specified in subsection (b) are satisfied, be punished as a court-martial may direct.

(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

(1) The oath is administered with respect to a matter for which such oath is required or authorized by law.

(2) The oath is administered by a person having authority to do so.

(3) Upon the oath, the other person willfully makes or subscribes a statement.

(4) The statement is material.

(5) The statement is false.

(6) When the statement is made or subscribed, the person subject to this chapter and the other person do not believe that the statement is true.

### **§931b. Art. 131b. Obstructing justice**

Any person subject to this chapter who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending, with intent to influence, impede, or otherwise obstruct the

## UNIFORM CODE OF MILITARY JUSTICE

due administration of justice shall be punished as a court-martial may direct.

### **§931c. Art. 131c. Misprision of serious offense**

(a) IN GENERAL.—Any person subject to this chapter—

(1) who knows that another person has committed a serious offense; and

(2) wrongfully conceals the commission of the offense and fails to make the commission of the offense known to civilian or military authorities as soon as possible; shall be punished as a court-martial may direct.

### **§931d. Art. 131d. Wrongful refusal to testify**

Any person subject to this chapter who, in the presence of a court-martial, a board of officers, a military commission, a court of inquiry, preliminary hearing, or an officer taking a deposition, or for the United States, wrongfully refuses to qualify as a witness or to answer a question after having been directed to do so by the person presiding shall be punished as a court-martial may direct.

### **§931e. Art. 131e. Prevention of authorized seizure of property**

Any person subject to this chapter who, knowing that one or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, destroys, removes, or otherwise disposes of the property with intent to prevent the seizure thereof shall be punished as a court-martial may direct.

### **§931f. Art. 131f. Noncompliance with procedural rules**

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct.

### **§931g. Art. 131g. Wrongful interference with adverse administrative proceeding**

Any person subject to this chapter who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this chapter, wrongfully acts with the intent—

(1) to influence, impede, or obstruct the conduct of the proceeding; or

(2) otherwise to obstruct the due administration of justice; shall be punished as a court-martial may direct.

### **§932. Art. 132. Retaliation**

(a) IN GENERAL.—Any person subject to this chapter who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any

person from reporting a criminal offense or making or planning to make a protected communication—

(1) wrongfully takes or threatens to take an adverse personnel action against any person; or

(2) wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person; shall be punished as a court-martial may direct.

(b) Definitions.—In this section:

(1) The term “protected communication” means the following:

(A) A lawful communication to a Member of Congress or an Inspector General.

(B) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(i) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) The term “Inspector General” has the meaning given that term in section 1034(j) of this title

(3) The term “covered individual or organization” means any recipient of a communication specified in clauses (i) through (v) of section 1034(b)(1)(B) of this title.

### **§933. Art. 133. Conduct unbecoming an officer and a gentleman**

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

### **§934. Art. 134. General article**

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. As used in the preceding sentence, the term “crimes and offenses not capital” includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.

## **SUBCHAPTER XI. MISCELLANEOUS PROVISIONS**

Sec. Art.

935. 135. Courts of inquiry.

936. 136. Authority to administer oaths.

937. 137. Articles to be explained.

938. 138. Complaints of wrongs.

## APPENDIX 2

939. 139. Redress of injuries to property.  
940. 140. Delegation by the President.  
940a. 140a. Case management; data collection and accessibility.

### §935. Art. 135. Courts of inquiry

- (a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.
- (b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.
- (c)(1) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party.
- (2) Any person who is (A) subject to this chapter, (B) employed by the Department of Defense, or (C) with respect to the Coast guard, employed by the department in which the Coast Guard is operating when it is not operating as a service in the Navy, and who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court.
- (3) Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.
- (d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.
- (e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.
- (f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.
- (g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.
- (h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

### §936. Art. 136. Authority to administer oaths

- (a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:
- (1) All judge advocates.
  - (2) All summary courts-martial.
  - (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
  - (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.
  - (5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
  - (6) All other persons designated by regulations of the armed forces or by statute.
- (b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.
  - (2) The president and the counsel for the court of any court of inquiry.
  - (3) All officers designated to take a deposition.
  - (4) All persons detailed to conduct an investigation.
  - (5) All recruiting officers.
  - (6) All other persons designated by regulations of the armed forces or by statute.
- (c) The judges of the United States Court of Appeals for the Armed Forces may administer the oaths authorized by subsections (a) and (b).

### §937. Art. 137. Articles to be explained

- (a) ENLISTED MEMBERS.—
- (1) The sections (articles) of this chapter specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—
- (A) the member's initial entrance on active duty; or
  - (B) the member's initial entrance into a duty status with a reserve component.
- (2) Such sections (articles) shall be explained again—
- (A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and
  - (B) at the time when the member reenlists.
- (3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).
- (b) OFFICERS.—
- (1) The sections (articles) of this chapter specified in paragraph (2) shall be carefully explained to each officer at the time of (or within six months after)—
- (A) the initial entrance of the officer on active duty as an officer; or
  - (B) the initial commissioning of the officer in a reserve component.
- (2) This subsection applies with respect to the sections (articles) specified in subsection (a)(3) and such other sections (articles) as the Secretary concerned may prescribe by regulation.
- (c) TRAINING FOR CERTAIN OFFICERS.—Under regulations prescribed by the Secretary concerned, officers with the authority to convene courts-martial or to impose non-judicial punishment shall receive periodic training regarding the purposes and administration of this chapter. Under regulations prescribed by the Secretary of Defense, officers assigned to duty in a combatant command, who have such authority, shall receive additional specialized training regarding the purposes and administration of this chapter.
- (d) AVAILABILITY AND MAINTENANCE OF TEXT.—The text of this chapter and the text of the regulations prescribed by the President under this chapter shall be—
- (1) made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination; and
  - (2) maintained by the Secretary of Defense in electronic formats that are updated periodically and made available on the Internet.

## UNIFORM CODE OF MILITARY JUSTICE

### §938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

### §939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

### §940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

### §940a. Art. 140a. Case management; data collection and accessibility

The Secretary of Defense shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system, including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

(1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).

(2) Case processing and management.

(3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.

(4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.

## SUBCHAPTER XII. UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec. Art.

- 941. 141. Status.
- 942. 142. Judges.
- 943. 143. Organization and employees.
- 944. 144. Procedure.
- 945. 145. Annuities for judges and survivors.
- 946. 146. Military Justice Review Panel.
- 946a. 146a. Annual reports.

### §941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

### §942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—

(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after January 31 and before July 31 of any year, the term shall expire on July 31 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after July 31 of any year and before February 1 of the following year, the term shall expire fifteen years after such July 31.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) A person may not be appointed as a judge of the court within seven years after retirement from active duty as a commissioned officer of a regular component of an armed force.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability. A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

## APPENDIX 2

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

- (i) during a period a judge of the court is unable to perform his duties because of illness or other disability;
- (ii) during a period in which a position of judge of the court is vacant; or
- (iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

- (A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;
- (B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);
- (C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period

during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

- (A) during a period a judge of the court is unable to perform his duties because of illness or other disability;
- (B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

### §943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—

(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

- (A) have served for one or more years as judges of the court; and
- (B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

- (i) the chief judge leaves regular active service as a judge of the court; or
- (ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

## UNIFORM CODE OF MILITARY JUSTICE

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—

(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

### §944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

### §945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—

(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter

III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—

(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed



## APPENDIX 2

as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—

(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

### §946. Art. 146. Military Justice Review Panel

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the "Military Justice Review Panel" (in this section referred to as the "Panel").

(b) MEMBERS.—

(1) NUMBER OF MEMBERS.—The Panel shall be composed of thirteen members.

(2) APPOINTMENT OF CERTAIN MEMBERS.—Each of the following shall appoint one member of the Panel:

(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

(B) The Attorney General.

(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

(3) APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) The Chief Justice of the United States.

(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

(c) QUALIFICATIONS OF MEMBERS.—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

(e) TERM; VACANCIES.—Each member shall be appointed for a term of eight years, and no member may serve more than one term. Any vacancy shall be filled in the same manner as the original appointment.

(f) REVIEWS AND REPORTS.—

(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.—During fiscal year 2021, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.

(2) SENTENCING DATA COLLECTION AND REPORT.—During fiscal year 2020, the Panel shall gather and analyze sentencing data collected from each of the armed forces from general and special courts-martial applying offense-based sentencing under section 856 of this title (article 5). The sentencing data shall include the number of accused who request member sentencing and the number who request sentencing by military judge alone, the offenses which the accused were convicted of, and the resulting sentence for each offense in each case. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall provide the sentencing data in the format and for the duration established by the chair of the Panel. The analysis under this paragraph shall be included in the assessment required by paragraph (1).

(3) PERIODIC COMPREHENSIVE REVIEWS.—During fiscal year 2024 and every eight years thereafter, the Panel shall conduct a comprehensive review and assessment of the operation of this chapter.

(4) PERIODIC INTERIM REVIEWS.—During fiscal year 2028 and every eight years thereafter, the Panel shall conduct an interim review and assessment of such other aspects of the operation of this chapter as the Panel considers appropriate. In addition, at the request of the Secretary of Defense, the Panel may, at any time, review and assess other specific matters relating to the operation of this chapter.

(5) Reports.—With respect to each review and assessment under this subsection, the Panel shall submit a report to the Committees on Armed Services of the Senate and House of Representatives. Each report—

(A) shall set forth the results of the review and assessment concerned, including the findings and recommendations of the Panel; and

(B) shall be submitted not later than December 31 of the calendar year in which the review and assessment is concluded.

(g) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such

## UNIFORM CODE OF MILITARY JUSTICE

evidence as the Panel considers appropriate to carry out its duties under this section.

(h) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chair of the Panel, a department or agency of the Federal Government shall provide information that the Panel considers necessary to carry out its duties under this section.

(i) ADMINISTRATIVE MATTERS.—

(1) MEMBERS TO SERVE WITHOUT PAY.—Members of the Panel shall serve without pay, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Panel.

(2) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the Panel.

(j) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel.

officer and enlisted grade structure, to capably perform military justice functions.

(5) Such other matters regarding the operation of this chapter as may be appropriate.

(c) SUBMISSION.—Each report under this section shall be submitted—

(1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.

### §946a. Art. 146a. Annual reports

(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 of each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

(b) SERVICE REPORTS.—Not later than December 31 of each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:

(1) Data on the number and status of pending cases.

(2) Information on the appellate review process, including—

(A) information on compliance with processing time goals;

(B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were

(i) reversed because of command influence or denial of the right to speedy review or

(ii) otherwise remitted because of loss of records of trial or other administrative deficiencies; and

(C) an analysis of each case in which a provision of this chapter was held unconstitutional.

(3)(A) An explanation of measures implemented by the armed force involved to ensure the ability of judge advocates—

(i) to participate competently as trial counsel and defense counsel in cases under this chapter;

(ii) to preside as military judges in cases under this chapter; and

(iii) to perform the duties of Special Victims' Counsel, when so designated under section 1044e of this title.

(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.

(4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and

THIS PAGE LEFT INTENTIONALLY BLANK

## APPENDIX 2.1 NON-BINDING DISPOSITION GUIDANCE

This Appendix provides non-binding guidance issued by the Secretary of Defense, in consultation with the Secretary of Homeland Security, pursuant to Article 33 (Disposition Guidance) of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 833.

### SECTION 1: IN GENERAL

- 1.1. Policy
- 1.2. Purpose
- 1.3. Scope
- 1.4. Non-Litigability

### SECTION 2: CONSIDERATIONS IN ALL CASES

- 2.1. Interests of Justice and Good Order and Discipline
- 2.2. Consultation with a Judge Advocate
- 2.3. Referral
- 2.4. Determining the Charges and Specifications to Refer
- 2.5. Determining the Appropriate Type of Court-Martial
- 2.6. Alternatives to Referral
- 2.7. Inappropriate Considerations

### SECTION 3: SPECIAL CONSIDERATIONS

- 3.1. Prosecution in Another Jurisdiction
- 3.2. Plea Agreements
- 3.3. Agreements Concerning Disposition of Charges and Specifications
- 3.4. Agreement Concerning Sentence Limitations

### SECTION 1: IN GENERAL

#### 1.1. Policy.

a. This Appendix provides non-binding guidance regarding factors that convening authorities, commanders, staff judge advocates, and judge advocates should consider when exercising their duties with respect to the disposition of charges and specifications under the UCMJ, and to further promote the purpose of military law.<sup>1</sup>

b. This Appendix supplements the Manual for Courts-Martial. The guidance in this Appendix does not require a particular disposition decision or other action in any given case. Accordingly, the disposition factors set forth in this Appendix are cast in general terms, with a view to providing guidance rather than mandating

results. The intent is to promote regularity without regimentation; encourage consistency without sacrificing necessary flexibility; and provide the flexibility to apply these factors in the manner that facilitates the fair and effective response to local conditions in the interest of justice and good order and discipline.

#### 1.2. Purpose. This non-binding guidance is intended to:

- a. Set forth factors for consideration by those assigned responsibility under the UCMJ for disposing of alleged violations of the UCMJ on how best to exercise their authority in a reasoned and structured manner, consistent with the principle of fair and evenhanded administration of the law;
- b. Serve as a training tool for convening authorities, commanders, staff judge advocates, and judge advocates in the proper discharge of their duties;
- c. Contribute to the effective utilization of the Government's law enforcement and prosecutorial resources; and
- d. Enhance the relationship between military commanders, judge advocates, and law enforcement agencies, including military criminal investigative organizations (MCIOs), with respect to investigations and charging decisions.

#### 1.3. Scope. This Appendix is designed to support the exercise of discretion with respect to the following disposition decisions:

- a. Initiating and declining action under the UCMJ;
- b. Selecting appropriate charges and specifications;
- c. Selecting the appropriate type of court-martial or alternative mode of disposition, if any; and
- d. Considering the appropriateness of a plea agreement.

#### 1.4. Non-Litigability. This non-binding guidance was developed solely as a matter of internal Departmental policy in accordance with Article 33. This Appendix is not intended to, does not, and may not be relied upon to

---

<sup>1</sup> "The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States." MANUAL FOR COURTS-MARTIAL, UNITED STATES, Pt. I, ¶ 3 (2016 ed.).

## APPENDIX 2.1

create a right, benefit, or defense, substantive or procedural, enforceable at law or in equity by any person.

### SECTION 2: CONSIDERATIONS IN ALL CASES

**2.1. Interests of Justice and Good Order and Discipline.** The military justice system is a powerful tool that preserves good order and discipline while protecting the civil rights of Service members. It is a commander's duty to use it appropriately. In determining whether the interests of justice and good order and discipline are served by trial by court-martial or other disposition in a case, the commander or convening authority should consider, in consultation with a judge advocate, the following:

- a. The mission-related responsibilities of the command;
- b. Whether the offense occurred during wartime, combat, or contingency operations;
- c. The effect of the offense on the morale, health, safety, welfare, and good order and discipline of the command;
- d. The nature, seriousness, and circumstances of the offense and the accused's culpability in connection with the offense;
- e. In cases involving an individual who is a victim under Article 6b, the views of the victim as to disposition;
- f. The extent of the harm caused to any victim of the offense;
- g. The availability and willingness of the victim and other witnesses to testify;
- h. Whether admissible evidence will likely be sufficient to obtain and sustain a conviction in a trial by court-martial;
- i. Input, if any, from law enforcement agencies involved in or having an interest in the specific case;
- j. The truth-seeking function of trial by court-martial;
- k. The accused's willingness to cooperate in the investigation or prosecution of others;
- l. The accused's criminal history or history of misconduct, whether military or civilian, if any;
- m. The probable sentence or other consequences to the accused of a conviction; and
- n. The impact and appropriateness of alternative disposition options—including nonjudicial punishment or administrative action—with respect to the accused's potential for continued service and the responsibilities of the command with respect to justice and good order and discipline.

#### A2.1-2

**2.2. Consultation with a Judge Advocate.** If a member of a command is accused or suspected of committing an offense punishable under the UCMJ, the commander should seek advice from a judge advocate regarding all possible dispositions of the allegation. The judge advocate's advice should include a discussion of the advantages and disadvantages of each of the available dispositions. The cognizant commander should consider all available options.

**2.3. Referral.** Probable cause must exist for each charge and specification referred to a court-martial. However, when making a referral decision, the convening authority should also consider the matters described in paragraph 2.1 of this appendix.

**2.4. Determining the Charges and Specifications to Refer.** Ordinarily, the convening authority should refer charges and specifications for all known offenses to a single court-martial. However, the convening authority should avoid referring multiple charges when they would:

- a. Unnecessarily complicate the prosecution of the most serious, readily provable offense or offenses;
- b. Unnecessarily exaggerate the nature and extent of the accused's criminal conduct or add unnecessary confusion to the issues at court-martial;
- c. Unnecessarily expose the accused to a harsher potential sentence or range of punishments than the circumstances of the case justify; or
- d. Be disposed of more appropriately through an alternative disposition.

**2.5. Determining the Appropriate Type of Court-Martial.** In determining the appropriate type of court-martial, a convening authority should consider:

- a. The advice of a judge advocate;
- b. The interests of justice and good order and discipline (*see* paragraph 2.1);
- c. The authorized maximum and minimum punishments for the offenses charged;
- d. Any unique circumstances in the case requiring immediate disposition of the charges;
- e. Whether the type of court-martial would unnecessarily expose the accused to a harsher potential sentence or range of punishments than the circumstances of the case justify; and
- f. Whether the potential of the accused for rehabilitation and continued service would be better addressed in a specific type of court-martial.

## NON-BINDING DISPOSITION GUIDANCE

**2.6. Alternatives to Referral.** In determining whether a case should not be referred to court-martial for trial because there exists an adequate alternative, a judge advocate should advise the convening authority on, and the convening authority should consider, in addition to the considerations in paragraph 2.1:

- a. The effect of alternative disposition on the interests of justice and good order and discipline;
- b. The options available under the alternative means of disposition;
- c. The views of the victim, if any, concerning the alternative disposition of the case; and
- d. The likelihood of an effective outcome.

**2.7. Inappropriate Considerations.** The disposition determination must not be influenced by:

- a. The accused's race, ethnicity, religion, gender, sexual orientation, national origin, or lawful political association, activities, or beliefs;
- b. The personal feelings of anyone authorized to recommend, advise, or make a decision as to disposition of offenses concerning the accused, the accused's associates, or any victim or witness of the offense;
- c. The time and resources already expended in the investigation of the case;
- d. The possible effect of the disposition determination on the commander or convening authority's military career or other professional or personal circumstances; or
- e. Political pressure to take or not to take specific actions in the case.

### SECTION 3: SPECIAL CONSIDERATIONS

**3.1. Prosecution in Another Jurisdiction.** When the accused is subject to effective prosecution in another jurisdiction, a judge advocate should advise on and the convening authority should consider the following additional factors when determining disposition:

- a. The strength of the other jurisdiction's interest in prosecution;
- b. The other jurisdiction's ability and willingness to prosecute the case effectively;
- c. The probable sentence or other consequences if the accused were to be convicted in the other jurisdiction;
- d. The views of the victim, if any, as to the desirability of prosecution in the other jurisdiction;

- e. Applicable policies derived from agreements with the Department of Justice and foreign governments regarding the exercise of military jurisdiction; and

- f. The likelihood that the nature of the proceedings in the other jurisdiction will satisfy the interests of justice and good order and discipline in the case, including any burdens on the command with respect to the need for witnesses to be absent from their military duties, and the potential for swift or delayed disposition in the other jurisdiction.

**3.2. Plea Agreements.** In accordance with Article 53a, the convening authority may enter into an agreement with an accused concerning disposition of the charges and specifications and the sentence that may be imposed. A judge advocate should advise on and the convening authority should consider the following additional factors in determining whether it would be appropriate to enter into a plea agreement in a particular case:

- a. The accused's willingness to cooperate in the investigation or prosecution of others;
- b. The nature and seriousness of the offense or offenses charged;
- c. The accused's remorse or contrition and his or her willingness to assume responsibility for his or her conduct;
- d. Restitution, if any;
- e. The accused's criminal history or history of misconduct, whether military or civilian;
- f. The desirability of prompt and certain disposition of the case and of related cases;
- g. The likelihood of obtaining a conviction at court-martial;
- h. The probable effect on victims and witnesses;
- i. The probable sentence or other consequences if the accused is convicted;
- j. The public and military interest in having the case tried rather than disposed of by a plea agreement;
- k. The time and expense associated with trial and appeal;
  - l. The views of the victim with regard to prosecution, the terms of the anticipated agreement, and alternative disposition; and
  - m. The potential of the accused for rehabilitation and continued service.

**3.3. Agreements Concerning Disposition of Charges and Specifications.** With respect to the convening authority's disposition of charges and specifications,

## APPENDIX 2.1

the plea agreement should require the accused to plead guilty to charges and specifications that:

- a. Appropriately reflect the nature and extent of the criminal conduct;
- b. Are supported by an adequate factual basis;
- c. Would support the imposition of an appropriate sentence under all the circumstances of the case;
- d. Do not adversely affect the investigation or prosecution of others suspected of misconduct; and
- e. Appropriately serve the interests of justice and good order and discipline.

**3.4 Agreements Concerning Sentence Limitations.** A convening authority, in consultation with a judge advocate, should ensure that any sentence limitation of a plea agreement takes into consideration the sentencing guidance set forth in Article 56(c).

\*\*\*\*\*

### **Analysis:**

This appendix implements Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and section 12 of Executive Order 13825 of March 1, 2018. The disposition factors contained in this appendix are adapted primarily from three sources: the Principles of Federal Prosecution issued by the Department of Justice; the American Bar Association (ABA), Criminal Justice Standards for the Prosecution Function; and the National District Attorneys Association (NDAA), National Prosecution Standards. Practitioners are encouraged to familiarize themselves with the disposition factors contained in this appendix as well as these related civilian prosecution function standards. The disposition factors have been adapted with a view toward the unique nature of military justice and the need for commanders and convening authorities to exercise wide discretion to meet their responsibilities to maintain good order and discipline.

**APPENDIX 3**  
**DoD Instruction 5525.07**

**Department of Defense**  
**INSTRUCTION**

June 18, 2007  
NUMBER 5525.07

GC, DoD/IG DoD

**SUBJECT:**

Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes

**References:**

(a) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Crimes," January 22, 1985 (hereby canceled)

(b) Acting Deputy Secretary of Defense Memorandum, "DoD Directives Review - Phase II," July 13, 2005

(c) DoD Directive 5145.1, "General Counsel of the Department of Defense," May 2, 2001

(d) DoD Directive 5106.01, "Inspector General of the Department of Defense," April 13, 2006

(e) through (h), see Enclosure 1

**1. REISSUANCE AND PURPOSE**

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction in accordance with the guidance in Reference (b) and the authority in References (c) and (d).

1.2. Updates policy, assigns responsibilities, and supplements the MOU between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes (Reference (e)) at Enclosure 1, pursuant to References (c) and (d).

**2. APPLICABILITY AND SCOPE**

2.1 This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. The term "DoD criminal investigative organizations," as used herein, refers collectively to the United States Army Criminal Investigation Command, Naval Criminal Investigative Service, U.S. Air Force Office of Special Investigations, and Defense Criminal Investigative Service, Office of the IG DoD.

**3. POLICY**

It is DoD policy to maintain effective working relationships with the DoJ in the investigation and prosecution of crimes involving DoD programs, operations, or personnel.

**4. PROCEDURES**

With respect to inquiries for which the DoJ has assumed investigative responsibility based on Reference (e), the DoD criminal investigative organizations should seek to participate jointly with DoJ investigative agencies whenever the inquiries relate to DoD programs, operations, or personnel. This applies to cases referred to the Federal Bureau of Investigation under paragraph C.1.a. of Reference (e) as well as to those cases for which a DoJ investigative agency is assigned primary investigative responsibility by a DoJ prosecutor. The DoD Components shall comply with the terms of Reference (e) and DoD Supplemental Guidance in Enclosure 2.



### APPENDIX 3

#### 5. RESPONSIBILITIES

5.1. The IG DoD, shall:

5.1.1. Establish procedures to implement the investigative policies set forth in this Instruction.

5.1.2. Monitor compliance by DoD criminal investigative organizations with the terms of Reference (c).

5.1.3. Provide specific guidance regarding investigative matters, as appropriate.

5.2. The General Counsel of the Department of Defense (GC, DoD), shall:

5.2.1. Establish procedures to implement the prosecutive policies as set forth in Reference (e) and consistent with the DoD Supplemental Guidance provided in Enclosure 2, the Uniform Code of Military Justice (Reference (f)) and the Manual for Courts-Martial (Reference (g)).

5.2.2. Monitor compliance by the DoD Components regarding the prosecutive aspects of Reference (e).

5.2.3. Provide specific guidance on the investigation and prosecution of those crimes addressed in Reference (e), as appropriate.

5.2.4. Modify the DoD Supplemental Guidance in Enclosure 2 with the concurrence of the IG DoD, after coordinating with the affected DoD Components.

5.3. The Secretaries of the Military Departments shall establish procedures to implement the policies set forth in this Instruction.

#### 6. EFFECTIVE DATE

This Instruction is effective immediately upon signing by both of the following, whichever date is later.

Signed by Claude M. Kicklighter  
Inspector General Department of Defense

Signed by Daniel J. Dell'Orto, Acting  
General Counsel Department of Defense

Enclosures – 2

E1. References, continued

E2. DoD Supplemental Guidance to the MOU Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes

#### **E1. ENCLOSURE 1**

#### **REFERENCES, continued**

(e) Memorandum of Understanding between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes, August 1981<sup>1</sup>

(f) Chapter 47 of title 10, United States Code, “Uniform Code of Military Justice (UCMJ)”

(g) Manual for Courts-Martial, United States, 2005 (R.C.M. 704)

(h) Title 18 of the United States Code

#### **E2. ENCLOSURE 2**

#### **DoD SUPPLEMENTAL GUIDANCE TO THE MOU BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE RELATING TO THE INVESTIGATION AND PROSECUTION OF CERTAIN CRIMES**

This enclosure contains the verbatim text of

---

<sup>1</sup> For copies of the signed Memorandum of Understanding, contact the Office of the Deputy General Counsel (Personnel and Health Policy), 1600 Defense Pentagon, Washington, D.C. 20301-1600

**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE**

Reference (e). Matter that is identified as “DoD Supplemental Guidance” has been added by the Department of Defense. DoD Components shall comply with the MOU and the DoD Supplemental Guidance.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE DEPARTMENTS OF JUSTICE  
AND DEFENSE RELATING TO THE  
INVESTIGATION AND PROSECUTION OF  
CERTAIN CRIMES**

**A. PURPOSE, SCOPE AND AUTHORITY**

This Memorandum of Understanding (MOU) establishes policy for the Department of Justice and the Department of Defense with regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. This memorandum is not intended to confer any rights, benefits, privileges or form of due process procedure upon individuals, associations, corporations, or other persons or entities.

This Memorandum applies to all components and personnel of the Department of Justice and the Department of Defense. The statutory bases for the Department of Defense and the Department of Justice investigation and prosecution responsibilities include, but are not limited to:

1. Department of Justice: Titles 18, 21 and 28 of the United States Code; and
2. Department of Defense: The Uniform Code of Military Justice, Title 10, United States Code, Sections 801-940; the Inspector General Act of 1978, Title 5 United States Code, Appendix 3; and Title 5 United States Code, Section 301.

**B. POLICY**

The Department of Justice has primary responsibility for enforcement of federal laws in the United States District Courts. The Department of Defense has responsibility for the integrity of its programs, operations and installations and for the

discipline of the Armed Forces. Prompt administrative actions and completion of investigations within the two (2) year statute of limitations under the Uniform Code of Military Justice require the Department of Defense to assume an important role in federal criminal investigations. To encourage joint and coordinated investigative efforts, in appropriate cases where the Department of Justice assumes investigative responsibility for a matter relating to the Department of Defense, it should share information and conduct the inquiry jointly with the interested Department of Defense investigative agency.

It is neither feasible nor desirable to establish inflexible rules regarding the responsibilities of the Department of Defense and the Department of Justice as to each matter over which they may have concurrent interest. Informal arrangements and agreements within the spirit of this MOU are permissible with respect to specific crimes or investigations.

**C. INVESTIGATIVE AND PROSECUTIVE JURISDICTION**

*1. CRIMES ARISING FROM THE DEPARTMENT OF DEFENSE OPERATIONS*

*a. Corruption Involving the Department of Defense Personnel*

The Department of Defense investigative agencies will refer to the FBI on receipt all significant allegations of bribery and conflict of interest involving military or civilian personnel of the Department of Defense. In all corruption matters that are the subject of a referral to the FBI, the Department of Defense shall obtain the concurrence of the Department of Justice prosecutor or the FBI before initiating any independent investigation preliminary to any action under the Uniform Code of Military Justice. If the Department of Defense is not satisfied with the initial determination, the matter will be reviewed by the Criminal Division of the Department of Justice.

The FBI will notify the referring agency promptly

### APPENDIX 3

regarding whether they accept the referred matters for investigation. The FBI will attempt to make such decision in one (1) working day of receipt in such matters.

#### **DoD Supplemental Guidance**

A. Certain bribery and conflict of interest allegations (also referred to as “corruption” offenses in the MOU) are to be referred immediately to the FBI.

B. For the purposes of this section, bribery and conflict of interest allegations are those which would, if proven, violate sections 201, 203, 205, 208, 209, or 219 of title 18, United States Code (Reference (h)).

C. Under paragraph C.1.a., DoD criminal investigative organizations shall refer to the FBI those “significant” allegations of bribery and conflict of interest that implicate directly military or DoD civilian personnel, including allegations of bribery or conflict of interest that arise during the course of an ongoing investigation.

1. All bribery and conflict of interest allegations against present, retired, or former General or Flag officers and civilians in positions above the GS-15 and equivalent levels, the Senior Executive Service, and the Executive Level will be considered “significant” for purposes of referral to the FBI.

2. In cases not covered by subsection C.1., of this supplemental guidance, the determination of whether the matter is “significant” for purposes of referral to the FBI should be made in light of the following factors: sensitivity of the DoD program involved, amount of money in the alleged bribe, number of DoD personnel implicated, impact on the affected DoD program, and with respect to military personnel, whether the matter normally would be handled under Reference (f). Bribery and conflicts of interest allegations warranting consideration of Federal prosecution, which were not referred to the FBI based on the application of these guidelines and not otherwise disposed of under Reference (f), will be developed and brought to the attention of the Department of Justice through the “conference” mechanism described in paragraph C.1.b of Reference

(e).

D. Bribery and conflict of interest allegations when military or DoD civilian personnel are not subjects of the investigations are not covered by the referral requirement of paragraph C.1.a. of Reference (e). Matters in which the suspects are solely DoD contractors and their subcontractors, such as commercial bribery between a DoD subcontractor and a DoD prime contractor, do not require referral upon receipt to the FBI. The “conference” procedure described in paragraph C.1.b. of Reference (e) shall be used in these types of cases.

E. Bribery and conflict of interest allegations that arise from events occurring outside the United States, its territories, and possessions, and requiring investigation outside the United States, its territories, and possessions need not be referred to the FBI.

F. The 1984 MOU references a two (2) year statute of limitations in effect for some Uniform Code of Military Justice offenses. Section 843 of Reference (f), governing statute of limitations has been amended several times since signing the MOU, applying generally a 5 year statute of limitation. It remains important that administrative actions and investigations be completed in a timely manner in order to meet the statute of limitations requirements for the respective offenses, while keeping in mind that the applicable statute of limitation of a particular offense is that which was in effect at the time the offense was committed.

#### **b. *Frauds Against the Department of Defense and Theft and Embezzlement of Government Property***

The Department of Justice and the Department of Defense have investigative responsibility for frauds against the Department of Defense and theft and embezzlement of Government property from the Department of Defense. The Department of Defense will investigate frauds against the Department of Defense and theft of government property from the Department of Defense. Whenever a Department of Defense investigative agency identifies a matter which, if developed by investigation, would warrant federal prosecution, it will confer with the United

**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE**

States Attorney or the Criminal Division, the Department of Justice, and the FBI field office. At the time of this initial conference, criminal investigative responsibility will be determined by the Department of Justice in consultation with the Department of Defense.

**DoD Supplemental Guidance**

A. Unlike paragraph C.1.a. of Reference (e), paragraph C.1.b. does not have an automatic referral requirement. Under paragraph C.1.b, DoD criminal investigative organizations shall confer with the appropriate Federal prosecutor and the FBI on matters which, if developed by investigation, would warrant Federal prosecution. This “conference” serves to define the respective roles of DoD criminal investigative organizations and the FBI on a case-by-case basis. Generally, when a conference is warranted, the DoD criminal investigative organization shall arrange to meet with the prosecutor and shall provide notice to the FBI that such meeting is being held. Separate conferences with both the prosecutor and the FBI normally are not necessary.

B. When investigations are brought to the attention of the Federal Procurement Fraud Unit (FPFU), such contact will satisfy the “conference” requirements of paragraph C.1.b. of Reference (e) as both the prosecutor and the FBI.

C. Mere receipt by DoD criminal investigative organizations of raw allegations of fraud or theft does not require conferences with the DoJ and the FBI. Sufficient evidence should be developed before the conference to allow the prosecutor to make an informed judgment as to the merits of a case dependent upon further investigation. However, DoD criminal investigative organizations should avoid delay in scheduling such conferences, particularly in complex fraud cases, because an early judgment by a prosecutor can be of assistance in focusing the investigation on those matters that most likely will result in criminal prosecution.

**2. CRIMES COMMITTED ON MILITARY INSTALLATIONS**

**a. Subject(s) can be Tried by Court-Martial or are Unknown**

Crimes (other than those covered by paragraph C.1.) committed on a military installation will be investigated by the Department of Defense investigative agency concerned and, when committed by a person subject to the Uniform Code of Military Justice, prosecuted by the Military Department concerned. The Department of Defense will provide immediate notice to the Department of Justice of significant cases in which an individual subject/victim is other than a military member or dependent thereof.

**b. One or More Subjects cannot be Tried by Court-Martial**

When a crime (other than those covered by paragraph C.1.) has occurred on a military installation and there is reasonable basis to believe that it has been committed by a person or persons, some or all of whom are not subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will provide immediate notice of the matter to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type of class of crime.

**DoD Supplemental Guidance**

A. Subsection C.2. of Reference (e) addresses crimes committed on a military installation other than those listed in paragraphs C.1.a. (bribery and conflict of interest) and C.1.b. (fraud, theft, and embezzlement against the Government).

B. Unlike paragraph C.1.a. of Reference (e), which requires “referral” to the FBI of certain cases, and paragraph C.1.b, which requires “conference” with respect to certain cases, subsection C.2. requires only that “notice” be given to DoJ of certain cases. Relief from the reporting requirement of subsection C.2. may be granted by the local U.S. attorney as to types or classes of cases.

C. For purposes of paragraph C.2.a. (when the

### APPENDIX 3

subjects can be tried by court-martial or are unknown), an allegation is “significant” for purposes of required notice to the DoJ only if the offense falls within the prosecutorial guidelines of the local U.S attorney. Notice should be given in other cases when the DoD Component believes that Federal prosecution is warranted or otherwise determines that the case may attract significant public attention.

#### 3. CRIMES COMMITTED OUTSIDE MILITARY INSTALLATIONS BY PERSONS WHO CAN BE TRIED BY COURT-MARTIAL

##### a. Offense is Normally Tried by Court-Martial

Crimes (other than those covered by paragraph C.1.) committed outside a military installation by persons subject to the Uniform Code of Military Justice which, normally, are tried by court-martial will be investigated and prosecuted by the Department of Defense. The Department of Defense will provide immediate notice of significant cases to the appropriate Department of Justice investigative agency. The Department of Defense will provide immediate notice in all cases where one or more subjects is not under military jurisdiction unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class or crime.

#### DoD Supplemental Guidance

For purposes of this paragraph, an allegation is “significant” for purposes of required notice to the DoJ only if the offense falls within prosecutorial guidelines of the local U.S. attorney. Notice should be given in other cases when the DoD Component believes that Federal prosecution is warranted, or otherwise determines that the case may attract significant public attention.

##### b. Crimes Related to Scheduled Military Activities

Crimes related to scheduled Military activities outside of a military installation, such as organized maneuvers in which persons subject to the Uniform Code of Military Justice are suspects, shall be treated

as if committed on a military installation for purposes of this Memorandum. The FBI or other Department of Justice investigative agency may assume jurisdiction with the concurrence of the United States Attorney or the Criminal Division, Department of Justice.

##### c. Offense is not Normally Tried by Court-Martial

When there are reasonable grounds to believe that a Federal crime (other than those covered by paragraph C.1.) normally not tried by court-martial, has been committed outside a military installation by a person subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will immediately refer the case to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirements for the type or class of crime.

#### D. REFERRALS AND INVESTIGATIVE ASSISTANCE

##### 1. REFERRALS

Referrals, notices, reports, requests and the general transfer of information under this Memorandum normally should be between the FBI or other Department of Justice investigative agency and the appropriate Department of Defense investigative agency at the field level.

If a Department of Justice investigative agency does not accept a referred matter and the referring Department of Defense investigative agency then, or subsequently, believes that evidence exists supporting prosecution before civilian courts, the Department of Defense agency may present the case to the United States Attorney or the Criminal Division, Department of Justice, for review.

##### 2. INVESTIGATIVE ASSISTANCE

In cases where a Department of Defense or Department of Justice investigative agency has primary responsibility and it requires limited assistance to pursue outstanding leads, the

## MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE

investigative agency requiring assistance will promptly advise the appropriate investigative agency in the other Department and, to the extent authorized by law and regulations, the requested assistance should be provided without assuming responsibility for the investigation.

### **E. PROSECUTION OF CASES**

1. With the concurrence of the Department of Defense, the Department of Justice will designate such Department of Defense attorneys as it deems desirable to be Special Assistant United States Attorneys for use where the effective prosecution of cases may be facilitated by the Department of Defense attorneys.
2. The Department of Justice will institute civil actions expeditiously in United States District Courts whenever appropriate to recover monies lost as a result of crimes against the Department of Defense; the Department of Defense will provide appropriate assistance to facilitate such actions.
3. The Department of Justice prosecutors will solicit the views of the Department of Defense prior to initiating action against an individual subject to the Uniform Code of Military Justice.
4. The Department of Justice will solicit the views of the Department of Defense with regard to its Department of Defense-related cases and investigations in order to effectively coordinate the use of civil, criminal and administrative remedies.

### **DoD Supplemental Guidance**

#### **Prosecution of Cases and Grants of Immunity**

A. The authority of court-martial convening authorities to refer cases to trial, approve pretrial agreements, and issue grants of immunity under Reference (f) extends only to trials by court-martial. In order to ensure that such actions do not preclude appropriate action by Federal civilian authorities in cases likely to be prosecuted in the U.S. district courts, court-martial convening authorities shall

ensure that appropriate consultation as required by this enclosure has taken place before trial by court-martial, approval of a pretrial agreement, or issuance of a grant of immunity in cases when such consultation is required.

B. Only a general court-martial convening authority may grant immunity under Reference (f), and may do so only in accordance with Rule for Courts-Martial 704 of Reference (g).

1. Under Reference (f), there are two types of immunity in the military justice system:

a. A person may be granted transactional immunity from trial by court-martial for one or more offenses under Reference (f).

b. A person may be granted testimonial immunity, which is immunity from the use of testimony, statements, and any information directly or indirectly derived from such testimony or statements by that person in a later court-martial.

2. Before a grant of immunity under Reference (f), the general court-martial convening authority shall ensure that there has been appropriate consultation with the DoJ with respect to offenses in which consultation is required by this enclosure.

3. A proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States shall be forwarded to the GC, DoD for the purpose of consultation with the DoJ. The GC, DoD shall obtain the views of other appropriate elements of the Department of Defense in furtherance of such consultation.

C. The authority of court-martial convening authorities extends only to grants of immunity from action under Reference (f). Only the Attorney General or other authority designated under sections 6001-6005 of Reference (h) may authorize action to obtain a grant of immunity with respect to trials in the U.S. district courts.

## APPENDIX 3

### F. MISCELLANEOUS MATTERS

#### 1. THE DEPARTMENT OF DEFENSE ADMINISTRATIVE ACTIONS

Nothing in this Memorandum limits the Department of Defense investigations conducted in support of administrative actions to be taken by the Department of Defense. However, the Department of Defense investigative agencies will coordinate all such investigations with the appropriate Department of Justice prosecutive agency and obtain the concurrence of the Department of Justice prosecutor or the Department of Justice investigative agency prior to conducting any administrative investigation during the pendency of the criminal investigation or prosecution.

#### 2. SPECIAL UNIFORM CODE OF MILITARY JUSTICE FACTORS

In situations where an individual subject to the Uniform Code of Military Justice is a suspect in any crime for which a Department of Justice investigative agency has assumed jurisdiction, if a Department of Defense investigative agency believes that the crime involves special factors relating to the administration and discipline of the Armed Forces that would justify its investigation, the Department of Defense investigative agency will advise the appropriate Department of Justice investigative agency or the Department of Justice prosecuting authorities of these factors. Investigation of such a crime may be undertaken by the appropriate Department of Defense investigative agency with the concurrence of the Department of Justice.

#### 3. ORGANIZED CRIME

The Department of Defense investigative agencies will provide to the FBI all information collected during the normal course of agency operations pertaining to the element generally known as "organized crime" including both traditional (La Cosa Nostra) and nontraditional organizations whether or not the matter is considered prosecutable. The FBI should be notified of any investigation involving any element of organized crime and may assume

jurisdiction of the same.

#### 4. DEPARTMENT OF JUSTICE NOTIFICATIONS TO DEPARTMENT OF DEFENSE INVESTIGATIVE AGENCIES

a. The Department of Justice investigative agencies will promptly notify the appropriate Department of Defense investigative agency of the initiation of the Department of Defense related investigations which are predicated on other than a Department of Defense referral except in those rare instances where notification might endanger agents or adversely affect the investigation. The Department of Justice investigative agencies will also notify the Department of Defense of all allegations of the Department of Defense related crime where investigation is not initiated by the Department of Justice.

b. Upon request, the Department of Justice investigative agencies will provide timely status reports on all investigations relating to the Department of Defense unless the circumstances indicate such reporting would be inappropriate.

c. The Department of Justice investigative agencies will promptly furnish investigative results at the conclusion of an investigation and advise as to the nature of judicial action, if any, taken or contemplated.

d. If judicial or administrative action is being considered by the Department of Defense, the Department of Justice will, upon written request, provide existing detailed investigative data and documents (less any federal grand jury material, disclosure of which would be prohibited by Rule 6(e), Federal Rules of Criminal Procedure), as well as agent testimony for use in judicial or administrative proceedings, consistent with Department of Justice and other federal regulations. The ultimate use of the information shall be subject to the concurrence of the federal prosecutor during the pendency of any related investigation or prosecution.

#### 5. TECHNICAL ASSISTANCE

a. The Department of Justice will provide to the Department of Defense all technical services normally available to federal investigative agencies.

b. The Department of Defense will provide assist-

## MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE

ance to the Department of Justice in matters not relating to the Department of Defense as permitted by law and implementing regulations.

### 6. JOINT INVESTIGATIONS

a. To the extent authorized by law, the Department of Justice investigative agencies and the Department of Defense investigative agencies may agree to enter into joint investigative endeavors, including undercover operations, in appropriate circumstances. However, all such investigations will be subject to Department of Justice guidelines.

b. The Department of Defense, in the conduct of any investigation that might lead to prosecution in Federal District Court, will conduct the investigation consistent with any Department of Justice guidelines. The Department of Justice shall provide copies of all relevant guidelines and their revisions.

authority now fixed by the 1979 "Agreement Governing the Conduct of the Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation" and the 1983 Memorandum of Understanding between the Department of Defense, the Department of Justice and the FBI concerning "Use of Federal Military Force in Domestic Terrorist Incidents."

### DoD Supplemental Guidance

When DoD procedures concerning apprehension, search and seizure, interrogation, eyewitnesses, or identification differ from those of DoJ, DoD procedures will be used, unless the DoJ prosecutor has directed that DoJ procedures be used instead. DoD criminal investigators should bring to the attention of the DoJ prosecutor, as appropriate, situations when use of DoJ procedures might impede or preclude prosecution under Reference (f).

### 7. APPREHENSION OF SUSPECTS

To the extent authorized by law, the Department of Justice and the Department of Defense will each promptly deliver or make available to the other suspects, accused individuals and witnesses where authority to investigate the crimes involved is lodged in the other Department. This MOU neither expands nor limits the authority of either Department to perform apprehensions, searches, seizures, or custodial interrogations.

### G. EXCEPTION

This Memorandum shall not affect the investigative



THIS PAGE LEFT INTENTIONALLY BLANK

**APPENDIX 4**  
**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND TRANSPORTATION (COAST GUARD) RELATING TO THE INVESTIGATIONS AND PROSECUTION OF CRIMES OVER WHICH THE TWO DEPARTMENTS HAVE CONCURRENT JURISDICTION**

Whereas, certain crimes committed by Coast Guard personnel subject to the Uniform Code of Military Justice may be prosecuted by Coast Guard tribunals under the Code or by civilian authorities in the Federal Courts; and

Whereas, it is recognized that although the administration and discipline of the Coast Guard requires that certain types of crimes committed by its personnel be investigated by that service and prosecuted before Coast Guard military tribunals other types of crimes committed by such military personnel should be investigated by civil authorities and prosecuted before civil tribunals; and

Whereas, it is recognized that it is not feasible to impose inflexible rules to determine the respective responsibility of the civilian and Coast Guard military authorities as to each crime over which they may have concurrent jurisdiction and that informal arrangements and agreements may be necessary with respect to specific crimes or investigations; and

Whereas, agreement between the Department of Justice and the Department of Transportation (Coast Guard) as to the general areas in which they will investigate and prosecute crimes to which both civil and military jurisdiction attach will, nevertheless, tend to make the investigation and prosecution of crimes more expeditious and efficient and give appropriate effect to the policies of civil government and the requirements of the United States Coast Guard;

It is hereby agreed and understood between the Department of Justice and the Department of Transportation (Coast Guard) as follows:

1. *Crimes committed on military installations (including aircraft and vessels).* Except as hereinafter indicated, all crimes committed on a military installation by Coast Guard personnel subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the Coast Guard if the Coast Guard makes a determination that there is a reasonable likelihood that only Coast Guard personnel subject to the Uniform Code of Military Justice are involved in such crimes as principals or accessories, and except in extraordinary cases, that there is no victim other than persons who are subject to the Uniform Code of Military Justice or who are bona fide dependents or members of a household of military or civilian personnel residing on the installation. Unless such a determination is made, the Coast Guard shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation if such crime is within the investigative authority of the Federal Bureau of Investigation. The Federal Bureau of Investigation shall investigate any serious

crime of which it has been so advised for the purpose of prosecution in the civil courts unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by the Coast Guard. Even if the determination provided for in the first sentence of this paragraph is made by the Coast Guard, it shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation in which there is a victim who is not subject to the Uniform Code of Military Justice or a bona fide dependent or member of the household of military or civilian personnel residing on the installation and that the Coast Guard is investigating the crime because it has been determined to be extraordinary. The Coast Guard shall promptly advise the Federal Bureau of Investigation whenever the crime, except in minor offenses, involves fraud against the government, misappropriation, robbery, or theft of government property of funds, or is of a similar nature. All such crimes shall be investigated by the Coast Guard unless it receives prompt advise that the Department of Justice has determined that the crime should be investigated by the Federal Bureau of Investigation and that the Federal Bureau of Investigation will undertake the investigation for the purpose of prosecution in the civil courts.

2. *Crimes committed outside of military installations.* Except as herein after indicated, all crimes committed outside of military installations, which fall within the investigative jurisdiction of the Federal Bureau of Investigation and in which there is involved as a suspect an individual subject to the Uniform Code of Military Justice, shall be investigated by the Federal Bureau of Investigation for the purpose of prosecution in civil courts, unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by other authorities. All such crimes which come first to the attention of Coast Guard authorities shall be referred promptly by them to the Federal Bureau of Investigation, unless relieved of this requirement by the Federal Bureau of Investigation as to particular types or classes of crime. However, whenever Coast Guard military personnel are engaged in scheduled military activities outside of military installations such as organized maneuvers or organized movement, the provisions of paragraph 1 above shall apply, unless persons not subject to the Uniform Code of Military Justice are involved as principals, accessories or victims. If, however, there is involved as a suspect or as an accused in any crime committed outside of a military installation and falling within the investigative authority of the Federal Bureau of Investigation, an individual who is subject to the Uniform Code of Military Justice and if the Coast Guard authorities

#### APPENDIX 4

believe that the crime involves special factors relating to the administration and discipline of the Coast Guard which would justify investigation by them for the purpose of prosecution before a Coast Guard military tribunal, they shall promptly advise the Federal Bureau of Investigation of the crime and indicate their views on the matter. Investigation of such a crime may be undertaken by the Coast Guard military authorities if the Department of Justice agrees.

3. *Transfer of investigative authority.* An investigative body of the Coast Guard which has initiated an investigation pursuant to paragraphs 1 and 2 hereof, shall have exclusive investigative authority and may proceed therewith to prosecution. If, however, any Coast Guard investigative body comes to the view that effectuation of those paragraphs requires the transfer of investigative authority over a crime, investigation of which has already been initiated by that or by any other investigative body, it shall promptly advise the other interested investigative body of its views. By agreement between the Departments of Justice and Transportation (Coast Guard), investigative authority may then be transferred.

4. *Administrative action.* Exercise of exclusive investigative authority by the Federal Bureau of Investigation pursuant to this agreement shall not preclude Coast Guard military authorities from making inquiries for the purpose of administrative action related to the crime being investigated. The Federal Bureau of Investigation will make the results of its investigations available to Coast Guard military authorities for use in connection with such action. Whenever possible, decisions with respect to the application in particular cases of the provisions of this Memorandum of Understanding will be made at the local level, that is, between the Special Agent in Charge of the local office of the Federal Bureau of Investigation and the local Coast Guard military commander.

5. *Surrender of suspects.* To the extent of the legal authority conferred upon them, the Department of Justice and Coast Guard military authorities will each deliver to the other promptly suspects and accused individuals if authority to investigate the crimes in which such accused individuals and suspects are involved is lodged in the other by paragraphs 1 and 2 hereof. Nothing in this memorandum shall prevent the Coast Guard from prompt arrest and detention of any person subject to the Uniform Code of Military Justice whenever there is knowledge or reasonable basis to believe that such a person has committed an offense in violation of such code and detaining such person until he is delivered to the Federal Bureau of Investigation if such action is required pursuant to this memorandum.

APPROVED:

/s/ Alan S. Boyd  
Alan S. Boyd  
Secretary of Transportation  
Date: 24 October 1967

/s/ Ramsey Clark  
Ramsey Clark  
Attorney General  
Date: 9 October 1967

## APPENDIX 5 CHARGE SHEET

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED <i>(Last, First, Middle Initial)</i>		2. SSN		3. GRADE OR RANK
4. PAY GRADE		5. UNIT OR ORGANIZATION		
6. CURRENT SERVICE			a. INITIAL DATE	b. TERM
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
		0.00		
II. CHARGES AND SPECIFICATIONS				
10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE				
SPECIFICATION:				
III. PREFERRAL				
11a. NAME OF ACCUSER <i>(Last, First, Middle Initial)</i>		b. GRADE	c. ORGANIZATION OF ACCUSER	
d. SIGNATURE OF ACCUSER			e. DATE (YYYYMMDD)	
<p>AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this _____ day of _____, _____, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p> <p style="text-align: center;">_____ <i>Typed Name of Officer</i></p> <p style="text-align: center;">_____ <i>Organization of Officer</i></p> <p style="text-align: center;">_____ <i>Grade</i></p> <p style="text-align: center;">_____ <i>Official Capacity to Administer Oath</i> <i>(See R.C.M. 307(b), must be commissioned officer)</i></p> <p style="text-align: center;">_____ <i>Signature</i></p>				

DD FORM 458, MAY 2000

PREVIOUS EDITION IS OBSOLETE.

Reset

Adobe Professional 7.0

**APPENDIX 5**

12. On \_\_\_\_\_, \_\_\_\_\_, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

\_\_\_\_\_ *Typed Name of Immediate Commander*      \_\_\_\_\_ *Organization of Immediate Commander*

\_\_\_\_\_ *Grade*

\_\_\_\_\_ *Signature*

---

**IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY**

13. The sworn charges were received at \_\_\_\_\_ hours, \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ *Designation of Command or Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)*

FOR THE <sup>1</sup> \_\_\_\_\_

\_\_\_\_\_ *Typed Name of Officer*      \_\_\_\_\_ *Official Capacity of Officer Signing*

\_\_\_\_\_ *Grade*

\_\_\_\_\_ *Signature*

---

**V. REFERRAL; SERVICE OF CHARGES**

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE (YYYYMMDD)
--	----------	--------------------

Referred for trial to the \_\_\_\_\_ court-martial convened by \_\_\_\_\_

\_\_\_\_\_ , \_\_\_\_\_ , subject to the following instructions: <sup>2</sup>

\_\_\_\_\_

By \_\_\_\_\_ of \_\_\_\_\_

*Command or Order*

\_\_\_\_\_ *Typed Name of Officer*      \_\_\_\_\_ *Official Capacity of Officer Signing*

\_\_\_\_\_ *Grade*

\_\_\_\_\_ *Signature*

---

15. On \_\_\_\_\_, \_\_\_\_\_, I (caused to be) served a copy hereof on (each of) the above named accused.

\_\_\_\_\_ *Typed Name of Trial Counsel*      \_\_\_\_\_ *Grade or Rank of Trial Counsel*

\_\_\_\_\_ *Signature*

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.  
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

DD FORM 458 (BACK), MAY 2000

Reset

## APPENDIX 6 PRELIMINARY HEARING OFFICER'S REPORT

PRELIMINARY HEARING OFFICER'S REPORT <i>(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)</i>			
1a. FROM: <i>(Name of Preliminary Hearing Officer - Last, First, MI)</i>	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT
2a. TO: <i>(Name of Officer who directed the Preliminary Hearing - Last, First, MI)</i>	b. TITLE	c. ORGANIZATION	
3a. NAME OF ACCUSED <i>(Last, First, MI)</i>	b. GRADE	c. ORGANIZATION	d. DATE OF CHARGES
<i>(Check appropriate answer)</i>			YES NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I CONDUCTED A PRELIMINARY HEARING CONCERNING THE CHARGES APPENDED HERETO (Exhibit 1)			<input type="checkbox"/> <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)			<input type="checkbox"/> <input type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(3), 502(d)(2)			<input type="checkbox"/> <input type="checkbox"/>
7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i>	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(If any)</i>	b. GRADE
c. ORGANIZATION <i>(If appropriate)</i>		c. ORGANIZATION <i>(If appropriate)</i>	
d. ADDRESS <i>(If appropriate)</i>		d. ADDRESS <i>(If appropriate)</i>	
9. TO BE SIGNED BY ACCUSED IF ACCUSED WAIVES COUNSEL. <i>(If accused does not sign, preliminary hearing officer will explain in detail in item 24.)</i>			
a. PLACE		b. DATE	
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED AT THIS PRELIMINARY HEARING BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL AT THIS PRELIMINARY HEARING.			
c. SIGNATURE OF ACCUSED			
10. AT THE BEGINNING OF THE PRELIMINARY HEARING, I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>			YES NO
a. THE RIGHT TO BE ADVISED OF THE CHARGES UNDER CONSIDERATION			<input type="checkbox"/> <input type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER			<input type="checkbox"/> <input type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			<input type="checkbox"/> <input type="checkbox"/>
d. THE PURPOSE OF THE PRELIMINARY HEARING			<input type="checkbox"/> <input type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE (EXCEPT AS DESCRIBED IN R.C.M. 804(c)(2))			<input type="checkbox"/> <input type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED THE GOVERNMENT TO PRESENT			<input type="checkbox"/> <input type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES ON MATTERS RELEVANT TO THE ISSUES FOR DETERMINATION IN R.C.M. 405(a)			<input type="checkbox"/> <input type="checkbox"/>
h. THE RIGHT TO PRESENT MATTERS RELEVANT TO THE ISSUES FOR DETERMINATION IN R.C.M. 405(a)			<input type="checkbox"/> <input type="checkbox"/>
i. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT RELEVANT TO THE ISSUES FOR DETERMINATION IN R.C.M. 405(a)			<input type="checkbox"/> <input type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>			<input type="checkbox"/> <input type="checkbox"/>
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL			
NOTE: If additional space is required for any item, enter the additional material in Item 24 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading. (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."			

**APPENDIX 6**

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH:				
NAME (Last, First, MI)	GRADE (if any)	ORGANIZATION/ADDRESS (whichever is appropriate)	YES	NO
b. THE PRELIMINARY HEARING REPORT REQUIRED BY RCM 405(I) IS ATTACHED				
c. AT THE HEARING, EVIDENCE WAS OFFERED UNDER MILITARY RULES OF EVIDENCE (Check appropriate box(es))				
<input type="checkbox"/> 412 <input type="checkbox"/> 513 <input type="checkbox"/> 514				
d. PORTIONS OF THE HEARING WERE CLOSED				
e. SEALED MATERIALS ARE INCLUDED IN THIS REPORT				
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (if not attached)			
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED				
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE (See R.C.M. 909, 916(k))				
15. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				
16. AN EXPLANATION OF ANY DELAYS IN THE HEARING IS ATTACHED HERETO				
17. EACH SPECIFICATION ALLEGES AN OFFENSE				
18. THERE IS PROBABLE CAUSE TO BELIEVE AN OFFENSE HAS BEEN COMMITTED AND THAT THE ACCUSED COMMITTED THE OFFENSE				
19. THE UNITED STATES HAS JURISDICTION OVER THE OFFENSE(S) AND THE ACCUSED				
20. ADDITIONAL UNCHARGED MISCONDUCT WAS CONSIDERED AND A RECOMMENDATION FOR DISPOSITION IS ATTACHED HERETO				
21. SUPPLEMENTARY MATERIALS SUBMITTED PURSUANT TO R.C.M. 405(k)				
22. I AM NOT AWARE OF ANY GROUNDS THAT WOULD DISQUALIFY ME FROM ACTING AS A PRELIMINARY HEARING OFFICER				
23. I RECOMMEND:				
a. TRIAL BY: <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify) _____				
24. REMARKS (Include, as necessary, explanation for any answers above.)				
25a. TYPED NAME OF PRELIMINARY HEARING OFFICER		b. GRADE	c. ORGANIZATION	
d. SIGNATURE OF PRELIMINARY HEARING OFFICER			e. DATE	

# APPENDIX 7 SUBPOENA

Subpoena to Testify and/or to Produce or Permit Inspection of Items in a Court-Martial

January 2019 (Previous editions are obsolete)

## UNITED STATES OF AMERICA

SUBPOENA

Military Justice Proceeding

United States of America )

v. )

\_\_\_\_\_  
*Subject of Investigation / Accused*

) MCIO Case No. \_\_\_\_\_ *Optional*

### SUBPOENA TO TESTIFY AND/OR TO PRODUCE OR PERMIT INSPECTION OF ITEMS

To: \_\_\_\_\_  
*Name of person to whom this subpoena is directed*

**YOU ARE HEREBY COMMANDED, PURSUANT TO 10 U.S.C. §§ 846-47, TO DO THE FOLLOWING:**

1. To appear personally on the following date, time and location: \_\_\_\_\_  
to testify before:
- an individual designated to take your deposition
  - a Court-Martial of the United States
  - a court of inquiry
- Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_
2. To produce the following items on the date and location listed: \_\_\_\_\_
- \_\_\_\_\_
3. To permit inspection and/or copying of the following items by the date and time listed: \_\_\_\_\_
- \_\_\_\_\_

Failure to appear and testify or to produce items as directed above is punishable by a fine of not more than \$1,000 or confinement for a period of not more than 30 days, or both, by the military judge (10 U.S.C. § 848). Failure to appear or produce items as directed above may also result in you being taken into custody and brought before the proceedings under a Warrant of Attachment (DD Form 454) Manual for Courts-Martial R.C.M. 703(g)(3)(H)(iv). Any person who refuses to appear, testify, or produce items as directed above is guilty of an offense against the United States and shall be tried on indictment or information in a United States district court. (10 U.S.C. § 847).

Issued by \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ as \_\_\_\_\_  
*Name Date Issuing Authority*

\_\_\_\_\_  
*Signature of Issuing Authority*

You may, before the time specified for compliance, request relief on the grounds that compliance is unreasonable or oppressive (R.C.M. 703(g)(3)(G)). Requests should be directed to: \_\_\_\_\_  
*Name, Phone Number and E-mail Address*

This subpoena was requested by \_\_\_\_\_, represented by \_\_\_\_\_  
*Name of Requester Name of Counsel*

\_\_\_\_\_  
*Phone Number and E-mail Address of Counsel*

### CERTIFICATE OF SERVICE

Served on \_\_\_\_\_  
*Name of Person Served Signature Date*

**IF SERVICE IS REFUSED**

By my signature below, I attest that I personally delivered a copy of this subpoena, on the date and at the time specified, to the person described on the "To" line above

\_\_\_\_\_  
*Name of Server Signature Date and Time of Service*

\_\_\_\_\_  
*Phone Number and E-mail Address of Server*



THIS PAGE LEFT INTENTIONALLY BLANK

## APPENDIX 8

### GUIDE FOR SUMMARY COURTS-MARTIAL

[General Note to SCM: It is not the purpose of this guide to answer all questions which may arise during a trial. When this guide, chapter 13 of the Rules for Courts-Martial, and other legal materials available fail to provide sufficient information concerning law or procedure, the summary court-martial should seek advice on these matters from a judge advocate. *See* R.C.M. 1301(b). If the accused has obtained, or wishes to obtain, defense counsel, *see* R.C.M. 1301(e). The SCM should examine the format for record of trial at appendix 9. It may be useful as a checklist during the proceedings to ensure proper preparation after trial. The SCM should become familiar with this guide before using it. Instructions for the SCM are contained in brackets, and should not be read aloud. Language in parentheses reflects optional or alternative language. The SCM should read the appropriate language aloud.]

#### Preliminary Proceeding

Identity of SCM

SCM: I am \_\_\_\_\_. I have been detailed to conduct a summary court-martial (by Summary Court-Martial Convening Order (Number \_\_\_\_\_), Headquarters, \_\_\_\_\_, dated [see convening order]).

Referral of charges to trial

Charges against you have been referred to me for trial by summary court-martial by ([*name and title of convening authority*]) on ([*date of referral*]) [see block IV on page 2 of charge sheet].

[Note 1. Hand copy of charge sheet to the accused.]

Providing the accused with charge sheet

I suggest that you keep this copy of the charge sheet and refer to it during the trial. The charges are signed by [ *see* first name at top of page 2 of charge sheet], a person subject to the Uniform Code of Military Justice, as accuser, and are properly sworn to before a commissioned officer of the armed forces authorized to administer oaths.

(\_\_\_\_\_ ordered the charges to be preferred.) The charges allege, in general, violation of Article \_\_\_\_\_, in that you \_\_\_\_\_, (and Article \_\_\_\_\_, in that you \_\_\_\_\_). I am now going to tell you about certain rights you have in this trial. You should carefully consider each explanation because you will soon have to decide whether to object to trial by summary court-martial. Until I have completed my explanation, do not say anything except to answer the specific questions which I ask you. Do you understand that?

ACC: \_\_\_\_\_.

Duties of SCM

SCM: As summary court-martial it is my duty to obtain and examine all the evidence concerning any offense(s) to which you plead not guilty, and to thoroughly and impartially inquire into both sides of the matter. I will call witnesses for the prosecution and question them, and I will help you in cross-examining those witnesses. I will help you obtain evidence and present the defense. This means that one of my duties is to help you present your side of the case. You may also represent yourself, and if you do, it is my duty to help you. You are presumed to be innocent until your guilt has been

**APPENDIX 8**

proved by legal and competent evidence beyond a reasonable doubt. If you are found guilty of an offense, it is also my duty to consider matters which might affect the sentence, and then to adjudge an appropriate sentence. Do you understand that?

- ACC: \_\_\_\_\_.
- Right to object to SCM      SCM: You have the absolute right to object to trial by summary court-martial. If you object the appropriate authority will decide how to dispose of the case. The charges may be referred to a special or general court-martial, or they may be dismissed, or the offenses charged may be disposed of by (nonjudicial punishment [if not previously offered and refused] or) administrative measures.[ *See* R.C.M. 306.] Do you understand that?
- ACC: \_\_\_\_\_.
- Right to inspect allied papers and personnel records.      SCM: You may inspect the allied papers and personnel records [Hand those documents which are available to the accused for examination in your presence.] (You may also inspect [*identify personnel records or other documents which are not present*] which are located at \_\_\_\_\_ . You may have time to examine these if you wish.)
- Witnesses/other evidence for the government      SCM: The following witnesses will probably appear and testify against you: \_\_\_\_\_. The following documents and physical evidence will probably be introduced:  
\_\_\_\_\_.
- Right to cross-examine      After these witnesses have testified in response to my questions, you may cross-examine them. If you prefer, I will do this for you after you inform me of the matters about which you want the witness to be questioned.  
Do you understand that?
- ACC: \_\_\_\_\_.
- Right to present evidence      SCM: You also have the right to call witnesses and present other evidence. This evidence may concern any or all of the charges. (I have arranged to have the following witnesses for you present at the trial.) I will arrange for the attendance of other witnesses and the production of other evidence requested by you. I will help you in any way possible. Do you understand that?
- ACC: \_\_\_\_\_.
- Evidence to be considered      SCM: In deciding this case, I will consider only evidence introduced during the trial. I will not consider any other information, including any statements you have made to me, which is not introduced in accordance with the Military Rules of Evidence during the court-martial. Do you understand that?

## GUIDE FOR SUMMARY COURTS-MARTIAL

	ACC:	_____.
Right to remain silent	SCM:	You have the absolute right during this trial to choose not to testify and to say nothing at all about the offense(s) with which you are charged. If you do not testify, I will not hold it against you in any way. I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).
Right to testify concerning the offense(s)		However, if you choose, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, I will consider your testimony just like the testimony of any other witness.
		[Note 2. Use the following if there is only one specification.]
If one specification		If you decide to testify concerning the offense, you can be questioned by me about the whole subject of the offense. Do you understand that?
	ACC:	_____.
		[Note 3. Use the following if there is more than one specification.]
If more than one specification	SCM:	If you decide to testify, you may limit your testimony to any particular offense charged against you and not testify concerning any other offense(s) charged against you. If you do this, I may question you about the whole subject of the offense about which you testify, but I may not question you about any offense(s) concerning which you do not testify. Do you understand that?
	ACC:	_____.
Right to testify, remain silent or make an unsworn statement in extenuation and mitigation	SCM:	In addition, if you are found guilty of an offense, you will have the right to testify under oath concerning matters regarding an appropriate sentence. You may, however, remain silent, and I will not hold your silence against you in any way. You may, if you wish, make an unsworn statement about such matters. This statement may be oral, in writing, or both. If you testify, I may cross-examine you. If you make an unsworn statement, however, I am not permitted to question you about it, but I may receive evidence to contradict anything contained in the statement. Do you understand that?
	ACC:	_____.
Maximum punishment	SCM:	If I find you guilty (of the offense) (of any of the offenses charged), the maximum sentence which I am authorized to impose is:
		[Note 4. For an accused of a pay grade of E-4 or below, proceed as follows.]
E-4 and below		(l) reduction to lowest enlisted pay grade; and

**APPENDIX 8**

- (2) forfeiture of two-thirds of 1 month's pay; and
- (3) confinement for 1 month.

[Note 5. For an accused of a pay grade above E-4, proceed as follows.]

E-5 and above

- (1) reduction to the next inferior pay grade; and
- (2) forfeiture of two-thirds of 1 month's pay; and
- (3) restriction to specified limits for 2 months.

SCM: Do you understand the maximum punishment which this court-martial is authorized to adjudge?

ACC: \_\_\_\_\_.

Plea options

SCM: You may plead not guilty or guilty to each offense with which you are charged. You have an absolute right to plead not guilty and to require that your guilt be proved beyond a reasonable doubt before you can be found guilty. You have the right to plead not guilty even if you believe you are guilty. Do you understand that?

ACC: \_\_\_\_\_.

SCM If you believe you are guilty of an offense, you may, but are not required to, plead guilty to that offense. If you plead guilty to an offense, you are admitting that you committed that offense, and this court-martial could find you guilty of that offense without hearing any evidence, and could sentence you to the maximum penalty I explained to you before. Do you understand that?

ACC: \_\_\_\_\_.

Lesser included offenses

SCM: [Examine the list of lesser included offenses under each punitive article alleged to have been violated. See Appendix 12A . If a lesser included offense may be in issue, give the following advice.] You may plead not guilty to Charge \_\_\_\_\_, Specification \_\_\_\_\_, as it now reads, but plead guilty to the offense of \_\_\_\_\_, which is included in the offense charged. Of course, you are not required to do this. If you do, then I can find you guilty of this lesser offense without hearing evidence on it. Furthermore, I could still hear evidence on the greater offense for purposes of deciding whether you are guilty of it. Do you understand that?

ACC: \_\_\_\_\_.

SCM: Do you need more time to consider whether to object to trial by summary court-martial or to prepare for trial?

ACC: \_\_\_\_\_.

SCM: [If time is requested or otherwise appropriate.] We will convene the court-martial at \_\_\_\_\_. When we convene, I will ask you

## GUIDE FOR SUMMARY COURTS-MARTIAL

whether you object to trial by summary court-martial. If you do not object, I will then ask for your pleas to the charge(s) and specification(s), and for you to make any motions you may have.

### Trial Proceedings

Convene	SCM:	This summary court-martial is now in session.
Objection/consent to trial by SCM	SCM:	Do you object to trial by summary court-martial?
	ACC:	_____.
Entries on record of trial		[Note 6. If there is an objection, adjourn the court-martial and return the file to the convening authority. If the accused does not object, proceed as follows. The accused may be asked to initial the notation on the record of trial that the accused did or did not object to trial by summary court-martial. This is not required, however.]
Readings of the charges	SCM:	Look at the charge sheet. Have you read the charge(s) and specification(s)?
	ACC:	_____.
	SCM:	Do you want me to read them to you?
	ACC:	[If accused requests, read the charge(s) and specification(s).]
Arraignment	SCM:	How do you plead? Before you answer that question, if you have any motion to dismiss (the) (any) charge or specification, or for other relief, you should make it now.
	ACC:	_____.
Motions		[Note 7. If the accused makes a motion to dismiss or to grant other relief, or such a motion is raised by the summary court-martial, do not proceed with the trial until the motions have been decided. <i>See</i> R.C.M. 905-907, and R.C.M. 1304(b)(2)(C). After any motions have been disposed of and if termination of the trial has not resulted, have the accused enter pleas and proceed as indicated below.]
Pleas	ACC:	I plead: _____.
		[Note 8. If the accused refuses to plead to any offense charged, enter pleas of not guilty. If the accused refuses to enter any plea, evidence must be presented to establish that the accused is the person named in the specification(s) and is subject to court-martial jurisdiction. <i>See</i> R.C.M. 202, 1301(c)]
		[Note 9. If the accused pleads not guilty to all offenses charged, proceed to the section entitled "Procedures-Not Guilty Pleas."]
		[Note 10. If the accused pleads guilty to one or more offenses, proceed as follows.]
Procedures-guilty pleas	SCM:	I will now explain the meaning and effect of your pleas, and question you so that I can be sure you understand. Refer to the charge(s) and specification(s). I will not accept your pleas of guilty unless you understand their meaning and effect. You are legally and morally entitled to plead not guilty even though you believe you are guilty, and to require that your guilt be proved beyond a reasonable

**APPENDIX 8**

doubt. A plea of guilty is the strongest form of proof known to the law. On your pleas of guilty alone, without receiving any evidence, I can find you guilty of the offense(s) to which you have pleaded guilty. I will not accept your pleas unless you realize that by your pleas you admit every element of the offense(s) to which you have pleaded guilty, and that you are pleading guilty because you really are guilty. If you are not convinced that you are in fact guilty, you should not allow anything to influence you to plead guilty. Do you understand that?

ACC: \_\_\_\_\_.

SCM: Do you have any questions?

ACC: \_\_\_\_\_.

SCM: By your pleas of guilty you give up three very important rights. (You keep these rights with respect to any offense(s) to which you have pleaded not guilty.) The rights which you give up when you plead guilty are:

First, the right against self-incrimination. This means you give up the right to say nothing at all about (this) (these) offense(s) to which you have pleaded guilty. In a few minutes I will ask you questions about (this) (these) offense(s), and you will have to answer my questions for me to accept your pleas of guilty.

Second, the right to a trial of the facts by this court-martial. This means you give up the right to have me decide whether you are guilty based upon the evidence which would be presented.

Third, the right to be confronted by and to cross-examine any witnesses against you. This means you give up the right to have any witnesses against you appear, be sworn and testify, and to cross-examine them under oath.

Do you understand these rights?

ACC: \_\_\_\_\_.

SCM: Do you understand that by pleading guilty you give up these rights?

ACC: \_\_\_\_\_.

SCM On your pleas of guilty alone you could be sentenced to \_\_\_\_\_.

[Note 11. Re-read the appropriate sentencing section at notes 4 or 5 above unless the summary court-martial is a rehearing or new or other trial, in which case see R.C.M. 810(d).]

Do you have any questions about the sentence which could be imposed as a result of your pleas of guilty?

ACC: \_\_\_\_\_.

## GUIDE FOR SUMMARY COURTS-MARTIAL

- SCM: Has anyone made any threat or tried in any other way to force you to plead guilty?
- ACC: \_\_\_\_\_.
- Pretrial agreement
- SCM: Are you pleading guilty because of any promises or understandings between you and the convening authority or anyone else?
- ACC: \_\_\_\_\_.

[Note 12. If the accused answers yes, the summary court-martial must inquire into the terms of such promises or understandings in accordance with R.C.M. 910.

[Note 13. If the accused has pleaded guilty to a lesser included offense, also ask the following question.]

- Effect of guilty pleas to lesser included offenses
- SCM: Do you understand that your plea of guilty to the lesser included offense of admits all the elements of the offense charged except the element(s) of , and that no proof is necessary to establish those elements admitted by your pleas?
- ACC: \_\_\_\_\_.
- SCM: The following elements state what would have to be proved beyond a reasonable doubt before the court-martial could find you guilty if you had pleaded not guilty. As I read each of these elements to you, ask yourself whether each is true and whether you want to admit that each is true, and then be prepared to discuss each of these elements with me when I have finished. The elements of the offense(s) which your pleas of guilty admit are

[Note 14. Read the elements of the offense(s) from the appropriate punitive article in Part IV. This advice should be specific as to names, dates, places, amounts, and acts.]

Do you understand each of the elements of the offense(s)?

- ACC: \_\_\_\_\_.
- SCM: Do you believe, and admit, that taken together these elements correctly describe what you did?

[Note 15. The summary court-martial should now question the accused about the circumstances of the offense(s) to which the accused has pleaded guilty. The accused will be placed under oath for this purpose. See oath below. The purpose of these questions is to develop the circumstances in the accused's own words, so that the summary court-martial may determine whether each element of the offense(s) is established.]

- Oath to accused for guilty plea inquiry
- SCM: Do you (swear) (affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?
- ACC: \_\_\_\_\_.



**APPENDIX 8**

SCM: Do you have any questions about the meaning and effect of your pleas of guilty?

ACC: \_\_\_\_\_.

SCM: Do you believe that you understand the meaning and effect of your pleas of guilty?

Determination of providence of pleas of guilty

[Note 16. Pleas of guilty may not be accepted unless the summary court-martial finds that they are made voluntarily and with understanding of their meaning and effect, and that the accused has knowingly, intelligently, and consciously waived the rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses. Pleas of guilty may be improvident when the accused makes statements at any time during the trial which indicate that there may be a defense to the offense(s), or which are otherwise inconsistent with an admission of guilt. If the accused makes such statements and persists in them after questioning, then the summary court-martial must reject the accused's guilty pleas and enter pleas of not guilty for the accused. Turn to the section entitled "Procedures-Not Guilty Pleas" and continue as indicated. If (the) (any of the) accused's pleas of guilty are found provident, the summary court-martial should announce findings as follows.]

Acceptance of guilty pleas

SCM: I find that the pleas of guilty are made voluntarily and with understanding of their meaning and effect. I further specifically find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, I find the pleas are provident, and I accept them. However, you may ask to take back your guilty pleas at any time before the sentence is announced. If you have a sound reason for your request, I will grant it. Do you understand that?

ACC: \_\_\_\_\_.

If any not guilty pleas remain

[Note 17. If no pleas of not guilty remain, go to note 26. If the accused has changed pleas of guilty to not guilty, if the summary court-martial has entered pleas of not guilty to any charge(s) and specification(s), or if the accused has pleaded not guilty to any of the offenses or pleaded guilty to a lesser included offense, proceed as follows.]

Witnesses for the accused

SCM: If there are witnesses you would like to call to testify for you, give me the name, rank, and organization or address of each, and the reason you think they should be here, and I will arrange to have them present if their testimony would be material. Do you want to call witnesses?

ACC: \_\_\_\_\_.

[Note 18. The summary court-martial should estimate the length of the case and arrange for the attendance of witnesses. The prosecution evidence should be presented before evidence for the defense.]

Calling witnesses

SCM: I call as a witness \_\_\_\_\_.

Witness oath

SCM: [To the witness, both standing] Raise your right hand. Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (, so help you God)? [Do not use the phrase, "so help you God," if the witness prefers to affirm.]

## GUIDE FOR SUMMARY COURTS-MARTIAL

WIT: \_\_\_\_\_.

SCM: Be seated. State your full name, rank, organization, and armed force ([or if a civilian witness] full name, city and state of residence, and occupation).

WIT: \_\_\_\_\_.

[Note 19. The summary court-martial should question each witness concerning the alleged offense(s). After direct examination of each witness, the accused must be given an opportunity to cross-examine. If the accused declines to cross-examine the witness, the summary court-martial should ask any questions that it feels the accused should have asked. If cross-examination occurs, the summary court-martial may ask questions on redirect examination and the accused may ask further questions in recross examination.]

[Note 20. After each witness has testified, instruct the witness as follows.]

SCM: Do not discuss this case with anyone except the accused, counsel, or myself until after the trial is over. Should anyone else attempt to discuss this case with you, refuse to do so and report the attempt to me immediately. Do you understand that?

WIT: \_\_\_\_\_.

Recalling witnesses

[Note 21. Witnesses may be recalled if necessary. A witness who is recalled is still under oath and should be so reminded.]

[Note 22. After all witnesses against the accused have been called and any other evidence has been presented, the summary court-martial will announce the following.]

SCM: That completes the evidence against you. I will now consider the evidence in your favor.

Presentation of defense case

[Note 23. Witnesses for the accused should now be called to testify and other evidence should be presented. Before the defense case is terminated the summary court-martial should ask the accused if there are other matters the accused wants presented. If the accused has not testified, the summary court-martial should remind the accused of the right to testify or to remain silent.]

Closing argument

SCM: I have now heard all of the evidence. You may make an argument on this evidence before I decide whether you are guilty or not guilty.

Deliberations on findings

[Note 24. The court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

SCM: The court-martial is closed so that I may review the evidence. Wait outside the courtroom until I recall you.

[Note 25. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. *See* R.C.M. 918. It may not consider any facts which were not admitted into evidence, such as a confession or admission of the accused which was excluded because it was taken in violation of Mil. R. Evid. 304. The summary court-martial may find the accused guilty of only the offense(s) charged, a lesser included offense, or of an offense which does not change the identity of an offense charged or a lesser included offense thereof.]

## APPENDIX 8

Announcing the findings	[Note 26. The summary court-martial should recall the accused, who will stand before the court-martial when findings are announced. All findings including any findings of guilty resulting from guilty pleas, should be announced at this time. The following forms should be used in announcing findings.]
Not guilty of all offenses	SCM: I find you of (the) (all) Charge(s) and Specification(s): Not Guilty.
Guilty of all offenses	I find you of (the) (all) Charge(s) and Specification(s): Guilty.
Guilty of some but not all offenses	I find you of (the) Specification (_____) of (the) Charge (____): Not Guilty; of (the) Specification (_____) of (the) Charge (_____) : Guilty; of (the) Charge (_____) : Guilty.
Guilty of lesser included offense or with exceptions and substitutions	I find you of (the) Specification (_____) of (the) Charge (_____) : Guilty, except the words _____ and _____ ; (substituting therefor, respectively, the words _____ and _____ ; ) of the excepted words: Not Guilty; (of the substituted words: Guilty;) of the Charge: (Guilty) (Not Guilty, but Guilty of a violation of Article _____, UCMJ, a lesser included offense).
Entry of findings	[Note 27. The summary court-martial shall note all findings on the record of trial.]
Procedure if total acquittal	[Note 28. If the accused has been found not guilty of all charges and specifications, adjourn the court-martial, excuse the accused, complete the record of trial, and return the charge sheet, personnel records, allied papers, and record of trial to the convening authority.]
Procedure if any findings of guilty	[Note 29. If the accused has been found guilty of any offense, proceed as follows.]
Presentence procedure	SCM: I will now receive information in order to decide on an appropriate sentence. Look at the information concerning you on the front page of the charge sheet. Is it correct?  [Note 30. If the accused alleges that any of the information is incorrect, the summary court-martial must determine whether it is correct and correct the charge sheet, if necessary.]  [Note 31. Evidence from the accused's personnel records, including evidence favorable to the accused, should now be received in accordance with R.C.M. 1001(b)(2). These records should be shown to the accused.]  SCM: Do you know any reason why I should not consider these?  ACC: _____.
Victim's Right to be heard on sentencing	[Note 32. The summary court-martial shall resolve objections under R.C.M. 1002(b)(2) and the Military Rules of Evidence and then proceed as follows. <i>See also</i> R.C.M. 1001(b)(3), (4), and (5) concerning other evidence which may be introduced.]  [Note 33. A crime victim has the right to be reasonably heard at presentencing hearing. <i>See</i> R.C.M. 1001(c) and 1304(a)(4)(D). A "crime victim" is an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty.]  SCM: Is there a crime victim in this case that wishes to submit a sworn or unsworn statement?  [Note 34. The crime victim may make a sworn statement, and be subject to cross-examination. The crime victim can elect to submit an unsworn statement, and may not be subjected to cross-

## GUIDE FOR SUMMARY COURTS-MARTIAL

examination. The content of statements may only include victim impact and matters in mitigation. The statement may not include a recommendation of a specific sentence.]

Extenuation and mitigation

SCM: In addition to the information already admitted which is favorable to you, and which I will consider, you may call witnesses who are reasonably available, you may present evidence, and you may make a statement. This information may be to explain the circumstances of the offense(s), including any reasons for committing the offense(s), and to lessen the punishment for the offense(s) regardless of the circumstances. You may show particular acts of good conduct or bravery, and evidence of your reputation in the service for efficiency, fidelity, obedience, temperance, courage, or any other trait desirable in a good servicemember. You may call available witnesses or you may use letters, affidavits, certificates of military and civil officers, or other similar writings. If you introduce such matters, I may receive written evidence for the purpose of contradicting the matters you presented. If you want me to get some military records that you would otherwise be unable to obtain, give me a list of these documents. If you intend to introduce letters, affidavits, or other documents, but you do not have them, tell me so that I can help you get them. Do you understand that?

ACC: \_\_\_\_\_.

Rights of accused to testify, remain silent, and make an unsworn statement

SCM: I informed you earlier of your right to testify under oath, to remain silent, and to make an unsworn statement about these matters.

SCM: Do you understand these rights?

ACC: \_\_\_\_\_.

SCM: Do you wish to call witnesses or introduce anything in writing?

ACC: \_\_\_\_\_.

Questions concerning pleas of guilty

[Note 35. If as a result of matters received on sentencing, including the accused's testimony or an unsworn statement, any matter is disclosed which is inconsistent with the pleas of guilty, the summary court-martial must immediately inform the accused and resolve the matter. *See* Note 16.]

Argument on sentence

SCM: You may make an argument on an appropriate sentence.

ACC: \_\_\_\_\_.

Deliberations prior to announcing sentence

[Note 36. After receiving all matters relevant to sentencing, the summary court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

Closing the court-martial

SCM: This court-martial is closed for determination of the sentence. Wait outside the courtroom until I recall you.

[Note 37. *See* Appendix 11 concerning proper form of sentence. Once the summary court-martial has determined the sentence, it should reconvene the court-martial and announce the sentence as follows.]

Announcement of sentence

SCM: Please rise. I sentence you to \_\_\_\_\_.

**APPENDIX 8**

[Note 38. If the sentence includes confinement, advise the accused as follows.]

SCM: You have the right to request in writing that [name of convening authority] defer your sentence to confinement. Deferment is not a form of clemency and is not the same as suspension of a sentence. It merely postpones the running of a sentence to confinement.

[Note 39. Whether or not the sentence includes confinement, advise the accused as follows.]

SCM: You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and convening authority approves an extension of up to 20 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by The Judge Advocate General of \_\_\_\_\_. Do you understand these rights?

ACC: \_\_\_\_\_.

Adjourning the court-martial

SCM: This court-martial is adjourned.

Entry on charge sheet

[Note 40. Record the sentence in the record of trial, inform the convening authority of the findings, recommendations for suspension, if any, and any deferment request. If the sentence includes confinement, arrange for the delivery of the accused to the accused's commander, or someone designated by the commander, for appropriate action. Ensure that the commander is informed of the sentence. Complete the record of trial and forward to the convening authority.]

## APPENDIX 9 RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL					
1a. NAME OF ACCUSED <i>(Last, First, MI)</i>	b. GRADE OR RANK	c. UNIT OR ORGANIZATION OF ACCUSED	d. SSN		
2a. NAME OF CONVENING AUTHORITY <i>(Last, First, MI)</i>	b. RANK	c. POSITION	d. ORGANIZATION OF CONVENING AUTHORITY		
3a. NAME OF SUMMARY COURT-MARTIAL <i>(If SCM was accuser, so state)</i>	b. RANK	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL			
<i>(Check appropriate answer)</i>				YES	NO
4. At a preliminary proceeding held on _____, _____, the summary court-martial gave the accused a copy of the charge sheet.					
5. At that preliminary proceeding the summary court-martial informed the accused of the following:					
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.					
b. The identity of the convening authority.					
c. The name(s) of the accuser(s).					
d. The general nature of the charge(s).					
e. The accused's right to object to trial by summary court-martial.					
f. The accused's right to inspect the allied papers and immediately available personnel records.					
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.					
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.					
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.					
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.					
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.					
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.					
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.					
n. The accused's right to plead guilty or not guilty.					
6. At the trial proceeding held on _____, _____, the accused, after being given a reasonable time to decide, <input type="checkbox"/> did <input type="checkbox"/> did not object to trial by summary court-martial. <i>(Note: The SCM may ask the accused to initial this entry at the time the election is made.)</i>					
				<hr style="width: 100px; margin-left: auto; margin-right: 0;"/> <i>(Initial)</i>	
7a. The accused <input type="checkbox"/> was <input type="checkbox"/> was not represented by counsel. <i>(If the accused was represented by counsel, complete b, c, and d below.)</i>					
b. NAME OF COUNSEL <i>(Last, First, MI)</i>				c. RANK <i>(if any)</i>	
d. COUNSEL QUALIFICATIONS					

DD Form 2329, AUG 84

Reset

Adobe Professional 8.0

## APPENDIX 9

8. The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:		
CHARGE(S) AND SPECIFICATION(S)	PLEA(S)	FINDINGS <i>(Include any exceptions and substitutions)</i>
9. The following sentenced was adjudged:		
10. The accused was advised of the right to request that confinement be deferred. <i>(Note: When confinement is adjudged.)</i> <input type="checkbox"/> YES <input type="checkbox"/> NO	11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General. <input type="checkbox"/> YES <input type="checkbox"/> NO	
12. AUTHENTICATION		
_____	_____	
<i>Signature of Summary Court-Martial</i>	<i>Date</i>	
13. ACTION BY CONVENING AUTHORITY		
_____	_____	
<i>Typed Name of Convening Authority</i>	<i>Position of Convening Authority</i>	
_____	_____	
<i>Rank</i>	<i>Date</i>	
_____	_____	
<i>Signature of Convening Authority</i>	<i>Date</i>	

DD Form 2329 Reverse, AUG 84

Reset

## APPENDIX 10

### FORMS FOR ACTIONS (CASES REFERRED BEFORE 1 JANUARY 2019)

The Forms in this appendix are guides for preparation of the convening authority's initial action for cases referred before 1 January 2019. Guidance is also provided for actions under MCM (2016), R.C.M. 1112(f). Appendix 11 contains Forms for later actions. The Forms are guidance only, and are not mandatory. They do not provide for all cases. It may be necessary to combine parts of different Forms to prepare an action appropriate to a specific case. Extreme care should be exercised in using these Forms and in preparing actions. See MCM (2016), R.C.M. 1107(f) concerning contents of the convening authority's action.

In addition to the matters contained in the Forms below, the action should show the headquarters and place, or the ship, of the convening authority taking the action, and the date of the action. The signature of the convening authority is followed by the grade and unit of the convening authority, and "commander" or "commanding" as appropriate.

Further, convening authorities must include in the record of trial a written explanation for (1) actions on findings to dismiss or change any charge or specification of qualifying offenses, and (2) actions to disapprove, commute, or suspend the adjudged sentence for an other than qualifying offense. Written explanations are not required in cases involving at least one pre-24 June 2014 offense, even for action concerning offenses that would otherwise require written explanation. The written explanation should not be written on the action itself.

When the sentence includes confinement, the place of confinement is designated in the action unless the Secretary concerned prescribes otherwise. If the place of confinement is designated in the action, service regulations should be consulted first. See MCM (2016) R.C.M. 1113(e)(2)(C).

In actions on a summary court-martial, when the action is written on the record of trial (see Appendix 9) the words "In the case of \_\_\_\_\_" may be omitted.

The convening authority should state in the action

or elsewhere in a document maintained in the record of trial that the convening authority considered the matters required by R.C.M. 1107 and whether the convening authority considered any discretionary matters under that Rule.

#### INITIAL ACTION ON COURT-MARTIAL SENTENCE—FINDINGS NOT AFFECTED

**Forms 1–10 are appropriate when the adjudged sentence does not include death, dismissal, or a dishonorable or bad-conduct discharge. An adjudged sentence of confinement for more than six months may not be disapproved, commuted, or suspended absent (1) a pre-trial agreement providing for such action, (2) a trial counsel recommendation for clemency for substantial assistance by the accused in the investigation and/or prosecution of another case; or (3) conviction in the same case for at least one offense occurring prior to 24 June 2014.**

*Adjudged sentence approved and ordered executed without modification. See MCM (2016), R.C.M. 1107(f)(4).*

1. In the case of \_\_\_\_\_ the sentence is approved and will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Adjudged sentence modified. See MCM (2016), R.C.M. 1107(d)(1), (f)(4).*

*Adjudged sentence approved in part and ordered executed.*

2. In the case of \_\_\_\_\_ only so much of the sentence as provides for \_\_\_\_\_ is approved and will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Adjudged sentence approved; part of confinement changed to forfeiture of pay.*

3. In the case of \_\_\_\_\_, so much of the sentence extending to \_\_\_\_\_ months of



## APPENDIX 10

confinement is changed to forfeiture of \$ \_\_\_\_ pay per month for months. The sentence as changed is approved and will be executed. (\_\_\_\_\_) is designated as the place of confinement.)

*Credit for illegal pretrial confinement. See R.C.M. MCM (2016), 305(k); 1107(f)(4)(F).*

In the case of \_\_\_\_\_, the sentence is approved and will be executed. The accused will be credited with \_\_\_\_ days of confinement against the sentence to confinement. (\_\_\_\_\_) is designated as the place of confinement.)

*Suspension of sentence. See MCM (2016), R.C.M. 1107(f)(4)(B); 1108.*

*Adjudged sentence approved and suspended.*

5. In the case of \_\_\_\_\_, the sentence is approved. Execution of the sentence is suspended for \_\_\_\_\_ (months) (years) at which time, unless the suspension is sooner vacated, the sentence will be remitted without further action.

*Adjudged sentence approved; part of sentence suspended.*

6. In the case of \_\_\_\_\_, the sentence is approved and will be executed but the execution of that part of the sentence extending to (confinement) (confinement in excess of months) (forfeiture of pay) (\_\_\_\_\_) is suspended for (months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. (\_\_\_\_\_) is designated as the place of confinement.)

*Deferment of confinement and termination of deferment. See MCM (2016), R.C.M. 1101(c); 1107(f)(4)(E).*

*Adjudged sentence approved; confinement deferred pending final review.*

7. In the case of \_\_\_\_\_, the sentence is

approved and, except for that portion extending to confinement, will be executed. Service of the sentence to confinement (is) (was) deferred effective (date), and will not begin until (the conviction is final) (date) (\_\_\_\_\_), unless sooner rescinded by competent authority.

*Adjudged sentence approved; deferment of confinement terminated.*

8. In the case of \_\_\_\_\_, the sentence is approved and will be executed. The Service of the sentence to confinement was deferred on (date). (\_\_\_\_\_) is designated as the place of confinement.)

*Adjudged sentence approved; deferment of confinement terminated previously.*

9. In the case of \_\_\_\_\_, the sentence is approved and will be executed. The service of the sentence to confinement was deferred on (date), and the deferment ended on (date). (\_\_\_\_\_) is designated as the place of confinement.)

*Disapproval of sentence; rehearing on sentence only ordered. See MCM (2016), R.C.M. 1107(e), (f).*

10. In the case of \_\_\_\_\_, it appears that the following error was committed: (evidence of a previous conviction of the accused was erroneously admitted) (\_\_\_\_\_\_). This error was prejudicial as to the sentence. The sentence is disapproved. A rehearing is ordered before a (summary) (special) (general) court-martial to be designated.

When the adjudged sentence includes death, dismissal, or a dishonorable or a bad-conduct discharge, Forms 1-10 are generally appropriate, but several will require modification depending on the action to be taken. One reason for this is because Article 60 now limits the authority to modify an adjudged dismissal, dishonorable discharge, or bad-conduct discharge. Generally, an adjudged punitive discharge may not be disapproved, commuted, or suspended, absent (1) a pre-trial agreement providing

## FORMS FOR ACTIONS (CASES REFERRED BEFORE 1 JANUARY 2019)

for such action, (2) a trial counsel recommendation for clemency for substantial assistance by the accused in the investigation and/or prosecution of another case, or (3) conviction in the same case for at least one offense occurring prior to 24 June 2014. For certain sex offenses occurring on or after 24 June 2014, Article 56(b) imposes a mandatory dishonorable discharge or dismissal, even when at least one offense in the same case occurs prior to 24 June 2014. When acting, pursuant to a pre-trial agreement, on a punitive discharge required by Article 56(b), Article 56(b) limits such action to commutation of the dishonorable discharge to a bad conduct discharge. This action is not authorized for dismissals pursuant to Article 56(b).

A second reason that several of the Forms require modification is that death, dismissal, or a dishonorable or bad-conduct discharge may not be ordered executed in the initial action. Therefore, unless an adjudged punishment of death, dismissal, or a dishonorable or bad-conduct discharge is disapproved, changed to another punishment, or (except in the case of death) suspended, the initial action must specifically except such punishments from the order of execution. This is done by adding the words “except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge),” after the words “is approved and” and before the words “will be executed” in the action. (A death sentence cannot be suspended. See MCM (2016), R.C.M. 1108(b).)

**Forms 11-14 provide examples of actions when the sentence includes death, dismissal, or a dishonorable or bad-conduct discharge.**

*Adjudged sentence approved and, except for death, dismissal, or discharge, ordered executed. See MCM (2016), R.C.M. 1107(f)(4).*

11. In the case of \_\_\_\_\_, the sentence is approved and, except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge), will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Adjudged sentence modified. See MCM (2016), R.C.M. 1107(d)(1), (f)(4).* If the part of the sentence

providing for death, dismissal, or a dishonorable or a bad-conduct discharge is disapproved, see Form 2 above.

12. In the case of \_\_\_\_\_, only so much of the sentence as provides for (death) (dismissal) (a dishonorable discharge) (a bad-conduct discharge) (and \_\_\_\_\_ [specify each approved punishment]) is approved and, except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge), will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Adjudged sentence approved; discharge changed to confinement.*

13. In the case of \_\_\_\_\_, so much of the sentence extending to a (dishonorable discharge) (bad-conduct discharge) is changed to confinement for \_\_\_\_\_ months (thereby making the period of confinement \_\_\_\_\_ total months). The sentence as changed is approved and will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Suspension of sentence. See MCM (2016), R.C.M. 1107(f)(4)(B); 1108(d).* If the portion of the sentence extending to dismissal or a dishonorable or a bad-conduct discharge is suspended, Form 5 or Form 6 may be used, as appropriate. If parts of the sentence other than an approved dismissal or discharge are suspended, the following form may be used:

*Adjudged sentence approved; part of sentence, other than dismissal or dishonorable or bad-conduct discharge, suspended.*

14. In the case of \_\_\_\_\_, the sentence is approved and, except for that part of the sentence extending to (dismissal) (a dishonorable discharge) (a bad-conduct discharge), will be executed, but the execution of that part of the sentence adjudging (confinement) (confinement in excess of \_\_\_\_\_) (forfeiture of pay) (\_\_\_\_\_ is suspended for \_\_\_\_\_ (months) (years) at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be

## APPENDIX 10

remitted without further action. (\_\_\_\_\_ is designated as the place of confinement.)

### INITIAL ACTION ON COURT-MARTIAL WHEN FINDINGS AFFECTED

Findings are addressed in the action only when any findings of guilty are disapproved, in whole or part. See MCM (2016), R.C.M. 1107(c), (f)(3). The action must also indicate what action is being taken on the sentence. Appropriate parts of the foregoing Forms for Action on the sentence may be substituted in the following examples as necessary. Under Article 60, convening authorities may only act to dismiss or change any charge or specification if such offenses are qualifying offenses, pre-24 June 2014 offenses, or heard in the same case as a pre-24 June 2014 offense. In cases of legal error when action on findings are not authorized, convening authorities may wish to consider deferring punishment until completion of review in accordance with R.C.M. 110 1(c)(6)(A).

*Some findings of guilty disapproved; adjudged sentence approved.*

15. In the case of \_\_\_\_\_, the finding of guilty of Specification 2, Charge I is disapproved. Specification 2, Charge I is dismissed. The sentence is approved and (, except for that part of the sentence extending to ((dismissal) (a dishonorable discharge) (a bad-conduct discharge),) will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Finding of guilty of lesser included offense approved; adjudged sentence modified.*

16. In the case of \_\_\_\_\_, the finding of guilty of Specification 1, Charge II is changed to a finding of guilty of (assault with a means likely to produce grievous bodily harm, to wit: a knife) (absence without authority from the (unit) (ship) (\_\_\_\_\_)) alleged from (date) to (date) in violation of Article 86 (\_\_\_\_\_). Only so much of the sentence as provides for \_\_\_\_\_ is approved and (,except for the part of the sentence extending to ((dismissal) (dishonorable discharge) (bad-conduct discharge)), will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

*Some findings of guilty and sentence disapproved; combined rehearing ordered. See 1107(e). A rehearing may not be ordered if any sentence is approved. See MCM (2016) R.C.M. 1107(c); (e).*

17. In the case of \_\_\_\_\_, it appears that the following error was committed: (Exhibit 1, a laboratory report, was not properly authenticated and was admitted over the objection of the defense) (\_\_\_\_\_). This error was prejudicial as to Specifications 1 and 2 of Charge II. The findings of guilty as to Specifications 1 and 2 of Charge II and the sentence are disapproved. A combined rehearing is ordered before a court-martial to be designated.

*All findings of guilty and sentence disapproved; rehearing ordered. See MCM (2016), R.C.M. 1107(c).*

18. In the case of \_\_\_\_\_, it appears that the following error was committed: (evidence offered by the defense to establish duress was improperly excluded) (\_\_\_\_\_). This error was prejudicial to the rights of the accused as to all findings of guilty. The findings of guilty and the sentence are disapproved. A rehearing is ordered before a court-martial to be designated.

*All findings of guilty and sentence disapproved based on jurisdictional error; another trial ordered. See MCM (2016), R.C.M. 1107(e)(3). This Form may also be used when a specification fails to state an offense.*

19. In the case of \_\_\_\_\_, it appears that (the members were not detailed to the court-martial by the convening authority) (\_\_\_\_\_). The proceedings, findings, and sentence are invalid. Another trial is ordered before a court-martial to be designated.

*All findings of guilty and sentence disapproved; charges dismissed. See MCM (2016), R.C.M. 1107(c).*

20 In the case of \_\_\_\_\_, the findings of guilty and the sentence are disapproved. The charges

## FORMS FOR ACTIONS (CASES REFERRED BEFORE 1 JANUARY 2019)

are dismissed.

### ACTION ON A REHEARING

The action on a rehearing is the same as an action on an original court-martial in most respects. It differs first in that, as to any sentence approved following the rehearing, the accused must be credited with those parts of the sentence previously executed or otherwise served. Second, in certain cases the convening authority must provide for the restoration of certain rights, privileges, and property. *See* MCM (2016), R.C.M. 1107(f)(5)(A). Under Article 60, convening authorities may only act to dismiss or change any charge or specification if such offenses are qualifying offenses, pre-24 June 2014 offenses, or heard in the same case as a pre-24 June 2014 offense.

*Action on rehearing; granting credit for previously executed or served punishment.*

21. In the case of \_\_\_\_\_, the sentence is approved and (, except for the portion of the sentence extending to ((dismissal) (dishonorable discharge) (bad-conduct discharge)), will be executed. The accused will be credited with any portion of the punishment served from (date) to (date) under the sentence adjudged at the former trial of this case.

*Action on rehearing; restoration of rights.*

22. In the case of \_\_\_\_\_, the findings of guilty and the sentence are disapproved and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the execution of the sentence adjudged at the former trial of this case on (date) will be restored.

23. In the case of \_\_\_\_\_, the accused was found not guilty of all the charges and specifications which were tried at the former hearing. All rights, privileges, and property of which the accused has been deprived by virtue of the execution of the sentence adjudged at the former trial of this case on (date) will be restored.

### WITHDRAWAL OF PREVIOUS ACTION

Form 24 is appropriate for withdrawal of an earlier

action. *See* MCM (2016), R.C.M. 1107(f)(2) concerning modification of an earlier action. Form 24a is appropriate for withdrawal of previous action pursuant to instructions from reviewing authority pursuant to MCM (2016), R.C.M. 1107(f)(2) or (g).

24. In the case of \_\_\_\_\_, the action taken by (me) (my predecessor in command) on (date) is withdrawn and the following substituted therefor:

24a. In the case of \_\_\_\_\_, in accordance with instructions from (The Judge Advocate General) (the Court of Criminal Appeals) pursuant to Rule for Courts-Martial [1107(f)(2)] [1107(g)], the action taken by (me) (my predecessor in command) is withdrawn. The following is substituted therefor:

\_\_\_\_\_.

### FORMS FOR ACTIONS APPROVING AND SUSPENDING PUNISHMENTS MENTIONED IN ARTICLE 58a AND RETAINING ACCUSED IN PRESENT OR INTERMEDIATE GRADE.

Under the authority of Article 58a, the Secretary concerned may, by regulation, limit or specifically preclude the reduction in grade which would otherwise be effected under that Article upon the approval of certain court-martial sentences by the convening authority. The Secretary concerned may provide in regulations that if the convening or higher authority taking action on the case suspends those elements of the sentence that are specified in Article 58a the accused may be retained in the grade held by the accused at the time of the sentence or in any intermediate grade. Forms 25-27 may be used by the convening or higher authority in effecting actions authorized by the Secretary concerned in regulations pursuant to the authority of Article 58a.

If the convening authority or higher authority, when taking action on a case in which the sentence includes a punitive discharge, confinement, or hard labor without confinement, elects to approve the sentence and to retain the enlisted member in the grade held by that member at the time of sentence or in any intermediate grade, that authority may do so if permitted by regulations of the Secretary concerned whether or not the sentence also includes a reduction to the lowest enlisted grade, by using one of the

## APPENDIX 10

following Forms of Action. The first action, Form 25, is appropriate when the sentence does not specifically provide for reduction. The second and third actions, Forms 26 and 27, are appropriate when the sentence specifically provides for reduction to the grade of E-1. The action set forth in Form 26 is intended for a case in which the accused is to be probationally retained in the grade held by that accused at the time of sentence. The action set forth in Form 27 is for a case in which the accused is to serve probationally in an intermediate grade.

Note that the following limitations on post-trial authority may affect the applicability of the Forms 25-27. An adjudged sentence of confinement for more than six months may not be disapproved, commuted, or suspended absent (1) a pre-trial agreement providing for such action, (2) a trial counsel recommendation for clemency for substantial assistance by the accused in the investigation and/or prosecution of another case; or (3) conviction in the same case for at least one offense occurring prior to 23 June 2014. For certain sex offenses occurring on or after 24 June 2014, Article 56(b) imposes a mandatory dishonorable discharge or dismissal, even when at least one offense in the same case occurs prior to 23 June 2014. When acting, pursuant to a pre-trial agreement, on a punitive discharge required by Article 56(b), Article 56(b) limits such action to commutation of the dishonorable discharge to a bad conduct discharge. This action is not authorized for dismissals pursuant to Article 56(b).

*Automatic reduction suspended; sentence does not specifically include reduction.*

25. In the case of \_\_\_\_\_, the sentence is approved and will be executed, but the execution of that part of the sentence extending to (a dishonorable discharge) (a bad-conduct discharge) (confinement) (hard labor without confinement) (and) is suspended for (months) (years) at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will (continue to) serve in the grade of \_\_\_\_\_ unless the suspension of (the dishonorable discharge) (the bad-conduct discharge) (confinement) (hard labor without confinement) is vacated, in which event the accused will be reduced to the grade of E-1 at that

time.

*Automatic reduction and adjudged reduction to E-1 suspended; accused retained in grade previously held.*

26. In the case of \_\_\_\_\_, the sentence is approved and will be executed, but the execution of that part of the sentence extending to (a dishonorable discharge) (a bad-conduct discharge) (confinement) (hard labor without confinement) (\_\_\_\_\_), and reduction to the grade of E-1, is suspended for \_\_\_ (months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will continue to serve in the grade of \_\_\_ unless the suspension of (the dishonorable discharge) (the bad-conduct discharge) (confinement) (hard labor without confinement), or reduction to the grade of E-1, is vacated, in which event the accused will be reduced to the grade of E-1 at that time

*Automatic reduction and adjudged reduction to E-1 suspended; accused retained in intermediate grade.*

27. In the case of \_\_\_\_\_, the sentence is approved and will be executed but the execution of that part of the sentence extending to (a dishonorable discharge) (a bad-conduct discharge) (confinement) (hard labor without confinement), and that part of the reduction which is in excess of reduction to the grade of \_\_\_\_\_ is suspended for \_\_\_\_\_ (months) (years) at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will serve in the grade of \_\_\_\_\_ unless the suspension of (the dishonorable discharge) (bad-conduct discharge) (confinement) (hard labor without confinement), or reduction to the grade of E-1, is vacated, in which event the accused will be reduced to the grade of E-1 at that time.

### **ACTION UNDER MCM (2016), R.C.M. 1112(f).**

The Forms for Action for the officer taking action under R.C.M. 1112(f) are generally similar to the foregoing actions. The officer taking action under R.C.M. 1112(f) may order executed all parts of the approved sentence, including a dishonorable or bad-conduct discharge, except those parts which have been

## FORMS FOR ACTIONS (CASES REFERRED BEFORE 1 JANUARY 2019)

suspended without later vacation unless the record must be forwarded under R.C.M. 1112(g)(1). See MCM (2016), R.C.M. 1113(c)(1)(A). The following are additional Forms which may be appropriate:

*Sentence approved when convening authority suspended all or part of it.*

28. In the case of \_\_\_\_\_, the sentence as approved and suspended by the convening authority is approved.

*Sentence approved and, when confinement was deferred, ordered executed. See MCM (2016), R.C.M. 1101(c)(6).*

29. In the case of \_\_\_\_\_, the sentence is approved and the confinement will be executed. The service of the sentence to confinement was deferred on (date). (\_\_\_\_\_ is designated as the place of confinement.)

*Sentence includes unsuspended dishonorable or bad-conduct discharge; order of execution. See MCM (2016), R.C.M. 1113(c)(1) and (2).*

30. In the case of \_\_\_\_\_, the sentence is approved. The (dishonorable discharge) (bad-conduct discharge) will be executed.

*Findings and sentence disapproved; restoration as to parts ordered executed by convening authority. See MCM (2016), R.C.M. 1208.*

31. In the case of \_\_\_\_\_, the findings of guilty and the sentence are disapproved. The charges are dismissed. (The accused will be released from the confinement adjudged by the sentence in this case and all) (All) rights, privileges, and property of which the accused has been deprived by virtue of the findings and sentence disapproved will be restored.

*Findings and sentence disapproved; rehearing authorized. See MCM (2016), R.C.M. 1112(f).*

32. In the case of \_\_\_\_\_, it appears that the

following error was committed: (Exhibit 1, a statement of the accused, was not shown to have been preceded by Article 31 warnings as required and was admitted over the objection of the defense) (\_\_\_\_\_). This error was prejudicial to the rights of the accused as to the findings and the sentence. The case is returned to the convening authority who may order a rehearing or dismiss the charges.

*Action taken is less favorable to the accused than that recommended by the judge advocate. See MCM (2016), R.C.M. 1112(f), (g).*

33. In the case of \_\_\_\_\_, the sentence is approved. As this action is less favorable to the accused than that recommended by the judge advocate, the record and this action shall be forwarded to the Judge Advocate General for review under Article 69(b).

*Action when approved sentence includes dismissal. See MCM (2016), R.C.M. 1113(c)(2).*

34. In the case of \_\_\_\_\_, the sentence is approved. The record shall be forwarded to the [Secretary concerned].

THIS PAGE LEFT INTENTIONALLY BLANK

**APPENDIX 11**  
**FORMS FOR COURT-MARTIAL ORDERS**  
**(CASES REFERRED BEFORE 1 JANUARY 2019)**

*a. Forms for initial promulgating orders*

[ Note. The following is a form applicable in promulgating the results of trial and the action of the convening authority in all general and special court-martial cases. Omit the marginal side notes in drafting orders. See R.C.M. 1114(c) (MCM 2016)]

Heading (General) (Special) (Headquarters) (USS)  
Court-Martial Order No. \_\_\_\_\_  
[Note. The date must be the same as the date of the convening authority's action, if any.]  
(Grade) (Name) (SSN) (Armed Force)  
(Unit)

Arraignment was arraigned (at/on board ) on the following offenses at a court-martial convened by (this command) (Commander, \_\_\_\_\_).

Offenses **CHARGE I. ARTICLE 86. Plea: G. Finding: G.**  
Specification 1: Unauthorized absence from unit from 1 April 1984 to 31 May 1984.  
Plea: G. Finding: G.

[Note. Specifications may be reproduced verbatim or may be summarized. Specific factors, such as value, amount, and other circumstances which affect the maximum punishment should be indicated in a summarized specification. Other significant matters contained in the specification may be included. If the specification is copied verbatim, include any amendment made during trial. Similarly, information included in a summarized specification should reflect any amendment to that information made during the trial.]

Specification 2: Failure to repair on 18 March 1984. Plea: None entered. Finding: Dismissed on motion of defense for failure to state an offense.

[Note. If a finding is not entered to a specification because, for example, a motion to dismiss was granted, this should be noted where the finding would otherwise appear.]

**CHARGE II. ARTICLE 91. Plea: NG. Finding: NG, but G of a violation of ARTICLE 92.**

Specification: Disobedience of superior noncommissioned officer on 30 March 1984 by refusing to inspect sentinels on perimeter of bivouac site. Plea: NG. Finding: G, except for disobedience of superior noncommissioned officer, substituting failure to obey a lawful order to inspect sentinels on perimeter of bivouac site.

**CHARGE III. ARTICLE 112a. Plea: G. Finding: G.**

Specification 1: Wrongful possession of 150 grams of marijuana on 24 March 1984. Plea: G. Finding: G.

Specification 2: Wrongful use of marijuana while on duty as a sentinel on 24 March 1984. Plea: G. Finding G.



APPENDIX 11

Specification 3: Wrongful possession of heroin with intent to distribute on 24 March 1984. Plea: NG. Finding: G.

**CHARGE IV. ARTICLE 121. Plea: NG. Finding: G.**

Specification: Larceny of property of a value of \$150.00 on 27 March 1984. Plea: NG. Finding: G, except the word "steal," substituting "wrongfully appropriate."

Acquittal

If the accused was acquitted of all charges and specifications, the date of the acquittal should be shown: "The findings were announced on \_\_\_\_\_."

**SENTENCE**

Sentence adjudged on \_\_\_\_\_ : Dishonorable discharge, forfeiture of all pay and allowances, confinement for 2 years, and reduction to the lowest enlisted grade.

Action of convening authority

**ACTION**

[Note. Summarize or enter verbatim the action of the convening authority. Whether or not the action is recited verbatim, the heading, date, and signature block of the convening authority need not be copied from the action if the same heading and date appear at the top of this order and if the name and rank of the convening authority are shown in the authentication.]

Authentication

[Note. See R.C.M. 1114(e) concerning authentication of the order.]

Joint or common trial

[Note. In case of a joint or common trial, separate trial orders should be issued for each accused. The description of the offenses on which each accused was arraigned may, but need not, indicate that there was a co-accused.]

*b. Forms for supplementary orders promulgating results of affirming action*

[Note. Court-martial orders publishing the final results of cases in which the President or the Secretary concerned has taken final action are promulgated by departmental orders. In other cases, the final action may be promulgated by an appropriate convening authority, or by an officer exercising general court-martial jurisdiction over the accused at the time of final action, or by the Secretary concerned. The following sample forms may be used where such a promulgating order is published in the field. These forms are guides. Extreme care should be exercised in using them. If a sentence as ordered into execution or suspended by the convening authority is affirmed without modifications and there has been no modification of the findings, no supplementary promulgating order is required.]

Heading

\*See above.

Sentence

-Affirmed

In the (general) (special) court-martial case of (name, grade or rank, branch of service, and SSN of accused,) the sentence to bad-conduct discharge, forfeiture of, and confinement for, as promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_, (Headquarters) (Commandant \_\_\_\_\_, Naval Region) \_\_\_\_\_ dated \_\_\_\_\_, has been finally affirmed. Article 71(c) having been complied with, the bad-conduct discharge will be executed.

or

-Affirmed in part

In the (general) (special) court-martial case of (name, grade or rank, branch of

**FORMS FOR COURT-MARTIAL ORDERS  
(CASES REFERRED BEFORE 1 JANUARY 2019)**

*service, and SSN of accused,)* only so much of the sentence promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_, (Headquarters) (Commandant, \_\_\_\_\_ Naval Region) \_\_\_\_\_, dated \_\_\_\_\_, as provides for \_\_\_\_\_, has been finally affirmed. Article 71(c) having been complied with, the bad-conduct discharge will be executed.

or

In the (general) (special) court-martial case of (*name, grade or rank, branch of service, and SSN of accused,)* the findings of guilty of Charge II and its specification have been set aside and only so much of the sentence promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_, (Headquarters) (Commandant, \_\_\_\_\_, Naval Region) \_\_\_\_\_, dated \_\_\_\_\_, as provides for \_\_\_\_\_, has been finally affirmed. Article 71(c) having been complied with, the bad-conduct discharge will be executed.

or

Affirmed in part; prior order of execution set aside in part

In the (general) (special) court-martial case of (*name, grade or rank, branch of service, and SSN of accused,)* the proceedings of which are promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_, (Headquarters) (Commandant, \_\_\_\_\_ Naval Region) \_\_\_\_\_, dated \_\_\_\_\_, the findings of guilty of Charge I and its specification, and so much of the sentence as in excess of have been set aside and the sentence, as thus modified, has been finally affirmed. Article 71(c) having been complied with, all rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and that portion of the sentence so set aside will be restored.

Finding and sentence set aside

In the (general)(special) court-martial case of (*name, grade or rank, branch of service, and SSN, of accused,)* the findings of guilty and the sentence promulgated by (General) (Special) Court-Martial Order No. \_\_\_\_\_, (Headquarters) (Commandant, \_\_\_\_\_ Naval Region), \_\_\_\_\_, dated \_\_\_\_\_, were set aside on \_\_\_\_\_. (The charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence so set aside will be restored.) (A rehearing is ordered before another court-martial to be designated.)

Authentication

*See* R.C.M. 1114(e).

*c. Forms for orders remitting or suspending unexecuted portions of sentence*

Heading

*See a* above

Remissions; suspension  
*See* R.C.M. 1108

The unexecuted portion of the sentence to \_\_\_\_\_, in the case of (*Name, grade or rank, branch of service and SSN of accused,)* promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_, (this headquarters) (this ship) (Headquarters \_\_\_\_\_) (USS \_\_\_\_\_), \_\_\_\_\_, \_\_\_\_\_, is (remitted) (suspended for \_\_\_\_\_, months, at which time, unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted without further action).

Authentication

*See* R.C.M. 1114(e).

## APPENDIX 11

### d. Forms for orders vacating suspension

[Note. Orders promulgating the vacation of the suspension of a dismissal will be published by departmental orders of the Secretary concerned. Vacations of any other suspension of a general court-martial sentence, or of a special court-martial sentence that as approved and affirmed includes a bad-conduct discharge or confinement for one year, will be promulgated by the officer exercising general court-martial jurisdiction over the probationer (Article 72(b)). The vacation of suspension of any other sentence may be promulgated by an appropriate convening authority under Article 72(c). See R.C.M. 1109.]

Heading *See a above*

Vacation of Suspension So much of the order published in (General) (Special) (Summary) (Court-Martial Order No. \_\_\_\_\_) (the record of summary court-martial), (this headquarters) (this ship) (Headquarters \_\_\_\_\_) (USS \_\_\_\_\_), \_\_\_\_\_, in the case of (*name, grade or rank, branch of service, and SSN*), as suspends, effective \_\_\_\_\_, execution of the approved sentence to (a bad-conduct discharge) (confinement for (months) (years)) (forfeiture of \_\_\_\_\_), (and subsequently modified by (General) (Special) Court-Martial Order No. \_\_\_\_\_, (this headquarters) (this ship) (Headquarters \_\_\_\_\_) (USS \_\_\_\_\_), \_\_\_\_\_, is vacated. (The unexecuted portion of the sentence to will be executed.) (\_\_\_\_\_ is designated as the place of confinement.)

[Note. See R.C.M. 1113 concerning execution of the sentence.]

Authentication *See R.C.M. 1114(e).*

### e. Forms for orders terminating deferment

[Note: When any deferment previously granted is rescinded after the convening authority has taken action in the case, such rescission will be promulgated in a supplementary order. See R.C.M. 1101(c)(7)(C).]

Heading *See a above*

Rescission of deferment The deferment of that portion of the sentence that provides for confinement for (months) (years) published in (General) (Special) Court-Martial Order \_\_\_\_\_ (this headquarters) (this ship) (Headquarters \_\_\_\_\_) (USS \_\_\_\_\_), \_\_\_\_\_, in the case of (*name, grade or rank, branch of service, and SSN of accused*) (is rescinded) (was rescinded on \_\_\_\_\_.) The portion of the sentence to confinement will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

Authentication *See R.C.M. 1114(e).*

[Note. Deferment may be terminated by an appropriate authority once the conviction is final under Article 71(c) and R.C.M. 1208(a). See R.C.M. 1101(c)(7).]

Heading *See a above*

In the (general) (special) court-martial case of (*name, grade or rank, branch of service, and SSN of accused*), the sentence to confinement (and \_\_\_\_\_), as

**FORMS FOR COURT-MARTIAL ORDERS  
(CASES REFERRED BEFORE 1 JANUARY 2019)**

promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_, (Headquarters) (Commandant, \_\_\_\_\_ Naval Region) \_\_\_\_\_, dated \_\_\_\_\_, has been finally affirmed. Service of confinement was deferred on \_\_\_\_\_. Article 71(c) having been complied with, the (bad-conduct discharge and the) sentence to confinement will be executed. (\_\_\_\_\_ is designated as the place of confinement.)

Authentication

*See* R.C.M. 1114(e).

THIS PAGE LEFT INTENTIONALLY BLANK

## APPENDIX 12 MAXIMUM PUNISHMENT CHART

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
77	Principals ( <i>see</i> Part IV, Para. 1 and pertinent offenses)			
78	Accessory after the fact ( <i>see</i> Part IV, Para. 2.d.)			
79	Conviction of offense charged, lesser included offenses, and attempts ( <i>see</i> Part IV, Para. 3 and pertinent offenses)			
80	Attempts ( <i>see</i> Part IV, Para. 4.d.)			
81	Conspiracy ( <i>see</i> Part IV, Para. 5.d.)			
82	Soliciting commission of offenses			
	Solicitation of espionage . . . . .	DD, BCD	Life <sup>4</sup>	Total
	Solicitation of desertion; mutiny or sedition; misbehavior before the enemy ( <i>see</i> Part IV, Para 6.d.2.)			
	Solicitation of all other offenses ( <i>see</i> Part IV, Para 6.d.3.)			
83	Malingering			
	Feigning illness, physical disablement, mental lapse, or mental derangement			
	In time of war, or in a hostile pay zone . . . . .	DD, BCD	3 yrs.	Total
	Other . . . . .	DD, BCD	1 yr.	Total
	Intentional self-inflicted injury			
	In time of war, or in a hostile fire pay zone . . . . .	DD, BCD	10 yrs.	Total
	Other . . . . .	DD, BCD	5 yrs.	Total
84	Breach of medical quarantine			
	Breach of medical quarantine involving a quarantinable communicable disease defined by 42 CFR 70.1 . . . . .	DD, BCD	1 yr.	Total
	Breach of medical quarantine . . . . .	BCD	6 mos.	2/3 6 mos.
85	Desertion			
	In time of war . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
	Intent to avoid hazardous duty or to shirk important services <sup>1</sup> . . . . .	DD, BCD	5 yrs. <sup>1</sup>	Total
	Other cases			
	Terminated by apprehension . . . . .	DD, BCD	3 yrs. <sup>1</sup>	Total
	Terminated otherwise . . . . .	DD, BCD	2 yrs. <sup>1</sup>	Total
86	Absence without leave			
	Failing to go, going from appointed place of duty . . . . .	None	1 mo.	2/3 1 mo.
	Absence from unit, organization, etc.			
	Not more than 3 days . . . . .	None	1 mo.	2/3 1 mo.
	More than 3, not more than 30 days . . . . .	None	6 mos.	2/3 6 mos.
	More than 30 days . . . . .	DD, BCD	1 yr.	Total
	More than 30 days and terminated by apprehension . . . . .	DD, BCD	18 mos.	Total
	Absence from guard or watch . . . . .	None	3 mos.	2/3 3 mos.
	Absence from guard or watch with intent to abandon . . . . .	BCD	6 mos.	Total
	Absence with intent to avoid maneuvers or field exercises . . . . .	BCD	6 mos.	Total
87	Missing movement; jumping from vessel			
	Missing movement			
	Design . . . . .	DD, BCD	2 yrs.	Total
	Neglect . . . . .	BCD	1 yr.	Total
	Jumping from vessel into the water . . . . .	BCD	6 mos.	Total
87a	Resistance, flight, breach of arrest, and escape			
	Resisting apprehension . . . . .	BCD	1 yr.	Total
	Flight from apprehension . . . . .	BCD	1 yr.	Total
	Breaking arrest . . . . .	BCD	6 mos.	Total
	Escape from custody, pretrial confinement, or confinement pursuant to Article 15 . . . . .	DD, BCD	1 yr.	Total
	Escape from post-trial confinement . . . . .	DD, BCD	5 yrs.	Total
87b	Offenses against correctional custody and restriction			
	Escape from correctional custody . . . . .	DD, BCD	1 yr.	Total
	Breach of correctional custody . . . . .	BCD	6 mos.	Total
	Breach of restriction . . . . .	None	1 mo.	2/3 1 mo.
88	Contempt toward officials . . . . .	Dismissal	1 yr.	Total

## APPENDIX 12

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
89	Disrespect toward superior commissioned officer; assault of superior commissioned officer			
	Disrespect toward superior commissioned officer			
	In command . . . . .	BCD	1 yr.	Total
	In rank . . . . .	BCD	6 mos.	Total
	Striking, drawing or lifting up a weapon or offering any violence to superior commissioned officer in execution of office			
	In time or war . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
	Other <sup>1</sup> . . . . .	DD, BCD	10 yrs. <sup>1</sup>	Total
90	Willfully disobeying superior commissioned officer			
	In time of war . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
	Other <sup>1</sup> . . . . .	DD, BCD	5 yrs. <sup>1</sup>	Total
91	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer			
	Striking or assaulting:			
	Warrant officer . . . . .	DD, BCD	5 yrs.	Total
	Superior noncommissioned or petty officer . . . . .	DD, BCD	3 yrs.	Total
	Other noncommissioned or petty officer . . . . .	DD, BCD	1 yr.	Total
	Willfully disobeying:			
	Warrant officer . . . . .	DD, BCD	2 yrs.	Total
	Noncommissioned or petty officer . . . . .	BCD	1 yr.	Total
	Contempt or disrespect:			
	Warrant officer . . . . .	BCD	9 mos.	Total
	Superior noncommissioned or petty officer . . . . .	BCD	6 mos.	Total
	Other noncommissioned or petty officer . . . . .	None	3 mos.	2/3 3 mos.
92	Failure to obey order or regulation			
	Violation of or failure to obey general order or regulation <sup>2</sup> . . . . .	DD, BCD	2 yrs.	Total
	Violation of or failure to obey other lawful order <sup>2</sup> . . . . .	BCD	6 mos.	Total
	Dereliction in performance of duties			
	Through neglect or culpable inefficiency . . . . .	None	3 mos.	2/3 3 mos.
	Through neglect or culpable inefficiency resulting in death or grievous bodily harm . . . . .	BCD	18 mos.	Total
	Willful . . . . .	BCD	6 mos.	Total
	Willful dereliction of duty resulting in death or grievous bodily harm . . . . .	DD, BCD	2 yrs.	Total
93	Cruelty and maltreatment . . . . .	DD, BCD	3 yrs.	Total
93a	Prohibited activities with military recruit or trainee by person in position of special trust . . . . .	DD, BCD	5 yrs.	Total
94	Mutiny or sedition . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
95	Offenses by sentinel or lookout			
	Drunk or sleeping on post, or leaving post before being relieved			
	In time of war . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
	While receiving special pay under 37 USC 310 . . . . .	DD, BCD	10 yrs.	Total
	In all other places . . . . .	DD, BCD	1 yr.	Total
	Loitering or wrongfully sitting on post by a sentinel or lookout			
	In time of war or while receiving special pay under 37 USC 310 . . . . .	DD, BCD	2 yrs.	Total
	Other cases . . . . .	BCD	6 mos.	Total
95a	Disrespect toward sentinel or lookout . . . . .	None	3 mos.	2/3 3 mos.
96	Release of prisoner without authority; drinking with prisoner			
	Releasing a prisoner without authority . . . . .	DD, BCD	2 yrs.	Total
	Allowing a prisoner to escape through neglect . . . . .	BCD	2 yrs.	Total
	Allowing a prisoner to escape through design . . . . .	DD, BCD	5 yrs.	Total
	Drinking with prisoner . . . . .	None	1 yr.	2/3 1 yr.
97	Unlawful Detention . . . . .	DD, BCD	3 yrs.	Total
98	Misconduct as prisoner . . . . .	DD, BCD	Life <sup>4</sup>	Total
99	Misbehavior before the enemy . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
100	Subordinate compelling surrender . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
101	Improper use of countersign . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total
102	Forcing a safeguard . . . . .	Death, DD, BCD	Life <sup>4</sup>	Total

## MAXIMUM PUNISHMENT CHART

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
103	Spies .....	Death, DD, BCD	Life <sup>4</sup>	Total
103a	Espionage			
	Espionage as a capital offense .....	Death, DD, BCD	Life <sup>4</sup>	Total
	Espionage or attempted espionage .....	DD, BCD	Life <sup>4</sup>	Total
103b	Aiding the enemy .....	Death, DD, BCD	Life <sup>4</sup>	Total
104	Public records offenses .....	DD, BCD	3 yrs.	Total
104a	Fraudulent enlistment, appointment, or separation			
	Fraudulent enlistment or appointment .....	DD, BCD	2 yrs.	Total
	Fraudulent separation .....	DD, BCD	5 yrs.	Total
104b	Unlawful enlistment, appointment, or separation .....	DD, BCD	5 yrs.	Total
105	Forgery .....	DD, BCD	5 yrs.	Total
105a	False or unauthorized pass offenses			
	Possessing or using with intent to defend or deceive, or making, altering, counterfeiting, tampering with, or selling .....	DD, BCD	3 yrs.	Total
	All other cases .....	BCD	6 mos.	Total
106	Impersonation of officer, noncommissioned or petty officer, or agent or official			
	With intent to defraud .....	DD, BCD	3 yrs.	Total
	All other cases .....	BCD	6 mos.	Total
106a	Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button			
	Wrongful wearing of the Medal of Honor; Distinguished Service Cross; Navy Cross; Air Force Cross; Silver Star; Purple Heart; or a valor device on any personal award .....	BDC	1 yr.	Total
	All other cases .....	BCD	6 mos.	Total
107	False official statements; false swearing			
	False official statement .....	DD, BCD	5 yrs.	Total
	False swearing .....	DD, BCD	3 yrs.	Total
107a	Parole violation .....	BCD	6 mos.	2/3 6 mos.
108	Military property; loss, damage, destruction, disposition			
	Selling or otherwise disposing			
	Of a value of \$1,000 or less .....	BCD	1 yr.	Total
	Of a value of more than \$1,000 or any firearm or explosive .....	DD, BCD	10 yrs.	Total
	Damaging, destroying, losing or suffering to be lost, damaged, destroyed, sold, or wrongfully disposed:			
	Through neglect, of a value or damage of			
	\$1,000 or less .....	None	6 mos.	2/3 6 mos.
	More than \$1,000 .....	BCD	1 yr.	Total
	Willfully, of a value or damage of			
	\$1,000 or less .....	BCD	1 yr.	Total
	More than \$1,000, or of any firearm or explosive .....	DD, BCD	10 yrs.	Total
108a	Captured or abandoned property			
	Captured, abandoned property; failure to secure, etc.			
	Of a value of \$1,000 or less .....	BCD	6 mos.	Total
	Of a value of more than \$1,000 or any firearm or explosive .....	DD, BCD	5 yrs.	Total
	Looting or pillaging .....	DD, BCD	Life <sup>4</sup>	Total
109	Property other than military property of United States: Waste, spoilage, or destruction			
	Wasting or spoiling, non-military property – real property of a value of:			
	\$1,000 or less .....	BCD	1 yr.	Total
	More than \$1,000 .....	DD, BCD	5 yrs.	Total
	Damaging any property other than military property of the United States of:			
	\$1,000 or less .....	BCD	1 yr.	Total
	More than \$1,000 .....	DD, BCD	5 yrs.	Total
	Destroying any property other than military property of the United States valued at:			
	\$1,000 or less .....	BCD	1 yr.	Total



## APPENDIX 12

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
	More than \$1,000 .....	DD, BCD	5 yrs.	Total
109a	Mail matter: Wrongful taking, opening, etc. ....	DD, BCD	5 yrs.	Total
110	Improper hazarding of vessel or aircraft			
	Willfully and wrongfully .....	Death, DD, BCD	Life <sup>4</sup>	Total
	Negligently .....	DD, BCD	2 yrs.	Total
111	Leaving scene of vehicle accident .....	BCD	6 mos.	Total
112	Drunkenness and other incapacitation offenses			
	Drunk on duty .....	BCD	9 mos.	Total
	Incapacitation for duty from drunkenness or drug use .....	None	3 mos.	2/3 3 mos.
	Drunk prisoner .....	None	3 mos.	2/3 3 mos.
112a	Wrongful use, possession, etc., of controlled substances			
	Wrongful use, possession, manufacture, or introduction of controlled substance			
	Amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana (except possession of less than 30 grams or use of marijuana), methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, III controlled substances .....	DD, BCD	5 yrs.	Total
	Marijuana (possession of less than 30 grams or use), phenobarbital, and Schedule IV and V controlled substances .....	DD, BCD	2 yrs.	Total
	Wrongful distribution, possession, manufacture, or introduction of controlled substance with intent to distribute, or wrongful importation or exportation of a controlled substance			
	Amphetamine, cocaine, heroin, lysergic and diethylamide, marijuana, methamphetamine, opium, phencyclidine, secobarbital, and schedule I, II, and III controlled substances .....	DD, BCD	15 yrs.	Total
	Phenobarbital and Schedule IV and V controlled substances .....	DD, BCD	10 yrs.	Total
113	Drunken or reckless operation of a vehicle, aircraft, or vessel			
	Resulting in personal injury .....	DD, BCD	18 mos.	Total
	No personal injury involved .....	BCD	6 mos.	Total
114	Endangerment offenses .....	DD, BCD	1 yr.	Total
115	Communicating threats			
	Threats and false threats generally .....	DD, BCD	3 yrs.	Total
	Threats and false threats concerning use of explosives, etc. ....	DD, BCD	10 yrs.	Total
116	Riot or breach of peace			
	Riot .....	DD, BCD	10 yrs.	Total
	Breach of the peace .....	None	6 mos.	2/3 6 mos.
117	Provoking speeches or gestures .....	None	6 mos.	2/3 6 mos.
118	Murder			
	Article 118(1) or (4) .....	Death, mandatory minimum life with parole, DD, BCD	Life <sup>4</sup>	Total
	Article 118(2) or (3) .....	DD, BCD	Life <sup>4</sup>	Total
119	Manslaughter			
	Voluntary manslaughter .....	DD, BCD	15 yrs.	Total
	Involuntary manslaughter .....	DD, BCD	10 yrs.	Total
	Voluntary manslaughter of a child under 16 years of age .....	DD, BCD	20 yrs.	Total
	Involuntary manslaughter of a child under 16 years of age .....	DD, BCD	15 yrs.	Total
119a	Death or injury of an unborn child ( <i>see</i> Part IV, para 58.d.)			
119a	Injuring or killing an unborn child .....	Such punishment, other than death, as a court-martial may direct, but such punishment shall be consistent with the punishment had the bodily injury or death occurred to the unborn child's mother.		

## MAXIMUM PUNISHMENT CHART

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
	Attempting to kill an unborn child . . . . .	Such punishment, other than death, as a court-martial may direct, but such punishment shall be consistent with the punishment had the attempt been made to kill the unborn child's mother.		
	Intentionally killing an unborn child . . . . .	Such punishment, other than death, as a court-martial may direct, but such punishment shall be consistent with the punishment had the death occurred to the unborn child's mother.		
119b	Child endangerment			
	Endangerment by design resulting in grievous bodily harm . . . . .	DD, BCD	8 yrs.	Total
	Endangerment by design resulting in harm . . . . .	DD, BCD	5 yrs.	Total
	Other cases by design . . . . .	DD, BCD	4 yrs.	Total
	Endangerment by culpable negligence resulting in grievous bodily harm . . . . .	DD, BCD	3 yrs.	Total
	Endangerment by culpable negligence resulting in harm . . . . .	BCD	2 yrs.	Total
	Other cases by culpable negligence . . . . .	BCD	1 yr.	Total
120	Rape and sexual assault generally			
	Rape . . . . .	<u>Mandatory DD</u> <sup>5</sup>	Life <sup>4</sup>	Total
	Sexual assault . . . . .	<u>Mandatory DD</u> <sup>5</sup>	30 yrs.	Total
	Aggravated sexual contact . . . . .	DD, BCD	20 yrs.	Total
	Abusive sexual contact . . . . .	DD, BCD	7 yrs.	Total
120a	Mails: deposit of obscene matter . . . . .	DD, BCD	3 yrs.	Total
120b	Rape and sexual assault of a child			
	Rape of a child . . . . .	<u>Mandatory DD</u> <sup>5</sup>	Life <sup>4</sup>	Total
	Sexual assault of a child . . . . .	<u>Mandatory DD</u> <sup>5</sup>	30 yrs.	Total
	Sexual abuse of a child			
	Cases involving sexual contact . . . . .	DD, BCD	20 yrs.	Total
	Other cases . . . . .	DD, BCD	15 yrs.	Total
120c	Other sexual misconduct			
	Indecent viewing . . . . .	DD, BCD	1 yr.	Total
	Indecent recording . . . . .	DD, BCD	5 yrs.	Total
	Broadcasting or distributing of an indecent recording . . . . .	DD, BCD	7 yrs.	Total
	Forcible pandering . . . . .	DD, BCD	20 yrs.	Total
	Indecent exposure . . . . .	DD, BCD	1 yr.	Total
	[Note: The Article 120, 120b, and 120c maximum punishments apply to offenses committed after 1 January 2019. See Appendices 17, 20, 21, and 20.]			
121	Larceny and wrongful appropriation			
	Larceny			
	Property of a value of \$1,000 or less . . . . .	BCD	1 yr.	Total
	Military property of a value of more than \$1,000 or of any military motor vehicle, aircraft, vessel, firearm, or explosive. . . . .	DD, BCD	10 yrs.	Total
	Property other than military property of a value of more than \$1,000 or any motor vehicle, aircraft, vessel, firearm, or explosive not included in subparagraph d.(1)(b) . . . . .	DD, BCD	5 yrs.	Total
	Wrongful appropriation			

## APPENDIX 12

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
	Of a value of \$1,000 or less . . . . .	None	3 mos.	2/3 3 mos.
	Of a value of more than \$1,000 . . . . .	BCD	1 yr.	Total
	Of any motor vehicle, aircraft, vessel, firearm, explosive, or military property of a value of more than \$1,000 . . . . .	DD, BCD	2 yrs.	Total
121a	Fraudulent use of credit cards, debit cards, and other access devices			
	Fraudulent use of a credit card, debit card, or other access device to obtain property of a value of \$1,000 or less . . . . .	BCD	10 yrs.	Total
	Fraudulent use during any 1-year period of a credit card, debit card, or other access device to obtain property the aggregate value of which is more than \$1,000 . . . . .	DD, BCD	15 yrs.	Total
121b	False pretenses to obtain services			
	Of a value of \$1,000 or less . . . . .	BCD	1 yr.	Total
	Of a value of more than \$1,000 . . . . .	DD, BCD	5 yrs.	Total
122	Robbery			
	When committed with a dangerous weapon . . . . .	DD, BCD	15 yrs.	Total
	All other cases . . . . .	DD, BCD	10 yrs.	Total
122a	Receiving stolen property			
	Receiving, buying, or concealing stolen property of a value of \$1,000 or less . . . . .	BCD	1 yr.	Total
	Receiving, buying, or concealing stolen property of a value of more than \$1,000 . . . . .	DD, BCD	3 yrs.	Total
123	Offenses concerning Government computers			
	Unauthorized distribution of classified information obtained from a Government computer . . . . .	DD, BCD	10 yrs.	Total
	Unauthorized access of a Government computer and obtaining classified or other protected information . . . . .	DD, BCD	5 yrs.	Total
	Causing damage to a Government computer . . . . .	DD, BCD	10 yrs.	Total
123a	Making, drawing, or uttering check, draft, or order without sufficient funds			
	For the procurement of any article or thing of value, with intent to defraud, in the face amount of:			
	\$1,000 or less . . . . .	BCD	6 mos.	Total
	More than \$1,000 . . . . .	DD, BCD	5 yrs.	Total
	For the payment of any past due obligation, or for any other purpose, with intent to deceive . . . . .	BCD	6 mos.	Total
124	Frauds against the United States			
	Article 124(1) and (2) . . . . .	DD, BCD	5 yrs.	Total
	Article 124(3) and (4)			
	When amount is \$1,000 or less . . . . .	BCD	6 mos.	Total
	When amount is more than \$1,000 . . . . .	DD, BCD	5 yrs.	Total
124a	Bribery . . . . .	DD, BCD	5 yrs.	Total
124b	Graft . . . . .	DD, BCD	3 yrs.	Total
125	Kidnapping . . . . .	DD, BCD	Life <sup>4</sup>	Total
126	Arson; burning property with intent to defraud			
	Aggravated arson . . . . .	DD, BCD	25 yrs.	Total
	Simple arson, where property value is:			
	\$1,000 or less . . . . .	DD, BCD	5 yrs.	Total
	More than \$1,000 . . . . .	DD, BCD	10 yrs.	Total
	Burning with intent to defraud . . . . .	DD, BCD	10 yrs.	Total
127	Extortion . . . . .	DD, BCD	3 yrs.	Total
128	Assault			
	Simple assault			
	Generally . . . . .	None	3 mos.	2/3 3 mos.
	When committed with an unloaded firearm . . . . .	DD, BCD	3 yrs.	Total
	Battery			
	Assault consummated by a battery . . . . .	BCD	6 mos.	Total
	Assault upon a commissioned officer of the armed forces of the United States or of a friendly foreign power, not in the execution of office . . . . .	DD, BCD	3 yrs.	Total

## MAXIMUM PUNISHMENT CHART

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
	Assault upon a warrant officer, not in the execution of office . . .	DD, BCD	18 mos.	Total
	Assault upon a noncommissioned or petty officer, not in the execution of office . . . . .	BCD	6 mos.	Total
	Assault upon a sentinel or lookout in the execution of duty, or upon any person who, in the execution of office, is performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties . . . . .	DD, BCD	3 yrs.	Total
	Assault consummated by a battery upon a child under 16 years, spouse, intimate partner, or an immediate family member . . .	DD, BCD	2 yrs.	Total
	Aggravated assault			
	Aggravated assault with a dangerous weapon			
	When committed with a loaded firearm . . . . .	DD, BCD	8 yrs.	Total
	When committed upon a child under the age of 16 years, spouse, intimate partner, or an immediate family member.	DD, BCD	5 yrs.	Total
	Other cases . . . . .	DD, BCD	3 yrs.	Total
	Aggravated assault in which substantial bodily harm is inflicted			
	When the injury is inflicted with a loaded firearm . . . . .	DD, BCD	8 yrs.	Total
	When the injury is inflicted upon a child under the age of 16 years, spouse, intimate partner, or an immediate family member . . . . .	DD, BCD	6 yrs.	Total
	Other cases . . . . .	DD, BCD	3 yrs.	Total
	Aggravated assault in which grievous bodily harm is inflicted			
	When the injury is inflicted with a loaded firearm . . . . .	DD, BCD	10 yrs.	Total
	When the injury is inflicted upon a child under the age of 16 years, spouse, intimate partner, or an immediate family member . . . . .	DD, BCD	8 yrs.	Total
	Other cases . . . . .	DD, BCD	5 yrs.	Total
	Assault with intent to commit specified offenses			
	Assault with the intent to commit murder, rape, or rape of a child	DD, BCD	20 yrs.	Total
	Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, and kidnapping . . . . .	DD, BCD	10 yrs.	Total
128a	Maiming . . . . .	DD, BCD	20 yrs.	Total
129	Burglary; unlawful entry			
	Burglary (with intent to commit an offense punishable under Article 118-120, 120b-121, 122, 125-128a, or 130) . . . . .	DD, BCD	10 yrs.	Total
	Burglary (with intent to commit any other offense punishable under the UCMJ) . . . . .	DD, BCD	5 yrs.	Total
	Unlawful entry . . . . .	BCD	6 mos.	Total
130	Stalking . . . . .	DD, BCD	3 yrs.	Total
131	Perjury . . . . .	DD, BCD	5 yrs.	Total
131a	Subornation of perjury . . . . .	DD, BCD	5 yrs.	Total
131b	Obstructing justice . . . . .	DD, BCD	5 yrs.	Total
131c	Misprision of serious offense . . . . .	DD, BCD	3 yrs.	Total
131d	Wrongful refusal to testify . . . . .	DD, BCD	5 yrs.	Total
131e	Prevention of authorized seizure of property . . . . .	DD, BCD	5 yrs.	Total
131f	Noncompliance with procedural rules			
	Unnecessary delay in disposing of case . . . . .	BCD	6 mos.	Total
	Knowingly and intentionally failing to enforce or comply with provisions of the UCMJ . . . . .	DD, BCD	5 yrs.	Total
131g	Wrongful interference with adverse administrative proceedings . . . . .	DD, BCD	5 yrs.	Total
132	Retaliation . . . . .	DD, BCD	3 yrs.	Total
133	Conduct unbecoming an officer and a gentleman . . . . .	Dismissal	1 yr. or as prescribed	Total
134	Animal abuse			
	Abuse, neglect, or abandonment of an animal . . . . .	BCD	1 yr.	Total
	Abuse, neglect, or abandonment of a public animal . . . . .	BCD	2 yrs.	Total
	Sexual act with an animal or cases where the accused caused the serious injury or death of the animal . . . . .	DD, BCD	5 yrs.	Total
	Bigamy . . . . .	DD, BCD	2 yrs.	Total

## APPENDIX 12

This chart was compiled for convenience purposes only and is not the authority for specific punishments. See Part IV and R.C.M. 1003 for specific limits and additional information concerning maximum punishments.

<i>Article</i>	<i>Offense</i>	<i>Discharge</i>	<i>Confinement</i>	<i>Forfeitures</i>
	Check, worthless making and uttering – by dishonorably failing to maintain funds . . . . .	BCD	6 mos.	Total
	Child pornography			
	Possessing, receiving, or viewing child pornography . . . . .	DD, BCD	10 yrs.	Total
	Possessing child pornography with intent to distribute . . . . .	DD, BCD	15 yrs.	Total
	Distributing child pornography . . . . .	DD, BCD	20 yrs.	Total
	Producing child pornography . . . . .	DD, BCD	30 yrs.	Total
	Debt, dishonorably failing to pay . . . . .	BCD	6 mos.	Total
	Disloyal statements . . . . .	DD, BCD	3 yrs.	Total
	Disorderly conduct, drunkenness			
	Disorderly conduct			
	Under such circumstances as to bring discredit upon the military Service . . . . .	None	4 mos.	2/3 4 mos.
	Other cases . . . . .	None	1 mo.	2/3 1 mo.
	Drunkenness			
	Aboard ship or under such circumstances as to bring discredit upon the military Service . . . . .	None	3 mos.	2/3 3 mos.
	Other cases . . . . .	None	1 mo.	2/3 1 mo.
	Drunk and disorderly			
	Aboard ship . . . . .	BCD	6 mos.	Total
	Under such circumstances as to bring discredit upon the military Service . . . . .	None	6 mos.	2/3 6 mos.
	Other cases . . . . .	None	3 mos.	2/3 3 mos.
	Extramarital sexual conduct . . . . .	DD, BCD	1 yr.	Total
	Firearm, discharging – through negligence . . . . .	None	3 mos.	2/3 3 mos.
	Fraternization . . . . .	Dismissal	2 yrs.	Total
	Gambling with subordinate . . . . .	None	3 mos.	2/3 3 mos.
	Homicide, negligent . . . . .	DD, BCD	3 yrs.	Total
	Indecent conduct . . . . .	DD, BCD	5 yrs.	Total
	Indecent language			
	Communicated to any child under the age of 16 years . . . . .	DD, BCD	2 yrs.	Total
	Other cases . . . . .	BCD	6 mos.	Total
	Pandering and prostitution			
	Prostitution and patronizing a prostitute . . . . .	DD, BCD	1 yr.	Total
	Pandering . . . . .	DD, BCD	5 yrs.	Total
	Self-injury without intent to avoid service			
	In time of war or in a hostile fire pay zone . . . . .	DD, BCD	5 yrs.	Total
	Intentional self-inflicted injury . . . . .	DD, BCD	2 yrs.	Total
134	Straggling . . . . .	None	3 mos.	2/3 3 mos.

**Notes:**

- <sup>1</sup> Suspended in time of war
- <sup>2</sup> See paragraph 18d(1) & (2) Note, Part IV
- <sup>3</sup> When any offense under paragraph 50, Part IV, is committed: while the accused is on duty as a sentinel or lookout; on board a vessel or aircraft used by or under the control of the armed forces; in or at a missile launch facility used by or under the control of the armed forces; while receiving special pay under 37 U.S.C. sec. 310; in time of war; or in a confinement facility used by or under the control of the armed forces, the maximum period of confinement authorized for such offense shall be increase by 5 years.
- <sup>4</sup> With or without the eligibility for parole.
- <sup>5</sup> A dishonorable discharge may be reduced to a bad-conduct discharge by the convening authority in accordance with a plea agreement.

## APPENDIX 12A

### PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES

This Appendix contains the list of lesser included offenses prescribed by the President in EO Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018) under Article 79(b)(2) as “reasonably included” in the greater offense. See Part IV, paragraph 3.b. of this Manual for an explanation regarding the offenses designated under Article 79(b)(2). This is not an exhaustive list of lesser included offenses. For offenses that may or may not be lesser included offenses, see R.C.M. 307(c)(3) and its accompanying Discussion regarding charging in the alternative.

<i>Article</i>	<i>Offense</i>	<b>Lesser Included Offense</b>
84	Breach of medical quarantine	Art. 87b – Breach of restriction
85	Desertion	
	<i>-Desertion with intent to remain away permanently</i>	Art. 86 – Absence without leave
	<i>-Desertion with intent to avoid hazardous duty or shirk important service</i>	Art. 86 – Absence without leave
	<i>-Desertion before notice of acceptance of resignation</i>	Art. 86 – Absence without leave
	<i>-Attempted desertion</i>	Art. 86 – Absence without leave
87	Missing movement; jumping from vessel	
	<i>-Missing movement by design</i>	Art. 86 – Absence without leave Art. 87 – Missing movement by neglect
	<i>-Missing movement by neglect</i>	Art. 86 – Absence without leave
87b	Offenses against correctional custody and restriction	
	<i>-Escape from correctional custody</i>	Art. 87b – Breach of correctional custody
89	Disrespect toward superior commissioned officer; assault of superior commissioned officer	
	<i>-Striking or assaulting superior commissioned officer</i>	Art. 128 – Simple assault Art. 128 – Assault consummated by a battery Art. 128 – Assault upon a commissioned officer not in the execution of office

**APPENDIX 12A**

90	Willfully disobeying superior commissioned officer	Art. 89 – Disrespect toward superior commissioned officer Art. 92 – Failure to obey lawful order
91	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer	
	<i>-Striking or assaulting a warrant, noncommissioned, or petty officer in the execution of office</i>	Art. 128 – Simple assault Art. 128 – Assault consummated by a battery Art. 128 – Assault upon a warrant, noncommissioned, or petty officer not in the execution of office
	<i>-Disobeying a warrant, noncommissioned, or petty officer</i>	Art. 92 – Failure to obey lawful order
94	Mutiny or sedition	
	<i>-Mutiny by creating violence or disturbance</i>	Art. 94 – Attempted mutiny Art. 116 – Breach of peace
	<i>-Mutiny by refusing to obey orders or perform duty</i>	Art. 92 – Failure to obey order or regulation Art. 92 – Dereliction of duty Art. Art. 94 – Attempted mutiny
	<i>-Sedition</i>	Art. 116 –Breach of peace
95	Offenses by sentinel or lookout	
	<i>-Drunk on post</i>	Art. 92 – Dereliction of duty Art. 112 – Drunk on duty
	<i>-Sleeping on post</i>	Art. 92 – Dereliction of duty
	<i>-Leaving post</i>	Art. 86 – Going from appointed place of duty Art. 92 – Dereliction of duty
	<i>-Loitering or wrongfully sitting on post</i>	Art. 92 – Dereliction of duty
96	Release of prisoner without authority; drinking with prisoner	
	<i>-Allowing a prisoner to escape through design</i>	Art. 96 – Allowing a prisoner to escape through neglect

**PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES**

99	Misbehavior before the enemy	
	<i>-Running away</i>	Art. 86 – Absence without leave; going from appointed place of duty
	<i>-Endangering safety of a command, unit, place, ship, or military property through disobedience</i>	Art. 92 – Failure to obey lawful order Art. 92 – Dereliction in the performance of duties
	<i>-Endangering safety of a command, unit, place, ship, or military property through neglect or intentional misconduct</i>	Art. 92 – Dereliction in the performance of duties
	<i>-Casting away arms or ammunition</i>	Art. 108 – Military property of the United States – loss or wrongful disposition
	<i>-Cowardly conduct</i>	
	<i>-Quitting place of duty to plunder or pillage</i>	Art. 86 – Going from appointed place of duty
100	Subordinate compelling surrender	
	<i>-Compelling surrender</i>	Art. 100 – Attempting to compel surrender
103a	Espionage	Art. 103a – Attempted espionage
103b	Aiding the enemy	
	<i>-Aiding the enemy</i>	Art. 103b – Attempting to aid the enemy
105a	False or unauthorized pass offenses	
	<i>-Wrongful making, altering, counterfeiting, or tampering with a military or official pass, permit, discharge certificate, or identification card</i>	Art. 105a – Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card
	<i>-Wrongful sale, gift, loan, or disposition of a military or official pass, permit, discharge certificate, or identification card</i>	Art. 105a – Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card



**APPENDIX 12A**

	<i>-Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, with the intent to defraud or deceive</i>	Art. 105a – Wrongful use or possession of a false or unauthorized military or official pass, permit, discharge certificate, or identification card without the intent to defraud or deceive
108	Military property of the United States – Loss, damage, destruction, or wrongful disposition	
	<i>-Willfully damaging military property</i>	Art. 108 – Damaging military property through neglect Art. 109 – Willfully damaging non- military property
	<i>-Willfully destroying military property</i>	Art. 108 – Destroying military property through neglect Art. 108 – Damaging military property through neglect Art. 108 – Willfully damaging military property Art. 109 – Willfully destroying non- military property Art. 109 – Willfully damaging non- military property
	<i>-Willfully losing military property</i>	Art. 108 – Through neglect, losing military property
	<i>-Willfully suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of</i>	Art. 108 – Through neglect, suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of
109a	Mail matter: wrongful taking, opening, etc.	
	<i>-Taking</i>	Art. 121 – Larceny; wrongful appropriation
	<i>-Opening, secreting, destroying, or stealing</i>	Art. 121 – Larceny; wrongful appropriation

**PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES**

110	Improper hazarding of vessel or aircraft	
	<i>-Willfully and wrongfully causing or suffering a vessel or aircraft to be hazarded</i>	Art. 110 – Negligently causing or suffering a vessel or aircraft to be hazarded
112	Drunkenness and other incapacitation offenses	
	<i>-Drunk on duty</i>	Art. 92 – Dereliction of duty
	<i>-Incapacitation for duty from drunkenness or drug use</i>	Art. 92 – Dereliction of duty
112a	Wrongful use, possession, etc., of controlled substances	
	<i>-Wrongful use of controlled substance</i>	Art. 112a – Wrongful possession of controlled substance
	<i>-Wrongful distribution of controlled substance</i>	Art. 112a – Wrongful possession of controlled substance Art. 112a – Wrongful possession with intent to distribute
	<i>-Wrongful introduction of a controlled substance</i>	Art. 112a – Wrongful possession of controlled substance
	<i>-Wrongful manufacture of a controlled substance</i>	Art. 112a – Wrongful possession of controlled substance
	<i>-Wrongful possession, manufacture, or introduction of a controlled substance with intent to distribute</i>	Art. 112a – Wrongful possession, manufacture, or introduction of controlled substance
115	Communicating threats	
	<i>-Threat to use explosive, etc.</i>	Art. 115 – Communicating threats generally
116	Riot or breach of peace	
	<i>-Riot</i>	Art. 116 – Breach of peace
118	Murder	

**APPENDIX 12A**

	<i>-Premeditated murder</i>	Art. 118 – Intent to kill or inflict great bodily harm Art. 118 – Act inherently dangerous to another Art. 119 –Voluntary manslaughter
	<i>-Intent to kill or inflict great bodily harm</i>	Art. 119 –Voluntary manslaughter
	<i>-During certain offenses</i>	Art. 119 –Voluntary manslaughter
119	Manslaughter	
	<i>-Voluntary manslaughter</i>	Art. 119 – Involuntary manslaughter
119a	Death or injury of an unborn child	
	<i>-Killing an unborn child</i>	Art. 119a – Injuring an unborn child Art. 119a – Attempting to kill an unborn child
	<i>-Intentionally killing an unborn child</i>	Art. 119a – Killing an unborn child Art. 119a – Injuring an unborn child Art. 119a – Attempting to kill an unborn child
119b	Child endangerment	
	<i>-Child endangerment by design</i>	Art. 119b – Child endangerment by culpable negligence
120	Rape and sexual assault generally	
	Rape	Art. 128 – Assault with intent to commit rape
	<i>-By unlawful force</i>	Art. 128 – Simple assault
	<i>-By force causing or likely to cause death or grievous bodily harm</i>	Art. 128 – Simple assault
	<i>-By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping</i>	Art. 120(a)(1) – Rape by unlawful force Art. 120(b)(1)(A) – Sexual assault by threatening or placing that other person in fear
	<i>-By first rendering that other person unconscious</i>	Art. 120(b)(2)(B) – Sexual assault of a person who is asleep, unconscious, or otherwise unaware the act is occurring

**PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES**

	<i>-By administering a drug, intoxicant, or other similar substance</i>	Art. 128 – Simple assault Art. 128 – Assault consummated by a battery
	Sexual Assault	Art. 128 – Assault with intent to commit sexual assault
	<i>-Without consent</i>	Art. 128 – Assault consummated by a battery
120b	Rape and sexual assault of a child	
	Rape of a child	
	<i>-Rape of a child who has not attained the age of 12</i>	Art. 128 – Assault consummated by a battery
	<i>-Rape by force of a child who has attained the age of 12</i>	Art. 128 – Assault consummated by a battery
	<i>-Rape by threatening or placing in fear a child who has attained the age of 12</i>	Art. 120(b)(1)(A) – Sexual assault by threatening or placing that other person in fear
	<i>-Rape by rendering unconscious a child who has attained the age of 12</i>	Art. 120(b)(2)(B) – Sexual assault of a person who is asleep, unconscious, or otherwise unaware the act is occurring
	<i>-Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12</i>	Art. 128 – Simple assault Art. 128 – Assault consummated by a battery
121	Larceny and wrongful appropriation	
	<i>-Larceny</i>	Art. 121 – Wrongful appropriation
122	Robbery	
	<i>-Robbery where the taking was by means of force, violence, or force and violence</i>	Art. 121 – Larceny; wrongful appropriation Art. 128 – Assault consummated by a battery Art. 128 – Simple assault Art. 128 – Assault with intent to commit robbery

**APPENDIX 12A**

	<i>-Robbery where the taking was by means of putting the person in fear</i>	Art. 121 – Larceny; wrongful appropriation Art. 128 – Simple assault Art. 128 – Assault with intent to commit robbery
123	Offenses concerning Government computers	
	<i>-Unauthorized distribution of classified information obtained from a Government computer</i>	Art. 123 – Unauthorized access of a Government computer and obtaining classified or other protected information
124a	Bribery	Art. 124b – Graft
128	Assault	
	<i>-Assault consummated by a battery upon a child under 16 years, a spouse, intimate partner, or immediate family member</i>	Art. 128 – Assault consummated by a battery
	<i>-Assault in which substantial bodily harm is inflicted</i>	Art. 128 – Assault consummated by a battery
	<i>-Assault in which grievous bodily harm is inflicted</i>	Art. 128 – Assault consummated by a battery Art. 128 – Assault in which substantial bodily harm is inflicted
	<i>-Assault with intent to murder</i>	Art. 128 – Simple assault Art. 128 – Assault with intent to commit voluntary manslaughter
	<i>-Assault with intent to commit voluntary manslaughter</i>	Art. 128 – Simple assault
	<i>-Assault with intent to commit rape or rape of a child</i>	Art. 128 – Simple assault
	<i>-Assault with intent to commit sexual assault or sexual assault of a child</i>	Art. 128 – Simple assault
	<i>-Assault with intent to commit robbery, arson, burglary, or kidnapping</i>	Art. 128 – Simple assault

**PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES**

128a	Maiming	Art. 128 – Assault consummated by a battery Art. 128 – Assault in which substantial bodily harm is inflicted Art. 128 – Assault in which grievous bodily harm is inflicted
129	Burglary; unlawful entry	
	<i>-Burglary</i>	Art. 129 – Unlawful entry
134 (95)	Child pornography	
	<i>-Possessing child pornography with intent to distribute</i>	Art. 134(95) – Possessing child pornography
	<i>-Distributing child pornography</i>	Art. 134(95) – Possessing child pornography Art. 134(95) – Possessing child pornography with intent to distribute
	<i>-Producing child pornography</i>	Art. 134(95) – Possessing child pornography

THIS PAGE LEFT INTENTIONALLY BLANK

**APPENDIX 13**  
**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL**  
**COURTS-MARTIAL SUBJECT TO REVIEW BY A COURT OF CRIMINAL**  
**APPEALS**

<b>WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS-MARTIAL</b> <b>SUBJECT TO REVIEW BY A COURT OF CRIMINAL APPEALS</b> <b>(For use in courts-martial referred on or after 1 January 2019)</b>	
<i>Note: See R.C.M. 1203(b) concerning which cases are subject to automatic review by a Court of Criminal Appeals and R.C.M. 1203(c) concerning which cases are eligible for direct review by a Court of Criminal Appeals. See R.C.M. 1115 concerning waiver or withdrawal of appellate review.</i>	
I have read the attached action dated _____ .	
I have consulted with _____, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.	
I understand that:	
1. If I do not waive or withdraw appellate review – <ul style="list-style-type: none"> <li>a. My court-martial will be <input type="checkbox"/> automatically reviewed by the _____ Court of Criminal Appeals per Article 66(b)(3) or <input type="checkbox"/> is eligible for direct review by the _____ Court of Criminal Appeals per Article 66(b)(1)(A-B).</li> <li>b. The Court of Criminal Appeals will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.</li> <li>c. After review by the Court of Criminal Appeals, my case could be reviewed for legal error by the United States Court of Appeals for the Armed Forces on petition by me or on request of the Judge Advocate General.</li> <li>d. If the Court of Appeals for the Armed Forces reviews my case, my case could be reviewed for legal error by the United States Supreme Court on petition by me or the Government.</li> <li>e. I have the right to be represented by military counsel, at no cost to me, or by civilian counsel, at no expense to the United States, or both, before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court.</li> </ul>	
2. If I waive or withdraw appellate review – <ul style="list-style-type: none"> <li>a. My case will not be reviewed by the Court of Criminal Appeals, or be subject to further review by the Court of Appeals for the Armed Forces, or by the Supreme Court under 28 U.S.C. 1259.</li> <li>b. My case will be reviewed by a judge advocate per Article 65(d)(3). Upon completion of that review, I may submit an application for consideration by the judge advocate under Article 69(b), for review limited to the issue of whether this waiver or withdrawal was invalid under the law. See R.C.M. 1201(h)(4)(B)</li> <li>c. An Article 69(b) application must be filed within one year after the date of completion of review under Article 65(d)(3), if I can show good cause for filing later the period may be extended up to three years after the completion date.</li> <li>d. I may file a waiver of appellate review at any after entry of judgment.</li> <li>e. I may file withdrawal from appellate review any time before such review is completed.</li> <li>f. A waiver or withdrawal, once filed, cannot be revoked, and bars further appellate review. A waiver or withdrawal may not be filed in any case where the sentence includes death.</li> </ul>	
3. Whether or not I waive or withdraw appellate review, I may petition the Judge Advocate General for a new trial under Article 73 on the grounds of newly discovered evidence or fraud on the court at any time within three years after the date of the entry of judgement.	
Understand the foregoing, I (waive my rights to appellate review) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefit from this waiver/withdrawal, and no one has forced me to make it.	
_____ TYPED NAME OF ACCUSED	_____ RANK OF ACCUSED
_____ SIGNATURE OF ACCUSED	_____ DATE



APPENDIX 13

STATEMENT OF COUNSEL	
<i>(Check appropriate block)</i>	
<input type="checkbox"/> 1. I represented the accused at his/her court-martial	
<input type="checkbox"/> 2. I am associate counsel detailed under R.C.M. 1110(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.	
<input type="checkbox"/> 3. I am substitute counsel detailed under R.C.M. 1110(b).	
<input type="checkbox"/> 4. I am civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____.	
<input type="checkbox"/> 5. I am appellate defense counsel for the accused.	
I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. The accused has elected (waiver)(withdraw) appellate review.	
_____ TYPED NAME OF COUNSEL	_____ UNIT OF COUNSEL
_____ RANK OF COUNSEL	_____ BUSINESS ADDRESS <i>(If Civilian Counsel)</i>
_____ SIGNATURE OF COUNSEL	_____ DATE

**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS-  
MARTIAL SUBJECT TO REVIEW BY A COURT OF CRIMINAL APPEALS**

<b>WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS- MARTIAL SUBJECT TO REVIEW BY A COURT OF CRIMINAL APPEALS</b> <b>(For use in courts-martial referred prior to 1 January 2019)</b>	
<i>Note: See R.C.M. 1203(b) concerning which cases are subject to review by a Court of Criminal Appeals. See R.C.M. 1110 concerning waiver or withdrawal of appellate review.</i>	
I have read the attached action dated _____ .	
I have consulted with _____, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.	
I understand that:	
1. If I do not waive or withdraw appellate review – <ul style="list-style-type: none"> <li>a. My court-martial will be reviewed by the _____ Court of Criminal Appeals.</li> <li>b. The Court of Criminal Appeals will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.</li> <li>c. After review by the Court of Criminal Appeals, my case could be reviewed for legal error by the United States Court of Appeals for the Armed Forces on petition by me or on request of the Judge Advocate General.</li> <li>d. If the Court of Criminal Appeals reviews my case, my case could be reviewed for legal error by the United States Supreme Court on petition by me or the Government.</li> <li>e. I have the right to be represented by military counsel, at no cost to me, or by civilian counsel, at no expense to the United States, or both, before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court.</li> </ul>	
2. If I waive or withdraw appellate review – <ul style="list-style-type: none"> <li>a. My case will not be reviewed by the Court of Criminal Appeals, or be subject to further review by the Court of Appeals for the Armed Forces, or by the Supreme Court under 28 U.S.C. 1259.</li> <li>b. My case will be reviewed by a judge advocate for legal error, and I may submit in writing allegations of legal error for consideration by the judge advocate under Article 64.</li> <li>c. After review by the judge advocate and final action in my case, I may petition the Judge Advocate General for review under Article 69(b). Such a petition must be filed within 2 years of the convening authority's action, on or before the last day of the two-year period beginning on the date my sentence was approved, unless I can show good cause for filing later.</li> <li>d. I may file a waiver of appellate review only within a 10-day period after my defense counsel or I am served with a copy of the convening authority's action, unless the convening authority extends this period for good cause by not more than 30 days.</li> <li>e. I may file withdrawal from appellate review any time before such review is completed.</li> <li>f. A waiver or withdrawal, once filed, cannot be revoked, and bars further appellate review. A waiver or withdrawal may not be filed in any case where the sentence includes death.</li> </ul>	
3. Whether or not I waive or withdraw appellate review, I may petition the Judge Advocate General for a new trial under Article 73 on the grounds of newly discovered evidence or fraud on the court at any time within two years after approval by the convening authority of a court-martial sentence.	
Understand the foregoing, I (waive my rights to appellate review) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefit from this waiver/withdrawal, and no one has forced me to make it.	
_____ TYPED NAME OF ACCUSED	_____ RANK OF ACCUSED
_____ SIGNATURE OF ACCUSED	_____ DATE

APPENDIX 13

STATEMENT OF COUNSEL	
<i>(Check appropriate block)</i>	
<input type="checkbox"/> 1. I represented the accused at his/her court-martial	
<input type="checkbox"/> 2. I am associate counsel detailed under R.C.M. 1115(b). I have communicate with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.	
<input type="checkbox"/> 3. I am substitute counsel detailed under R.C.M. 1115(b).	
<input type="checkbox"/> 4. I am civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____.	
<input type="checkbox"/> 5. I am appellate defense counsel for the accused.	
I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. The accused has elected (waiver)(withdraw) appellate review.	
_____ TYPED NAME OF COUNSEL	_____ UNIT OF COUNSEL
_____ RANK OF COUNSEL	_____ BUSINESS ADDRESS <i>(If Civilian Counsel)</i>
_____ SIGNATURE OF COUNSEL	_____ DATE

**APPENDIX 14**  
**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL COURTS-**  
**MARTIAL SUBJECT TO EXAMINATION IN THE OFFICE OF THE JUDGE**  
**ADVOCATE GENERAL**  
**(CASES REFERRED BEFORE 1 JANUARY 2019)**

**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL COURTS-MARTIAL**  
**SUBJECT TO EXAMINATION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL**

*NOTE: See R.C.M. 1201(b)(1) concerning which cases are subject to examination in the Office of the Judge Advocate General.  
See R.C.M. 1110 concerning waiver or withdrawal of appellate review.*

I have read the attached action, dated \_\_\_\_\_.

I have consulted with \_\_\_\_\_, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

1. If I do not waive or withdraw appellate review, my case will be examined in the Office of the Judge Advocate General to determine whether the findings and sentence are legally correct and whether the sentence is appropriate.
2. If I waive or withdraw appellate review -
  - a. My case will not be examined in the Office of the Judge Advocate General under Article 69(a), UCMJ.
  - b. My case will be reviewed by a judge advocate for legal error, and I may submit in writing allegations of legal error for consideration by the judge advocate under Article 64.
  - c. After review by the judge advocate and final action in my case, I may petition the Judge Advocate General for review under Article 69(b). Such a petition must be filed on or before the last day of the two-year period beginning on the date my sentence was approved, unless I can show good cause for filing later.
  - d. I may file a waiver of appellate review only within a 10 day period after my defense counsel or I am served with a copy of the convening authority's action, unless the convening authority extends this period for good cause by not more than 30 days.
  - e. I may file withdrawal from appellate review any time before such review is completed.
  - f. A waiver or withdrawal, once filed, may not be revoked.
3. Whether or not I waive or withdraw appellate review, I may petition the Judge Advocate General for a new trial under Article 73 on the grounds of newly discovered evidence or fraud on the court at any time within two years after approval by the convening authority of a court-martial sentence.
4. Understanding the above, I hereby (waive my rights to appellate review) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefits from this waiver/ withdrawal, and no one has forced me to make it.

\_\_\_\_\_  
TYPED NAME OF ACCUSED

\_\_\_\_\_  
RANK OF ACCUSED

\_\_\_\_\_  
SIGNATURE OF ACCUSED

\_\_\_\_\_  
DATE

APPENDIX 14

**STATEMENT OF COUNSEL**

*(Check appropriate block)*

1. I represented the accused at his/her court-martial.

2. I am associate counsel detailed under R.C.M. 1110(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.

3. I am substitute counsel detailed under R.C.M. 1110(b).

4. I am a civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of \_\_\_\_\_.

5. I am appellate defense counsel for the accused.

I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. The accused has elected to (waive) (withdraw) appellate review.

---

TYPED NAME OF COUNSEL	UNIT OF COUNSEL
RANK OF COUNSEL	BUSINESS ADDRESS <i>(if Civilian Counsel)</i>
SIGNATURE OF COUNSEL	DATE

DD FORM 2331 (BACK), JUL 2016

## APPENDIX 15

### ANALYSIS OF RULES FOR COURTS-MARTIAL

#### Introduction

The Manual for Courts-Martial, United States, 2019 implements the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081 of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). It includes one Executive Order signed by President Donald Trump; Executive Order No. 13825 (1 March 2018). This publication also contains various supplementary materials for the convenience of the user.

*History of the Manual for Courts-Martial.* The President traditionally has exercised the power to make rules for the government of the military establishment, including rules governing courts-martial. See W. Winthrop, *Military Law and Precedents* 27–28 (2d ed. 1920 reprint). Such rules have been promulgated under the President’s authority as commander-in-chief, see U.S. Const., Art. II, sec. 2, cl.1., and, at least since 1813, such power also has been provided for in statutes. See W. Winthrop, *supra*, at 26–27. Article 36 of the Uniform Code of Military Justice provides such authority. See also Articles 18 and 56. See generally *Hearings on H.R. 3804 Before the Military Personnel Subcomm. of the House Comm. on Armed Services*, 96th Cong., 1st Sess. 5–6, 14, 17–18, 20–21, 52, 106 (1979). In 1979, Article 36 was amended to clarify the broad scope of the President’s rulemaking authority for courts-martial. Act of November 9, 1979, Pub. L. No. 96–107, Section 801(b), 93 Stat. 810,811. See generally *Hearings on H.R. 3804, supra*.

In the nineteenth century the President promulgated, from time to time, regulations for the Army. Those regulations were published in various forms, including “Manuals.” W. Winthrop, *supra*, at 28. Such publications were not limited to court-martial procedures and related matters; however, they were more in the nature of compendiums of military law and regulations. The early manuals for courts-martial were informal guides and were not promulgated by the President. See MCM, 1895 at 1, 2; MCM, 1905 at 3; MCM, 1910 at 3; MCM, 1917 at III. See also MCM, 1921 at XIX.

The forerunner of the modern *Manual for Courts-Martial* was promulgated by the Secretary of War in 1895. See MCM, 1895 at 2. See also *Hearings on H.R. 3805, supra*, at 5. (Earlier Manuals were prepared by individual authors. See e.g., A. Murray, *A Manual for Courts-Martial* (3d ed. 1893); H. Coppée, *Field Manual for Courts-Martial* (1863)). Subsequent Manuals through MCM, 1969 (Rev.) have had the same basic format, organization, and subject matter as MCM, 1895, although the contents have been modified and considerably expanded. See, e.g., MCM, 1921 at XIX–XX. The format was a paragraph format, numbered consecutively and divided into chapters. The subject matter included pretrial, trial, and post-trial procedure. In MCM, 1917, rules of evidence and explanatory materials on the punitive articles were included. See MCM, 1917 at XIV. The 1921 Manual for Courts-Martial was the first to be promulgated by the President. See MCM, 1921 at XXVI.

*Background of this Manual.* During the drafting of the Military Rules of Evidence (see Analysis, Part III, introduction, *infra*), the drafters identified several portions of MCM, 1969 (Rev.) in which they considered revisions appropriate. Consideration was given to amending MCM, 1969 (Rev.) in specific areas. However, the project to draft the Military Rules of Evidence had demonstrated the value of a more comprehensive examination of existing law. In addition, changing the format of the Manual for Courts-Martial was considered desirable. In this regard it should be noted that, as indicated above, the basic format and organization of the Manual for

Courts-Martial had remained the same for over 80 years, although court-martial practice and procedure had changed substantially.

Upon completion of the Military Rules of Evidence in early 1980, the General Counsel, Department of Defense, with the concurrence of the Judge Advocates General, directed that the Manual for Courts-Martial be revised. There were four basic goals for the revision. First, the new Manual was to conform to federal practice to the extent possible, except where the Uniform Code of Military Justice requires otherwise or where specific military requirements render such conformity impracticable. See Article 36. Second, current court-martial practice and applicable judicial precedent was to be thoroughly examined and the Manual was to be brought up to date, by modifying such practice and precedent or conforming to it as appropriate. Third, the format of the Manual was to be modified to make it more useful to lawyers (both military and civilian) and nonlawyers. Specifically, a rule as opposed to paragraph format was to be used and prescriptive rules would be separated from nonbinding discussion. Fourth, the procedures in the new Manual had to be workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

These goals were intended to ensure that the Manual for Courts-Martial continues to fulfill its fundamental purpose as a comprehensive body of law governing the trial of courts-martial and as a guide for lawyers and nonlawyers in the operation and application of such law. It was recognized that no single source could resolve all issues or answer all questions in the criminal process. However, it was determined that the Manual for Courts-Martial should be sufficiently comprehensive, accessible, and understandable so it could be reliably used to dispose of matters in the military justice system properly, without the necessity to consult other sources, as much as reasonably possible.

The Joint Service Committee on Military Justice was tasked with the project. In the summer of 1980, the Navy and Army prepared an initial outline of the new Manual. Drafting was done by the Working Group of the Joint Service Committee on Military Justice.

The Working Group drafted the Manual in fourteen increments. Each increment was circulated by each service to various field offices for comment. Following such comment, each increment was reviewed in the respective offices of the Judge Advocates General, the Director, Judge Advocate Division, Headquarters, USMC, and the Chief Counsel, USCG, and in the Court of Military Appeals. Following such review, the Joint Service Committee met and took action on each increment. After all increments had been reviewed and approved, the Code Committee approved the draft.

Following approval by the Code Committee, the draft was made available for comment by the public. 48 Fed. Reg. 23688 (May 26, 1983). In September and October 1983, the comments were reviewed. The Working Group prepared numerous modifications in the draft based on comments from the public and from within the Department of Defense, and on judicial decisions and other developments since completion of the draft. In October 1983, the Joint Service Committee approved the draft for forwarding to the General Counsel, Department of Defense, for submission to the President after coordination by the Office of Management and Budget.

On November 18, 1983, Congress passed the Military Justice Act of 1983. This act was signed into law by the President on December 6, 1983, Pub. L. No. 98–209, 97 Stat. 1393 (1983). The Working Group had previously drafted proposed modifications to the May 1983 draft which would be necessary to implement the act. These

## APPENDIX 15

proposed modifications were approved by the Joint Service Committee in November 1983 and were made available to the public for comment in December 1983. 48 Fed. Reg. 54263 (December 1, 1983). These comments were reviewed and modifications made in the draft by the Working Group, and the Joint Service Committee approved these changes in January 1984. The draft of the complete Manual and the proposed executive order were forwarded to the General Counsel, Department of Defense in January 1984. These were reviewed and forwarded to the Office of Management and Budget in January 1984. They were reviewed in the Departments of Justice and Transportation. The Executive Order was finally prepared for submission to the President, and the President signed it on 13 April 1984.

*A note on citation form.* The drafters generally have followed the *The Bluebook, A Uniform System of Citation* (20th ed. 2016), subject to the following.

This edition of the Manual for Courts-Martial is referred to generally as “this Manual.” The Rules for Courts-Martial are cited, e.g., as R.C.M. 101. The Military Rules of Evidence are cited, e.g., as Mil. R. Evid. 101. Other provisions of this Manual are cited to the applicable part and paragraph, e.g., MCM, Part V, paragraph 1a(1) (2019).

Previous editions of the Manual for Courts-Martial will be referred to as “MCM, (XXXX).”

The Uniform Code of Military Justice, 10 U.S.C. Sections 801–946, will be cited as follows:

Each individual section is denominated in the statute as an “Article” and will be cited to the corresponding Article. E.g., 10 U.S.C. Section 801 will be cited as “Article 1”; 10 U.S.C. Section 802 will be cited as “Article 2”; 10 U.S.C. Section 940 will be cited as “Article 140.” The entire legislation, Articles 1 through 146, will be referred to as “the Code” or “the UCMJ” without citation to the United States Code. When a change from MCM, 2016 is based on the Military Justice Act of 2016 or subsequent legislation, this will be noted in the analysis, with citation to the appropriate section of the act.

### *Composition of the Manual for Courts-Martial*

#### *Executive Order*

The Executive Order includes the Manual for Courts-Martial, which consists of the Preamble; Rules for Courts-Martial; Military Rules of Evidence; the Punitive Articles; Nonjudicial Punishment Procedure; and Appendix 12A, Presidentially-Prescribed Lesser Included Offenses. Each rule states binding requirements except when the text of the rule expressly provides otherwise. Normally, failure to comply with a rule constitutes error. See Article 59 concerning the effect of errors.

#### *a. Supplementary Materials*

As a supplement to the Manual, the Department of Defense, in conjunction with the Department of Homeland Security, has published a Discussion (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), this Analysis, and various Appendices.

##### *(1) The Discussion*

The Discussion is intended by the drafters to serve as a treatise. To the extent that the Discussion uses terms such as “must” or “will,” it is solely for the purpose of alerting the user to important legal consequences that may result from binding requirements in the

Executive Order, judicial decisions, or other sources of binding law. The Discussion itself, however, does not have the force of law, even though it may describe legal requirements derived from other sources. It is in the nature of treatise, and may be used as secondary authority. The inclusion of both the President’s rules and the drafters’ informal discussion in the basic text of the Manual provides flexibility not available in pre-1984 editions of the Manual, and should eliminate questions as to whether an item is a requirement or only guidance. See e.g., *United States v. Baker*, 14 M.J. 361, 373 (C.M.A. 1973). In this Manual, if matter is included in a rule or paragraph, it is intended that the matter be binding, unless it is clearly expressed as precatory. A rule is binding even if the source of the requirement is a judicial decision or a statute not directly applicable to courts-martial. If the President had adopted a rule based on a judicial decision or a statute, subsequent repeal of the statute or reversal of the judicial decision does not repeal the rule. On the other hand, if the President did not choose to “codify” a principle or requirement derived from a judicial decision or other source of law but the drafters considered it sufficiently significant that the Manual’s users should be aware of it, such matter is addressed in the Discussion. The Discussion is revised from time to time as warranted by changes in applicable law.

##### *(2) The Analysis*

The Analysis sets forth the nonbinding views of the drafters as to the basis for each rule or paragraph, as well as the intent of the drafters, particularly with respect to the purpose of substantial changes in present law. The Analysis is intended to be a guide in interpretation. Users are reminded, however, that primary reliance should be placed on the plain words of the rules. In addition, it is important to remember that the Analysis solely represents the views of staff personnel who worked on the project, and does not necessarily reflect the views of the President in approving it, or of the officials who formally recommended approval to the President.

The Analysis frequently refers to judicial decisions and statutes from the civilian sector that are not applicable directly to courts-martial. Subsequent modification of such sources of law may provide useful guidance in interpreting rules, and the drafters do not intend that citation of a source in this Analysis should preclude reference to subsequent developments for purposes of interpretation. At the same time, the user is reminded that the amendment of the Manual is the province of the President. Developments in the civilian sector that affect the underlying rationale for a rule do not affect the validity of the rule except to the extent otherwise required as a matter of statutory or constitutional law. The same is true with respect to rules derived from the decisions of military tribunals. Once incorporated into the Executive Order, such matters have an independent source of authority and are not dependent upon continued support from the judiciary. Conversely, to the extent that judicial precedent is set forth only in the Discussion or is otherwise omitted from the Rules or the Discussion, the continuing validity of the precedent will depend on the force of its rationale, the doctrine of *stare decisis*, and similar jurisprudential considerations. Nothing in this Introduction should be interpreted to suggest that the placement of matter in the Discussion (or the Analysis), rather than the rule, is to be taken as disapproval of the precedent or as an invitation for a court to take a different approach; rather, the difficult drafting problem of choosing between a codification and common law approach to the law frequently resulted in noncodification of decisions which had the unanimous support of the drafters. To the extent that future changes are made in the Rules or Discussion, corresponding materials will be included in the Analysis.

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

The Appendices contain various nonbinding materials to assist users of this Manual. The Appendices also contain excerpts from pertinent statutes. These excerpts are appropriate for judicial notice of law, *see* Mil. R. Evid. 201, but nothing herein precludes a party from proving a change in law through production of an official codification or other appropriate evidence.

### PART I. PREAMBLE

#### Introduction.

The preamble is based on paragraphs 1 and 2 of MCM, 1969 (Rev.).

#### 1. Sources of military jurisdiction

This subsection is based on paragraph 1 of MCM, 1969 (Rev.). The provisions of the Constitution which are sources of jurisdiction of military courts or tribunals include: Art I, sec. 8, cl. 1, 9–16, 18; Art. II, sec. 2; Art. IV, sec. 4; and the Fifth Amendment. As to sources in international law, *see e.g., Ex Parte Quirin*, 317 U.S. 1 (1942); Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, arts. 82–84, 6 U.S.T. 3316, 3382, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

#### 2. Exercise of military jurisdiction

Subsection (a) is based on the first paragraph of paragraph 2 of MCM, 1969 (Rev.).

For additional materials on martial law, *see* W. Winthrop, *Military Law and Precedent* 817–30 (2d ed. 1920 reprint); *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866). *See also* paragraph 3, sec. 1 of MCM, 1910 (concerning the exercise of martial law over military affiliated persons).

For additional materials on military government, *see* W. Winthrop, *supra* at 798–817; *Madsen v. Kinsella*, 343 U.S. 341(1952); *Mechanics' and Traders' Bank v. Union Bank*, 89 U.S. (22 Wall.) 276 (1875).

For additional materials on the exercise of military jurisdiction under the law of war, *see* W. Winthrop, *supra* at 831–46; *Trials of War Criminals Before the Nuremberg Tribunals* (U.S. Gov't Printing Off., 1950–51); *Trials of the Major War Criminals Before the International Military Tribunal* (International Military Tribunal, Nuremberg 1947); *In re Yamashita*, 327 U.S. 1 (1946); *Ex parte Quirin*, *supra*; *Ex parte Milligan*, *supra*; Articles 18 and 21. Subsection (b) is based on the second paragraph of paragraph 2 of MCM, 1969 (Rev.). *See also* Article 21; DA PAM 27–174, *supra* at paragraph 1–5 *a*; W. Winthrop, *supra* at 802–05, 835–36. As to provost courts, *see also* *Hearings on H.R. 2498 Before a Subcomm. of the House Comm. on Armed Services*, 81st Cong., 1st Sess. 975, 1061 (1949). As to trial of prisoners of war, *see* Article 2(a)(9) and Article 102, 1949 Geneva Convention Relative to the Treatment of Prisoners of War, *supra*.

#### 3. Purpose of military law

*See generally* *Chappell v. Wallace*, 462 U.S. 296 (1983); *Parker v. Levy*, 417 U.S. 733 (1974); S.Rep. No. 53, 98th Cong., 1st Sess. 2–3 (1983). For a discussion of the nature and purpose of military law, *see* R. Everett, *Military Justice in the Armed Forces of the*

*United States* (1956); J. Bishop, *Justice Under Fire* (1974); Hodson, *Military Justice: Abolish or Change?*, 22 Kan. L. Rev. 31 (1975), *reprinted in* Mil. L. Rev. Bicent. Issue 579 (1976); Hansen, *Judicial Functions for the Commander*, 41 Mil.L.Rev. 1 (1968); *Hearings on H.R. 2498 Before a Subcomm. of the House Comm. on Armed Services*, 81st Cong., 1st Sess. 606, 778–86 (1949); H. Moyer, *Justice and the Military* 5–23 (1972).

#### 4. Structure and application of the Manual for Courts-Martial

Self-explanatory. *See also* the *Introduction* of the Analysis.

### PART II. RULES FOR COURTS-MARTIAL

#### CHAPTER I. GENERAL PROVISIONS

##### Rule 101 Scope, title

This rule is taken from Rule 101 of the MCM (2016 edition) without amendment.

##### Rule 102 Purpose and construction

This rule is taken from Rule 102 of the MCM (2016 edition) without amendment.

##### Rule 103 Definitions and rule of construction

This rule is taken from Rule 103 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 103(1), (2), and (3) are renumbered as R.C.M. 103(2), (3), and (4); R.C.M. 103(16) through (18) are renumbered as R.C.M. 103(17) through (19); R.C.M. 103(19) through (21) are renumbered R.C.M. 103(21) through (23). The definition of “UCMJ” is moved from R.C.M. 103(4) to R.C.M. 103(20).

R.C.M. 103(1) is amended and clarifies the reference to “appellate military judge” means a judge of a Court of Criminal Appeals.

R.C.M. 103(8)(D) is amended and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes a convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

R.C.M. 103(11) is amended and updates a description of the federal law definition of “explosive.”

R.C.M. 103(15) is amended and implements Article 1, as amended by Section 5101 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 1081(a)(21) and 1081(c)(1)(A) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which amends the definition of “military judge.”

R.C.M. 103(16) is amended and implements Articles 19, 26a,



## APPENDIX 15

and 30a, as amended by Sections 5163, 5185, and 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which authorizes the use of military magistrates; Article 30a was amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 103(17) is amended and clarifies the definition of “party” to include acting on behalf of a party in pre-referral and post-referral proceedings under these rules.

R.C.M. 103(22) is amended and aligns the definitions of “writings” and “recordings” with Mil. R. Evid. 1001.

The Discussion accompanying R.C.M. 103(23) is amended and reflects current statutory provisions.

### **Rule 104 Unlawful command influence**

This rule is taken from Rule 104 of the MCM (2016 edition), as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), with the following amendment:

The Discussion accompanying R.C.M. 104(b)(2)(B) is amended to reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 105 Direct communication: convening authorities and staff judge advocates; among staff judge advocates**

This rule is taken from Rule 105 of the MCM (2016 edition) without substantive amendment.

### **Rule 106 Delivery of military offenders to civilian authorities**

This rule is taken from Rule 106 of the MCM (2016 edition) with the following amendment: the Discussion accompanying R.C.M. 106 is amended to correct a cross-reference.

### **Rule 107 Dismissed officer’s right to request trial by court-martial**

This rule is taken from Rule 107 of the MCM (2016 edition) without substantive amendment.

### **Rule 108 Rule of court**

This rule is taken from Rule 108 of the MCM (2016 edition) without amendment.

### **Rule 109 Professional supervision of military judges and counsel**

This rule is taken from Rule 109 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The title of R.C.M. 109 and its accompanying Discussions are amended and reflect Articles 6a and 26a, as added by Sections 5104 and 5185 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which adds

military magistrates to those judicial personnel included in procedures relating to the investigation and disposition of matters pertaining to the fitness of military judges, and authorizes the Judge Advocate General to certify the qualifications of military magistrates, respectively.

## CHAPTER II. JURISDICTION

### **Rule 201 Jurisdiction in general**

This rule is taken from Rule 201 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 201(b)(5) is amended and deletes a reference to R.C.M. 810(d).

R.C.M. 201(c), which addressed contempt, is deleted. *See* R.C.M. 809 for procedures and standards for contempt proceedings and the exercise of contempt authority by judicial officers under Article 98.

R.C.M. 201(f)(1)(A)(i), R.C.M. 201(f)(1)(D), and the Discussion accompanying R.C.M. 201(g) are amended to reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 201(f)(1)(D) and (f)(2)(D) are amended and eliminate redundancies and reflect the dates of applicability set forth in Section 1705(c) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672, 960 (2013).

The Discussion accompanying R.C.M. 201(f)(2)(D) is amended to update a citation.

R.C.M. 201(f)(2)(B)(ii) is amended and implements Articles 16 and 19, as amended by Sections 5161 and 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which eliminate special courts-martial without a military judge and authorize a convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

R.C.M. 201(f)(2)(E) and the accompanying Discussion are new and reflect Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes a convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

### **Rule 202 Persons subject to jurisdiction of courts-martial**

This rule is taken from Rule 202 of the MCM (2016 edition) with the following amendments:

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

*2018 Amendment:* Paragraph (1) of the Discussion accompanying R.C.M. 202(a) and the Discussion accompanying R.C.M. 202(c) are amended to reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Paragraph (5) of the Discussion accompanying R.C.M. 202(a) is amended and reflects Article 2(a)(3), as amended by Section 5102 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which revises UCMJ jurisdiction over reservists to cover periods incident to inactive-duty training.

### **Rule 203 Jurisdiction over the offense**

This rule is taken from Rule 203 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 203 is amended and adds a reference to R.C.M. 201(f) with respect to the punishment limitations applicable to specific types of courts-martial.

### **Rule 204 Jurisdiction over certain reserve component personnel**

This rule is taken from Rule 204 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 204(d) is amended and implements Article 2(a)(3), as amended by Section 5102 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which revises UCMJ jurisdiction over reservists to cover periods incident to inactive-duty training.

## **CHAPTER III. INITIATION OF CHARGES; APPREHENSION; PRETRIAL RESTRAINT; RELATED MATTERS**

### **Rule 301 Report of offense**

This rule is taken from Rule 301 of the MCM (2016 edition) without substantive amendment.

### **Rule 302 Apprehension**

This rule is taken from Rule 302 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 302(a)(1) is amended and updates cross-references.

R.C.M. 302(e)(2)(A) is amended and updates cross-references to the Military Rules of Evidence.

R.C.M. 302(e)(2)(B) is amended and reflects exigent circumstances under which an apprehension may be made in a private dwelling.

### **Rule 303 Preliminary inquiry into reported offenses**

This rule is taken from Rule 303 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 303 is amended and reflects Section 1742 of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 980 (2013), which mandated that commanders refer reports of sex-related offenses involving members of the armed forces in their chain of command to the appropriate military criminal investigative organization.

### **Rule 304 Pretrial restraint**

This rule is taken from Rule 304 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 304(a)(4) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 305 Pretrial confinement**

This rule is taken from Rule 305 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 305 is amended throughout the rule and replaces the term “prisoner” with the term “confinee.”

The Discussion accompanying R.C.M. 305(a) is amended and reflects Article 12, as amended by Section 5122 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), with respect to confinement of members of the armed forces in immediate association with enemy prisoners and other specified individuals.

R.C.M. 305(k) is amended and updates cross-references applicable to administrative credit against the sentenced adjudged for confinement served as a result of noncompliance with R.C.M. 305(f), (h), (i), or (j).

R.C.M. 305(m)(1) and (2) are amended and update cross-references.

The Discussion accompanying R.C.M. 305(m) is amended and clarifies that operational exceptions permitted to the requirements of certain provisions of R.C.M. 305 do not constitute exceptions to the requirements of Article 31(b).

The Discussion accompanying R.C.M. 305(n) is amended and clarifies the meaning of the term “victim of an alleged offense” as it pertains to this rule.

### **Rule 306 Initial disposition**

This rule is taken from Rule 306 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 306(a) is amended and reflects that the Initial Disposition Authority for certain sex-related offenses is a commander in the grade of O-6 or above possessing at least special court-martial convening authority.

## APPENDIX 15

The Discussion accompanying R.C.M. 306(b) is amended and refers to the non-binding disposition guidance required by Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). *See* Appendix 2.1.

The Discussion accompanying R.C.M. 306(c)(2) is relocated and accompanies R.C.M. 306(c)(1).

R.C.M. 306(e)(1) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 306(e)(3) is amended and clarifies that, under such regulations as the Secretary may prescribe, if no charges are preferred for an alleged sex-related offense, if the commander learns of any decision by civilian authorities to prosecute or not prosecute the offense in civilian court, the commander shall ensure the victim is notified.

### Rule 307 Preferral of charges

This rule is taken from Rule 307 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 307(b) is amended and implements Article 30, as amended by Section 5201 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 307(c)(3) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016 and the addition of Appendix 12A with respect to lesser included offenses. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 307(c)(4) is amended and deletes the last sentence.

The Discussion accompanying R.C.M. 307(c)(4) is amended to address the differences between multiplicity and unreasonable multiplication of charges, and to alert practitioners that use of the phrase “multiplicity in sentencing,” is confusing and should be avoided. *See United States v. Campbell*, 71 M.J. 19 (C.A.A.F. 2012).

### Rule 308 Notification to accused of charges

This rule is taken from Rule 308 of the MCM (2016 edition) without amendment.

### Rule 309 Pre-referral judicial proceedings

R.C.M. 309 is new and implements Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018,

Pub. L. No. 155-91, 131 Stat. 1283 (2017), which establishes the matters that may be addressed by a military judge or military magistrate in a pre-referral proceeding.

## CHAPTER IV. FORWARDING AND DISPOSITION OF CHARGES

### Rule 401 Forwarding and disposition of charges in general

This rule is taken from Rule 401 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussions accompanying R.C.M. 401(b) and (c) are amended and refer to the non-binding disposition guidance required by Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). *See* Appendix 2.1.

### Rule 402 Action by commander not authorized to convene courts-martial

This rule is taken from Rule 402 of the MCM (2016 edition) without amendment.

### Rule 403 Action by commander exercising summary court-martial jurisdiction

This rule is taken from Rule 403 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussions accompanying R.C.M. 403 are amended and update cross-references.

R.C.M. 403(b)(4) is amended and implements Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction for certain sex-related offenses to general courts-martial.

### Rule 404 Action by Commander exercising special court-martial jurisdiction

This rule is taken from Rule 404 of the MCM (2016 edition) with the following amendment.

*2018 Amendment:* R.C.M. 404(4) and the accompanying Discussion are amended and reflect Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction for certain sex-related offenses to general courts-martial.

### Rule 404A Disclosure of matters following direction of preliminary hearing

This rule is taken from Rule 404A of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The rule is renamed “Initial disclosures.”

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

R.C.M. 404A(a) is amended and establishes the Government's disclosure requirements at pretrial of charges and at the direction of a preliminary hearing.

The Discussion accompanying R.C.M. 404A(c) is amended and updates a cross-reference.

The Discussion accompanying R.C.M. 404A(d) is amended and updates a reference.

### Rule 405 Preliminary hearing

This rule is taken from Rule 405 of the MCM (2016 edition) with the following amendments:

*2018 Amendments:* R.C.M. 405 and the accompanying Discussions are amended and reflect Articles 6b, 30a, 32, 33, 46, and 47, as amended or added by Sections 5105, 5202, 5203, 5204, and 5229 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 6b is further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017). Article 30a is amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017).

The Discussions following R.C.M. 405(i)(2)(D), R.C.M. 405(j)(8), and R.C.M. 405(k)(3) are new and reflect that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside of the procedures set forth in R.C.M. 1113(b).

### Rule 406 Pretrial advice

This rule is taken from Rule 406 of the MCM (2016 edition) with the following amendments:

*2018 Amendments:* R.C.M. 406(a) and (b) and the accompanying Discussions are amended and reflect Article 34, as amended by Section 5205 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial and also prohibits a convening authority from referring charge(s) and specification(s) to a general court-martial unless a staff judge advocate provides written advice stating that the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charges, and a court-martial would have jurisdiction over the accused and the offense. Prior to referring charge(s) and specification(s) to a general court-martial, the staff judge advocate is also required to provide a recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline. *See also* R.C.M. 601(d).

The Discussion accompanying R.C.M. 406(a) is amended and refers to the non-binding disposition guidance required by Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). *See* Appendix 2.1.

### Rule 406A Pretrial advice before referral special court-martial

R.C.M. 406A is new and implements Article 34(b), as amended

by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial.

The Discussion accompanying R.C.M. 406A(a) is amended and refers to guidance concerning disposition of charges and specifications required by Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). *See* Appendix 2.1.

### Rule 407 Action by commander exercising general court-martial jurisdiction

This rule is taken from Rule 407 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 407(a)(4) and the accompanying Discussion are amended and reflect Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction over certain sex-related offenses to general courts-martial.

The Discussion accompanying R.C.M. 407(a)(6) is amended and refers to Sections 1744(b)-(d) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 980 (2013), as amended by the Section 541 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, 128 Stat. 3371 (2014), which require higher level review with respect to the referral of certain sex-related offenses to courts-martial.

## CHAPTER V. COURT-MARTIAL COMPOSITION AND PERSONNEL; CONVENING COURTS-MARTIAL

### Rule 501 Composition and personnel of courts-martial

This rule is taken from Rule 501 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 501(a) and the accompanying Discussion are amended and reflect Articles 16, 25a, and 29, as amended by Sections 5161, 5183, and 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which require a set number of members for capital and non-capital general courts-martial and special courts-martial, eliminate special courts-martial without a military judge, establish a special court-martial consisting of a military judge alone with certain limitations on offenses and punishments, and authorize the convening authority to detail alternate members to general and special courts-martial.

The Discussion accompanying R.C.M. 501(c) in the MCM (2016 edition), which addressed court reporters, is deleted.

## APPENDIX 15

### **Rule 502 Qualifications and duties of personnel of court-martial**

This rule is taken from Rule 502 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 502(a)(1) is amended and implements Article 25, as amended by Section 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which permits a convening authority to detail enlisted members to general and special courts-martial without requiring a request for such members from an enlisted accused.

R.C.M. 502(a)(2) and the accompanying Discussion are amended and reflect Articles 29 and 53, as amended by Sections 5187 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes the convening authority to detail alternate members to general and special courts-martial and addresses sentencing for capital offenses.

R.C.M. 502(c) and the accompanying Discussion are amended and reflect Articles 26 and 26a, as amended and added, respectively, by Sections 5184 and 5185 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which establish qualifications and minimum tour lengths for trial judges and authorizes the Secretary concerned to establish a military magistrate program.

R.C.M. 502(d)(1) and (2) and the accompanying Discussion are amended and reflect Article 27, as amended by Section 5186 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), with respect to the qualifications of trial counsel, assistant trial counsel, defense counsel, assistant and associate defense counsel, individual military counsel, civilian defense counsel, and counsel learned in the law applicable to capital cases.

R.C.M. 502(d)(3) and the accompanying Discussion are amended and address disqualification of appellate military judges and counsel for witnesses and victims.

The Discussion accompanying R.C.M. 502(d)(4) is amended and updates cross-references, reflects trial counsel's duties with regard to victims' rights, and reflects the elimination of special courts-martial without a military judge. *See* Articles 6b and 16, as amended by Sections 5105 and 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 6b is further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). Article 16 is further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 502(d)(5) is amended and clarifies defense counsel's duties in light of substantial changes to post trial and appellate practice in the Military Justice Act of 2016.

### **Rule 503 Detailing members, military judge, and counsel, and designating military magistrates**

This rule is taken from Rule 503 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 503(a)(1) and (2) and the accompanying Discussions are amended and reflect Articles 25, 25a, and 29, as amended by Sections 5182, 5183, and 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding detailing of members, excusal of members, and impanelment of alternate members.

R.C.M. 503(a)(4) is new and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which permits a convening authority to refer charge(s) and specification(s) to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation.

R.C.M. 503(b)(4) is new and implements Articles 19 and 30a, as amended by Sections 5163 and 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and Article 30a is further amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017), which authorizes military judges to detail military magistrates, if authorized under regulations of the Secretary concerned, to preside over certain pre-referral proceedings and special courts-martial consisting of a military judge alone in specified circumstances.

R.C.M. 503(c)(1) is amended and implements Article 27, as amended by Section 5186 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), with respect to counsel learned in the law applicable to capital cases.

### **Rule 504 Convening courts-martial**

This rule is taken from Rule 504 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 504(d) is amended and aligns with the 2018 Amendments to R.C.M. 503(a).

### **Rule 505 Changes of members, military judge, and counsel**

This rule is taken from Rule 505 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 505(a) is amended and aligns with the 2018 Amendments to R.C.M. 503(b)(4) regarding military magistrates.

R.C.M. 505(b) is amended and aligns with the 2018 Amendments to R.C.M. 1202 regarding the certification of the record of trial.

R.C.M. 505(c)(2) is amended and aligns with the 2018 Amendments to R.C.M. 501 and 912A regarding fixed panel sizes in general and special courts-martial and the procedure for excusing excess members at impanelment. The Discussion accompanying R.C.M. 505(c)(2) is new.

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

R.C.M. 505(e) is amended and describes the circumstances in which the military magistrate can be changed before and after assembly of the court-martial. The Discussion accompanying R.C.M. 505(e) is new.

R.C.M. 505(f) is amended and describes the circumstances in which good cause would exist to change the military magistrate.

### Rule 506 Accused's rights to counsel

This rule is taken from Rule 506 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 506(a) and the accompanying Discussion are amended and align with the 2018 Amendments to R.C.M. 502(d)(2)(C) regarding the detailing of defense counsel in capital cases.

## CHAPTER VI. REFERRAL, SERVICE, AMENDMENT, AND WITHDRAWAL OF CHARGES

### Rule 601 Referral

This rule is taken from Rule 601 of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018) with the following amendments.

*2018 Amendment:* R.C.M. 601(a) is amended and clarifies that referral is the order of a convening authority that charges and specifications against an accused will be tried by a specified court-martial.

R.C.M. 601(d) is amended and implements Article 34(b), as amended by Section 5205 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial and also prohibits a convening authority from referring charge(s) and specification(s) to a general court-martial unless a staff judge advocate provides written advice stating that the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charges, and a court-martial would have jurisdiction over the accused and the offense. Prior to referring charge(s) and specification(s) to a general court-martial, the staff judge advocate is also required to provide a recommendation to the convening authority as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline. *See also* R.C.M. 406.

The Discussion accompanying R.C.M. 601(d)(1) is amended and references Appendix 2.1 (Non-binding disposition guidance), and reflects Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 601(d)(2) is new and reflects the opportunity of the accused to waive the preliminary hearing and the rules regarding waiver or forfeiture for failure to object to a defect under R.C.M. 601.

The Discussion accompanying R.C.M. 601(d)(3) is new and references limitations on referral of charges and specifications to special courts-martial.

R.C.M. 601(e)(1) is amended and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), concerning referring charges and specifications in a capital case or in a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

### Rule 602 Service of charges

This rule is taken from Rule 602 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 602 is amended and implements Article 35, as amended by Section 5206 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) regarding the time periods applicable to service of charges and commencement of trial, and sets forth the consequences for defense failure to object to proceeding during the applicable period

### Rule 603 Changes to charges and specifications

This rule is taken from Rule 603 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 603 and the accompanying Discussions are revised and clarify the definition of major and minor changes that may be made to charges and specifications that have been referred to trial by court-martial, and the timing requirements for making such changes to the charges and specifications.

### Rule 604 Withdrawal of charges

This rule is taken from Rule 604 of the MCM (2016 edition) without substantive amendment.

## CHAPTER VII. PRETRIAL MATTERS

### Rule 701 Discovery

This rule is taken from Rule 701 of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), with the following amendments.

*2018 Amendment:* The amendments to R.C.M. 701 clarify discovery practice in the military justice system. The amendments enhance efficiency and ensure the prompt disposition of offenses, while at the same time ensuring fairness to the accused and the equal opportunity of both the prosecution and defense to obtain witnesses and evidence guaranteed by Article 46.

R.C.M. 701(a) is amended and aligns with the 2018 Amendments to the disclosure provisions of R.C.M. 404A.

The Discussion accompanying R.C.M. 701(a) is new and addresses the purposes of discovery in the military justice system.

R.C.M. 701(a)(2)(A)(i) and (a)(2)(B)(i) are amended and specify the scope of trial counsel discovery obligations. The provisions broaden the scope of discovery, requiring disclosure of items that are "relevant" rather than "material" to defense preparation of a case, and adding a requirement to disclose items the government anticipates using in rebuttal.

## APPENDIX 15

R.C.M. 701(a)(3) and (5), and R.C.M. 701(b)(1)(A) and (C)(i) are amended and require the trial counsel and defense counsel to provide contact information, rather than addresses, of witnesses.

R.C.M. 701(a)(6)(D) is added and clarifies that trial counsel must disclose to defense counsel information adverse to the credibility of prosecution witnesses or evidence. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999) (duty to disclose evidence favorable to the defense applies even in the absence of a request by the defense and encompasses impeachment evidence as well as exculpatory evidence).

The Discussion accompanying R.C.M. 701(a)(6) is amended and reflects that trial counsel may disclose information earlier than required by R.C.M. 701 or in addition to that required by the rule; that trial counsel have a continuing duty to disclose information favorable to the defense and should exercise due diligence and good faith in learning about such evidence; and should not avoid pursuit of information that may be harmful to the prosecution's case; and to update cross-references.

R.C.M. 701(b)(2) and the accompanying Discussion are amended and require that the defense provide notice of certain defenses in writing.

R.C.M. 701(b)(3) is amended and permits the trial counsel to copy or photograph the items listed for disclosure by the defense.

The Discussion accompanying R.C.M. 701(b)(5) is amended and updates cross-references.

The Discussion accompanying R.C.M. 701(d) is new and reflects that trial counsel should advise authorities involved in the case of their duty to identify, preserve, and disclose to trial counsel the information required to be disclosed under R.C.M. 701.

R.C.M. 701(e)(1) is amended and conforms to Article 6b, as amended by Section 5105 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 701(g)(2) is amended and clarifies the applicability of Part III of the Manual for Courts-Martial to the examination of materials by the military judge *in camera*. R.C.M. 701(g)(2) is further amended and clarifies the responsibilities of the military judge with respect to sealing materials and attaching materials examined to the record of trial.

The Discussion accompanying R.C.M. 701(g)(2) is new and addresses considerations relevant to the military judge's authority to regulate discovery in order to achieve the purposes of the Rule and reflects that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside the procedures set forth in R.C.M. 1113(b).

### Rule 702 Depositions

*2018 Amendment:* This rule is taken from Rule 702 of the MCM (2016 edition) with substantial amendments, clarifies the circumstances in which depositions may be ordered and their uses at trial, and reflects Article 49, as amended by Section 5231 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and the consequence for failure to object prior to or during a deposition, or to written interrogatories.

### Rule 703 Production of witnesses and evidence

*2018 Amendment:* This rule is taken from Rule 703 of the MCM (2016 edition) with substantial amendments and clarifies the procedures for requesting the production of witnesses and evidence at trial. The amendments are as follows:

R.C.M. 703(d) is amended and clarifies the distinction between expert witnesses and expert consultants. *See, e.g., United States v. Warner*, 62 M.J. 114 (C.A.A.F. 2005); *United States v. Turner*, 28 M.J. 487 (C.M.A. 1989); *United States v. Langston*, 32 M.J. 894 (A.F.C.M.R. 1991).

R.C.M. 703(g)(3)(C) and (D) and the Discussion accompanying R.C.M. 703(g)(3)(C) are new and reflect Article 46, as amended by Section 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which authorizes the issuance of a pre-referral investigative subpoena under specified circumstances.

R.C.M. 703(g)(3)(C)(i) and (ii) and the accompanying Discussions are new. R.C.M. 703(g)(3)(C)(i) describes requirements for investigative subpoenas; R.C.M. 703(g)(3)(C)(ii) establishes a category of investigative subpoenas with respect to personal or confidential information of a victim consistent with the Fed. R. Crim. P. 17. This category of investigative subpoenas has special notice requirements, with appropriate exceptions for exceptional circumstances. The Discussion accompanying R.C.M. 703(g)(3)(C)(ii) also clarifies the meaning of the term "victim" for purposes of this provision.

R.C.M. 703(g)(3)(G) and (H) and the Discussion accompanying R.C.M. 703(g)(3)(H)(i) are amended and reflect Articles 30a and 46, as added and amended, respectively, by Sections 5202 and 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which authorizes a military judge to review requests for relief from subpoenas prior to referral. Article 30a was amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 703(g)(4) is new and reflects that a request for subpoena may be accompanied by a request that the custodian of the evidence take all necessary steps to preserve records and other evidence until such time as the items may be produced or inspected. *Cf. United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015).

### Rule 703A Warrant or order for wire or electronic communication

*2018 Amendment:* R.C.M. 703A is new and implements Article 46, as amended by Section 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides authority for a military judge to issue a warrant or order for the disclosure of the contents of electronic communications by a provider of an electronic communication service or a remote computing service. *See also* 18 U.S.C. §§ 2703 and 2711, as amended by Section 5228 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

### Rule 704 Immunity

This rule is taken from Rule 704 of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), with the following amendments: The Discussion accompanying R.C.M. 704(d) is amended and updates cross-references and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 705 Plea agreements

This rule is taken from Rule 705 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 705 and the accompanying Discussions are substantially amended and reflect Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), and Articles 33, 56 and 60, as amended by Sections 5204, 5301 and 5321 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion following R.C.M. 705(d)(1)(C) is new and reflects the role of the military judge and the members in adjudging a sentence as part of a plea agreement.

R.C.M. 705(e) of the MCM (2016 edition) is renumbered as R.C.M. 705(f) and is amended and allows a military judge to notify a court-martial of the existence of a plea agreement upon either the request of an accused or to prevent a manifest injustice.

### Rule 706 Inquiry into the mental capacity or mental responsibility of the accused

This rule is taken from Rule 706 of the MCM (2016 edition) without substantive amendment.

### Rule 707 Speedy trial

This rule is taken from Rule 707 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 707(b)(3)(A) is amended and clarifies the effect of dismissal of charges or mistrial on the 120-day time period in which to bring a case to trial. The rule addresses both the circumstance where the accused, on the date of dismissal or mistrial, is under pretrial restraint and the circumstance where the accused, on the date of dismissal or retrial, is not under pretrial restraint. *See United States v. Anderson*, 50 M.J. 447 (C.A.A.F. 1997).

R.C.M. 707(e) is amended and clarifies the consequences of a plea of guilty on speedy trial issues as to the offense to which a plea of guilty is entered.

R.C.M. 707(f) is new and mandates that the trial of an accused

held in pretrial restraint under R.C.M. 304(a)(3)-(4) be given priority, consistent with the Speedy Trial Act, *see* 18 U.S.C. § 3164 and Article 10, as amended by Section 5121 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

## CHAPTER VIII. TRIAL PROCEDURE GENERALLY

### Rule 801 Military judge's responsibility; other matters

This rule is taken from Rule 801 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 801(a) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 801(a)(3) is amended and updates a cross-reference.

R.C.M. 801(a)(6) and the Discussion accompanying R.C.M. 801(a)(6)(E) are amended and reflect Article 6b, as amended by Section 5105 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). The Discussion accompanying R.C.M. 801(a)(6)(E) also clarifies the meaning of the term "victim of an offense under the UCMJ" as it pertains to this rule.

R.C.M. 801(e) and (f) are amended and reflect the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 801(e)(4) is amended and updates cross-references, and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 801(e)(5) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 802 Conferences

This rule is taken from Rule 802 of the MCM (2016 edition) with the following amendments.



## APPENDIX 15

*2018 Amendment:* R.C.M. 802(a) is amended and reflects Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017), which provides the authority for military judges to preside over specified proceedings prior to referral.

Subsection (f) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act of 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 803 Court-martial sessions with members under Article 39(a)**

This rule is taken from Rule 803 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 803 is amended and reflects the requirement for an entry of judgment in special and general courts-martial. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The last line of R.C.M. 803 is deleted and reflects the elimination of special courts-martial without a military judge. *See* Articles 16, 25, and 53, as amended by Sections 5161, 5182, and 5236, respectively, of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 1081(c)(1)(C) and 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 803 is amended and reflects changes to court-martial forums, the establishment of military judge alone sentencing as the default rule, and the elimination of special courts-martial without a military judge. *See* Articles 16, 25, and 53, as amended by Sections 5161, 5182, and 5236, respectively, of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 1081(c)(1)(C) and 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 804 Presence of the accused at trial proceedings**

This rule is taken from Rule 804 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 804(a) is new and reflects the accused's entitlement to travel allowances for official travel to attend military justice proceedings.

R.C.M. 804(b) is amended and reflects the requirements of Article 39(b) with respect to remote proceedings and the physical presence of defense counsel with the accused, and prohibits the use of remote sessions for presentencing proceedings.

### **Rule 805 Presence of military judge, members, and counsel**

This rule is taken from Rule 805 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 805(a) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5121 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 805(b) and the accompanying Discussion are amended and reflect Articles 16 and 25, as amended by Sections 5161 and 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which requires the use of fixed panel sizes, permits the accused the ability to request specified officer or enlisted composition, and permits the accused to elect sentencing by members, except where the court-martial is composed of a military judge alone.

R.C.M. 805(c) is amended and reflects the requirements of Article 39(b), with respect to remote proceedings and the physical presence of defense counsel with the accused, and prohibits the use of remote means to conduct presentencing proceedings.

The Discussion accompanying R.C.M. 805(c) is amended and updates cross-references.

R.C.M. 805(d) is amended and reflects Article 29(f), as amended by Section 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides the option of playing an audio recording of the trial to newly detailed panel members and judges.

### **Rule 806 Public trial**

This rule is taken from Rule 806 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 806(b)(1) is amended and deletes a provision addressing exclusion of spectators, which is now addressed in R.C.M. 806(b)(2).

R.C.M. 806(b)(2) is amended and addresses exclusion of spectators.

R.C.M. 806(b)(3) is amended and addresses the right of the victim not to be excluded. The Discussion accompanying R.C.M. 806(b)(3) is amended and addresses additional matters pertaining to victims, and clarifies the meaning of the term "victim of an alleged offense" as it pertains to this rule.

R.C.M. 806(b)(4) and (6) are deleted and the subject matter of those provisions is now addressed in a new R.C.M. 806(b)(3) and the accompanying Discussion.

R.C.M. 806(b)(5) is redesignated as R.C.M. 806(b)(4), and the accompanying Discussion is amended and updates cross-references.

R.C.M. 806(d) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5121 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 807 Oaths

This rule is taken from Rule 807 of the MCM (2016 edition) without substantive amendment.

### Rules 808 Record of trial

This rule is taken from Rule 808 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 808 is amended and updates a cross-reference.

The Discussion accompanying R.C.M. 808 is deleted in its entirety and the subject matter is covered by the 2018 Amendments to R.C.M. 1112.

### Rule 809 Contempt proceedings

This rule is taken from Rule 809 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 809(a) and (b) and the Discussion accompanying R.C.M. 809(a) are amended and reflect Article 48(a), as amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which uses the term “judicial officer.” The use of the term reflects that judges are not detailed to courts of inquiry, and that judges serving on the Court of Appeals for the Armed Forces and the Courts of Criminal Appeals are not “detailed” to those courts in the sense that military judges are “detailed” to courts-martial.

The Discussion following R.C.M. 809(a) is further amended and reflects that, since 2011, the contempt power includes “indirect” contempts in addition to “direct” contempts. *See* Article 48, as amended by Section 542 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, 124 Stat. 4218 (2011), as further amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 809(d) is amended and reflects Article 48, as amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which provides for appellate review of contempt punishments when imposed by military judges and military magistrates.

R.C.M. 809(e) is amended and addresses when execution of a sentence of contempt begins to run or becomes effective and the permissible maximum punishments that may be imposed for contempt. *See* Article 48, as amended by Section 542 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, 124 Stat. 4218 (2011), as further amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 809(f) is amended and reflects that judicial officers may exercise contempt authority and requires that a person held in contempt be informed of the procedures for review of a finding of contempt. *See* Article 48, as amended by Section 5230 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(F) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 810 Procedures for rehearing’s, new trials, other trials, and remands

This rule is taken from Rule 810 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 810(a)-(d) and the accompanying Discussions are amended and reflect Article 63, as added by Section 5327 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(i) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which addressed the limitations on sentences at rehearing’s.

R.C.M. 810(f) is new and reflects Article 66(f)(3), as amended by Section 5330 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(j) and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), and reflects, but does not expand, current practice regarding *DuBay* hearings. *See United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

### 811 Stipulations

This rule is taken from Rule 811 of the MCM (2016 edition) without substantive amendment.

### Rule 812 Joint and common trials

This rule is taken from Rule 812 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 812 is amended and addresses the differences between a joint and a common trial. *See* Major Robert S. Stubbs II, USMC, *Joint and Common Trials*, 1956 JAG Journal 16 (September-October).

### Rule 813 Announcing personnel of the courts-martial and the accused

This rule is taken from Rule 813 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 813(a)(3) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

## APPENDIX 15

### CHAPTER IX. TRIAL PROCEDURE THROUGH FINDINGS

#### Rule 901 Opening session

This rule is taken from Rule 901 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion following R.C.M. 901(a) is amended and provides a cross-reference reflecting applicable waiting periods between service of charges and commencement of trial by special and general courts-martial. *See* Article 35, as amended by Section 5206 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 901(d)(2) and the Discussion accompanying R.C.M. 901(d)(3) are amended and reflect Article 27, as amended by Section 5186 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) which requires, to the greatest extent practicable, that at least one defense counsel in a capital case be learned in the law applicable to capital cases.

R.C.M. 901(e) is amended and provides for the conduct of designated procedures without the members present, and to reflect the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

#### Rule 902 Disqualification of military judge

This rule is taken from Rule 902 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 902(c)(1) is amended and reflects Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017), which provides limited pre-referral authority to the military judge.

R.C.M. 902(c)(3) is deleted and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

#### Rule 902A Application of sentencing rules

*2018 Amendment:* R.C.M. 902A is new and implements Section 5542 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which establishes effective dates for the amendments made by the Military Justice Act of 2016 and authorizes the President to prescribe regulations regarding applicable sentencing rules. R.C.M. 902A applies in cases where charges were referred to trial by court-martial after the effective date designated by the President

for offenses allegedly committed both before and on or after the effective date. (Note, see text of Section 531(o), NDAA 2018)

#### Rule 903 Accused's elections on composition of court-martial

This rule is taken from Rule 903 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 903 and its accompanying Discussion are amended and reflect Article 25, as amended by Section 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which permits an accused to elect trial by military judge alone or by members, and, if the accused is enlisted, trial by a panel with at least one-third enlisted members or by an all-officer panel, and the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

#### Rule 904 Arraignment

This rule is taken from Rule 904 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 904 is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

#### Rule 905 Motions generally

This rule is taken from Rule 905 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 905(b)(3) and (4) and R.C.M. 905(d) is amended and cross-references are updated.

R.C.M. 905(e) is amended and clarifies the applicability throughout the Manual of the concepts of waiver and forfeiture.

R.C.M. 905(f) and the Discussion accompanying R.C.M. 905(d) are amended to reflect the requirement for an entry of judgment in special and general courts-martial and the elimination of authentication of the record of trial. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 905(h) is amended and authorizes the military judge to exercise his or her discretion to determine whether an Article 39(a) session is necessary for the resolution of a motion.

#### Rule 906 Motions for appropriate relief

This rule is taken from Rule 906 of the MCM (2016 edition) with the following amendments.

*2018 Amendment:* R.C.M. 906(b)(4) is amended and clarifies the provisions governing amendment of charges after referral.

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

The Discussion accompanying R.C.M. 905(b)(5) is amended and updates a cross-reference and reflects the addition of Appendix 12A with respect to lesser included offenses. *See* Article 79, as amended by Section 5402 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 906(b)(7) is amended and updates a cross-reference.

R.C.M. 906(b)(10) is amended and addresses the standards applicable to severance of charges in capital and non-capital cases.

R.C.M. 906(b)(12) and the accompanying Discussion are amended and clarify the remedies available to address findings of unreasonable multiplication of charges in light of the requirement for segmented sentencing by military judges. *See* Article 56, as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 907 Motions to dismiss

This rule is taken from Rule 907 of the MCM (2016 edition) with the following amendments: *2018 Amendment:* R.C.M. 907(b)(2)(C) and the accompanying Discussion are amended and reflect Article 44, as amended by Section 5226 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the point when jeopardy attaches in a court-martial.

R.C.M. 907(b)(2)(D)(iii) is deleted and R.C.M. 907(b)(2)(D)(iv) is redesignated as R.C.M. 907(b)(2)(D)(iii).

### Rule 908 Appeal by the United States

This rule is taken from Rule 908 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 908(a) is amended and implements Article 62, as amended by Section 5326 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(h) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which authorizes a Government appeal when a military judge sets aside a panel's guilty verdict. The Discussion accompanying R.C.M. 908(a) is new.

R.C.M. 908(b)(5) is amended and implements Article 54, as amended by Section 5238 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires the certification of the record of trial.

The Discussion accompanying R.C.M. 908(b)(7) is new and reflects changes to the jurisdiction of the Courts of Criminal Appeals. *See* Article 66(b), as amended by Section 5330 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(j) and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which

provides that the Courts of Criminal Appeals maintain jurisdiction to review a case under Article 66(b) regardless of the sentence imposed when the government has filed an appeal under Article 62 or Article 56.

The Discussion accompanying R.C.M. 908(c) is new and reflects that the Government may appeal a sentence under certain circumstances and utilizing certain procedures. *See* Article 56, as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 908(d) of the MCM (2016 edition) is deleted and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 909 Capacity of the accused to stand trial by court-martial

This rule is taken from Rule 909 of MCM (2016 edition) without amendment.

### Rule 910 Pleas

This rule is taken from Rule 910 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 910(a)(1) is amended and implements Article 45, as amended by Section 5227 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which permits a military judge to accept a guilty plea in a capital case except where death is the mandatory punishment. Although the 2016 Amendments eliminated the sentence of death as a mandatory punishment for any offense, the prohibition against accepting a guilty plea in a capital case where death is the mandatory punishment is retained.

The Discussion accompanying R.C.M. 910(a)(1) is amended and reflects the addition of Appendix 12A with respect to lesser included offenses and reflects that no offenses carry a mandatory penalty of death. *See* Article 79, as amended by Section 5402 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 910(c)(1) and the accompanying Discussion are amended and reflect changes to plea agreements and the sentencing proceeding in courts-martial. *See* Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017); and Article 56, as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

## APPENDIX 15

R.C.M. 910(c)(6) and the accompanying Discussion are new and reflect forum options for sentencing under the Military Justice Act of 2016. *See* Articles 53 and 56, as amended by Sections 5236 and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 910(f) and the accompanying Discussions are amended and reflect changes to plea agreement practice in the military as a result of the Military Justice Act of 2016. *See* Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 910(g) is amended and implements Articles 45 and 19, as amended by Sections 5227 and 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which removed the requirement for the Services to maintain separate rules authorizing entry of a finding of guilty without a vote when a guilty plea has been accepted and eliminated special courts-martial without a military judge.

R.C.M. 910(h) is amended by deleting paragraph (3) and reflects the manner in which the military judge addresses the plea agreement under R.C.M. 910(f).

R.C.M. 910(i) is deleted. The requirement for a certified record of guilty plea proceedings is governed by R.C.M. 1112, 1114 and 1305.

R.C.M. 910(j) is redesignated as 910(i) and reflects the application of plain-error review to errors concerning guilty pleas raised for the first time on appeal. *See* Article 45, as amended by Section 5227 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### Rule 911 Assembly of the court-martial

This rule is taken from Rule 911 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 911 is amended and authorizes the convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation, and updates a cross-reference. *See* Articles 16 and 19, as amended by Sections 5161 and 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### Rule 912 Challenge of selection of members; examination and challenges of members

This rule is taken from Rule 912 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 912(a)(1) is amended and reflects the authority of the convening authority to detail alternate members. *See* Article 29, as amended by Section 5187 of the Military Justice Act of 2016, Division E of the National Defense

Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 912(a)(1) is amended and updates a cross-reference.

R.C.M. 912(b)(3) is amended and clarifies that failure to make a timely motion challenging the selection of the members shall forfeit, but not waive, the improper selection, except in specified circumstances where the failure to make a timely motion neither forfeits nor waives the improper selection.

R.C.M. 912(f)(4) is amended and implements Article 25, as amended by Section 5182 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which eliminates the prohibition against detailing enlisted members from the same unit.

The Discussion accompanying R.C.M. 912(f)(4) is amended and updates a cross-reference.

R.C.M. 912(f)(5) is new and addresses the assignment of random numbers to members following challenges for cause for the purpose of impaneling members and alternate members as set forth in R.C.M. 912A.

The Discussion accompanying R.C.M. 912(g)(2) is amended and reflects the requirement for a specified number of members in special and general courts-martial. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 912(h) of the MCM (2016 edition) is deleted and R.C.M. 912(i) is redesignated as R.C.M. 912(h). This reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 912A Impaneling members and alternate members

*2018 Amendment:* R.C.M. 912A is new and implements Articles 16, 25, and 29, as amended by Sections 5161, 5182, and 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the process for impaneling members after challenges for cause and peremptory challenges, and the process for impaneling alternate members if authorized by the convening authority. Article 16 was further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 912B Excusal and replacement of members after impanelment

*2018 Amendment:* R.C.M. 912B is new and implements Article 29, as amended by Section 5187 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which prescribes the process by which impaneled members may be excused and replaced by alternate members or additionally detailed

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

members.

### **Rule 913 Presentation of the case on the merits**

This rule is taken from Rule 913 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion to R.C.M. 913(c)(2) is amended and updates a cross-reference.

The Discussion to R.C.M. 913(c)(3) is amended and deletes the first sentence, which reflected that views and inspections should be permitted only in extraordinary circumstances.

### **Rule 914 Production of statements of witnesses**

This rule is taken from Rule 914 of MCM (2016 edition) without substantive amendment.

### **Rule 914A Use of remote live testimony of a child**

This rule is taken from Rule 914A of the MCM (2016 edition) without amendment.

### **Rule 914B Use of remote testimony**

This rule is taken from Rule 914B of MCM (2016 edition) without amendment.

### **Rule 915 Mistrial**

This rule is taken from Rule 915 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* The Discussion accompanying R.C.M. 915(b) is deleted and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 916 Defense**

This rule is taken from Rule 916 of MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 916(e)(2)(B) is amended to align with Article 128, as amended by Section 5441 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(P) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 916(e)(3) and (5) and the Discussion accompanying R.C.M. 916(j) and R.C.M. 916(l)(2) are amended and reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 916(k)(1) is amended and updates a cross-reference.

R.C.M. 916(k)(3)(B) and the accompanying discussion are amended and reflect the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 917 Motion for finding of not guilty**

This rule is taken from Rule 917 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 917(a) is amended and allows a military judge to rule on a motion under R.C.M. 917 after a panel returns findings, similar to the practice in U.S. District Court. *See* Fed. R. Crim. P. 29; *United States v. Wilson*, 420 U.S. 332 (1975).

The Discussion accompanying R.C.M. 917(a) is new and refers to R.C.M. 908(a) concerning the ability of the Government to file an interlocutory appeal when the military judge sets aside a panel's finding of guilty. *See* Article 62, as amended by Section 5326 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(h) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

The Discussion accompanying R.C.M. 917(c) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 917(f) is amended and permits the military judge to reconsider a denial of a motion for a finding of not guilty at any time before entry of judgment. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### **Rule 918 Finding**

This rule is taken from Rule 918 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 918(a)(1) is amended and clarifies when the fact finder may consider a lesser included offense if the evidence fails to prove the offense charged. *See* Article 79, as amended by Section 5402 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 918(a)(2) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

## APPENDIX 15

R.C.M. 918(b) is amended and requires the entry of special findings prior to the entry of judgment. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### Rule 919 Argument by counsel on findings

This rule is taken from Rule 919 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 919(c) is amended and addresses the consequences of a failure to object to error in argument.

### Rule 920 Instructions on findings

This rule is taken from Rule 920 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion accompanying R.C.M. 920(e) is amended and reflects the two statutory grounds by which to designate an offense as lesser included: those offenses that are “necessarily included” in the greater offense, and those offenses designated in regulations prescribed by the President that are “reasonably included” in the greater offense. *See* Article 79, as amended by Section 5402 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 920(f) is amended and addresses the consequences of a failure to object to an instruction or the omission of an instruction.

### Rule 921 Deliberations and voting on findings

This rule is taken from Rule 921 of the MCM (2016 edition) with the following amendment:

*2018 Amendment:* R.C.M. 921(c) and the accompanying Discussion are amended and reflect Article 52, as amended by Section 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), concerning voting on findings in a non-capital case.

### Rule 922 Announcement of findings

This rule is taken from Rule 922 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 922(a) is amended and conforms to Article 53, as amended by Section 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 922(b) and the accompanying Discussion are amended and conform to changes regarding the acceptance of guilty pleas by the military judge and the announcement of findings by the members.

### Rule 923 Impeachment of findings

This rule is taken from Rule 923 of MCM (2016 edition) without substantive amendment.

### Rule 924 Reconsideration of findings

This rule is taken from Rule 924 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 924(b) is amended and implements Article 52, as amended by Section 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which reflects the changes in voting requirements. The subsection is also amended and reflects the elimination of any provisions imposing a mandatory death penalty.

R.C.M. 924(c) is amended and reflects the requirement for an entry of judgment and the elimination of authentication of the record of trial. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

## CHAPTER X. SENTENCING

### Rule 1001 Presentencing procedure

This rule is taken from Rule 1001 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1001 is amended and implements Articles 25, 53 and 56, as amended by Sections 5182, 5236, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). R.C.M. 1001(b)(1), (b)(2), and (h) set forth the consequences for failure to object to matters presented by the prosecution or argument on sentence.

The Discussion following R.C.M. 1001(b)(3)(C) is amended and reflects the new requirement for the entry of judgment in R.C.M. 1111.

R.C.M. 1001(c) is new and incorporates R.C.M. 1001A of the MCM (2016 edition).

### Rule 1002 Sentencing determination

*2018 Amendment:* This rule and its accompanying Discussions amend R.C.M. 1002 of the MCM (2016 edition) in its entirety and implement Articles 25, 53, 53a, and 56, as amended by Sections 5182, 5236, 5237, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides an accused the option to elect sentencing by members in lieu of sentencing by military judge in a general or special court-martial with a military judge and members; reflects that sentences adjudged by a military judge shall provide for segmented sentences of confinement and fines; and sets forth statutory guidance for determining an appropriate sentence. Article 53a was further amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Article 56 was further amended by Section 531(e) the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

### Rule 1003 Punishments

This rule is taken from Rule 1003 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1003(b)(2) is amended by adding the last sentence, which is consistent with *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987).

R.C.M. 1003(c)(1)(C) is amended and removes discussion of the available remedies for Multiplicity and Unreasonable Multiplication of Charges. Such remedies are addressed in R.C.M. 906(b)(12).

The discussion immediately following R.C.M. 1003(c)(1)(C) is replaced with language directing practitioners to R.C.M. 906(b)(12).

### Rule 1004 Capital cases

This rule is taken from Rule 1004 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1004(a)(2) is amended and implements Articles 45 and 52, as amended by Sections 5227 and 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 1004(b)(4) is amended and clarifies that the members must find unanimously that at least one of the aggravating factors under subsection (c) existed beyond a reasonable doubt before death may be adjudged.

R.C.M. 1004(b)(6) is amended and requires that the military judge instruct the members of the charges and specifications for which they shall determine a sentence, because the accused has the option to choose sentencing by members, rather than the military judge, for those charges and specifications for which death may not be adjudged, in accordance with R.C.M. 1002(b)(2).

A Discussion is added after R.C.M. 1004(b)(6) and addresses an accused's right to elect sentencing by members in lieu of sentencing by military judge. *See* Articles 25 and 53 as amended by Sections 5182 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 1004(b)(7) is amended and reflects the requirement that members must unanimously concur in a finding of the existence of at least one aggravating factor and unanimously find that the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances before a sentence of death may be considered.

R.C.M. 1004(c)(3) is amended and deletes the reference to Article 120.

R.C.M. 1004(c)(4) is amended and deletes the reference to Article 120 and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(c)(6) is amended and deletes the reference to Article 120.

R.C.M. 1004(c)(7)(B) is amended and adds the phrase "a separate murder, or" and deletes the reference to forcible sodomy

and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(c)(8) is amended and deletes the reference to forcible sodomy and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(c)(9) is deleted.

R.C.M. 1004(c)(11) is amended and reflects the reorganization of the punitive articles. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1004(d) is deleted and subsection "(e)" is redesignated as subsection "(d)" and reflects the reorganization of the punitive articles and the removal of the mandatory death penalty for spying. *See* Section 5414 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)(eliminating mandatory death penalty for spying). *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### Rule 1005 Instructions on sentence

This rule is taken from Rule 1005 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion after R.C.M. 1005(e)(1) is amended and includes instructions to the members regarding the available range of permissible punishments when a plea agreement contains sentencing limitations.

The discussion after R.C.M. 1005(e)(5) is amended and reflects the terms of Article 56(c), as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1005(e)(6) is new and implements Article 56(c), as amended by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1005(e)(7) is new and allows a military judge to provide additional instructions as may be required.

R.C.M. 1005(f) is amended and changes "waiver" to



## APPENDIX 15

“forfeiture” when a party fails to object to an instruction or to omission of an instruction before the members close to deliberate on the sentence.

### **Rule 1006 Deliberations and voting on sentence**

This rule is taken from Rule 1006 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1006(a) is amended and implements Articles 25 and 53 as amended by Sections 5182 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 1006(d)(4)(B) of the MCM (2016 edition) is deleted and R.C.M. 1006(d)(4)(C) is redesignated as (d)(4)(B). This provision and its accompanying Discussion are amended and implement Article 52 as amended by Section 5235 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 1006(d)(6) is new and implements Art 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1006(e) is amended and implements Articles 52, 53, and 56 as amended by Sections 5235, 5236, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 1007 Announcement of sentence**

This rule is taken from Rule 1007 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1007(a) and its accompanying Discussion are amended and implement Article 53 as amended by Section 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(G) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

R.C.M. 1007(b) and its accompanying Discussion are amended and conform with changes made to R.C.M. 1002. This rule reflects the accused’s right to elect member sentencing in lieu of military judge sentencing for non-capital offenses and the requirement for the military judge to announce the sentence promptly after it has been determined.

### **Rule 1008 Impeachment of sentence**

This rule is taken from Rule 1008 of the MCM (2016 edition) without substantive amendment.

### **Rule 1009 Reconsideration of sentence**

This rule is taken from Rule 1009 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1009 and its accompanying Discussion are amended and implement Articles 52 and 53, as amended by Sections 5235 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding reconsideration of the sentence, including in a capital sentencing proceeding.

R.C.M. 1009(b)(3) is new and reflects the addition of Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131Stat. 1283 (2017).

### **Rule 1010 Notice concerning post-trial and appellate rights**

This rule is taken from Rule 1010 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1010 is amended and implements Articles 60a, 60b, 61, 64-67, and 69, as amended by Sections 5322, 5323, 5325, 5328, 5329, 5330, 5331, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding appellate procedure.

The Discussion following R.C.M. 1010(d) is amended and corrects a cross-reference.

### **Rule 1011 Adjournment**

This rule is taken from Rule 1011 of the MCM (2016 edition) without substantive amendment. The Discussion accompanying R.C.M. 1011 is amended and corrects a cross-reference.

## CHAPTER XI. POST-TRIAL PROCEDURE

### **Rule 1101 Statement of trial results**

*2018 Amendment:* R.C.M. 1101 (“Report of result of trial; post-trial restraint; deferment of confinement, forfeitures and reduction in grade; waiver of Article 58b forfeitures”) of the MCM (2016 edition) is deleted.

R.C.M. 1101 (“Statement of trial results”) and its accompanying Discussion are new. R.C.M. 1101 implements Article 60, as amended by Section 5321 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the requirement that the military judge of a general or special court-martial enter into the record of trial a document entitled “Statement of Trial Results

### **Rule 1102 Execution and effective date of sentences**

*2018 Amendment:* R.C.M. 1102 (“Post-trial Sessions”) of the MCM (2016 edition) is deleted.

R.C.M. 1102 (“Execution and effective date of sentences”) and its accompanying Discussion are new. R.C.M. 1102 implements Articles 57 and 60-60c, as amended by Sections 5302, 5321, 5322, 5323 and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the execution and

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

effective date of sentences.

### **Rule 1102A Post-trial hearing for person found not-guilty only by reason of lack of mental responsibility**

*2018 Amendment:* R.C.M. 1102A (“Post-trial hearing for person found not guilty only by reason of lack of mental responsibility”) of the MCM (2016 edition) is deleted and its provisions are incorporated into R.C.M. 1105 without substantial amendment.

### **Rule 1103 Deferment of confinement, forfeitures, and reduction in grade; waiver of Article 58b forfeitures**

*2018 Amendment:* R.C.M. 1103 (“Preparation of record of trial”) of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), is deleted.

R.C.M. 1103 (“Deferment of confinement, forfeitures, and reduction in grade; waiver of Article 58b forfeitures”) and its accompanying Discussion are new. R.C.M. 1103 implements Article 57(b), as amended by Section 5302 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

R.C.M. 1103 also incorporates portions of R.C.M. 1101 and 1107 of the MCM (2016 edition), regarding deferment of confinement, forfeitures, and reduction in grade, as well as waiver of Article 58b forfeitures.

### **Rule 1103A Sealed exhibits and proceedings**

*2018 Amendment:* R.C.M. 1103A (“Sealed exhibits and proceedings”) of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), and its accompanying Discussion are deleted and its provisions are incorporated into R.C.M. 1113.

### **Rule 1104 Post-trial motions and proceedings**

*2018 Amendment:* R.C.M. 1104 (“Records of trial: Authentication; service; loss; correction; forwarding”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1104 (“Post-trial motions and proceedings”) and its accompanying Discussion are new. R.C.M. 1104 implements the provisions of Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and authorizes the filing of post-trial motions before entry of judgment.

R.C.M. 1104 also incorporates portions of R.C.M. 1102 of the MCM (2016 edition).

### **Rule 1105 Post-trial hearing for person found not guilty only by reason of lack of mental responsibility**

*2018 Amendment:* RCM 1105 (“Matters submitted by the accused”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1105 (“Post-trial hearing for person found not guilty only by reason of lack of mental responsibility”) is new and incorporates R.C.M. 1102A of the MCM (2016 edition) regarding a post-trial hearing for a person found not guilty only by reason of

lack of mental responsibility without substantive amendments.

### **Rule 1105A Matters submitted by a crime victim**

*2018 Amendment:* R.C.M. 1105A (“Matters submitted by a crime victim”) of the MCM (2016 edition) and its accompanying Discussion are deleted and its provisions are substantially incorporated into R.C.M. 1106A.

### **Rule 1106 Matters submitted by accused**

*2018 Amendment:* R.C.M. 1106 (“Recommendation of the staff judge advocate or legal officer”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1106 (“Matters submitted by the accused”) and its accompanying Discussion are new and incorporate portions of R.C.M. 1105 of the MCM (2016 edition) addressing the post-trial submission of matters to the convening authority by the accused.

### **Rule 1106A Matters submitted by crime victim**

*2018 Amendment:* R.C.M. 1106A and its accompanying Discussion are new and incorporate portions of R.C.M. 1105A of the MCM (2016 edition) addressing the post-trial submission of matters by the crime victim to the convening authority.

### **Rule 1107 Suspension of execution of sentence; remission**

*2018 Amendment:* R.C.M. 1107 (“Action by convening authority”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1107 (“Suspension of execution of sentence; remission”) is new and implements Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding suspension of a sentence and the remission of a sentence in limited circumstances.

The rule incorporates portions of R.C.M. 1108 of the MCM (2016 edition).

### **Rule 1108 Vacation of suspension of sentence**

*2018 Amendment:* R.C.M. 1108 (“Suspension of execution of sentence; remission”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1108 (“Vacation of suspension of sentence”) and its accompanying Discussion are new. R.C.M. 1108 implements Articles 60-60c and 72 as amended by Sections 5321, 5322, 5323, 5324, and 5335 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding procedures for the vacation of a suspension of a sentence.

R.C.M. 1108 incorporates portions of R.C.M. 1109 of the MCM (2016 edition).

### **Rule 1109 Reduction of sentence, general and special courts-martial**

*2018 Amendment:* R.C.M. 1109 (“Vacation of suspension of sentence”) of the MCM (2016 edition), as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), and its

## APPENDIX 15

accompanying Discussion, are deleted.

R.C.M. 1109 (“Reduction of Sentence, general and special courts-martial”) and its accompanying Discussion are new. R.C.M. 1109 implements Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the reduction of a sentence in specified general or special courts-martials.

R.C.M. 1109 incorporates portions of R.C.M. 1107 of the MCM (2016 edition).

### **Rule 1110 Action by convening authority in certain general and special court-martial**

*2018 Amendment:* R.C.M. 1110 (“Waiver or withdrawal of appellate review”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1110 (“Action by convening authority in certain general and special courts-martial”) and its accompanying Discussion are new. R.C.M. 1110 implements Articles 60-60c, as amended by Sections 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the action that the convening authority may take in certain general and special courts-martial.

R.C.M. 1110 incorporates portions of R.C.M. 1107 of the MCM (2016 edition).

### **Rule 1111 Entry of judgment**

*2018 Amendment:* R.C.M. 1111 (“Disposition of the record of trial after action”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1111 (“Entry of judgment”) and its accompanying Discussion are new. R.C.M. 1111 implements Articles 60c and 63, as added by Sections 5324 and 5327 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 63 was amended by Section 531(i) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

The entry of judgment replaces the action by the convening authority as the means by which the trial proceedings terminate and the appellate process begins. The judgment replaces the promulgating order as the document that reflects the outcome of the court-martial.

### **Rule 1112 Certification of record of trial; general and special courts-martial**

*2018 Amendment:* R.C.M. 1112 (“Review by a judge advocate”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1112 (“Certification of record of trial; general and special courts-martial”) and its accompanying Discussion are new. R.C.M. 1112 implements Articles 54 and 60-60c, as amended by Sections 5238, 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), providing for the certification and contents of

records of trial in general and special courts-martial.

R.C.M. 1112 incorporates portions of R.C.M. 1103 of the MCM (2016 edition).

The Discussion following R.C.M. 1112(e)(3)(B)(iii) reflects that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside of the procedures set forth in R.C.M. 1113(b).

### **Rule 1113 Sealed exhibits, proceedings, and other materials**

*2018 Amendment:* R.C.M. 1113 (“Execution of sentences”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1113 (“Sealed exhibits and proceedings”) and its accompanying Discussion are new and incorporate R.C.M. 1103A of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018). R.C.M. 1113(b) conforms to changes in R.C.M. 1112(c) regarding certification of records of trial.

The Discussion following R.C.M. 1113(b) is new and reflects that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside of the procedures set forth in R.C.M. 1113(b).

### **Rule 1114 Transcription of proceedings**

*2018 Amendment:* R.C.M. 1114 (“Promulgating orders”) of MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1114 (“Transcription of proceedings”) and its accompanying Discussion are new. R.C.M. 1114 implements Article 54(c), as amended by Section 5238 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the contents of a record of trial.

### **Rule 1115 Waiver or withdrawal of appellate review**

R.C.M. 1115 (“Waiver or withdrawal of appellate review”) and its accompanying Discussion are new and are taken from Rule 1110 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1115 and its accompanying Discussion are new. R.C.M. 1115 implements Article 61, as amended by Section 5325 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding waiver or withdrawal of appellate review.

### **Rule 1116 Transmittal of records of trial for general and special courts-martial**

*2018 Amendment:* R.C.M. 1116 (“Transmittal of records of trial for general and special courts-martial”) and its accompanying Discussion are new. R.C.M. 1116 implements Articles 65 and 66, as amended by Sections 5329 and 5330 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the transmittal of records of trial in general and special courts-martial to the Judge Advocate General and the Courts of Criminal Appeals. Article 66 was further amended by Sections 531(j) and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No.

## ANALYSIS OF THE RULES FOR COURTS-MARTIAL

115-91, 131 Stat. 1283 (2017).

### **Rule 1117 Appeal of sentence by the United States**

*2018 Amendment.* R.C.M. 1117 (“Appeal of sentence by the United States”) and its accompanying Discussion are new. R.C.M. 1117 implements Article 56(d), as added by Section 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

## **CHAPTER XII. APPEALS AND REVIEW**

### **Rule 1201 Review by the Judge Advocate General**

This rule is taken from Rule 1201 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1201 and its accompanying Discussion are amended. R.C.M. 1201 implements Articles 65, 66, and 69, as amended by Sections 5329, 5330, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the post-trial review of certain records of trial by the Judge Advocate General. Article 66 was further amended by Sections 531(j) of and 1081(c)(1)(K) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 1202 Appellate counsel**

This rule is taken from Rule 1202 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1202(b)(2)(A) is amended and implements Article 65, as amended by Section 5329 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(J) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), addressing the requirement to detail appellate defense counsel to review cases eligible for direct appeal.

R.C.M. 1202(c) and its accompanying Discussion are new. R.C.M. 1202(c) implements Article 70, as amended by Section 5334 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), addressing the requirements regarding counsel learned in the law applicable to capital cases.

### **Rule 1203 Review by a Court of Criminal Appeals**

This rule is taken from Rule 1203 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1203 and its accompanying Discussion are amended and implements Articles 65, 66, and 69, as amended by Sections 5329, 5330, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding review by a Court of Criminal Appeals and minimum tour lengths for appellate military judges. Article 66 was further amended by Sections 531(j) of and 1081(c)(1)(K) of

the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 1204 Review by the Court of Appeals for the Armed Forces**

This rule is taken from Rule 1204 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1204(a)(2) is amended and implements Article 67, as amended by Section 5331 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires that the Judge Advocate General provide appropriate notification to all other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps before certifying a case to the Court of Appeals for the Armed Forces.

### **Rule 1205 Review by the Supreme Court**

This rule is taken from Rule 1205 of the MCM (2016 edition) with the following amendments.

*2018 Amendment:* R.C.M. 1205(a) is amended and changes the reference to “Article 67(h)” and replaces it with “Article 67a.” Technical corrections are made to references to Article 67(a)(1), (2), and (3).

### **Rule 1206 Powers and responsibilities of the Secretary**

This rule is taken from Rule 1206 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion to R.C.M. 1206(a) is amended and changes the reference to “Article 71(b)” and replaces it with “Article 57(a)(4).”

### **Rule 1207 Sentences requiring approval by the President**

This rule is taken from Rule 1207 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* The Discussion to R.C.M. 1207 is amended and changes the reference to “Article 71(a)” and replaces it with “Article 57(a)(3).”

### **Rule 1208 Restoration**

This rule is taken from Rule 1208 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1208(b) is amended and implements Article 75, as amended by Section 5337 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). R.C.M. 1208 now requires that in certain cases where an executed part of a court-martial sentence is set aside pending a rehearing, new trial, or other trial, that those punishments shall not be enforced from the effective date of the order setting aside that punishment.

R.C.M. 1208(a), 1208(b) and the Discussion to R.C.M. 1208(b) are amended and insert a reference to entry of a new judgment in the case.

## APPENDIX 15

### Rule 1209 Finality of courts-martial

This rule is taken from Rule 1209 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1209 and its Discussion are amended and implement Articles 64, 65, and 69, as amended by Sections 5328, 5329, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding the finality of courts-martial.

### Rule 1210 New trial

This rule is taken from Rule 1210 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1210 is amended and implements Article 73, as amended by Section 5336 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which increases the time in which an accused must file a petition for a new trial from two years to three years after entry of judgment. R.C.M. 1210 is amended and includes references to the entry of judgment in accordance with the addition of Article 60c, as reflected in Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 1210(f)(3) is amended and corrects a cross-reference.

## CHAPTER XIII. SUMMARY COURTS-MARTIAL

### Rule 1301 Summary courts-martial

This rule is taken from Rule 1301 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1301(b) is amended and implements Article 20, as amended by Section 5164 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which clarifies that a summary court-martial is not a criminal forum and a finding of guilt does not constitute a criminal conviction. This change does not deprive an accused at a summary court-martial of the protections previously applicable at a summary court-martial, to include the right to confront witnesses.

R.C.M. 1301(c) and the Discussion to R.C.M. 1301(c) are amended and align with the prohibition against trying certain offenses at a summary court-martial and the elimination of the discrete offense of forcible sodomy in accordance with Sections 5162 and 5439 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### Rule 1302 Convening a summary court-martial

This rule is taken from Rule 1302 of the MCM (2016 edition) without substantive amendment.

### Rule 1303 Right to object to trial by summary court-martial

This rule is taken from Rule 1303 of the MCM (2016 edition) without substantive amendment.

### Rule 1304 Trial procedure

This rule is taken from Rule 1304 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1304(a)(4) and the accompanying Discussion are new and address the rights of a victim at summary courts-martial in accordance with Article 6b as amended by Section 5105 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Sections 531(a), 1081(a)(22) and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 115-91, 131 Stat. 1283 (2017). The Discussion accompanying R.C.M. 1304(a)(4)(E) clarifies the meaning of the term “victim” as it pertains to this provision. R.C.M. 1304(b)(2)(F)(ii) is amended and directs the summary court-martial to use the procedures in R.C.M. 1001 and 1002 and the principles in the remainder of Chapter X in determining a sentence, with some exceptions.

### Rule 1305 Record of trial

This rule is taken from Rule 1305 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* R.C.M. 1305(c) and (d) and the Discussion accompanying R.C.M. 1305(c), (d), and (e) are amended and reflect Article 54, as amended by Section 5238 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a certified record of trial in a summary court-martial.

R.C.M. 1305(d) is amended to include a cross-reference to procedures for classified information in the record of trial, and conforms with changes to Article 54 to provide procedures for the correction of a record of trial in a summary court-martial.

### Rule 1306 Post-trial procedure, summary court-martial

*2018 Amendment:* This rule is taken from Rule 1306 of the MCM (2016 edition) with the following amendments:

R.C.M. 1306 and its accompanying Discussion are amended and consolidate the post-trial process for summary courts-martial into one rule and removes most of the prior cross references to the post-trial process prescribed for general and special courts-martial. The rule is further amended to reflect the changes to post-trial and appellate procedures in summary courts-martial required by the changes to Articles 60b, 64, and 69 as amended by Sections 5323, 5328, and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### Rule 1307 Review of summary courts-martial by a judge advocate

*2018 Amendment:* R.C.M. 1307 and its accompanying Discussion are new. R.C.M. 1307 implements Articles 64 and 69, as amended by Sections 5328 and 5333 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides for review of the record of trial of a summary court-martial by a judge advocate and permits an accused to apply for appellate review for correction of legal error.

# APPENDIX 16

## ANALYSIS OF THE MILITARY RULES OF EVIDENCE

### SECTION I

#### General Provisions

##### **Rule 101 Scope**

This rule is taken from Rule 101 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 101(c)(1) is amended and reflects the elimination of special courts-martial without a military judge and to include within the definition of military judge a military magistrate who has been designated to preside at a special court-martial or pre-referral proceedings under Article 30a. *See* Articles 16 and 30a, as amended and added, respectively, by Sections 5161 and 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended and amended, respectively, by Sections 1081(c)(1) and 531(b), respectively, of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017).

Mil. R. Evid. 101(c)(2) is amended and aligns military rules regarding electronically stored information with Federal civilian practice and the broader definitions of “writing” contained in R.C.M. 103 and Mil. R. Evid. 1001. The new language is based on Fed. R. Evid. 101(b)(6).

##### **Rule 102 Purpose**

This rule is taken from Rule 102 of the MCM (2016 edition) without amendment.

##### **Rule 103 Rulings on evidence**

This rule is taken from Rule 103 of the MCM (2016 edition) without amendment.

##### **Rule 104 Preliminary questions**

This rule is taken from Rule 104 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 104(c) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

##### **Rule 105 Limiting evidence that is not admissible against other parties or for other purposes**

This rule is taken from Rule 105 of the MCM (2016 edition) without amendment.

##### **Rule 106 Remainder of or related writings or recorded statements**

This rule is taken from Rule 106 of the MCM (2016 edition) without amendment.

### SECTION II

#### Judicial Notice

##### **Rule 201 Judicial notice of adjudicative facts**

This rule is taken from Rule 201 of the MCM (2016 edition) without amendment.

##### **Rule 202 Judicial notice of law**

This rule is taken from Rule 202 of the MCM (2016 edition) without amendment.

### SECTION III

#### Exclusionary Rules And Related Matters Concerning Self-Incrimination, Search And Seizure, And Eyewitness Identification

##### **Rule 301 Privilege concerning compulsory self-incrimination**

This rule is taken from Rule 301 of the MCM (2016 edition) without amendment.

##### **Rule 302 Privilege concerning mental examination of an accused**

This rule is taken from Rule 302 of the MCM (2016 edition) without amendment.

##### **Rule 303 Degrading questions**

This rule is taken from Rule 303 of the MCM (2016 edition) without amendment.

##### **Rule 304 Confessions and admissions**

This rule is taken from Rule 304 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 304(f)(7) is amended and reflects the elimination of special courts-martial without a military judge. *See* Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130

## APPENDIX 16

Stat. 2000 (2016), as amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 305 Warnings about rights**

This rule is taken from Rule 305 of the MCM (2016 edition) without amendment.

### **Rule 306 Statements by one of several accused**

This rule is taken from Rule 306 of the MCM (2016 edition) without amendment.

### **Rule 311 Evidence obtained from unlawful searches and seizures**

This rule is taken from Rule 311 of the MCM (2016 edition), as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), without further amendment.

### **Rule 312 Body views and intrusions**

This rule is taken from Rule 312 of the MCM (2016 edition) without amendment. The Discussion following Mil. R. Evid. 312(f) has been updated.

### **Rule 313 Inspections and inventories in the Armed Forces**

This rule is taken from Rule 313 of the MCM (2016 edition) without amendment.

### **Rule 314 Searches and requiring probable cause**

This rule is taken from Rule 314 of the MCM (2016 edition) without amendment.

### **Rule 315 Probable cause searches**

This rule is taken from Rule 315 of the MCM (2016 edition) without amendment [except that the Discussion following Mil. R. Evid. 315(a) has been deleted].

### **Rule 316 Seizures**

This rule is taken from Rule 316 of the MCM (2016 edition) without amendment.

### **Rule 317 Interception of wire and oral communications**

This rule is taken from Rule 317 of the MCM (2016 edition) without amendment.

### **Rule 321 Eyewitness identification**

This rule is taken from Rule 321 of the MCM (2016 edition) without amendment.

## SECTION IV

### **Relevancy And Its Limits**

#### **Rule 401 Test for relevant evidence**

This rule is taken from Rule 401 of the MCM (2016 edition) without amendment.

#### **Rule 402 General admissibility of relevant evidence**

This rule is taken from Rule 402 of the MCM (2016 edition) without amendment.

#### **Rule 403 Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons**

This rule is taken from Rule 403 of the MCM (2016 edition) without amendment.

#### **Rule 404 Character evidence, crimes or other acts**

This rule is taken from Rule 404 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 404(a)(2)(A) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

#### **Rule 405 Methods of proving character**

This rule is taken from Rule 405 of the MCM (2016 edition) without amendment.

#### **Rule 406 Habit; routine practice**

This rule is taken from Rule 406 of the MCM (2016 edition) without amendment.

#### **Rule 407 Subsequent remedial measures**

This rule is taken from Rule 407 of the MCM (2016 edition) without amendment.

#### **Rules 408 Compromise offers and negotiations**

This rule is taken from Rule 408 of the MCM (2016 edition) without amendment.

## ANALYSIS OF THE MILITARY RULES OF EVIDENCE

### **Rule 409 Offers to pay medical and similar expenses**

This rule is taken from Rule 409 of the MCM (2016 edition) without amendment.

### **Rule 410 Pleas, plea discussions, and related statements**

This rule is taken from Rule 410 of the MCM (2016 edition) without amendment.

### **Rule 411 Liability insurance**

This rule is taken from Rule 411 of the MCM (2016 edition) without amendment.

### **Rule 412 Sex offense cases: The victim's sexual behavior or predisposition**

This rule is taken from Rule 412 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 412(b) is amended and more closely aligns with Federal Rule of Evidence 412. The amendment also addresses the Court of Appeals for the Armed Forces' opinion in *United States v. Gaddis*, 70 M.J. 248 (C.A.A.F. 2011) with regard to evidence the admission of which is required by the United States Constitution.

In *United States v. Banker*, 60 M.J. 215, 223 (C.A.A.F. 2004), the Court of Appeals for the Armed Forces indicated that when assessing whether evidence satisfies Military Rule of Evidence 412's requirement that its probative value outweighs the danger of unfair prejudice, one factor to be considered is the "prejudice to the victim's legitimate privacy interests." In 2007, the President codified that standard in Military Rule of Evidence 412, adding to the rule that evidence is admissible under the rule if "the probative value of such evidence outweighs the danger of unfair prejudice to the alleged victim's privacy." Exec. Order No. 13,447, Annex, § 2(a) (Sept. 28, 2007). The Court of Appeals for the Armed Forces subsequently cautioned that the revised Military Rule of Evidence 412 "has the potential to lead military judges to exclude constitutionally required evidence merely because its probative value does not outweigh the danger of prejudice to the alleged victim's privacy, which would violate the Constitution." *Gaddis*, 70 M.J. at 254. A rule that invites constitutional error, with its attendant risk of appellate reversal and even unjust convictions, is not in the interest of the accused, the government, or the alleged victim. Additionally, the current rule is in tension with Article 36(a) of the Uniform Code of Military Justice, 10 U.S.C. § 836(a), which generally requires that the evidentiary rules prescribed by the President be, "as far as he considers practicable" consistent with "the rules of evidence generally recognized in the trial of criminal cases in the United States district courts." The portion of Military Rule of Evidence 412 added in 2007 is inconsistent with the portion of Federal Rule of Evidence 412 that applies in criminal cases; however, *Banker* prescribed an additional test of admissibility that made it impracticable to follow Federal Rule of Evidence 412 in full. *Gaddis'* repudiation of *Banker*, see 70 M.J. at 256, however, eliminated that concern with regard to the test for admissibility of constitutionally required evidence. Thus, it is no longer impracticable for courts-martial to follow the same admissibility test for constitutionally required evidence as in

Federal Rule of Evidence 412. Accordingly, to comply with Article 36(a), Military Rule of Evidence 412, as it pertains to constitutionally required evidence, is revised to comport with the portion of Federal Rule of Evidence 412 that applies in criminal cases. The balancing test for the admission of evidence that is not required by the Constitution remains unchanged.

Mil. R. Evid. 412(c)(2) is amended and updates a cross-reference to R.C.M. 1103A, which is deleted and redesignated as R.C.M. 1113.

### **Rule 413 Similar crimes in sexual offense cases**

This rule is taken from Rule 413 of the MCM (2016 edition) without amendment.

### **Rule 414 Similar crimes in child-molestation cases**

This rule is taken from Rule 414 of the MCM (2016 edition) without amendment.

## SECTION V

### **Privileges**

#### **Rule 501 Privilege in general**

This rule is taken from Rule 501 of the MCM (2016 edition) without amendment.

#### **Rule 502 Lawyer-client privilege**

This rule is taken from Rule 502 of the MCM (2016 edition) without amendment.

#### **Rule 503 Communications to clergy**

This rule is taken from Rule 503 of the MCM (2016 edition) without amendment.

#### **Rule 504 Marital privilege**

This rule is taken from Rule 504 of the MCM (2016 edition) without amendment.

#### **Rule 505 Classified information**

This rule is taken from Rule 505 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 505, as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), further amends Mil. R. Evid. 505(j)(3), 505(k)(1)(B), and 505(l) updates cross-references to R.C.M. 701(g)(2) and R.C.M. 1103A (which is deleted and redesignated as R.C.M. 1113), and updates cross-references to R.C.M. 1103(h) and 1104(b)(1)(D), which are deleted and redesignated as R.C.M. 1112(e)(3).



## APPENDIX 16

### **Rule 506 Government information**

This rule is taken from Rule 506 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 506, as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), further amends Mil. R. Evid. 506(b) and broadens the scope of the rule to cover classified information. The government may now claim a privilege with respect to classified information under either Mil. R. Evid. 505 or Mil. R. Evid. 506, or both.

The Discussion accompanying Mil. R. Evid. 506(b) is new.

Mil. R. Evid. 506(j)(3), 506(l)(2), and 506(m) are amended and update cross-references to R.C.M. 1103A, which is deleted and redesignated as R.C.M. 1113.

### **Rule 507 Identity of informants**

This rule is taken from Rule 507 of the MCM (2016 edition) without amendment.

### **Rule 508 Political vote**

This rule is taken from Rule 508 of the MCM (2016 edition) without amendment.

### **Rule 509 Deliberations of courts and juries**

This rule is taken from Rule 509 of the MCM (2016 edition) without amendment.

### **Rule 510 Waiver of privilege by voluntary disclosure**

This rule is taken from Rule 510 of the MCM (2016 edition) without amendment.

### **Rule 511 Privileged matter disclosed under compulsion or without opportunity to claim privilege**

This rule is taken from Rule 511 of the MCM (2016 edition) without amendment.

### **Rule 512 Comment upon or inference from claim of privilege; instruction**

This rule is taken from Rule 512 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 512(b) is amended and reflects the elimination of special courts-martial without a military judge. See Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 513 Psychotherapist—patient privilege**

This rule is taken from Rule 513 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 513, as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), amends Mil. R. Evid. 513(c) and provides that a patient may authorize trial counsel or any counsel representing the patient to claim the privilege on his or her behalf.

Mil. R. Evid. 513(e)(3)(A) is amended and clarifies the required findings of a military judge prior to conducting an in-camera review of protected records or communications to determine whether the records or communications must be produced or admitted into evidence.

Mil. R. Evid. 513(e)(6) is amended and updates cross-references to R.C.M. 701(g)(2) and R.C.M. 1103A (which is deleted and redesignated as R.C.M. 1113).

### **Rule 514 Victim advocate—victim privilege**

This rule is taken from Rule 514 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 514, as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), amends Mil. R. Evid. 514(b)(2) and clarifies the definition of a “victim advocate” in this rule as a person, other than a prosecutor, trial counsel, any victim’s counsel, law enforcement officer, or military criminal investigator in the case.

Mil. R. Evid. 514(e)(3)(A) is amended and clarifies the required findings of a military judge prior to conducting an in-camera review of protected records or communications to determine whether the records or communications must be produced or admitted into evidence.

Mil. R. Evid. 514(e)(6) is amended and updates cross-references to R.C.M. 701(g)(2) and R.C.M. 1103A (which is deleted and redesignated as R.C.M. 1113).

## SECTION VI

### **Witnesses**

#### **Rule 601 Competency to testify in general**

This rule is taken from Rule 601 of the MCM (2016 edition) without amendment.

#### **Rule 602 Need for personal knowledge**

This rule is taken from Rule 602 of the MCM (2016 edition) without amendment.

#### **Rule 603 Oath or affirmation to testify truthfully**

This rule is taken from Rule 603 of the MCM (2016 edition) without amendment.

## ANALYSIS OF THE MILITARY RULES OF EVIDENCE

### **Rule 604 Interpreter**

This rule is taken from Rule 604 of the MCM (2016 edition) without amendment.

### **Rule 605 Military Judge’s competency as a witness**

This rule is taken from Rule 605 of the MCM (2016 edition) without amendment.

### **Rule 606 Member’s competency as a witness**

This rule is taken from Rule 606 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 606(a) is amended and reflects the elimination of special courts-martial without a military judge. See Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

### **Rule 607 Who may impeach a witness**

This rule is taken from Rule 607 of the MCM (2016 edition) without amendment.

### **Rule 608 A witness’ character for truthfulness or untruthfulness**

This rule is taken from Rule 608 of the MCM (2016 edition) without amendment.

### **Rule 609 Impeachment by evidence of a criminal conviction or finding of guilty by summary court-martial**

This rule is taken from Rule 609 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 609 is amended throughout and reflects changes to Article 20, UCMJ, implementing the Supreme Court’s ruling in *Middendorf v. Henry*, 425 U.S. 25 (1976) (summary court-martial is not a “criminal prosecution” within the meaning of the Sixth Amendment). See Article 20, as amended by Section 5164 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

### **Rule 610 Religious beliefs or opinions**

This rule is taken from Rule 610 of the MCM (2016 edition) without amendment.

### **Rule 611 Mode and order of examining witnesses and presenting evidence**

This rule is taken from Rule 611 of the MCM (2016 edition) without amendment.

### **Rule 612 Writing used to refresh a witness’ memory**

This rule is taken from Rule 612 of the MCM (2016 edition) without amendment.

### **Rule 613 Witness’ prior statement**

This rule is taken from Rule 613 of the MCM (2016 edition) without amendment.

### **Rule 614 Court-martials calling or examining a witness**

This rule is taken from Rule 614 of the MCM (2016 edition) without amendment.

### **Rule 615 Excluding witnesses**

This rule is taken from Rule 615 of the MCM (2016 edition) without amendment.

## SECTION VII

### **Opinions And Expert Testimony**

#### **Rule 701 Opinion testimony by lay witnesses**

This rule is taken from Rule 701 of the MCM (2016 edition) without amendment.

#### **Rule 702 Testimony by expert witnesses**

This rule is taken from Rule 702 of the MCM (2016 edition) without amendment.

#### **Rule 703 Bases of an expert’s opinion testimony**

This rule is taken from Rule 703 of the MCM (2016 edition) without amendment.

#### **Rule 704 Opinion on an ultimate issue**

This rule is taken from Rule 704 of the MCM (2016 edition) without amendment.

#### **Rule 705 Disclosing the facts or data underlying an expert’s opinion**

This rule is taken from Rule 705 of the MCM (2016 edition) without amendment.

#### **Rule 706 Court-appointed expert witnesses**

This rule is taken from Rule 706 of the MCM (2016 edition) without amendment.

## APPENDIX 16

### Rule 707 Polygraph examinations

This rule is taken from Rule 707 of the MCM (2016 edition) without amendment.

## SECTION VIII

### Hearsay

#### Rule 801 Definitions that apply to this section; exclusions from hearsay

This rule is taken from Rule 801 of the MCM (2016 edition) without amendment.

#### Rule 802 The rule against hearsay

This rule is taken from Rule 802 of the MCM (2016 edition) without amendment.

#### Rule 803 Exceptions to the rule against hearsay – regardless of whether the declarant is available as a witness

This rule is taken from Rule 803 of the MCM (2016 edition) without amendment.

#### Rule 804 Exceptions to the rule against hearsay – when the declarant is unavailable as a witness

This rule is taken from Rule 804 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 804(a)(6) is amended and reflects amendments to Article 49 and deletes the cross-reference to Article 49(d)(2). *See* Article 49, as amended by Section 532, Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014).

#### Rule 805 Hearsay within hearsay

This rule is taken from Rule 805 of the MCM (2016 edition) without amendment.

#### Rule 806 Attacking and supporting the declarant’s credibility

This rule is taken from Rule 806 of the MCM (2016 edition) without amendment.

#### Rule 807 Residual exception

This rule is taken from Rule 807 of the MCM (2016 edition) without amendment.

## SECTION IX

### Authentication And Identification

#### Rule 901 Authenticating or identifying evidence

This rule is taken from Rule 901 of the MCM (2016 edition) without amendment.

#### Rule 902 Evidence that is self-authenticating

This rule is taken from Rule 902 of the MCM (2016 edition) without amendment.

#### Rule 903 Subscribing witness’ testimony

This rule is taken from Rule 903 of the MCM (2016 edition) without amendment.

## SECTION X

### Contents Of Writings, Recordings, And Photographs

#### Rule 1001 Definitions that apply to this section

This rule is taken from Rule 1001 of the MCM (2016 edition) without amendment.

#### Rule 1002 Requirement of the original

This rule is taken from Rule 1002 of the MCM (2016 edition) without amendment.

#### Rule 1003 Admissibility of duplicates

This rule is taken from Rule 1003 of the MCM (2016 edition) without amendment.

#### Rule 1004 Admissibility of other evidence of content

This rule is taken from Rule 1004 of the MCM (2016 edition) without amendment.

#### Rule 1005 Copies of public records to prove content

This rule is taken from Rule 1005 of the MCM (2016 edition) without amendment.

#### Rule 1006 Summaries to prove content

This rule is taken from Rule 1006 of the MCM (2016 edition) without amendment.

#### Rule 1007 Testimony or statement of a party to prove content

This rule is taken from Rule 1007 of the MCM (2016 edition) without amendment.

## ANALYSIS OF THE MILITARY RULES OF EVIDENCE

### **Rule 1008 Functions of the military judge and the members**

This rule is taken from Rule 1008 of the MCM (2016 edition) without amendment.

## SECTION XI

### **Miscellaneous Rules**

#### **Rules 1101 Applicability of these rules**

This rule is taken from Rule 1101 of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Mil. R. Evid. 1101(a) is amended and reflects that the Military Rules of Evidence also apply to pre-referral proceedings under Article 30a. *See* Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017).

#### **Rule 1102 Amendments**

This rule is taken from Rule 1102 of the MCM (2016 edition) without amendment.

#### **Rule 1103 Title**

This rule is taken from Rule 1103 of the MCM (2016 edition) without amendment.

THIS PAGE LEFT INTENTIONALLY BLANK

## APPENDIX 17

### ANALYSIS OF PUNITIVE ARTICLES

#### 1. Article 77 (10 U.S.C. 877)—Principals

This paragraph is taken, without change, from paragraph 1 (Article 77—Principals) of the MCM (2016 edition).

#### 2. Article 78 (10 U.S.C. 878)—Accessory after the fact

This paragraph is taken from paragraph 2 (Article 78—Accessory after the fact) of the MCM (2016 edition), with the following amendments:

*2018 Amendment: c. Explanation. (2) Failure to report offense.* This subparagraph is amended and reflects that the offense of misprision of a serious offense has been relocated from Article 134 to Article 131c as part of the Military Justice Act of 2016's realignment of the punitive articles. The substance of the offense remains the same. *See* Article 131c, as added by Section 5446 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

#### 3. Article 79 (10 U.S.C. 879)—Conviction of offense charged, lesser included offenses, and attempts

This paragraph is taken from paragraph 3 (Article 79—Conviction of lesser included offenses) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: a. Text of statute.* Article 79 is amended and provides two statutory grounds for identifying “lesser included offenses.” Under the first, the lesser offense must be “necessarily included” in the greater offense. *See, e.g.,* the elements test articulated in *United States v. Jones*, 68 M.J. 465, 470 (C.A.A.F. 2010); *United States v. Alston*, 69 M.J. 214, 216 (C.A.A.F. 2010). Under the second, the offense must be expressly designated by the President as a lesser included offense. The President’s authority extends only to an offense “reasonably included” in the greater offense. The President has done so in Appendix 12A. *See* Article 79 as amended by Section 5402 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

b. *Explanation.*

Subparagraph b.2. sets forth an explanation of “necessarily included offenses.” Subparagraph b.3. explains the President’s express authority under Article 79 to designate certain closely related offenses to be “reasonably included” lesser offenses of greater ones, including offenses that do not strictly meet the “necessarily included” elements test. Whether “necessarily included” or “reasonably included,” a lesser included offense must be raised by the evidence at trial. That is, while all presidentially designated lesser included offenses (*see* Appendix 12A) qualify as lesser included offenses, a party is not entitled to an instruction on a lesser included offense if the evidence at trial does not reasonably raise it. *See United States v. Bean*, 62 M.J. 264, 265 (C.A.A.F. 2005).

#### 4. Article 80 (10 U.S.C. 880)—Attempts

This paragraph is taken from paragraph 4 (Article 80—Attempts), of the MCM (2016 edition) with the following amendments:

*2018 Amendment: c. Explanation. (6) Attempts not under Article 80.* This subparagraph is amended and reflects that the offenses of Article 104—Aiding the enemy and Article 106a—Espionage are renumbered Articles 103b and 103a respectively, under Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.*

This subparagraph is amended and reflects that the offense of forcible sodomy under Article 125 is now addressed under Article 120. *See* Section 5430 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(O) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

#### 5. Article 81 (10 U.S.C. 881)—Conspiracy

This paragraph is taken from paragraph 5 (Article 81—Conspiracy) of the MCM (2016 edition) with the following amendment:

*2018 Amendment: Subparagraph d. Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

#### 6. Article 82 (10 U.S.C. 882)—Soliciting commission of offenses

This paragraph is taken from paragraphs 6 (Article 82—Solicitation) and 105 (Article 134—Soliciting another to commit an offense) of the MCM (2016 edition) with the following amendments:

*2018 Amendment a. Text of Statute.* Article 82 is revised and incorporates the solicitation of any offense under the UCMJ in one consolidated statute. Specifically, the former Article 134—Soliciting another to commit an offense, MCM (2016 edition), is relocated to Article 82 pursuant to Section 5403 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(M) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). Soliciting another to commit a criminal offense is a well-recognized concept in criminal law that does not rely upon the “terminal element” of Article 134 as the basis for its criminality. Accordingly, the newly consolidated

## APPENDIX 17

Article 82 does not require proof of the Article 134 “terminal element.”

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum Punishment.* The maximum authorized confinement for solicitation to commit desertion, mutiny or sedition, or misbehavior before the enemy where the offense is not committed or attempted is changed to confinement for 15 years or the maximum confinement for the underlying offense, whichever is lesser. The maximum authorized punishment for solicitation to commit unspecified offenses is changed to a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years, or the maximum punishment for the underlying offense, whichever is lesser.

### 7. Article 83 (10 U.S.C. 883)—Malingering

This paragraph is taken from paragraph 40 (Article 115—Malingering) of the MCM (2016 edition) with the following amendments:

This offense is relocated to its current position, without substantive change, pursuant to Section 5404 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 8. Article 84 (10 U.S.C. 884)—Breach of medical quarantine

The Article 134 offense of Quarantine: medical, breaking is relocated from paragraph 100 of the MCM (2016 edition) to Article 84 pursuant to Section 5405 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment: c. Explanation.* Formal medical quarantines are addressed in DoDI 6200.03, Public Health Emergency Management within the Department of Defense, March 5, 2010 (Change 2, effective October 2, 2013). This instruction provides an example of a commander’s power to institute medical quarantines as an incidence of command, but the commander’s power generally to institute a medical quarantine is not limited to the situations discussed in DoDI 6200.03. Quarantines may include, but are not limited to, orders to remain within a restricted area and to submit to diagnostic or medical treatment. *See id.* at Enclosure 3, ¶2(c)–(e), (h), 4a(7)(a)–(i).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum Punishment.* A new maximum punishment category is added and aligns this offense with federal law (*see* 42 U.S.C. § 271) by enhancing maximum punishments for breaking of medical

quarantines declared in reference to a “quarantinable communicable disease.” Under 42 U.S.C. § 271, a “quarantinable communicable disease” extends to those diseases defined by the President by Executive Order. The President has done so in Executive Order 13295 (April 4, 2003, as amended July 3, 2014), now promulgated in 42 C.F.R. §70.1.

### 9. Article 85 (10 U.S.C. 885)—Desertion

This paragraph is taken, without substantive change, from paragraph 9 (Article 85—Desertion) of the MCM (2016 edition).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 10. Article 86 (10 U.S.C. 886)—Absence without leave

This paragraph is taken, without substantive change, from paragraph 10 (Article 86—Absence without leave) of the MCM (2016 edition).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 11. Article 87 (10 U.S.C. 887)—Missing movement; jumping from vessel

This paragraph is taken from paragraphs 11 (Article 87—Missing movement) and 91 (Article 134—Jumping from vessel into the water) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: a. Text of Statute.* The Article 134 offense of jumping from a vessel into the water is relocated to Article 87 pursuant to Section 5406 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The substance of both offenses remains the same with the exception of the removal of the terminal element from the former Article 134 offense.

Subparagraph b. *Elements.* The two elements “that the accused missed the movement” and “through design or neglect” from paragraph 11.b.(3) and (4) of the MCM (2016 edition) are combined into a single sentence “that the accused missed the movement through design or neglect.”

A new Discussion is added following paragraph 11.c.(2)

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

## ANALYSIS OF PUNITIVE ARTICLES

### 12. Article 87a (10 U.S.C. 887a)—Resistance, flight, breach of arrest, and escape

This paragraph is taken from paragraph 19 (Article 95—Resistance, flight, breach, of arrest, and escape) of the MCM (2016 edition). This offense is relocated to its current position, without substantive change, pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 13. Article 87b (10 U.S.C. 887b)—Offenses against correctional custody and restriction

This paragraph is taken from paragraph 70 (Article 134—Correctional custody—offenses against) and paragraph 102 (Article 134—Restriction, breaking) of the MCM (2016 edition). These offenses are consolidated and relocated to Article 87b pursuant to Section 5407 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 14. Article 88 (10 U.S.C. 888)—Contempt toward officials

This paragraph is taken, without substantive change, from paragraph 12 (Article 88—Contempt toward officials) of the MCM (2016 edition).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 15. Article 89 (10 U.S.C. 889)—Disrespect toward superior commissioned officer; assault of superior commissioned officer

This paragraph is taken from paragraphs 13 (Article 89—Disrespect toward superior commissioned officer) and 14 (Article 90—Assaulting or willfully disobeying superior commissioned officer) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* a. *Text of Statute.* Article 89 is amended and incorporates the offense of willfully assaulting a superior commissioned officer, which is relocated from Article 90 MCM (2016 edition) pursuant to Section 5408 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

c. *Explanation.*

(1) *Superior commissioned officer.* The definition of superior commissioned officer is changed from MCM (2016 edition), Part IV, subparagraph 13.c.(1). The definition of “superior commissioned officer,” as revised, removes the separate Service distinction.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum punishment is adjusted and differentiates situations where the disrespect is directed at a superior commissioned officer in command from situations where a commissioned officer is superior in rank.

### 16. Article 90 (10 U.S.C. 890)—Willfully disobeying superior commissioned officer

This paragraph is taken from paragraph 14 (Article 90—Assaulting or willfully disobeying superior commissioned officer) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* a. *Text of Statute.* Article 90 is amended by relocating the offense of “striking or assaulting superior commissioned officer” to Article 89 pursuant to Sections 5408 and 5409 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

c. *Explanation* (1) *Superior commissioned officer.* The definition of superior commissioned officer is changed from MCM (2016 edition), Part IV, subparagraph 13.c.(1). The definition of “superior commissioned officer,” as revised, removes the separate Service distinction. Subparagraph 16.c.(2)(a)(iii), as revised, explains the basis for the authority of the issuing officer.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 17. Article 91 (10 U.S.C. 891)—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

This paragraph is taken from paragraph 15 (Article 91—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer) of the MCM (2016 edition) without substantive change.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 18. Article 92 (10 U.S.C. 892)—Failure to obey order or regulation

This paragraph is taken from paragraph 16, (Article 92—Failure to obey order or regulation) of the MCM (2016 edition) without substantive change.



## APPENDIX 17

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 19. Article 93 (10 U.S.C. 893)—Cruelty and maltreatment

This paragraph is taken from paragraph 17 (Article 93—Cruelty and maltreatment) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum authorized confinement for a violation of Article 93 is increased from two years to three years

### 20. Article 93a (10 U.S.C. 893a)—Prohibited activities with military recruit or trainee by person in position of special trust

*2018 Amendment:* This article is a new enumerated provision and implements Article 93a, as added by Section 5410 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and criminalizes acts of “prohibited sexual activity” specified in regulations by the Secretary concerned, between those in positions of special trust and junior military members in initial active duty training, officer qualification programs, other training programs for initial career qualification, in a delayed entry program, or applicants for military service.

### 21. Article 94 (10 U.S.C. 894)—Mutiny or sedition

This paragraph is taken from paragraph 18 (Article 94—Mutiny and sedition) of the MCM (2016 edition) without substantive change.

*2018 Amendment:* Subparagraph c.(4)(b) is amended and clarifies the definition of “superior commissioned officer.”

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 22. Article 95 (10 U.S.C. 895)—Offenses by sentinel or lookout

This paragraph is taken from paragraph 38 (Article 113—Misbehavior of sentinel or lookout) and the portions of paragraph 104 (Article 134—Sentinel or lookout: offenses against or by) relating to the offense of “Loitering or wrongfully sitting on post by a sentinel or lookout” of the MCM (2016 edition) with the following amendments: This offense is relocated from subparagraph 104.b.(2) of Article 134 of the MCM (2016 edition) pursuant to Section 5411 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal

Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the “terminal element” of Article 134 is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 23. Article 95a (10 U.S.C. 895a)—Disrespect toward sentinel or lookout

This paragraph is taken from the portions of paragraph 104 (Article 134—Sentinel or lookout: offenses against or by) of the MCM (2016 edition) relating to the offense of “Disrespect to a sentinel or lookout.” This offense is relocated to its current position pursuant to Section 5412 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments: Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 24. Article 96 (10 U.S.C. 896)—Release of prisoner without authority; drinking with prisoner

This paragraph is taken from paragraphs 20 (Article 96—Releasing prisoner without authority) and 74 (Article 134—Drinking liquor with prisoner) of the MCM (2016 edition) with the following amendments: These offenses were relocated and consolidated pursuant to Section 5413 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The term “suffers” was stricken and replaced with “allows” and reflects modern usage of terminology; and in the case of the “drinking with prisoner” offense, the scope of the offense was extended to apply to any person who unlawfully drinks an alcoholic beverage with a prisoner. Proof of the “terminal element” of Article 134 is no longer required.

*2018 Amendment: c. Explanation (5) Drinking with prisoner.* This explanation clarifies that drinking with a prisoner is unlawful unless competent authority has granted the accused specific permission to consume alcohol with a prisoner.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum authorized confinement for allowing a prisoner to escape through neglect is increased from one to two years; the maximum authorized confinement for allowing a prisoner to escape through design is increased from two to five years. The maximum authorized confinement and period of forfeitures of two-thirds pay per month for drinking with a prisoner is increased from three months to one year.

## ANALYSIS OF PUNITIVE ARTICLES

### 25. Article 97 (10 U.S.C. 897)—Unlawful detention

This paragraph is taken, without substantive change, from paragraph 21 (Article 97—Unlawful detention) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 26. Article 98 (10 U.S.C. 898)—Misconduct as prisoner

This paragraph is taken from paragraph 29 (Article 105—Misconduct as a prisoner) of the MCM (2016 edition) with the following amendments: This offense is relocated to its current position, pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 27. Article 99 (10 U.S.C. 899)—Misbehavior before the enemy

This paragraph is taken, without substantive change, from paragraph 23 (Article 99—Misbehavior before the enemy) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 28. Article 100 (10 U.S.C. 900)—Subordinate compelling surrender

This paragraph is taken from paragraph 24 (Article 100—Subordinate compelling surrender) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 29. Article 101 (10 U.S.C. 901)—Improper use of countersign

This paragraph is taken from paragraph 25 (Article 101—Improper use of a countersign) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM

(2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 30. Article 102 (10 U.S.C. 902)—Forcing a safeguard

This paragraph is taken from paragraph 26 (Article 102—Forcing a safeguard) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 31. Article 103 (10 U.S.C. 903)—Spies

This paragraph is taken from paragraph 30 (Article 106—Spies) of the MCM (2016 edition) with the following amendments: This offense is relocated to its current position pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) and is amended to remove the mandatory death penalty.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* As amended, death is the maximum authorized punishment for the offense, rather than a mandatory punishment.

### 32. Article 103a (10 U.S.C. 903a)—Espionage

This paragraph is taken from paragraph 30a (Article 106a—Espionage) of the MCM (2016 edition) with the following amendments: This offense is relocated to its current position pursuant to Section 5401 Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 33. Article 103b (10 U.S.C. 903b)—Aiding the enemy

This paragraph is taken from paragraph 28 (Article 104—Aiding the enemy) of the MCM (2016 edition) with the following amendments: This offense is relocated to its current position pursuant to Section 5401 Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

## APPENDIX 17

### 34. Article 104 (10 U.S.C. 904)—Public records offenses

This paragraph is taken from paragraph 99 (Article 134—Public record: altering, concealing, removing, mutilating, obliterating, or destroying) of the MCM (2016 edition) and is relocated to Article 104 pursuant to Section 5415 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments: Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 35. Article 104a (10 U.S.C. 904a)—Fraudulent enlistment, appointment, or separation

This paragraph is taken from paragraph 7 (Article 83—Fraudulent enlistment, appointment, or separation) of the MCM (2016 edition) with the following amendments: This offense is relocated to and is relocated to Article 104a pursuant to Section 5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 36. Article 104b (10 U.S.C. 904b)—Unlawful enlistment, appointment, or separation

This paragraph is taken from paragraph 8 (Article 84—Effecting unlawful enlistment, appointment, or separation) of the MCM (2016 edition) with the following amendments: This offense is relocated to Article 104b pursuant to Section 5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 37. Article 105 (10 U.S.C. 905)—Forgery

This paragraph is taken from paragraph 48 (Article 123—Forgery) of the MCM (2016 edition) with the following amendments: This offense is relocated to Article 105 pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM

(2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 38. Article 105a (10 U.S.C. 905a)—False or unauthorized pass offenses

This paragraph is taken from paragraph 77 (Article 134—False pretenses, obtaining services under) of the MCM (2016 edition) pursuant to Section 5416 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments: Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 39. Article 106 (10 U.S.C. 906)—Impersonation of officer, noncommissioned or petty officer, or agent or official

This paragraph is taken from paragraph 86 (Article 134—Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official) of the MCM (2016 edition) with the following amendments: This offense is relocated to Article 106 pursuant to Section 5417 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* a. *Text of statute.* The phrase “commissioned, warrant officer” is replaced with “officer.” This change aligns this offense with the definition of “officer” under 10 U.S.C. § 101(b)(1) which defines “officer” to mean a commissioned or warrant officer.

c. *Explanation (2) Officer.* This provision is added to the MCM and explains that the definition of “officer” for purposes of this statute is derived from the existing definition of that term in 10 U.S.C. § 101(b)(1).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 40. Article 106a (10 U.S.C. 906a)—Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button

This paragraph is taken from paragraph 113 (Article 134—Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button) of the MCM (2016 edition) with the following amendments: This offense is relocated to Article 106a pursuant to Section 5418 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* c. *Explanation (1) In general.* The MCM (2016 edition) did not provide an explanation for this provision. An

## ANALYSIS OF PUNITIVE ARTICLES

explanation is added and clarifies the gravamen of this offense, the scope of unauthorized wear, and knowledge.

d. *Maximum punishment.* The maximum authorized confinement is increased from six months to a year for violations of the article involving specified medals and awards.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 41. Article 107 (10 U.S.C. 907)—False official statements; false swearing

This paragraph is taken from paragraphs 31 (Article 107—False official statement) and 79 (Article 134—False swearing) of the MCM (2016 edition) with the following amendments: The offense of false swearing is relocated from Article 134, MCM (2016 edition), to Article 107 pursuant to Section 5419 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” of Article 134 is no longer required.

*2018 Amendment: c. Explanation.* (1)(b) *Official statements.* This explanation is revised and clarifies whether a statement relates to the official duties of the speaker or hearer. See *United States v. Spicer*, 71 M.J. 470 (C.A.A.F. 2013). See also *United States v. Passut*, 73 M.J. 27 (C.A.A.F. 2014), and *United States v. Capel*, 71 M.J. 485 (C.A.A.F. 2013).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 42. Article 107a (10 U.S.C. 907a)—Parole violation

This paragraph is taken from paragraph 97a (Article 134—Parole, violation of) of the MCM (2016 edition) with the following amendments: The offense is relocated from Article 134, MCM (2016 edition), to Article 107a pursuant to Section 5420 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” of Article 134 is no longer required.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 43. Article 108 (10 U.S.C. 908)—Military property of United States—Loss, damage, destruction, or wrongful disposition

This paragraph is taken from paragraph 32 (Article 108—Military property of United States—Loss, damage, destruction, or wrongful disposition) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: c. Explanation.* Subparagraph c.(4) *Firearms and Explosives* clarifies that the term “explosive” specifically includes ammunition.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The threshold amount for purposes of the maximum punishment in relation to the qualifying value of property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in federal civilian law for equivalent misconduct. See 18 U.S.C. § 1361.

### 44. Article 108a (10 U.S.C. 908a)—Captured or abandoned property

This paragraph is taken from paragraph 27 (Article 103—Captured or abandoned property) of the MCM (2016 edition) and is relocated to Article 108a pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments:

*2018 Amendment: c. Explanation.* Subparagraph c.(6) *Firearms and explosives* is added and aligns it with an identical provision in paragraph 43.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum Punishment.* The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in civilian jurisdictions. Maximum punishments focus on the amount of damage inflicted and the value of the property destroyed.

### 45. Article 109 (10 U.S.C. 909)—Property other than military property of United States—Waste, spoilage, or destruction

This paragraph is taken from paragraph 33 (Article 109—Property other than military property of the United States—waste, spoilage, or destruction) of the MCM (2016 edition) with the following amendments:

*2018 Amendments: b. Elements.* The maximum punishment categories are reorganized into three separate categories reflecting the type of property involved and the type of action being taken against the property.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum Punishment.* The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in civilian jurisdictions. Maximum punishments focus on the amount of damage inflicted and the value of the property

## APPENDIX 17

destroyed. The maximum punishments are also further divided based on the nature of the property and the extent of the damage.

### **46. Article 109a (10 U.S.C. 909a)—Mail matter: wrongful taking, opening, etc.**

This paragraph is taken from paragraph 93 (Article 134—Mail: taking, opening, secreting, destroying, or stealing) of the MCM (2016 edition) with the following amendments: The offense is relocated from Article 134, MCM (2016 edition), to Article 109a pursuant to Section 5421 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” of Article 134 is no longer required.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **47. Article 110 (10 U.S.C. 910)—Improper hazarding of vessel or aircraft**

This paragraph is taken from paragraph 34 (Article 110—Improper hazarding of a vessel) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* a. *Text of statute.* This offense is amended and includes improper hazarding of an aircraft, and accordingly is retitled “Improper hazarding of vessel or aircraft.”

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **48. Article 111 (10 U.S.C. 911)—Leaving scene of vehicle accident**

This paragraph is taken from paragraph 82 (Article 134—Fleeing scene of accident) of the MCM (2016 edition) with the following amendments: The offense is relocated from Article 134, MCM (2016 edition), to Article 111 pursuant to Section 5423 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” of Article 134 is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **49. Article 112 (10 U.S.C. 912)—Drunkenness and other incapacitation offenses**

This paragraph is taken from paragraphs 36 (Article 112—Drunk on duty), 75 (Article 134—Drunk Prisoner) and 76 (Article 134—Drunkenness—incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug) of the MCM (2016 edition) with the following amendments: The offense is now Article 112 pursuant to Section 5424 of the Military Justice

Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” of Article 134 is no longer required.

*2018 Amendment:* a. *Text of statute.* The new text reflects the migration of paragraphs 75 and 76 from Article 134 offenses in the MCM (2016 edition) to Article 112; proof of the terminal element of Article 134 is no longer required. This migration places the similar offenses of drunk on duty, drunk prisoner, and incapacitation for duty under the same UCMJ article.

(2) *Incapacitation for duty from drunkenness or drug use.* Under paragraph 76 of the MCM (2016 edition) wrongful indulgence in alcohol or drugs was required. The word wrongful has been removed from the incapacitation for duty from drunkenness or drug use offense; the act of being incapacitated for duty is itself wrongful in the military context. However, this offense retains the affirmative defense formerly utilized in the paragraph 76 of the MCM (2016 edition) namely: that at the time of the offense the accused neither knew, nor reasonably should have known, that he or she was assigned to, or susceptible to recall for, military duties. See subparagraph 49.c.(2)(b). Likewise, the defenses of accident (*see* R.C.M. 916(f)) and mistake of fact (*see* R.C.M. 916(j)) continue to apply to instances where the accused accidentally or mistakenly consumed drugs or alcohol, not knowing them to be such at the time of ingestion.

c. *Explanation.* (1) *Drunk on Duty.* (a) *Drunk.* This definition is taken from subparagraph 35.c.(6), MCM (2016 edition).

(2) *Incapacitation for duty from drunkenness or drug use.* (a) *Incapacitated.* The cross-reference to the explanation of drunk is changed to reflect the relocation of that definition from subparagraph 35.c.(6), MCM (2016 edition) to subparagraph 49.c.(1)(a).

(3) *Drunk prisoner.* (a) *Prisoner.* The cross-reference to the explanation of prisoner is changed and reflects the Military Justice Act of 2016’s relocation of the former Article 134—Drinking liquor with prisoner offense paragraph 74 of the MCM (2016 edition) to Article 96.

(b) *Drunk.* See subparagraph 51.c.(6). The definition of drunk is changed and reflects the lower blood alcohol content limits set forth in Article 113 pursuant to Section 5425, Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) and the relocation of that definition from subparagraph 35.c.(6), MCM (2016 edition), to subparagraph 49.c.(1)(a).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **50. Article 112a (10 U.S.C. 912a)—Wrongful use, possession, etc., of controlled substances**

This paragraph is taken from paragraph 37 (Article 112a—Wrongful use, possession, etc., of controlled substances) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

## ANALYSIS OF PUNITIVE ARTICLES

### 51. Article 113 (10 U.S.C. 913)—Drunken or reckless operation of a vehicle, aircraft, or vessel

This paragraph is taken from paragraph 35 (Article 111—Drunken or reckless operation of a vehicle, aircraft, or vessel) of the MCM (2016 edition). This offense is relocated to its current position pursuant to Section 5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments:

*2018 Amendment:* a. *Text of statute.* The substance of the offense remains the same, except for a lower blood alcohol content limit with respect to alcohol concentration in a person's blood pursuant to Section 5425 of the NDAA for FY17. The Secretary may by regulation prescribe limits that are lower if such lower limits are based on scientific developments, as reflected in federal civilian law of general applicability.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 52. Article 114 (10 U.S.C. 914)—Endangerment Offenses

This paragraph is taken from paragraphs 39 (Article 114—Dueling), 81 (Article 134—Firearm, discharging—willfully, under such circumstances as to endanger human life), 100a (Article 134—Reckless endangerment), and 112 (Article 134—Weapon: concealed, carrying) of the MCM (2016 edition) with the following amendments: These offenses are relocated and consolidated into the newly titled Article 114—Endangerment offenses pursuant to Section 5426 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* By prescribing one maximum punishment for all of these offenses, the 2018 Amendments authorize the imposition of a dishonorable discharge for reckless endangerment and for carrying a concealed weapon. Previously, a bad-conduct discharge but not a dishonorable discharge was a portion of the maximum authorized punishment for those offenses.

### 53. Article 115 (10 U.S.C. 915)—Communicating threats

This paragraph is taken from paragraphs 109 (Article 134—Threat or hoax designed or intended to cause panic or public fear) and 110 (Article 134—Threat, communicating) of the MCM (2016 edition) with the following amendments: These offenses are consolidated and relocated to their current position pursuant to Section 5427 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134

“terminal element” is no longer required. The explanations for threat and wrongful are amended and are consistent with *Elonis v. United States*, 135 S.Ct. 2001 (2015), and *United States v. Rapert*, 75 M.J. 164 (C.A.A.F. 2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 54. Article 116 (10 U.S.C. 916)—Riot or breach of peace

This paragraph is taken from paragraph 41 (Article 116—Riot or breach of peace) of the MCM (2016 edition) and is relocated to Article 116 pursuant to Section 5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 55. Article 117 (10 U.S.C. 917)—Provoking speeches or gestures

This paragraph is taken from paragraph 42 (Article 117—Provoking speeches or gestures) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 56. Article 118 (10 U.S.C. 918)—Murder

This paragraph is taken from paragraph 43 (Article 118—Murder) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* c. *Explanation (5)(b) Separate offenses.* This subparagraph is amended and conforms to the amendments to Articles 120 and 125 from Sections 5430 and 5439 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The specific listing of offenses that may be charged separately also is amended to reflect the list of felony-murder offenses contained at Article 118(4).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 57. Article 119 (10 U.S.C. 919)—Manslaughter

This paragraph is taken from paragraph 44 (Article 119—Manslaughter) of the MCM (2016 edition) with the following amendments:

## APPENDIX 17

*2018 Amendment:* b. *Elements* (2)(d) clarifies the relationship between involuntary manslaughter and murder perpetrated during the commission of certain offenses and conforms to the amendments to Articles 118 and 120 from Sections 5428 and 5430 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Forcible sexual misconduct previously addressed under Article 125 (MCM 2016) is now addressed in Articles 120 and 134 (Animal abuse).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 58. Article 119a (10 U.S.C. 919a)—Death or injury of an unborn child

This paragraph is taken from paragraph 44a (Article 119a—Death or injury of an unborn child) of the MCM 2016, as amended by Section 1031(c)(1)(N) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), with the following amendments:

*2018 Amendment:* a. *Text of statute.* The phrase “authorized by state or federal law to perform abortions” was removed from this subparagraph’s recital of the text of Article 119a because that phrase does not appear in the statute. See Pub. L. No. 1018-212, § 3; 118 Stat. 568 (April 1, 2004).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 59. Article 119b (10 U.S.C. 919b)—Child endangerment

This paragraph is taken from paragraph 68a (Article 134—Child endangerment) of the MCM (2016 edition) and is relocated to Article 116 pursuant to Section 5429 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* c. *Explanation.* (2) The phrase “even though such harm would not necessarily be the natural and probable consequences of such acts. In this regard,” was removed from this subparagraph.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 60. Article 120 (10 U.S.C. 920)—Rape and sexual assault generally

This paragraph is taken from paragraph 45 (Article 120—Rape and sexual assault generally) of MCM (2016 edition) with the following amendments that implement Article 120, as amended by Section 5430 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L.

No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(O) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).*2018 Amendment:* a. *Text of statute.* The definition of sexual act is amended.

b. *Elements.* The elements are consolidated to eliminate redundancy in repeating the specific intent necessary to accomplish a sexual act and sexual contact because the definitions of sexual act and sexual contact already contain within them the mens rea element of specific intent.

c. *Explanation.* (4) Consent as an element was removed from the explanation. Section 5430 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) amended Article 120 to include lack of consent as an element in Article 120(b)(2), Sexual Assault.

(5) Scope of threatening or placing that other person in fear emphasizes that threatening or placing that other person in fear explicitly includes, but is not limited to, abuse of military rank, position, or power, in order to engage in a sexual act or contact with a victim. See *United States v. Simpson*, 58 M.J. 368, 377 (C.A.A.F. 2003) (listing seven factors “demonstrating the relationship between the offenses at issue and Appellant’s superior rank and position” in a case involving “constructive force” under the pre-2007 version of Article 120).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

e. *Sample specifications.* The sample specifications are consolidated to include the various acts constituting: (a) rape; (b) sexual assault; (c) aggravated sexual contact; and (d) abusive sexual contact, by consolidating the descriptions of a sexual act or sexual contact within each overarching specification.

### 61. Article 120a (10 U.S.C. 920a)—Mails: deposit of obscene matter

This paragraph is taken from paragraph 94 (Article 134—Mails: depositing or causing to be deposited obscene matters in) of the MCM (2016 edition) and is relocated to Article 120a pursuant to Section 5431 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments. Proof of the Article 134 “terminal element” is no longer required. See *Miller v. United States*, 413 U.S. 15 (1973), for a discussion of the definition of obscenity.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 62. Article 120b (10 U.S.C. 920b)—Rape and sexual assault of a child

This paragraph is taken from paragraph 47 (Article 120b—Rape and sexual assault of a child) of the MCM (2016 edition) with the following amendments:

## ANALYSIS OF PUNITIVE ARTICLES

*2018 Amendment:* a. *Text of statute.* The definition of sexual act conforms to Article 120(g) as amended by Section 5430 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Consistent with federal civilian law, sexual acts with children under Article 120b include the intentional touching of the genitalia of a child under the age of 16 (committed by a person over the age of 16), when accomplished with either the intent to abuse, humiliate, harass, or degrade the victim, or to arouse or gratify the sexual desire of any person.

b. *Elements.* The elements are consolidated and eliminate redundancy in repeating the specific intent necessary to accomplish a sexual act and sexual contact. The definitions of sexual act and sexual contact already contain the mens rea element of specific intent.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

e. *Sample specifications.* The sample specifications are consolidated and include the various acts constituting rape of a child and sexual assault of a child, by consolidating the descriptions of a sexual act or sexual contact within each overarching specification.

### 63. Article 120c (10 U.S.C. 920c)—Other sexual misconduct

This paragraph is taken from paragraph 45c (Article 120c—Other sexual misconduct) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum punishment for forcible pandering is increased and aligns with federal civilian law. See 18 U.S.C. § 2422.

### 64. Article 121 (10 U.S.C. 921)—Larceny and wrongful appropriation

This paragraph is amended and reflects the addition of Article 121a to the UC MJ by Section 5432 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Other than the deletion of portions of the explanation dealing with matters now covered by Article 121a, this section is taken from paragraph 46 of the MCM (2016 edition).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum punishments for Wrongful appropriation of property of a value more than \$1000 is increased and aligns with corresponding federal civilian practice under 18 U.S.C. § 661 (Theft within special maritime and territorial

jurisdiction) and § 641 (Theft of public money, property, or records). The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in federal civilian law. The difference in the maximum authorized confinement for larceny of military versus non-military property in the lower-value category is eliminated.

### 65. Article 121a (10 U.S.C. 921a)—Fraudulent use of credit cards, debit cards, and other access devices

This offense is new and addresses misconduct previously charged as an obtaining-type larceny offense under paragraph 46 (Article 121—Larceny) the MCM (2016 edition), and is similar to 18 U.S.C. § 1029. This offense is created pursuant to pursuant to Section 5432 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The offense focuses on the intent of the accused and technology used. This punitive article applies to situations where an accused has no authorization to use the access device from a person whose authorization is required, as well as situations where an accused exceeds the authorization of a person whose authorization is required for such use. See *United States v. Simpson*, 77 M.J. 279 (C.A.A.F. 2018) and cases cited therein.

### 66. Article 121b (10 U.S.C. 921b)—False pretenses to obtain services

This paragraph is taken from paragraph 78 (Article 134—False pretenses: obtaining services under) of the MCM (2016 edition) pursuant to Section 5433 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments. Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum punishment for the lower-value category is increased, and aligns with federal civilian practice under 18 U.S.C. § 661 (Theft within special maritime and territorial jurisdiction). The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in federal civilian law.

### 67. Article 122 (10 U.S.C. 922)—Robbery

This paragraph is taken from paragraph 47 (Article 122—Robbery) of the MCM (2016 edition) with the following amendments: This offense is relocated to its current position Section 5434 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).



## APPENDIX 17

*2018 Amendment:* a. *Statutory Text.* Consistent with equivalent misconduct under

federal civilian law (see 18 U.S.C. § 2111), the element of “with the intent to deprive permanently” is removed from the offense of Article 122—Robbery. The gravamen of the offense is the forcible taking of a victim’s property in the presence of a victim.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum Punishment.* The maximum punishment categories of robbery are aligned with federal civilian law to authorize a maximum punishment of 15 years confinement for any robbery committed with a “dangerous weapon,” not limited to firearms.

### 68. Article 122a (10 U.S.C. 922a)—Receiving stolen property

This paragraph is taken from paragraph 106 (Article 134—Stolen property: knowingly receiving, buying, or concealing) of the MCM (2016 edition) with the following amendments. This offense is relocated from Article 134 to Article 122a pursuant to Section 5435 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum punishments are increased, and align with corresponding federal civilian practice under 18 U.S.C. § 662 (Receiving stolen property within special maritime and territorial jurisdiction). The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in federal civilian law.

### 69. Article 123 (10 U.S.C. 923)—Offenses concerning Government computers

This offense is new pursuant to Section 5436 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). The offense is similar to 18 U.S.C. § 1030, but does not supersede or preempt the assimilation of 18 U.S.C. § 1030 or other Title 18 offenses under Article 134, clause 3. Also, this offense does not supersede or preempt Department of Defense and Service regulations applicable to offenses concerning Government computers, applied via Article 92. This offense is directed at certain types of criminal conduct concerning Government computers. For other types of criminal conduct concerning computers, including private computers, persons subject to this chapter may also be subject to 18 U.S.C. § 1030, and other criminal statutes, via clause 3 of Article 134, as well as orders and regulations via Article 92. See Report of the Military Justice Review Group Part I: UCMJ Recommendations (December 22, 2015). For explanation of

Controlled Unclassified Information, see DoDM 5200.01-V4 (February 24, 2012).

### 70. Article 123a (10 U.S.C. 923a)—Making, drawing, or uttering check, draft, or order without sufficient funds

This paragraph is taken from paragraph 49 (Article 123a—Making, drawing, or uttering check, draft, or order without sufficient funds) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in federal civilian law.

### 71. Article 124 (10 U.S.C. 924)—Frauds against the United States

This paragraph is taken from paragraph 58 (Article 132—Frauds against the United States) of the MCM (2016 edition) with the following amendments. This offense is relocated to Article 124 pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The threshold amount for purposes of the maximum punishment in relation to the qualifying value of the property concerned is amended to \$1,000 and aligns with the division between felony and misdemeanor penalties for property offenses in federal civilian law.

### 72. Article 124a (10 U.S.C. 924a)—Bribery

This paragraph is taken from portions of paragraph 66 (Article 134—Bribery and graft) of the MCM (2016 edition), related to the offense of bribery pursuant to Section 5437 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments. Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

## ANALYSIS OF PUNITIVE ARTICLES

### 73. Article 124b (10 U.S.C. 924b)—Graft

This paragraph is taken from portions of paragraph 66 (Article 134—Bribery and graft) of the MCM (2016 edition), related to the offense of graft; pursuant to Section 5437 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments. Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment.* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 74. Article 125 (10 U.S.C. 925)—Kidnapping

This paragraph is taken from paragraph 92 (Article 134—Kidnapping) of the MCM (2016 edition) pursuant to Section 5439 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments. Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment.* Subparagraph c.(5) has deleted the sentence from the MCM (2016 edition) that discussed kidnapping in the context of a parent or legal guardian.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 75. Article 126 (10 U.S.C. 926)—Arson; burning property with intent to defraud

This paragraph is taken from paragraphs 52 (Article 126—Arson) and 67 (Article 134—Burning with intent to defraud) of the MCM (2016 edition) pursuant to Section 5440 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments. Proof of the Article 134 “terminal element” is not required.

*2018 Amendment:* Article 126 is amended and incorporates burning with intent to defraud in conjunction with the Military Justice Act of 2016’s reorganization of the punitive articles. The offense of burning with intent to defraud remains substantively the same, except proof of the Article 134 terminal element is no longer required.

b.(1). The elements of aggravated arson were amended and proof that the property belonged to a certain person and was of a certain value is not required. *See United States v. Desha*, 23 M.J. 66 (C.A.A.F. 1986) (affirming an aggravated arson conviction holding that Congress eliminated the common-law requirement that the property burned be “of another”).

b.(2). The element of simple arson that required that the dwelling or structure be of a certain value was removed. An enhanced punishment is available for property of a value of more than \$1,000.

c.(2)(a). The definition of “inhabited dwelling” aligns with *United States v. Duke*, 16 C.M.A. 460 (C.M.A. 1966).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The maximum authorized confinement for both aggravated arson and simple arson are increased.

### 76. Article 127 (10 U.S.C. 927)—Extortion

This paragraph is taken from paragraph 53 (Article 127—Extortion) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 77. Article 128 (10 U.S.C. 928)—Assault

This paragraph is taken from paragraphs 54 (Article 128—Assault) and 64 (Article 134—Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking) of the MCM (2016 edition) pursuant to Section 5441 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(P) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017). with the following amendments:

*2018 Amendment:* a. *Text of statute.* (b) *Aggravated Assault.* Two amendments to this statute align it more closely with federal civilian practice under 18 U.S.C. § 113. First, the phrase “or other means or force likely to result in death or grievous bodily harm” has been removed from the statutory definition of “aggravated assault,” and replaced with the phrase “dangerous weapon.” This eliminates the likelihood of harm analysis previously necessary under the MCM (2016 edition) for this offense, and allows the offense to focus solely on the intent of the accused. In turn, the phrase “dangerous weapon” focuses on the capability of any object to inflict death or grievous bodily harm. *See c. Explanation* (5)(a)(iii). Second, the intent necessary to complete an aggravated assault is modified to no longer require the specific intent to commit substantial or grievous bodily harm. This change aligns the specific intent requirement to federal civilian law under 18 U.S.C. § 113.

(c) *Assault with intent to commit specified offenses.* The offense of assault with intent to commit specified offenses is taken from paragraph 64 (Article 134—Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, forcible sodomy, arson, burglary, or housebreaking) of the MCM (2016 edition) in conjunction with the Military Justice Act of 2016’s reorganization of the punitive articles. *See Appendix 23, subparagraph 64.c. Explanation* of the MCM (2016 edition). The scope of the offense remains substantively the same with two exceptions: (1) the offense now lists rape of a child, sexual assault, sexual assault of a child, and kidnapping, as specified offenses; and (2) proof of the terminal element of Article 134 is no longer required.

c. *Explanation.*(1) *Substantial bodily harm.* The definition of substantial bodily harm aligns with 18 U.S.C. § 113(b)(1). It provides a middle tier of harm between bodily harm and grievous

## APPENDIX 17

bodily harm. The definition of grievous bodily harm aligns with the definition of serious bodily injury under 18 U.S.C. § 113(b)(2), which is the highest tier of bodily injury.

(5)(a)(iii) *Dangerous weapon.* The definition of dangerous weapon focuses attention on the nature of the weapon involved and the accused's intent to commit any bodily harm. To qualify as a dangerous weapon, it is sufficient that "an instrument [is] capable of inflicting death or serious bodily injury." *United States v. Sturgis*, 48 F.3d 784, 787 (4th Cir. 1995). *See also United States v. Bey*, 667 F.2d 7, 11 (5th Cir. 1982) (citation and internal quotation omitted) ("[w]hat constitutes a dangerous weapon depends not on the nature of the object itself but on its capacity, given the manner of its use, to endanger life or inflict great bodily harm.")

(5)(b)(i). Assault resulting in substantial or grievous bodily harm requires only a finding of general intent. *See United States v. Davis*, 237 F.3d 942, 944 (8<sup>th</sup> Cir. 2001).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* Two new maximum punishment categories were added: (1) infliction of substantial bodily harm and (2) assaulting a spouse, intimate partner, or an immediate family member.

### 78. Article 128a (10 U.S.C. 928a)—Maiming

This paragraph is taken from paragraph 50 (Article 124—Maiming) of the MCM (2016 edition) with the following amendments. This offense is relocated to its current position pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 79. Article 129 (10 U.S.C. 929)—Burglary; unlawful entry

This paragraph is taken from paragraphs 55 (Article 129—Burglary), 56 (Article 130—Housebreaking), and 111 (Article 134—Unlawful entry) of the MCM (2016 edition) and is consolidated pursuant to Section 5442 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments:

*2018 Amendment:* a. *Text of statute.* The common law elements of nighttime and dwelling house are eliminated as elements of the offense of burglary.

b. *Elements.* The list of offenses that qualify for enhanced maximum punishment is amended to reflect the Military Justice Act of 2016's reorganization of the punitive articles.

c. *Explanation.* The definition of "Building, structure" is taken, without change, from paragraph 56 of the MCM (2016 edition).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment*

and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

f. *Sample specifications.* The sample specifications are modeled after those contained under paragraphs 55, 56, and 111 of the MCM (2016 edition).

### 80. Article 130 (10 U.S.C. 930)—Stalking

This offense is taken from paragraph 45a (Article 120a—Stalking) of the MCM (2016 edition) and is modified pursuant to Section 5443 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) with the following amendments:

*2018 Amendment:* a. *Text of statute.* This statute is amended and extends the conduct covered to include cyberstalking and threats to intimate partners. This aligns the offense with similar misconduct under 18 U.S.C. § 2261A.

c. *Explanation.* The definition of bodily harm is based on subparagraph 77.c.(1)(a).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 81. Article 131 (10 U.S.C. 931)—Perjury

This paragraph is taken from paragraph 57 (Article 131—Perjury) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 82. Article 131a (10 U.S.C. 931a)—Subornation of perjury

This paragraph is taken from paragraph 98 (Article 134—Perjury: subornation of) of the MCM (2016 edition) with the following amendments. The offense is relocated to Article 131a pursuant to Section 5444 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 "terminal element" is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 83. Article 131b (10 U.S.C. 931b)—Obstructing justice

This paragraph is taken from paragraph 96 (Article 134—Obstructing justice) of the MCM (2016 edition) with the following amendments. The offense is relocated to Article 131b pursuant to

## ANALYSIS OF PUNITIVE ARTICLES

Section 5445 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph c. *Explanation* has been updated and reflects Article 20, as amended by Section 5164 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which clarifies that a summary court-martial is not a criminal forum. The *Explanation* also reflects the reorganization of Article 98, Noncompliance with procedural rules, from paragraph 22 of MCM (2016 edition) to paragraph 87 (Article 131f), pursuant to Section 5201 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **84. Article 131c (10 U.S.C. 931c)—Misprision of serious offense**

This paragraph is taken from paragraph 95 (Article 134—Misprision of a serious offense) of the MCM (2016 edition) with the following amendments. The offense is relocated to Article 131c pursuant to Section 5446 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **85. Article 131d (10 U.S.C. 931d)—Wrongful refusal to testify**

This paragraph is taken from paragraph 108 (Article 134—Testify: wrongful refusal) of the MCM (2016 edition) with the following amendments. The offense is relocated to Article 131d pursuant to Section 5447 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **86. Article 131e (10 U.S.C. 931e)—Prevention of authorized seizure of property**

This paragraph is taken from paragraph 103 (Article 134—Seizure: destruction, removal, or disposal of property to prevent) of the MCM (2016 edition) with the following amendments. The offense is relocated to Article 131e pursuant to Section 5448 of the Military Justice Act of 2016, Division E of the National Defense

Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

d. *Maximum punishment.* The authorized punishment for the offense is modified and aligns with federal civilian law for similar misconduct. See 18 U.S.C. § 2232.

### **87. Article 131f (10 U.S.C. 931f)—Noncompliance with procedural rules**

This paragraph is taken from paragraph 22 (Article 98—Noncompliance with procedural rules) of the MCM (2016 edition) with the following amendments. This offense is relocated to its current position, pursuant to Section 5401 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **88. Article 131g (10 U.S.C. 931g)—Wrongful interference with adverse administrative**

This paragraph is taken from paragraph 96a (Article 134—Wrongful interference with an adverse administrative proceeding) of the MCM (2016 edition) with the following amendments. The offense is relocated to Article 131g pursuant to Section 5449 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Proof of the Article 134 “terminal element” is no longer required.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### **89. Article 132 (10 U.S.C. 932)—Retaliation**

This is a new enumerated offense pursuant to Section 5450 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(Q) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017), which supplements and does not preempt Service regulations that address other types or categories of prohibited retaliatory actions. See also 10 U.S.C. § 1034, 18 U.S.C. § 1513. Service regulations may specify additional types of retaliatory conduct punishable at court-martial under Article 92 or Article 134.

## APPENDIX 17

### 90. Article 133 (10 U.S.C. 933)—Conduct unbecoming an officer and a gentleman

This paragraph is taken from paragraph 59 (Article 133—Conduct unbecoming an officer and a gentleman) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: c. Explanation (1) Gentleman.* This subparagraph is amended to emphasize that the term “gentleman” connotes failings in an officer’s personal character, regardless of gender.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 91. Article 134 (10 U.S.C. 934)—General article

This paragraph is taken from paragraph 60 (Article 134—General Article) of the MCM (2016 edition), and reflects two significant changes to designated Article 134 offenses within the MCM (2016 edition), namely, (1) the “relocation” of 36 of the 53 Article 134 offenses listed in MCM (2016 edition) to the enumerated punitive articles (Articles 80-132); and (2) the statutory amendment to Article 134 to provide extraterritorial jurisdiction for noncapital federal crimes committed outside of the United States which otherwise require commission of the offense “within the special maritime and territorial jurisdiction of the United States.”

*2018 Amendment: a. Statutory text.* Article 134 is amended and specifically provides that under clause 3, extraterritorial jurisdiction exists over non-capital federal crimes committed outside the United States which include as an element that the crime occur “within the special maritime or territorial jurisdiction of the United States.” Clause 3 aligns the prosecutorial scope of noncapital federal offenses under Article 134 with the prosecutorial scope of 18 U.S.C. § 3261 (applicable to civilian misconduct). This extraterritorial jurisdiction does not extend to 18 U.S.C. § 13—Federal Assimilative Crimes Act—which requires the commission of the offense concerned upon an enclave of federal exclusive or concurrent jurisdiction.

b. *Elements.* The terminal element for each Article 134 offense is revised as follows: “That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.” See RCM 307(c)(3) regarding the form for alleging this terminal element.

c. *Explanation* Subparagraph c.(4) is amended and clarifies the categories of federal crimes and offenses which may be prosecuted under clause (3), Article 134.

(6) *Drafting specifications for Article 134 offenses.* The third paragraph in the Discussion following subparagraph c.(6)(a) is consistent with *United States v. Miles*, 71 M.J. 671 (N.M. Ct. Crim. App. 2012) and R. Peter Masterton, “A View From the Bench: Prohibition on Disjunctive Charging Using ‘Or’”, *A View From the Bench: Prohibition on Disjunctive Charging Using ‘Or,’* ARMY LAW., May 2012.

### 92. Article 134—(Animal abuse)

This paragraph is taken from paragraph 61 (Article 134—Animal Abuse) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: Subparagraph d. Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 93. Article 134—(Bigamy)

This paragraph is taken from paragraph 65 (Article 134—Bigamy) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: Subparagraph d. Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 94. Article 134—(Check, worthless making and uttering—by dishonorably failing to maintain funds)

This paragraph is taken from paragraph 68 (Article 134—Check, worthless, making and uttering—by dishonorably failing to maintain funds) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: Subparagraph d. Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 95. Article 134—(Child pornography)

This paragraph is taken from paragraph 68b (Article 134—Child pornography) of the MCM (2016 edition) with the following amendments:

*2018 Amendment: c. Explanation (1) In general.* The scope of child pornography under Article 134 is broader than the scope of child pornography criminalized under 18 U.S.C. § 2252A. *Cf. Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002). Article 134 includes visual depictions of what appear to be minors engaged in sexually explicit conduct within the definition of child pornography. *See United States v. Blouin*, 74 M.J. 247 (C.A.A.F. 2015); *United States v. Forney*, 67 M.J. 271, 275 (C.A.A.F. 2009); *United States v. Brisbane*, 63 M.J. 106, 116 (C.A.A.F. 2006); *United States v. Roderick*, 62 M.J. 425, 429 (C.A.A.F. 2006); *United States v. Reeves*, 62 M.J. 88, 96 (C.A.A.F. 2005); *United States v. Mason*, 60 M.J. 15, 19 (C.A.A.F. 2004); *United States v. O’Connor*, 58 M.J. 450 (C.A.A.F. 2003).

(2) *Federal “Child pornography” and “Obscenity” offenses* and (3) *State “child pornography” and “obscenity” offenses* are new and emphasize that Article 134—(Child pornography) is not intended to preempt applicable federal and state child pornography and obscenity statutes. (2) and (3) also discuss the circumstances under which these federal and state child pornography and obscenity statutes may be charged under Article 134, clauses 2 and 3.

(10) *Sexually explicit conduct.* The amendments do not change the usefulness of the “Dost factors” in determining whether a particular

## ANALYSIS OF PUNITIVE ARTICLES

image qualifies as a “lascivious exhibition”, for purposes of this offense. *United States v. Dost*, 636 F.Supp. 828, 832 (S.D. Ca. 1986), *aff’d sub nom United States v. Wiegand*, 812 F.2d 1239 (9<sup>th</sup> Cir. 1987). The *Dost* factors are also commonly employed by federal civilian and military courts in interpreting “lascivious exhibition” for purposes of 18 U.S.C. § 2252A. See *United States v. Roderick*, 62 M.J. 425, 430 (C.A.A.F. 2006).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 96. Article 134—(Debt, dishonorably failing to pay)

This paragraph is taken from paragraph 71 (Article 134—Debt: dishonorably failing to pay) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 97. Article 134—(Disloyal statements)

This paragraph is taken from paragraph 72 (Article 134—Disloyal statements) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 98. Article 134—(Disorderly conduct, drunkenness)

This paragraph is taken from paragraph 73 (Article 134—Disorderly conduct, drunkenness) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 99. Article 134—(Extramarital sexual conduct)

This paragraph is drawn from paragraph 62 (Article 134—Adultery) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* This offense does not preempt any additional lawful regulations prescribed by a proper authority to proscribe additional forms of improper extramarital conduct by military personnel. Violations of such regulations, directives, or orders may be punishable under Article 92. See paragraph 18.

b. *Elements.* The definition of extramarital conduct is consistent with the definition of sexually explicit conduct under 18 U.S.C. § 2256(2)(A)(i) and is gender neutral.

c. *Explanation.* (1) *Nature of the offense* was deleted and replaced with *Conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces*. Subparagraph c.(1)(h) from the MCM (2016 edition) regarding legal separations is now an affirmative defense. Subparagraph c.(1)(h) now lists pending legal dissolution as a factor in assessing whether the conduct at issue meets a terminal element.

(4) *Legal separation.* This is a new affirmative defense. In order for the affirmative defense to apply, both parties to the conduct must either be legally separated or unmarried. That is, it is not an affirmative defense if the accused is legally separated but the co-actor is still married. By the same token, it is an affirmative defense if the accused is legally separated and the co-actor is unmarried.

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 100. Article 134—(Firearm, discharging—through negligence)

This paragraph is taken from paragraph 80 (Article 134—Firearm, discharging through negligence) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 101. Article 134—(Fraternalization)

This paragraph is taken from paragraph 83 (Article 134—Fraternalization) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 102. Article 134—(Gambling with subordinate)

This paragraph is taken from paragraph 84 (Article 134—Gambling with subordinate) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 103. Article 134—(Homicide, negligent)

This paragraph is taken from paragraph 85 (Article 134—Homicide, negligent) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e.

## APPENDIX 17

*Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 104. Article 134—(Indecent conduct)

This paragraph is taken from paragraph 90 (Article 134—Indecent conduct) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 105. Article 134—(Indecent language)

This paragraph is taken from paragraph 89 (Article 134—Indecent language) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 106. Article 134—(Pandering and prostitution)

This paragraph is based on paragraph 97 (Article 134—Pandering and prostitution) of the MCM (2016 edition) with the following amendments:

*2018 Amendment:* (c)(1) *Sexual act*. The definition of “sexual act” conforms to Article 120(g) as amended by Section 5430 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment* and f. *Sample specification* from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 107. Article 134—(Self-injury without intent to avoid service)

This paragraph is taken from paragraph 103a (Article 134—Self-injury without intent to avoid service) of the MCM (2016 edition).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment*. and f. *Sample specification*. from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 108. Article 134—(Stragglng)

This paragraph is taken from paragraph 107 (Article 134—Stragglng) of the MCM (2016 edition).

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment*. and f. *Sample specification*. from the MCM

(2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

### 109. Article 134—(Visual depiction, nonconsensual distribution or broadcast)

This paragraph is taken from paragraph 114 (Article 134—(Visual depiction, nonconsensual distribution or broadcast) of the MCM (2016 edition), as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018) without substantive amendment.

*2018 Amendment:* Subparagraph d. *Lesser included offenses* from the MCM (2016 edition) has been deleted. Subparagraphs e. *Maximum punishment*. and f. *Sample specification*. from the MCM (2016 edition) have been redesignated as subparagraphs d. and e. respectively. For lesser included offenses, see Appendix 12A.

## APPENDIX 18

### ANALYSIS OF NONJUDICIAL PUNISHMENT PROCEDURE

#### 1. General

c. *Purpose.* This paragraph is based on the legislative history of Article 15, both as initially enacted and as modified in 1962. See generally H.R.Rep. No. 491, 81st Cong., 1st Sess. 14–15 (1949); S.Rep. No. 1911, 87th Cong., 2d Sess. (1962).

d. *Policy.* Subparagraph (1) is based on paragraph 129a of MCM, 1969 (Rev.). Subparagraph (2) is based on the last sentence of paragraph 129a of MCM, 1969 (Rev.) and on service regulations. See, e.g., AR 27–10, para. 3–4 b (1 Sep. 1982); JAGMAN sec. 0

101. Cf. Article 37. Subparagraph (3) is based on the second paragraph 129b of MCM, 1969 (Rev.).

e. *Minor offenses.* This paragraph is derived from paragraph 128b of MCM, 1969 (Rev.), service regulations concerning “minor offenses” (see, e.g., AR 27–10, para. 3–3d (1 Sep. 1982); AFR 111–9, para. 3a(3) (31 Aug. 1979)); *United States v. Fretwell*, 11 U.S.C.M.A. 377, 29 C.M.R. 193 (1960). The intent of the paragraph is to provide the commander with enough latitude to appropriately resolve a disciplinary problem. Thus, in some instances, the commander may decide that nonjudicial punishment may be appropriate for an offense that could result in a dishonorable discharge or confinement for more than 1 year if tried by general court-martial, e.g., failure to obey an order or regulation. On the other hand, the commander could refer a case to a court-martial that would ordinarily be considered at nonjudicial punishment, e.g., a short unauthorized absence, for a servicemember with a long history of short unauthorized absences, which nonjudicial punishment has not been successful in correcting.

f. *Limitations on nonjudicial punishment.*

(1) *Double punishment prohibited.* This subparagraph is taken from the first paragraph of paragraph 128d of MCM, 1969 (Rev.). Note that what is prohibited is the service of punishment twice. Where nonjudicial punishment is set aside, this does not necessarily prevent reimposition of punishment and service of punishment not previously served.

(2) *Increase in punishment prohibited.* This paragraph is taken from the second paragraph of paragraph 128d of MCM, 1969 (Rev.).

(3) *Multiple punishment prohibited.* This paragraph is based on the guidance for court-martial offenses, found in paragraph 30g and 33h of MCM, 1969 (Rev.).

(4) *Statute of limitations.* This paragraph restates the requirements of Article 43(c) regarding nonjudicial punishment.

(5) *Civilian courts.* This paragraph is derived from service regulations (see, e.g., AR 27–10, chap. 4 (1 Sep. 1982)) and is intended to preclude the possibility of a servicemember being punished by separate jurisdictions for the same offense, except in unusual cases.

g. *Relationship of nonjudicial punishment to administrative corrective measures.* This paragraph is derived from paragraph 128c of MCM, 1969 (Rev.) and service regulations.

h. *2005 Amendment:* Subsection (h) is new. This subsection was added to clarify that nonjudicial punishment proceedings conducted in a combatant or joint command are to be conducted in accordance with the implementing regulations and procedures of the service of which the accused is a member.

i. *Effect of errors.* This paragraph is taken from paragraph 130 of MCM, 1969 (Rev.).

l. *2018 Amendments:* Paragraph 1.e. is amended and addresses the

definition of minor offense. Paragraph 1.f.(4) is amended and clarifies that a member may waive the statute of limitations applicable to nonjudicial punishment. This is consistent with court-martial practice. See *United States v. Moore*, 32 M.J. 170 (CMA 1991).

#### 2. Who may impose nonjudicial punishment

This paragraph is taken from paragraph 128a of MCM, 1969 (Rev.) and service regulations. See, e.g., AR 27–10, para. 3–7 (1 Sep. 1982); JAGMAN sec. 0101; AFR 111–9, para. 3 (31 Aug. 1979). Additional guidance in this area is left to Secretarial regulation, in accordance with the provisions of Article 15(a).

*2005 Amendment:* Subsection (2) was amended to clarify the authority of the commander of a joint command to impose nonjudicial punishment upon service members of the joint command.

#### 3. Right to demand trial

This paragraph is taken from Article 15(a) and paragraph 132 of MCM, 1969 (Rev.).

*2018 Amendment:* Paragraph 3 is amended and addresses nonjudicial punishment of a person attached to or embarked in a vessel.

#### 4. Procedure

This paragraph is based on paragraph 133 of MCM, 1969 (Rev.) and service regulations. It provides a uniform basic procedure for nonjudicial punishment for all the services. Consistent with the purposes of nonjudicial punishment (see S.Rep. No. 1911, 87th Cong. 2d Sess. 4 (1962)) it provides due process protections and is intended to meet the concerns expressed in the Memorandum of Secretary of Defense Laird, 11 January 1973. See also *United States v. Mack*, 9 M.J. 300, 320–21 (C.M.A. 1980). The Report of the Task Force on the Administration of Military Justice in the Armed Forces, 1972, and GAO Report to the Secretary of Defense, *Better Administration of Military Article 15 Punishments for Minor Offenses is Needed*, September 2, 1980, were also considered.

Note that there is no right to consult with counsel before deciding whether to demand trial by court-martial. Unless otherwise prescribed by the Secretary concerned, the decision whether to permit a member to consult with counsel is left to the commander. In *United States v. Mack*, *supra*, records of punishments where such opportunity was not afforded (except when the member was attached to or embarked in a vessel) were held inadmissible in courts-martial.

*1986 Amendment:* Subparagraph (c)(2) was amended to state clearly that a servicemember has no absolute right to refuse to appear personally before the person administering the nonjudicial punishment proceeding. In addition, Part V was amended throughout to use the term “nonjudicial punishment authority” in circumstances where the proceeding could be administered by a commander, officer in charge, or a principal assistant to a general court-martial convening authority or general or flag officer.

#### 5. Punishments

This paragraph is taken from paragraph 131 of MCM, 1969 (Rev.). Subparagraph b(2)(b)4 is also based on S.Rep. 1911, 87th



## APPENDIX 18

Cong., 1st Sess. 7 (1962). Subparagraph c(4) is also based on *id.* at 6–7 and *Hearings Before a Subcomm. of the House Comm. on Armed Services*, 87th Cong., 1st Sess. 33 (1962). Detention of pay was deleted as a punishment because under current centralized pay systems, detention of pay is cumbersome, ineffective, and seldom used. The concept of apportionment, authorized in Article 15(b) and set forth in paragraph 131d of MCM, 1969 (Rev.), was eliminated as unnecessary and confusing. Accordingly, the Table of Equivalent Punishments is no longer necessary. Subparagraph d, in concert with the elimination of the apportionment concept, will ease the commanders burden of determining an appropriate punishment and make the implementation of that punishment more efficient and understandable.

*1987 Amendment:* Subparagraph e was redesignated as subparagraph g and new subparagraphs e and f were added to implement the amendments to Articles 2 and 3, UCMJ, contained in the “Military Justice Amendments of 1986,” tit. VIII, § 804, National Defense Authorization Act for fiscal year 1987, Pub. L. No. 99–661, 100 Stat. 3905 (1986).

*1990 Amendment:* Subsection (c)(8) was amended to incorporate the statutory expansion of jurisdiction over reserve component personnel provided in the Military Justice Amendments of 1990, tit. XIII, § 1303, National Defense Authorization Act of Fiscal Year 1990, Pub. L. 101–189, 103 Stat. 1352 (1989).

*2007 Amendment:* Paragraph 5.c.(8) was amended because Hardship Duty Pay (HDP) superseded Foreign Duty Pay (FDP) on 3 February 1999. HDP is payable to members entitled to basic pay. The Secretary of Defense has established that HDP will be paid to members (a) for performing specific missions, or (b) when assigned to designated areas.

*2018 Amendment:* Subparagraphs 5.b.(2)(A)(i) and 5.b.(2)(B)(i) are amended and reflect the elimination of confinement on bread and water or diminished rations as an authorized nonjudicial punishment in Section 5141 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph 5.c.(1) is amended and reflects the elimination of confinement on bread and water or diminished rations as an authorized nonjudicial punishment in Section 5141 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Subparagraph 5.d.(1) is amended and reflects the elimination of confinement on bread and water or diminished rations as an authorized nonjudicial punishment in Section 5141 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Paragraphs 5.b.(2)(A)(i), 5.b.(2)(B)(i), 5.c.(5), and 5.d.(2) are amended and address the authorized punishments.

### 6. Suspension, mitigation, remission, and setting aside

This paragraph is taken from Article 15, paragraph 134 of MCM 1969 (Rev.), and service regulations. *See e.g.*, AR 27–10, paras. 3–23 through 3–28 (1 Sep. 1982); JAGMAN sec. 0101; AFR 111–9, para 7 (31 Aug 1979). Subparagraph a dealing with suspension was expanded to: require a violation of the code during the period of suspension as a basis for vacation action, and to explain

that vacation action is not in itself nonjudicial punishment and does not preclude the imposition of nonjudicial punishment for the offenses upon which the vacation action was based. Subparagraph a(4) provides a procedure for vacation of suspended nonjudicial punishment. This procedure parallels the procedure found sufficient to make admissible in courts-martial records of vacation of suspended nonjudicial punishment. *United States v. Covington*, 10 M.J. 64 (C.M.A. 1980).

*1990 Amendment:* A new subsection a(4) was added to permit punishment imposed under Article 15 to be suspended based on conditions in addition to violations of the UCMJ. This affords the same flexibility given to authorities who suspend punishment adjudged at court-martial under R.C.M. 1108(c). Experience has demonstrated the necessity and utility of such flexibility in the nonjudicial punishment context.

*2018 Amendment:* Subparagraph 6.d is amended and reflects the elimination of confinement on bread and water or diminished rations as an authorized nonjudicial punishment in Section 5141 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

*2018 Amendment:* Paragraphs 6.b.(2) and b.(3) are amended and address mitigation and remission of authorized punishments.

### 7. Appeals

This paragraph is taken from paragraph 135 of MCM, 1969 (Rev.) and service regulations dealing with appeals. *See* AR 27–10, paras. 3–29 through 3–35 (1 Sep. 1982); JAGMAN 0101; AFR 111–9, para. 8 (31 Aug. 1981). Subparagraph (d) requires an appeal to be filed within 5 days or the right to appeal will be waived, absent unusual circumstances. This is a reduction from the 15 days provided for in paragraph 135 and is intended to expedite the appeal process. Subparagraph f(2) is intended to promote sound practice, that is, the superior authority should consider many factors when reviewing an appeal, and not be limited to matters submitted by the appellant or the officer imposing the punishment. Subparagraph f(3) provides for “additional proceedings” should a punishment be set aside due to a procedural error. This is consistent with court-martial practice and intended to ensure that procedural errors do not prevent appropriate disposition of a disciplinary matter.

### 8. Records of nonjudicial punishment

This paragraph is taken from Article 15(g) and paragraph 133c of MCM, 1969 (Rev.).

## APPENDIX 19 HISTORICAL EXECUTIVE ORDERS

Each Executive Order is available online at the Joint Service Committee's website at the following address:  
<http://jsc.defense.gov>.

**EXECUTIVE ORDER 12473**

49 Fed. Reg. 17152 (Apr. 23, 1984)  
*President Ronald W. Reagan (Apr. 13, 1984)*

**EXECUTIVE ORDER 12484**

49 Fed. Reg. 28825 (July 17, 1984)  
*President Ronald W. Reagan (July 17, 1984)*

**EXECUTIVE ORDER 12550**

51 Fed. Reg. 6497 (Feb. 25, 1986)  
*President Ronald W. Reagan (Feb. 19, 1986)*

**EXECUTIVE ORDER 12586**

52 Fed. Reg. 7103 (Mar. 9, 1987)  
*President Ronald W. Reagan (Mar. 3, 1987)*

**EXECUTIVE ORDER 12708**

55 Fed. Reg. 11353 (Mar. 27, 1990)  
*President George H.W. Bush (Mar. 23, 1990)*

**EXECUTIVE ORDER 12767**

56 Fed. Reg. 30284 (July 1, 1991)  
*President George H.W. Bush (June 27, 1991)*

**EXECUTIVE ORDER 12888**

58 Fed. Reg. 69153 (Dec. 29, 1993)  
*President William J. Clinton (Dec. 23, 1993)*

**EXECUTIVE ORDER 12936**

59 Fed. Reg. 59075 (Nov. 15, 1994)  
*President William J. Clinton (Nov. 10, 1994)*

**EXECUTIVE ORDER 12960**

60 Fed. Reg. 26647 (May 17, 1995)  
*President William J. Clinton (May 12, 1995)*

**EXECUTIVE ORDER 13086**

63 Fed. Reg. 30065 (June 2, 1998)  
*President William J. Clinton (May 27, 1998)*

**EXECUTIVE ORDER 13140**

64 Fed. Reg. 55115 (Oct. 12, 1999)  
*President William J. Clinton (Oct. 6, 1999)*

**EXECUTIVE ORDER 13262**

67 Fed. Reg. 18773 (Apr. 17, 2002)  
*President George W. Bush (Apr. 11, 2002)*

**EXECUTIVE ORDER 13365**

69 Fed. Reg. 71333 (Dec. 8, 2004)  
*President George W. Bush (Dec. 3, 2004)*

**EXECUTIVE ORDER 13387**

70 Fed. Reg. 60697 (Oct. 17, 2005)  
*President George W. Bush (Oct. 14, 2005)*

**EXECUTIVE ORDER 13430**

72 Fed. Reg. 20213 (Apr. 23, 2007)  
*President George W. Bush (Apr. 18, 2007)*

**EXECUTIVE ORDER 13447**

72 Fed. Reg. 56179 (Oct. 2, 2007)  
*President George W. Bush (Sep. 28, 2007)*

**EXECUTIVE ORDER 13468**

73 Fed. Reg. 43827 (July 28, 2008)  
*President George W. Bush (July 24, 2008)*

**EXECUTIVE ORDER 13552**

75 Fed. Reg. 54263 (Sep. 3, 2010)  
*President Barack H. Obama (Aug 31, 2010)*

## APPENDIX 19

### **EXECUTIVE ORDER 13593**

76 Fed. Reg. 78451 (Dec. 16, 2011)

*President Barack H. Obama (Dec. 13, 2011)*

### **EXECUTIVE ORDER 13643**

78 Fed. Reg. 29559 (May 21, 2013)

*President Barack H. Obama (May 15, 2013)*

### **EXECUTIVE ORDER 13669**

79 Fed. Reg. 34999 (June 18, 2014)

*President Barack H. Obama (June 13, 2014)*

### **EXECUTIVE ORDER 13696**

80 Fed. Reg. 35783 (June 22, 2015)

*President Barack H. Obama (June 17, 2015)*

### **EXECUTIVE ORDER 13730**

81 Fed. Reg. 33331 (May 26, 2016)

*President Barack H. Obama (May 20, 2016)*

### **EXECUTIVE ORDER 13740**

81 Fed. Reg. 65175 (Sep. 22, 2016)

*President Barack H. Obama (Sep. 16, 2016)*

### **EXECUTIVE ORDER 13825**

83 Fed. Reg. 9889 (Mar. 8, 2016)

*President Donald J. Trump (Mar. 1, 2018)*

**APPENDIX 20**  
**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES**  
**COMMITTED PRIOR TO 1 OCTOBER 2007**

The punitive articles contained in this appendix were replaced or superseded by changes to Article 120, Uniform Code of Military Justice, contained in the National Defense Authorization Act for Fiscal Year 2006. Article 120 was amended again by the National Defense Authorization Act for Fiscal Year 2012. Each version of Article 120 is located in a different part of this Manual. For offenses committed prior to 1 October 2007, the relevant sexual offense provisions and analysis are contained in this appendix and listed below. For offenses committed during the period 1 October 2007 through 27 June 2012, the relevant sexual offense provisions and analysis are contained in Appendix 28. For offenses committed on or after 28 June 2012, the relevant sexual offense provisions are contained in Part IV of this Manual (Articles 120, 120b, and 120c).

**45. Article 120—Rape and carnal knowledge**

a. *Text.*

(a) Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

(1) who is not his or her spouse; and

(2) who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(d)(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that the person had at the time of the alleged offense attained the age of 16 years.

(2) The accused has the burden of proving a defense under subparagraph (d)(1) by a preponderance of the evidence.

b. *Elements.*

(1) *Rape.*

(a) That the accused committed an act of sexual intercourse; and

(b) That the act of sexual intercourse was done by force and without consent.

(2) *Carnal knowledge.*

(a) That the accused committed an act of sexual intercourse with a certain person;

(b) That the person was not the accused's spouse; and

(c)(1) That at the time of the sexual intercourse the person was under the age of 12; or

(2) That at the time of the sexual intercourse the person had attained the age of 12 but was under the age of 16.

c. *Explanation.*

(1) *Rape.*

(a) *Nature of offense.* Rape is sexual intercourse by a person, executed by force and without consent of the victim. It may be committed on a victim of any age. Any penetration, however slight, is sufficient to complete the offense.

(b) *Force and lack of consent.* Force and lack of consent are necessary to the offense. Thus, if the victim consents to the act, it is not rape. The lack of consent required, however, is more than mere lack of acquiescence. If a victim in possession of his or her mental faculties fails to make lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent. Consent, however, may not be inferred if resistance would have been futile, where resistance is overcome by threats of death or great bodily harm, or where the victim is unable to resist because of the lack of mental or physical faculties. In such a case there is no consent and the force involved in penetration will suffice. All the surrounding circumstances are to be considered in determining whether a victim gave consent, or whether

## APPENDIX 20

he or she failed or ceased to resist only because of a reasonable fear of death or grievous bodily harm. If there is actual consent, although obtained by fraud, the act is not rape, but if to the accused's knowledge the victim is of unsound mind or unconscious to an extent rendering him or her incapable of giving consent, the act is rape. Likewise, the acquiescence of a child of such tender years that he or she is incapable of understanding the nature of the act is not consent.

(c) *Character of victim.* See Mil. R. Evid. 412 concerning rules of evidence relating to an alleged rape victim's character.

(2) *Carnal knowledge.* "Carnal knowledge" is sexual intercourse under circumstances not amounting to rape, with a person who is not the accused's spouse and who has not attained the age of 16 years. Any penetration, however slight, is sufficient to complete the offense. It is a defense, however, which the accused must prove by a preponderance of the evidence, that at the time of the act of sexual intercourse, the person with whom the accused committed the act of sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this same person was at least 16 years of age.

d. *Lesser included offenses.*

(1) *Rape.*

(a) Article 128—assault; assault consummated by a battery

(b) Article 134—assault with intent to commit rape

(c) Article 134—indecent assault

(d) Article 80—attempts

(e) Article 120(b)—carnal knowledge

(2) *Carnal knowledge.*

(a) Article 134—indecent acts or liberties with a person under 16

(b) Article 80—attempts

e. *Maximum punishment.*

(1) *Rape.* Death or such other punishment as a court-martial may direct.

(2) *Carnal knowledge with a child who, at the time of the offense, has attained the age of 12 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) *Carnal knowledge with a child under the age of*

*12 years at the time of the offense.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.

f. *Sample specifications.*

(1) *Rape.* In that (personal jurisdiction data), did, (at/on board — location) (subject - matter jurisdiction data, if required), on or about \_\_\_\_\_, rape, \_\_\_\_\_ (a person under the age of 12) (a person who had attained the age of 12 but was under the age of 16).

(2) *Carnal knowledge.* In that (personal jurisdiction data), did, (at/on board — location) (subject - matter jurisdiction data, if required), on or about \_\_\_\_\_, commit the offense of carnal knowledge with \_\_\_\_\_, (a person under the age of 12) (a person who attained the age of 12 but was under the age of 16).

### 63. Article 134—(Assault—indecent)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused assaulted a certain person not the spouse of the accused in a certain manner;

(2) That the acts were done with the intent to gratify the lust or sexual desires of the accused; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* See paragraph 54c for a discussion of assault. Specific intent is an element of this offense. For a definition of 'indecent', see paragraph 90c.

d. *Lesser included offenses.*

(1) Article 128—assault consummated by a battery; assault

(2) Article 134—indecent acts

(3) Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.* In that (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, commit an indecent assault upon a person not his/her wife/husband by \_\_\_\_\_, with intent to gratify his/her (lust) (sexual desires).

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED  
PRIOR TO 1 OCTOBER 2007**

**87. Article 134—(Indecent acts or liberties with a child)**

a. *Text.* See paragraph 60.

b. *Elements.*

(1) *Physical contact.*

(a) That the accused committed a certain act upon or with the body of a certain person;

(b) That the person was under 16 years of age and not the spouse of the accused;

(c) That the act of the accused was indecent;

(d) That the accused committed the act with intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the accused, the victim, or both; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *No physical contact.*

(a) That the accused committed a certain act;

(b) That the act amounted to the taking of indecent liberties with a certain person;

(c) That the accused committed the act in the presence of this person;

(d) That this person was under 16 years of age and not the spouse of the accused;

(e) That the accused committed the act with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the accused, the victim, or both; and

(f) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Consent.* Lack of consent by the child to the act or conduct is not essential to this offense; consent is not a defense.

(2) *Indecent liberties.* When a person is charged with taking indecent liberties, the liberties must be taken in the physical presence of the child, but physical contact is not required. Thus, one who with the requisite intent exposes one's private parts to a child under 16 years of age may be found guilty of this offense. An indecent liberty may consist of communication of indecent

language as long as the communication is made in the physical presence of the child.

(3) *Indecent.* See paragraph 89c and 90c.

d. *Lesser included offense.*

(1) Article 134—indecent acts with another

(2) Article 128—assault; assault consummated by a battery

(3) Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

f. *Sample specification.* In that (personal jurisdiction data), did, (at/on board — location) (subject - matter jurisdiction data, if required), on or about \_\_\_\_\_, (take (indecent) liberties with) (commit an indecent act (upon) (with) the body of) \_\_\_\_\_, a (female) (male) under 16 years of age, not the (wife) (husband) of the said \_\_\_\_\_, by (fondling (her) (him) and placing his/her hands upon (her) (his) leg and private parts) ( ), with intent to (arouse) (appeal to) (gratify) the (lust) (passion) (sexual desires) of the said ( ).

**88. Article 134—(Indecent exposure)**

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused exposed a certain part of the accused's body to public view in an indecent manner;

(2) That the exposure was willful and wrongful; and

(3) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* "Willful" means an intentional exposure to public view. Negligent indecent exposure is not punishable as a violation of the code. See paragraph 90c concerning "indecent."

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Bad - conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.* In that (personal jurisdiction data), did (at/on board—location) (subject-matter

## APPENDIX 20

jurisdiction data, if required), on or about \_\_\_\_\_ while (at a barracks window) ( ) willfully and wrongfully expose in an indecent manner to public view his or her \_\_\_\_\_.

### 90. Article 134—(Indecent acts with another)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused committed a certain wrongful act with a certain person;

(2) That the act was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* “Indecent” signifies that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.* In that (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_, wrongfully commit an indecent act with by \_\_\_\_\_.

### Appendix 20 Analysis Follows:

The analysis was inserted into this appendix to accompany the version of Article 120, and other punitive sexual offense articles, applicable to offenses committed before 1 October 2007. For offenses committed during the period 1 October 2007 through 27 June 2012, analysis related to Article 120 is contained in Appendix 21. For offenses committed between 28 June 2012, and 31 December 2018 analysis related to Article 120, 120b, and 120c is contained in Appendix 22.]

### 45. Article 120—Rape and carnal knowledge

b. *Elements.* 2004 Amendment: Paragraph 45(b)(2) was amended to add two distinct elements of age based upon the 1994 amendment to paragraph 45(e). See also

concurrent change to R.C.M. 307(c)(3) and accompanying analysis.

c. *Explanation.* This paragraph is based on paragraph 199 of MCM, 1969 (Rev). The third paragraph of paragraph 199 (a) was deleted as unnecessary. The third paragraph of paragraph 199(b) was deleted based on the preemption doctrine. See *United States v. Wright*, 5 M.J. 106 (C.M.A. 1978); *United States v. Norris*, 2 U.S.C.M.A. 236, 8 C.M.R. 36 (1953). Cf. *Williams v. United States*, 327 U.S. 711 (1946) (scope of preemption doctrine). The Military Rules of Evidence deleted the requirement for corroboration of the victim’s testimony in rape and similar cases under former paragraph 153 a of MCM, 1969. See Analysis, Mil. R. Evid. 412.

d. *Lesser included offenses.* Carnal knowledge was deleted as a lesser included offense of rape in view of the separate elements in each offense. Both should be separately pleaded in a proper case. See generally *United States v. Smith*, 7 M.J. 842 (A.C.M.R. 1979).

*1993 Amendment.* The amendment to para 45d(1) represents an administrative change to conform the Manual with case authority. Carnal knowledge is a lesser included offense of rape where the pleading alleges that the victim has not attained the age of 16 years. See *United States v. Baker*, 28 M.J. 900 (A.C.M.R. 1989); *United States v. Stratton*, 12 M.J. 998 (A.F.C.M.R. 1982), pet. denied, 15 M.J. 107 (C.M.A. 1983); *United States v. Smith*, 7 M.J. 842 (A.C.M.R. 1979).

e. *Maximum punishment.*

*1994 Amendment.* Subparagraph e was amended by creating two distinct categories of carnal knowledge for sentencing purposes -- one involving children who had attained the age of 12 years at the time of the offense, now designated as subparagraph e(2), and the other for those who were younger than 12 years. The latter is now designated as subparagraph e(3). The punishment for the older children was increased from 15 to 20 years confinement. The maximum confinement for carnal knowledge of a child under 12 years was increased to life. The purpose for these changes is to bring the punishments more in line with those for sodomy of a child under paragraph 51e of this part and with the Sexual Abuse Act of 1986, 18 U.S.C. §§ 2241–2245. The alignment of the maximum punishments for carnal knowledge with those of sodomy is aimed at paralleling the concept of gender–

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED  
PRIOR TO 1 OCTOBER 2007**

neutrality incorporated into the Sexual Abuse Act.

*1995 Amendment.* The offense of rape was made gender neutral and the spousal exception was removed under Article 120(a). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 10 2–484, 106 Stat. 2315, 2506 (1992).

Rape may “be punished by death” only if constitutionally permissible. In *Coker v. Georgia*, 433 U.S. 584 (1977), the Court held that the death penalty is “grossly disproportionate and excessive punishment for the rape of an adult woman,” and is “therefore forbidden by the Eighth Amendment as cruel and unusual punishment.” *Id.* at 592 (plurality opinion). *Coker*, however, leaves open the question of whether it is permissible to impose the death penalty for the rape of a minor by an adult. *See Coker*, 433 U.S. at 595. *See Leatherwood v. State*, 548 So.2d 389 (Miss. 1989) (death sentence for rape of minor by an adult is not cruel and unusual punishment prohibited by the Eighth Amendment). *But see Buford v. State*, 403 So.2d 943 (Fla. 1981) (sentence of death is grossly disproportionate for sexual assault of a minor by an adult and consequently is forbidden by Eighth Amendment as cruel and unusual punishment).

*1998 Amendment:* In enacting section 1113 of the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, 110 Stat. 186, 462 (1996), Congress amended Article 120, UCMJ, to make the offense gender neutral and create a mistake of fact as to age defense to a prosecution for carnal knowledge. The accused must prove by a preponderance of the evidence that the person with whom he or she had sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this person was at least 16 years of age.

f. *Sample Specification. 2004 Amendment:* Paragraph 45(f)(2) was amended to aid practitioners in charging the two distinct categories of carnal knowledge created in 1994. For the same reason paragraph 45(f)(1) was amended to allow for contingencies of proof because carnal knowledge is a lesser-included offense of rape if properly pleaded. *See also* concurrent change to R.C.M.307(c)(3) and accompanying analysis.

**63. Article 134—(Assault—indecent)**

c. *Explanation.* This paragraph is based on paragraph 213f(2) of MCM, 1969 (Rev.). *See United States v. Caillouette*, 12 U.S.C.M.A. 149, 30 C.M.R. 149 (1961) regarding specific intent. *See also United States v. Headspeth*, 2 U.S.C.M.A. 635, 10 C.M.R. 133 (1953).

Gender-neutral language has been used in this paragraph, as well as throughout this Manual. This will eliminate any question about the intended scope of certain offenses, such as indecent assault such as may have been raised by the use of the masculine pronoun in MCM, 1969 (Rev.). It is, however, consistent with the construction given to the former Manual. *See, e.g., United States v. Respass*, 7 M.J. 566 (A.C.M.R. 1979). *See generally* 1 U.S.C. § 1 (“unless the context indicates otherwise ... words importing the masculine gender include the feminine as well ...”).

d. *Lesser included offenses.* *See United States v. Thacker*, 16 U.S.C.M.A. 408, 37 C.M.R. 28 (1966); *United States v. Jackson*, 31 C.M.R. 738 (A.F.B.R. 1962).

*2007 Amendment:* This paragraph has been replaced in its entirety by paragraph 45. *See* Article 120 (e) Aggravated Sexual Contact, (h) Abusive Sexual Contact, and (m) Wrongful Sexual Contact.

**87. Article 134—(Indecent acts or liberties with a child)**

c. *Explanation.* This paragraph is based on paragraph 213f(3) of MCM, 1969 (Rev.). *See also United States v. Knowles*, 15 U.S.C.M.A. 404, 35 C.M.R. 376 (1965); *United States v. Brown*, 3 U.S.C.M.A. 454, 13 C.M.R. 454, 13 C.M.R. 10 (1953); *United States v. Riffe*, 25 C.M.R. 650 (A.B.R. 1957), *pet. denied*, 9 U.S.C.M.A. 813, 25 C.M.R. 486 (1958). “Lewd” and “lascivious” were deleted because they are synonymous with indecent. *See id.* *See also paragraph* 90c.

*2007 Amendment.* This paragraph has been replaced in its entirety by paragraph 45. *See* Article 120 (g) Aggravated Sexual Contact with a Child, (i) Abusive Sexual Contact with a Child, and (j) Indecent Liberty with Child.



## APPENDIX 20

### 88. Article 134—(Indecent exposure)

c. *Explanation.* This paragraph and is based on *United States v. Manos*, 8 U.S.C.M.A. 734, 25 C.M.R. 238 (1958). See also *United States v. Caune*, 22 U.S.C.M.A. 200, 46 C.M.R. 200 (1973); *United States v. Conrad*, 15 U.S.C.M.A. 439, 35 C.M.R. 411 (1965).

e. *Maximum punishment.* The maximum punishment has been increased to include a bad-conduct discharge. Indecent exposure in some circumstances (e.g., in front of children, but without the intent to incite lust or gratify sexual desires necessary for indecent acts or liberties) is sufficiently serious to authorize a punitive discharge.

*2007 Amendment:* This paragraph has been replaced in its entirety by paragraph 45. See Article 120(n) Indecent Exposure.

### 90. Article 134—(Indecent acts with another)

c. *Explanation.* This and is based on *United States v. Holland*, 12 U.S.C.M.A. 444, 31 C.M.R. 30 (1961); *United States v. Gaskin*, 12 U.S.C.M.A. 419, 31 C.M.R. 5 (1962); *United States v. Sanchez*, 11 U.S.C.M.A. 216, 29 C.M.R. 32 (1960); *United States v. Johnson*, 4 M.J. 770 (A.C.M.R. 1978). “Lewd” and “lascivious” have been deleted as they are synonymous with “indecent.” See *id.*

**APPENDIX 21**  
**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED**  
**DURING THE PERIOD 1 OCTOBER 2007 THROUGH 27 JUNE 2012**

The punitive articles contained in this appendix were replaced or superseded by Articles 120, 120b, and 120c, Uniform Code of Military Justice, as amended or established by the National Defense Authorization Act for Fiscal Year 2012. Article 120 was previously amended by the National Defense Authorization Act for Fiscal Year 2006. Each version of Article 120 is located in a different part of this Manual. For offenses committed prior to 1 October 2007, the relevant sexual offense provisions are contained in Appendix 20. For offenses committed during the period 1 October 2007 through 27 June 2012, the relevant sexual offense provisions are contained in this appendix and listed below. For offenses committed between 28 June 2012 and 31 December 2018, the relevant sexual offense provisions are contained in Appendix 22.

**45. Article 120—Rape, sexual assault, and other sexual misconduct**

a. *Text of statute.*

(a) *Rape.* Any person subject to this chapter who causes another person of any age to engage in a sexual act by—

- (1) using force against that other person;
- (2) causing grievous bodily harm to any person;
- (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;
- (4) rendering another person unconscious; or
- (5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct; is guilty of rape and shall be punished as a court-martial may direct.

(b) *Rape of a child.* Any person subject to this chapter who—

- (1) engages in a sexual act with a child who has not attained the age of 12 years; or
- (2) engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years; is guilty

of rape of a child and shall be punished as a court-martial may direct.

(c) *Aggravated sexual assault.* Any person subject to this chapter who—

(1) causes another person of any age to engage in a sexual act by—

(A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) causing bodily harm; or

(2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of—

(A) appraising the nature of the sexual act;

(B) declining participation in the sexual act; or

(C) communicating unwillingness to engage in the sexual act; is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) *Aggravated sexual assault of a child.* Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

(e) *Aggravated sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(f) *Aggravated sexual abuse of a child.* Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct

(g) *Aggravated sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a

## APPENDIX 21

child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) *Abusive sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) *Abusive sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) *Indecent liberty with a child.* Any person subject to this chapter who engages in indecent liberty in the physical presence of a child—

(1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) with the intent to abuse, humiliate, or degrade any person; is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) *Indecent act.* Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(l) *Forcible pandering.* Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) *Wrongful sexual contact.* Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) *Indecent exposure.* Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved

may reasonably be expected to be viewed by people other than members of the actor's family or household, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(o) *Age of child.*

(1) *Twelve years.* In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) *Sixteen years.* In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) *Proof of threat.* In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) *Marriage.*

(1) *In general.* In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure), it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct were married to each other.

(2) *Definition* For purposes of this

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) *Exception.* Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) *Consent and mistake of fact as to consent.* Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) *Other affirmative defenses not precluded.* The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) *Definitions.* In this section:

(1) *Sexual act.* The term "sexual act" means—

(A) contact between the penis and the vulva, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) *Sexual contact.* The term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to

arouse or gratify the sexual desire of any person.

(3) *Grievous bodily harm.* The term "grievous bodily harm" means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) *Dangerous weapon or object.* The term "dangerous weapon or object" means—

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) *Force.* The term "force" means action to compel submission of another or to overcome or prevent another's resistance by—

(A) the use or display of a dangerous weapon or object;

(B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

(6) *Threatening or placing that other person in fear.* The term "threatening or placing that other person in fear" under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in

## APPENDIX 21

the victim or another person being subjected to death, grievous bodily harm, or kidnapping.

(7) *Threatening or placing that other person in fear.*

(A) *In general.* The term “threatening or placing that other person in fear” under paragraph (1)(A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) *Inclusions.* Such lesser degree of harm includes—

(i) physical injury to another person or to another person’s property; or

(ii) a threat—

(I) to accuse any person of a crime;

(II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or

(III) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

(8) *Bodily harm.* The term “bodily harm” means any offensive touching of another, however slight.

(9) *Child.* The term “child” means any person who has not attained the age of 16 years.

(10) *Lewd act.* The term “lewd act” means—

(A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) *Indecent liberty.* The term “indecent

liberty” means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one’s genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child’s consent is not relevant.

(12) *Indecent conduct.* The term “indecent conduct” means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person’s consent, and contrary to that other person’s reasonable expectation of privacy, of—

(A) that other person’s genitalia, anus, or buttocks, or (if that other person is female) that person’s areola or nipple; or

(B) that other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125) of this chapter), or sexual contact.

(13) *Act of prostitution.* The term “act of prostitution” means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) *Consent.* The term “consent” means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused’s use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

sexual activity if—

(A) under 16 years of age; or

(B) substantially incapable of—

(i) appraising the nature of the sexual conduct at issue due to—

(I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) mental disease or defect that renders the person unable to understand the nature of the sexual conduct at issue;

(ii) physically declining participation in the sexual conduct at issue; or

(iii) physically communicating unwillingness to engage in the sexual conduct at issue.

(15) *Mistake of fact as to consent.* The term “mistake of fact as to consent” means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable, the ignorance or mistake must have been based on information, or lack of it, that would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused’s state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) *Affirmative defense.* The term “affirmative defense” means any special defense that, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused

has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.

b. *Elements.*

(1) *Rape.*

(a) *Rape by using force.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act by using force against that other person.

(b) *Rape by causing grievous bodily harm.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act by causing grievous bodily harm to any person.

(c) *Rape by using threats or placing in fear.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) *Rape by rendering another unconscious.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act by rendering that other person unconscious.

(e) *Rape by administration of drug, intoxicant, or other similar substance.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act by administering to that other person a drug, intoxicant, or other similar substance;

(ii) That the accused administered the drug, intoxicant or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(iii) That, as a result, that other person’s ability to appraise or control conduct was substantially impaired.

(2) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12 years.*

(i) That the accused engaged in a sexual act with a child; and

## APPENDIX 21

(ii) That at the time of the sexual act the child had not attained the age of twelve years.

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening or placing that child in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(f) *Rape of a child who has attained the age of*

*12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii)(a) That the accused did so by administering to that child a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child; and

(c) That, as a result, that child's ability to appraise or control conduct was substantially impaired.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) *Aggravated sexual assault by causing bodily harm.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by causing bodily harm to another person.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i) That the accused engaged in a sexual act with another person, who is of any age; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

(iii) That the other person was substantially incapable of appraising the nature of the sexual act;

(iv) That the other person was substantially incapable of declining participation in the sexual act; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual act.

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

(a) That the accused engaged in a sexual act with a child; and

(b) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by using force against that other person.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing grievous bodily harm to any person.

(c) *Aggravated sexual contact by using threats or placing in fear.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) *Aggravated sexual contact by rendering*

*another unconscious.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by rendering that other person unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii)(a) That the accused did so by administering to that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(c) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(6) *Aggravated sexual abuse of a child.*

(a) That the accused engaged in a lewd act; and

(b) That the act was committed with a child who has not attained the age of 16 years.

(7) *Aggravated Sexual Contact with a Child.*

(a) *Aggravated sexual contact with a child who has not attained the age of 12 years.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had not attained the age of twelve years.

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact



## APPENDIX 21

with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening or placing that child or that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering another or that child unconscious.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not

attained the age of 16 years; and

(iii) That the accused did so by rendering that child or that other person unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii)(a) That the accused did so by administering to that child or that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child or that other person; and

(c) That, as a result, that child's or that other person's ability to appraise or control conduct was substantially impaired.

(8) *Abusive sexual contact.*

(a) *Abusive sexual contact by using threats or placing in fear.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) *Abusive sexual contact by causing bodily harm.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing bodily

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

harm to another person.

(c) *Abusive sexual contact upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual contact;

(iv) That the other person was substantially incapable of declining participation in the sexual contact; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual contact.

(9) *Abusive sexual contact with a child.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years.

(10) *Indecent liberty with a child.*

(a) That the accused committed a certain act or communication;

(b) That the act or communication was indecent;

(c) That the accused committed the act or communication in the physical presence of a certain child;

(d) That the child was under 16 years of age; and

(e) That the accused committed the act or communication with the intent to:

(i) arouse, appeal to, or gratify the sexual desires of any person; or

(ii) abuse, humiliate, or degrade any person.

(11) *Indecent act.*

(a) That the accused engaged in certain conduct; and

(b) That the conduct was indecent conduct.

(12) *Forcible pandering.*

(a) That the accused compelled a certain person to engage in an act of prostitution; and

(b) That the accused directed another person to said person, who then engaged in an act of prostitution.

(13) *Wrongful sexual contact.*

(a) That the accused had sexual contact with another person;

(b) That the accused did so without that other person's permission; and

(c) That the accused had no legal justification or lawful authorization for that sexual contact.

(14) *Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the accused's exposure was in an indecent manner;

(c) That the exposure occurred in a place where the conduct involved could reasonably be expected to be viewed by people other than the accused's family or household; and

(d) That the exposure was intentional.

c. *Explanation.*

(1) *Definitions.* The terms are defined in Paragraph 45a.(t), supra.

(2) *Character of victim.* See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense.

(3) *Indecent.* In conduct cases, "indecent" generally signifies that form of immorality relating to sexual impurity that is not only grossly vulgar, obscene, and repugnant to common propriety, but also tends to excite lust and deprave the morals with respect to sexual relations. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

## APPENDIX 21

d. *Lesser included offenses.* The following lesser included offenses are based on internal cross-references provided in the statutory text of Article 120. See subsection (e) for a further listing of possible lesser included offenses.

(1) *Rape.*

(a) Article 120—Aggravated sexual contact

(b) Article 134—Assault with intent to commit rape

(c) Article 128—Aggravated assault; Assault; Assault consummated by a battery

(d) Article 80—Attempts

(2) *Rape of a child.*

(a) Article 120—Aggravated sexual contact with a child; Indecent act

(b) Article 134—Assault with intent to commit rape

(c) Article 128—Aggravated assault; Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(d) Article 80—Attempts

(3) *Aggravated sexual assault.*

(a) Article 120—Abusive sexual contact

(b) Article 128—Aggravated assault; Assault; Assault consummated by a battery

(c) Article 80—Attempts

(4) *Aggravated sexual assault of a child.*

(a) Article 120—Abusive sexual contact with a child; Indecent act

(b) Article 128—Aggravated assault; Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80—Attempts

(5) *Aggravated sexual contact.*

(a) Article 128—Aggravated assault; Assault; Assault consummated by a battery

(b) Article 80—Attempts

(6) *Aggravated sexual abuse of a child.*

(a) Article 120—Indecent act

(b) Article 128—Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80—Attempts

(7) *Aggravated sexual contact with a child.*

(a) Article 120—Indecent act

(b) Article 128—Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80—Attempts

(8) *Abusive sexual contact.*

(a) Article 128—Assault; Assault consummated by a battery

(b) Article 80—Attempts

(9) *Abusive sexual contact with a child.*

(a) Article 120—Indecent act

(b) Article 128—Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80—Attempts

(10) *Indecent liberty with a child.*

(a) Article 120—Indecent act

(b) Article 80—Attempts

(11) *Indecent act.* Article 80—Attempts

(12) *Forcible pandering.* Article 80—Attempts

(13) *Wrongful sexual contact* Article 80—Attempts

(14) *Indecent exposure.* Article 80—Attempts

e. *Additional lesser included offenses.* Depending on the factual circumstances in each case, to include the type of act and level of force involved, the following offenses may be considered lesser included in addition to those offenses listed in subsection d. (See subsection (d) for a listing of the offenses that are specifically cross-referenced within the statutory text of Article 120.) The elements of the proposed lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. See Appendix 23 for further explanation of lesser included offenses.

(1)(a) *Rape by using force.* Article 120—Indecent act; Wrongful sexual contact

(1)(b) *Rape by causing grievous bodily harm.* Article 120—Aggravated sexual assault by causing bodily harm; Abusive sexual contact by causing bodily harm;

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

Indecent act; Wrongful sexual contact

(1)(c) *Rape by using threats or placing in fear.* Article 120—Aggravated sexual assault by using threats or placing in fear; Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(1)(d) *Rape by rendering another unconscious.* Article 120—Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(1)(e) *Rape by administration of drug, intoxicant, or other similar substance.* Article 120—Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(2)(a) - (f) *Rape of a child who has not attained 12 years; Rape of a child who has attained the age of 12 years but has not attained the age of 16 years.* Article 120—Aggravated sexual assault of a child; Aggravated sexual abuse of a child; Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(3) *Aggravated sexual assault.* Article 120—Wrongful sexual contact; indecent act

(4) *Aggravated sexual assault of a child.* Article 120—Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(5)(a) *Aggravated sexual contact by force.* Article 120—Indecent act; Wrongful sexual contact

(5)(b) *Aggravated sexual contact by causing grievous bodily harm.* Article 120—Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(5)(c) *Aggravated sexual contact by using threats or placing in fear.* Article 120—Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(5)(d) *Aggravated sexual contact by rendering another unconscious.* Article 120—Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(5)(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.* Article

120—Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(6) *Aggravated sexual abuse of a child.* Article 120—Aggravated sexual contact with a child; Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(7) *Aggravated sexual contact with a child.* Article 120—Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(8) *Abusive sexual contact.* Article 120—Wrongful sexual contact; Indecent act

(9) *Abusive sexual contact with a child.* Article 120—Indecent liberty with a child; Wrongful sexual contact

(10) *Indecent liberty with a child.* Article 120—Wrongful sexual contact

f. *Maximum punishment.*

(1) *Rape and rape of a child.* Death or such other punishment as a court martial may direct.

(2) *Aggravated sexual assault.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

(3) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years, aggravated sexual abuse of a child, aggravated sexual contact, and aggravated sexual contact with a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Abusive sexual contact with a child and indecent liberty with a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(5) *Abusive sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

(6) *Indecent act or forcible pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(7) *Wrongful sexual contact or indecent exposure.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

g. *Sample specifications*

## APPENDIX 21

### (1) Rape

#### (a) Rape by using force.

(i) *Rape by use or display of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_, by (using a dangerous weapon or object, to wit: \_\_\_\_\_ against (him)(her)) (displaying a dangerous weapon or object, to wit: \_\_\_\_\_ to (him)(her)).

(ii) *Rape by suggestion of possession of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) to believe it was a dangerous weapon or object.

(iii) *Rape by using physical violence, strength, power, or restraint to any person.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_, by using (physical violence)(strength)(power)(restraint applied to \_\_\_\_\_), sufficient that (he)(she) could not avoid or escape the sexual conduct.

(b) *Rape by causing grievous bodily harm.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_, by causing grievous bodily harm upon (him)(her)(\_\_\_\_\_), to wit: a (broken leg)(deep cut)(fractured skull)(\_\_\_\_\_).

(c) *Rape by using threats or placing in fear.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_, by [threatening][placing (him)(her) in fear] that (he)(she)(\_\_\_\_\_) will be subjected to (death)(grievous bodily harm)(kidnapping) by \_\_\_\_\_.

(d) *Rape by rendering another unconscious.* In

that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in sexual act, to wit: \_\_\_\_\_, by rendering (him)(her) unconscious.

(e) *Rape by administration of drug, intoxicant, or other similar substance.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_, by administering to (him)(her) a drug, intoxicant, or other similar substance, (by force)(by threat of force)(without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise)(control)][(his)(her)] conduct.

#### (2) Rape of a child.

(a) *Rape of a child who has not attained the age of 12 years.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had not attained the age of 12

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years, by (using a dangerous weapon or object, to wit: \_\_\_\_\_ against (him)(her))(displaying a dangerous weapon or object, to wit: \_\_\_\_\_ to (him)(her)).

(ii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

years, but had not attained the age of 16 years, by suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her) to believe it was a dangerous weapon or object.

(iii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had not attained the age of 12 years, but had not attained the age of 16 years, by using (physical violence)(strength)(power)(restraint applied to \_\_\_\_\_) sufficient that (he)(she) could not avoid or escape the sexual conduct.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years, by causing grievous bodily harm upon (him)(her)(\_\_\_\_\_), to wit: a (broken leg)(deep cut)(fractured skull)(\_\_\_\_\_).

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years, by [threatening][placing (him)(her) in fear] that (he)(she)(\_\_\_\_\_) would be subjected to (death)(grievous bodily harm)(kidnapping) by \_\_\_\_\_.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to

wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years, by rendering (him)(her) unconscious.

(f) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years, by administering to (him)(her) a drug, intoxicant, or other similar substance (by force)(by threat of force)(without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise)(control)][(his)(her)] conduct.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_ by [threatening][placing(him)(her) in fear of][[(physical injury to \_\_\_\_\_)(injury to \_\_\_\_\_'s property)(accusation of crime)(exposition of secret)(abuse of military position)(\_\_\_\_\_)].

(b) *Aggravated sexual assault by causing bodily harm.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, cause \_\_\_\_\_ to engage in a sexual act, to wit: \_\_\_\_\_ by causing bodily harm upon (him)(her)(\_\_\_\_\_), to wit: \_\_\_\_\_.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_ with \_\_\_\_\_, who was (substantially incapacitated) [substantially incapable of (appraising the nature of the sexual act)(declining

## APPENDIX 21

participation in the sexual act)(communicating unwillingness to engage in the sexual act)].

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, engage in a sexual act, to wit: \_\_\_\_\_ with \_\_\_\_\_, who had attained the age of 12 years, but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i) *Aggravated sexual contact by use or display of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by (using a dangerous weapon or object, to wit: \_\_\_\_\_ against (him)(her))(displaying a dangerous weapon or object, to wit: \_\_\_\_\_ to (him)(her))

(ii) *Aggravated sexual contact by suggestion of possession of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)(\_\_\_\_\_) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact by using physical violence, strength, power, or restraint to any person.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)

\_\_\_\_\_) (cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by using (physical violence) (strength) (power) (restraint applied to \_\_\_\_\_), sufficient that (he)(she)(\_\_\_\_\_) could not avoid or escape the sexual conduct.

(b) *Aggravated sexual contact by causing grievous bodily harm.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by causing grievous bodily harm upon (him)(her)(\_\_\_\_\_), to wit: a (broken leg)(deep cut)(fractured skull)(\_\_\_\_\_).

(c) *Aggravated sexual contact by using threats or placing in fear.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by [threatening (him)(her)(\_\_\_\_\_)][placing (him)(her)(\_\_\_\_\_) in fear] that (he)(she)(\_\_\_\_\_) will be subjected to (death)(grievous bodily harm)(kidnapping) by \_\_\_\_\_.

(d) *Aggravated sexual contact by rendering another unconscious.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by rendering (him)(her)(\_\_\_\_\_) unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by administering to (him)(her)(\_\_\_\_\_) a drug, intoxicant, or other similar substance, (by force)(by threat of force)(without (his)(her)(\_\_\_\_\_) knowledge or permission), and thereby substantially impaired (his)(her)(\_\_\_\_\_) ability to [(appraise)(control)][(his)(her)] conduct.

(6) *Aggravated sexual abuse of a child.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, engage in lewd act, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had not attained the age of 16 years.

(7) *Aggravated sexual contact with a child.*

(a) *Aggravated sexual contact with a child who has not attained the age of 12 years.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had not attained the age of 12 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who has not attained the age of 12 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who has not attained the age of 12 years)]

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with

or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by (using a dangerous weapon or object, to wit: \_\_\_\_\_ against (him)(her)(\_\_\_\_\_) (displaying a dangerous weapon or object, to wit: \_\_\_\_\_ to (him)(her)(\_\_\_\_\_)).

(ii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)(\_\_\_\_\_) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by using (physical violence)(strength)(power)(restraint applied to \_\_\_\_\_) sufficient that (he)(she)(\_\_\_\_\_) could not avoid or escape the sexual conduct.



## APPENDIX 21

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by causing grievous bodily harm upon (him)(her)(\_\_\_\_\_), to wit: a (broken leg)(deep cut)(fractured skull)(\_\_\_\_\_).

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by [threatening][placing (him)(her)(\_\_\_\_\_) in fear] that (he)(she)(\_\_\_\_\_) will be subjected to (death)(grievous bodily harm)(kidnapping) by \_\_\_\_\_.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child or another unconscious* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual

contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by rendering (him)(her)(\_\_\_\_\_) unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)] by administering to (him)(her)(\_\_\_\_\_) knowledge or permission), and thereby substantially impaired (his)(her)(\_\_\_\_\_) ability to [(appraise)(control)][(his)(her)] conduct.

### (8) *Abusive sexual contact.*

(a) *Abusive sexual contact by using threats or placing in fear.* . In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_)(cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_)] by [(threatening)(placing (him)(her)(\_\_\_\_\_) in fear of)][physical injury to \_\_\_\_\_)(injury to \_\_\_\_\_'s property)(accusation of crime)(exposition of secret)(abuse of military position)(\_\_\_\_\_)].

(b) *Abusive sexual contact by causing bodily harm.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_, [engage in sexual contact, to wit: \_\_\_\_\_ with

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED DURING THE PERIOD  
1 OCTOBER 2007 THROUGH 27 JUNE 2012**

\_\_\_\_\_) (cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_) (cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_) by causing bodily harm upon (him)(her)(\_\_\_\_\_), to wit: (\_\_\_\_\_).

(c) *Abusive sexual contact by engaging in a sexual act with a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or substantially incapable of communicating unwillingness.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, [engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_] (cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_) (cause sexual contact with or by \_\_\_\_\_, to wit: \_\_\_\_\_) while (he)(she)(\_\_\_\_\_) was [substantially incapacitated][substantially incapable of (appraising the nature of the sexual contact)(declining participation in the sexual contact)(communicating unwillingness to engage in the sexual contact)].

(9) *Abusive sexual contact with a child.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, [(engage in sexual contact, to wit: \_\_\_\_\_ with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause \_\_\_\_\_ to engage in sexual contact, to wit: \_\_\_\_\_, with \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause sexual contact with or by \_\_\_\_\_, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: \_\_\_\_\_)]

(10) *Indecent liberties with a child.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, (take indecent liberties)(engage in indecent conduct) in the physical presence of \_\_\_\_\_, a (female)(male) under 16 years, by (communicating the words: to wit: \_\_\_\_\_)(exposing one's private parts, to wit: \_\_\_\_\_)(\_\_\_\_\_), with the intent to [(arouse)(appeal to)(gratify) the (sexual desire) of the \_\_\_\_\_ (or

\_\_\_\_\_)] [(abuse)(humiliate)(degrade) \_\_\_\_\_].

(11) *Indecent act.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, wrongfully commit indecent conduct, to wit \_\_\_\_\_.

(12) *Forcible pandering.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, compel \_\_\_\_\_ to engage in [(a sexual act)(sexual contact)(lewd act), to wit: \_\_\_\_\_] for the purpose of receiving money or other compensation with \_\_\_\_\_ (a) person(s) to be directed to (him)(her) by the said \_\_\_\_\_.

(13) *Wrongful sexual contact.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, engage in sexual contact with \_\_\_\_\_, to wit: \_\_\_\_\_, and such sexual contact was without legal justification or lawful authorization and without the permission of \_\_\_\_\_.

(14) *Indecent exposure.* In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20\_\_\_\_\_, intentionally (expose in an indecent manner (his)(her)(\_\_\_\_\_)(\_\_\_\_\_) while (at the barracks window)(in a public place)(\_\_\_\_\_)).”

**Appendix 21 Analysis Follows:**

[Note: The analysis was inserted into this appendix to accompany the version of Article 120 applicable to offenses committed during the period 1 October 2007 through 27 June 2012. For offenses committed prior to 1 October 2007, analysis related to Article 120 and other punitive articles applicable to sexual offenses is contained in Appendix 20. For offenses committed between 28 June 2012 and 31 December 2018, analysis related to Article 120, 120b, and 120c is contained in Appendix 22.]

## APPENDIX 21

### 45. Article 120—Rape, sexual assault, and other sexual misconduct

*2007 Amendment:* Changes to this paragraph are contained in Div. A. Title V. Subtitle E, Section 552(a)(1) of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, 119 Stat. 3257 (6 January 2006), which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct. In accordance with Section 552(c) of that Act, the amendment to the Article applies only with respect to offenses committed on or after 1 October 2007.

Nothing in these amendments invalidates any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to 1 October 2007. Any such nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

This new Article 120 consolidates several sexual misconduct offenses and is generally based on the Sexual Abuse Act of 1986, 18 U.S.C. Sections 2241-2245. The following is a list of offenses that have been replaced by this new paragraph 45:

(1) Paragraph 63, 134 Assault - Indecent, has been replaced in its entirety by three new offenses under paragraph 45. *See* subsections (e) Aggravated Sexual Contact, (h) Abusive Sexual Contact, and (m) Wrongful Sexual Contact.

(2) Paragraph 87, 134 Indecent Acts or Liberties with a Child, has been replaced in its entirety by three new offenses under paragraph 45. *See* subsections (g) Aggravated Sexual Contact with a Child, (i) Abusive Sexual Contact with a Child, and (j) Indecent Liberty with a Child.

(3) Paragraph 88, Article 134 Indecent Exposure, has been replaced in its entirety by a new offense under paragraph 45. *See* subsection (n) Indecent Exposure.

(4) Paragraph 90, Article 134 Indecent Acts with

Another, has been replaced in its entirety by a new offense under paragraph 45. *See* subsection (k) Indecent Act.

(5) Paragraph 97, Article 134 Pandering and Prostitution, has been amended. The act of compelling another person to engage in an act of prostitution with another person will no longer be an offense under paragraph 97 and has been replaced by a new offense under paragraph 45. *See* subsection (l), Forcible Pandering.

*c. Explanation.* Subparagraph (3), definition of “indecent,” is taken from paragraphs 89.c and 90.c of the Manual (2005 ed.) and is intended to consolidate the definitions of “indecent,” as used in the former offenses under Article 134 of “Indecent acts or liberties with a child,” “Indecent exposure,” and “Indecent acts with another,” formerly at paragraphs 87, 88, and 90 of the 2005 Manual, and “Indecent language,” at paragraph 89. The application of this single definition of “indecent” to the offenses of “Indecent liberty with a child,” “Indecent act,” and “Indecent exposure” under Article 120 is consistent with the construction given to the former Article 134 offenses in the 2005 Manual that were consolidated into Article 120. *See e.g. United States v. Negron*, 60 M.J. 136 (C.A.A.F. 2004).

*d. Additional Lesser Included Offenses.* The test to determine whether an offense is factually the same as another offense, and therefore lesser-included to that offense, is the “elements” test. *United States v. Foster*, 40 M.J. 140, 142 (C.M.A. 1994). Under this test, the court considers “whether each provision requires proof of a fact which the other does not.” *Blockburger*, 284 U.S. 299 at 304 (1932). Rather than adopting a literal application of the elements test, the Court stated that resolution of lesser-included claims “can only be resolved by lining up elements realistically and determining whether each element of the supposed ‘lesser’ offense is rationally derivative of one or more elements of the other offense - and vice versa.” *Foster*, 40 M.J. at 146. Whether an offense is a lesser-included offense is a matter of law that the Court will consider de novo. *United States v. Palagar*, 56 M.J. 294, 296 (C.A.A.F. 2002).

*e. Maximum punishment.* *See 1995 Amendment* regarding maximum punishment of death.

**APPENDIX 22**  
**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED**  
**BETWEEN 12 JUNE 2012 AND 31 DECEMBER 2018**

[Note: This statute applies to offenses committed between 28 June 2012 and 31 December 2018. Previous versions of Article 120 are located as follows: for offenses committed on or before 30 September 2007, *see* Appendix 20; for offenses committed during the period 1 October 2007 through 27 June 2012, *see* Appendix 21.]

**45. Article 120—Rape and sexual assault generally**

a. *Text of statute.*

(a) *Rape.* Any person subject to this chapter who commits a sexual act upon another person by—

(1) using unlawful force against that other person;

(2) using force causing or likely to cause death or grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) first rendering that other person unconscious; or

(5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; is guilty of rape and shall be punished as a court-martial may direct.

(b) *Sexual Assault.* Any person subject to this chapter who—

(1) commits a sexual act upon another person by—

(A) threatening or placing that other person in fear;

(B) causing bodily harm to that other person;

(C) making a fraudulent representation that the sexual act serves a professional purpose; or

(D) inducing a belief by any artifice, pretense, or concealment that the person is another person;

(2) commits a sexual act upon another person when the person knows or reasonably should know

that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—

(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person; is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) *Aggravated Sexual Contact.* Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(d) *Abusive Sexual Contact.* Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) *Proof of Threat.* In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) *Defenses.* An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) *Definitions.* In this section:

(1) *Sexual act.* The term ‘sexual act’ means—

(A) contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs

## APPENDIX 22

upon penetration, however slight; or

(B) the penetration, however slight, of the vulva or anus or mouth of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) *Sexual contact.* The term ‘sexual contact’ means—

(A) touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person; or

(B) any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person.

Touching may be accomplished by any part of the body.

(3) *Bodily harm.* The term ‘bodily harm’ means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.

(4) *Grievous bodily harm.* The term ‘grievous bodily harm’ means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(5) *Force.* The term ‘force’ means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(6) *Unlawful Force.* The term ‘unlawful force’ means an act of force done without legal justification or excuse.

(7) *Threatening or placing that other person in fear.* The term ‘threatening or placing that other person in fear’ means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to

the wrongful action contemplated by the communication or action.

(8) *Consent.*

(A) The term ‘consent’ means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).

(C) Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person’s actions.

b. *Elements.*

(1) *Rape involving contact between penis and vulva or anus or mouth.*

(a) *By unlawful force*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so with unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death,*

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

*grievous bodily harm, or kidnapping*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.

(d) *By first rendering that other person unconscious*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by first rendering that other person unconscious.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.

(2) *Rape involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *By force*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration,

however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; and

## APPENDIX 22

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Sexual assault involving contact between penis and vulva or anus or mouth.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by threatening or placing that other person in fear.

(b) *By causing bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by causing bodily harm to that other person.

(c) *By fraudulent representation*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose.

(d) *By false pretense*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iii) That the accused knew or reasonably

should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(f) *When the other person is incapable of consenting*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability; and

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person.

(4) *Sexual assault involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose when it served no professional purpose; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(5) *Aggravated sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By force*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person*



## APPENDIX 22

### *unconscious*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(6) *Aggravated sexual contact involving the touching of any body part of any person.*

(a) *By force*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed sexual contact

upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(7) *Abusive sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed sexual contact upon another person by touching, or causing another

person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(8) *Abusive sexual contact involving the touching of any body part of any person.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose when it served no professional purpose; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by inducing a

## APPENDIX 22

belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iv) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant, or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to arouse or gratify the sexual desire of any person.

c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.* The terms are defined in Paragraph 45.a.(g).

(3) *Victim character and privilege.* See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense. See Mil. R. Evid. 514 concerning rules of evidence relating to privileged communications between the victim and victim advocate.

(4) *Consent as an element.* Lack of consent is not an element of any offense under this paragraph unless expressly stated. Consent may be relevant for other purposes.

d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishments.*

(1) *Rape.* Forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum – Dismissal or dishonorable discharge.

(2) *Sexual assault.* Forfeiture of all pay and allowances and confinement for 30 years. Mandatory minimum – Dismissal or dishonorable discharge.

(3) *Aggravated sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Abusive sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

f. *Sample specifications.*

(1) *Rape involving contact between penis and vulva or anus or mouth.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, commit a sexual act upon by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by using unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_ by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by using force likely to cause death or grievous bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_ by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear) that would be subjected to (death) (grievous bodily harm) (kidnapping).

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, commit a sexual act upon by \_\_\_\_\_ causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by first rendering \_\_\_\_\_ unconscious by \_\_\_\_\_.

(e) *By administering a drug, intoxicant, or other*

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

*similar substance*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, commit a sexual act upon by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by administering to \_\_\_\_\_ (by force) (by threat of force) (without the knowledge or permission of \_\_\_\_\_) a (drug) (intoxicant) (list other similar substance), to wit: \_\_\_\_\_, thereby substantially impairing the ability of \_\_\_\_\_ to appraise or control his/her conduct.

(2) *Rape involving penetration of genital opening by any part of the body or any object.*

(a) *By force*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ , 20 \_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object) by using unlawful force, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) \_\_\_\_\_.

(b) *By force causing or likely to cause death or grievous bodily injury*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ , 20 \_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object) by using force likely to cause death or grievous bodily harm to, to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of).

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object) by (threatening ) (placing \_\_\_\_\_ in fear) that \_\_\_\_\_ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) \_\_\_\_\_.

(d) *By first rendering that other person unconscious*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ , 20 \_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object) by first rendering \_\_\_\_\_ unconscious, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire

of) \_\_\_\_\_.

(e) *By administering a drug, intoxicant, or other similar substance*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object) by administering to \_\_\_\_\_ (by force) (by threat of force) (without the knowledge or permission of \_\_\_\_\_) a (drug) (intoxicant) (list other similar substance), to wit: \_\_\_\_\_, thereby substantially impairing the ability of \_\_\_\_\_ to appraise or control his/her conduct, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) \_\_\_\_\_.

(3) *Sexual assault involving contact between penis and vulva or anus or mouth.*

(a) *By threatening or placing that other person in fear*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ , 20 \_\_, commit a sexual act upon \_\_\_\_\_, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear).

(b) *By causing bodily harm*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, commit a sexual act upon \_\_\_\_\_, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis by causing bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_.

(c) *By fraudulent representation*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, commit a sexual act upon \_\_\_\_\_, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis by making a fraudulent representation that the sexual act served a professional purpose, to wit: \_\_\_\_\_.

(d) *By false pretense*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ , 20 \_\_, commit a sexual act upon \_\_\_\_\_, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*. In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ , 20 \_\_, commit a sexual act upon

## APPENDIX 22

\_\_\_\_\_, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis when he/she knew or reasonably should have known that \_\_\_\_\_ was (asleep) (unconscious) (unaware the sexual act was occurring due to \_\_\_\_\_).

(f) *When the other person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, when \_\_\_\_\_ was incapable of consenting to the sexual act because he/she [was impaired by (a drug, to wit: \_\_\_\_\_) (an intoxicant, to wit: \_\_\_\_\_) ( )] [had a (mental disease, to wit: \_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_) (physical disability, to wit: \_\_\_\_\_)], a condition that was known or reasonably should have been known by the said accused.

(4) *Sexual assault involving penetration of vulva or anus or mouth by any part of the body or any object.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by causing bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_ with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by making a fraudulent representation that the sexual act served a professional purpose, to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or

about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), when he/she knew or reasonably should have known that \_\_\_\_\_ was (asleep) (unconscious) (unaware the sexual act was occurring due to), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(f) *When the other person is incapable of consenting.* In that (personal jurisdiction data), did (at/ on board location), on or about \_\_\_\_\_, 20\_\_\_\_, commit a sexual act upon \_\_\_\_\_, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), when \_\_\_\_\_ was incapable of consenting to the sexual act because he/she [was impaired by (a drug, to wit: \_\_\_\_\_) (an intoxicant, to wit: \_\_\_\_\_) ( )] [had a (mental disease, to wit: \_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_) (physical disability, to wit: \_\_\_\_\_)], a condition that was known or reasonably should have been known by the said accused, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(5) *Aggravated sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, [(touch) (cause to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, by using unlawful force, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_, 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, by using force likely to cause death or grievous bodily

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

harm to \_\_\_\_\_, to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear) that \_\_\_\_\_ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, by rendering \_\_\_\_\_ unconscious by \_\_\_\_\_, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, by administering to \_\_\_\_\_ (by force) (by threat of force) (without the knowledge or permission of \_\_\_\_\_) a (drug) (intoxicant) (\_\_\_\_\_) thereby substantially impairing the ability of \_\_\_\_\_ to appraise or control his/her conduct, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(6) *Aggravated sexual contact involving the touching of any body part of any person.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] (name of body part) of \_\_\_\_\_, by using unlawful force, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly)

(through the clothing)] (name of body part) of \_\_\_\_\_, by using force likely to cause death or grievous bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause to touch)] [(directly) (through the clothing)] (name of body part) of \_\_\_\_\_, by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear) that \_\_\_\_\_ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] (name of body part) of \_\_\_\_\_, by rendering \_\_\_\_\_ unconscious by \_\_\_\_\_, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause \_\_\_\_\_ to touch)] [(directly) (through the clothing)] (name of body part) of \_\_\_\_\_, by administering to \_\_\_\_\_ (by force) (by threat of force) (without the knowledge or permission of \_\_\_\_\_) a (drug) (intoxicant) (\_\_\_\_\_) and thereby substantially impairing the ability of \_\_\_\_\_ to appraise or control his/her conduct, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(7) *Abusive sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_ by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or

## APPENDIX 22

about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_ by causing bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_ by making a fraudulent representation that the sexual contact served a professional purpose, to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_ by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_ when he/she knew or reasonably should have known that \_\_\_\_\_ was (asleep) (unconscious) (unaware the sexual contact was occurring due to \_\_\_\_\_), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(f) *When that person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_ when \_\_\_\_\_ was incapable of consenting to the sexual contact because he/she [was impaired by (a drug, to wit: \_\_\_\_\_) (an intoxicant, to wit: \_\_\_\_\_) ( )] [had a (mental disease, to wit: \_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_) (physical disability, to wit: \_\_\_\_\_)] and this condition was known or

reasonably should have been known by \_\_\_\_\_, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(8) *Abusive sexual contact involving the touching of any body part of any person.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of \_\_\_\_\_ by (threatening \_\_\_\_\_) (placing in \_\_\_\_\_ fear), with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of \_\_\_\_\_ by causing bodily harm to \_\_\_\_\_, to wit: \_\_\_\_\_, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of \_\_\_\_\_ by making a fraudulent representation that the sexual contact served a professional purpose, to wit: \_\_\_\_\_, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of \_\_\_\_\_ by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of \_\_\_\_\_ when he/she knew or reasonably should have known that \_\_\_\_\_ was (asleep) (unconscious) (unaware the sexual contact was occurring due to \_\_\_\_\_), with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(f) *When that person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20 \_\_, [(touch) (cause another person to touch)] [(directly) (through the

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

clothing)] the (name of body part) of \_\_\_\_\_  
when \_\_\_\_\_ was incapable of consenting to the  
sexual contact because he/she [was impaired by (a  
drug, to wit: \_\_\_\_\_) (an intoxicant, to wit:  
\_\_\_\_\_) ( )] [had a (mental disease, to wit:  
\_\_\_\_\_) (mental defect, to wit: \_\_\_\_\_)  
(physical disability, to wit: \_\_\_\_\_)], a condition  
that was known or reasonably should have been  
known by \_\_\_\_\_, with an intent to (arouse)  
(gratify the sexual desire of) \_\_\_\_\_.

**45a. Article 120a—Stalking**

a. *Text of statute.*

(a) **Any person subject to this section:**

(1) **who wrongfully engages in a course of  
conduct directed at a specific person that would  
cause a reasonable person to fear death or bodily  
harm, including sexual assault, to himself or  
herself or a member of his or her immediate  
family;**

(2) **who has knowledge, or should have  
knowledge, that the specific person will be placed  
in reasonable fear of death or bodily harm,  
including sexual assault, to himself or herself or a  
member of his or her immediate family; and**

(3) **whose acts induce reasonable fear in the  
specific person of death or bodily harm, including  
sexual assault, to himself or herself or to a member  
of his or her immediate family;  
is guilty of stalking and shall be punished as a  
court-martial may direct.**

(b) **In this section:**

(1) **The term “course of conduct” means:**

(A) **a repeated maintenance of visual or  
physical proximity to a specific person; or**

(B) **a repeated conveyance of verbal threat,  
written threats, or threats implied by con- duct, or  
a combination of such threats, directed at or  
towards a specific person.**

(2) **The term “repeated,” with respect to  
conduct, means two or more occasions of such  
conduct.**

(3) **The term “immediate family,” in the case of  
a specific person, means a spouse, parent, child, or  
sibling of the person, or any other family member,  
relative, or intimate partner of the person who  
regularly resides in the household of the person or  
who within the six months preceding the  
commencement of the course of conduct regularly  
resided in the household of the person.**

b. *Elements.*

(1) That the accused wrongfully engaged in a  
course of conduct directed at a specific person that  
would cause a reasonable person to fear death or  
bodily harm to himself or herself or a member of his  
or her immediate family;

(2) That the accused had knowledge, or should have  
had knowledge, that the specific person would be  
placed in reasonable fear of death or bodily harm to  
himself or herself or a member of his or her  
immediate family; and

(3) That the accused’s acts induced reasonable fear  
in the specific person of death or bodily harm to  
himself or herself or to a member of his or her  
immediate family.

c. *Explanation.* See Paragraph 54c(1)(a) for an  
explanation of “bodily harm”.

d. *Lesser included offenses.* See paragraph 3 of this  
part and Appendix 12A.

e. *Maximum punishment.* Dishonorable discharge,  
forfeiture of all pay and allowances, and confinement  
for 3 years.

f. *Sample Specification.*

In that \_\_\_\_\_ (personal jurisdiction data), who  
(knew)(should have known) that \_\_\_\_\_ would be  
placed in reasonable fear of (death)(bodily harm) to  
(himself) (herself) (\_\_\_\_\_, a member of his or  
her immediate family) did (at/on board—location),  
(subject-matter jurisdiction data, if required), (on or  
about \_\_\_\_ . 20 \_\_)(from about to about 20 \_\_),  
wrongfully engage in a course of conduct directed at  
\_\_\_\_\_, to wit: \_\_\_\_\_ thereby inducing in  
\_\_\_\_\_, a reasonable fear of (death)(bodily harm)  
to (himself)(herself) (\_\_\_\_\_, a member of his or her  
immediate family).

**45b. Article 120b—Rape and sexual assault of a  
child**

[Note: This statute applies to offenses committed  
between 28 June 2012 and 31 December 2018. Article  
120b is a new statute designed to address only child  
sexual offenses. Previous versions of child sexual  
offenses are located as follows: for offenses  
committed on or before 30 September 2007, see  
Appendix 20; for offenses committed during the  
period 1 October 2007 through 27 June 2012, see  
Appendix 21.]

a. *Text of Statute*

(a) *Rape of a Child.* **Any person subject to this**



## APPENDIX 22

chapter who—

(1) commits a sexual act upon a child who has not attained the age of 12 years; or

(2) commits a sexual act upon a child who has attained the age of 12 years by—

(A) using force against any person;

(B) threatening or placing that child in fear;

(C) rendering that child unconscious; or

(D) administering to that child a drug, in toxicant, or other similar substance; is guilty of rape of a child and shall be punished as a court-martial may direct.

(b) *Sexual Assault of a Child*. Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.

(c) *Sexual Abuse of a Child*. Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) *Age of Child*.

(1) *Under 12 years*. In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) *Under 16 years*. In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) *Proof of Threat*. In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) *Marriage*. In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each

other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) *Consent*. Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) *Definitions*. In this section:

(1) *Sexual act and sexual contact*. The terms ‘sexual act’ and ‘sexual contact’ have the meanings given those terms in section 920(g) of this title (article 120(g)).

(2) *Force*. The term ‘force’ means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or

(C) inflicting physical harm. In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) *Threatening or placing that child in fear*. The term ‘threatening or placing that child in fear’ means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) *Child*. The term ‘child’ means any person who has not attained the age of 16 years.

(5) *Lewd act*. The term ‘lewd act’ means—

(A) any sexual contact with a child;

(B) intentionally exposing one’s genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

**arouse or gratify the sexual desire of any person;  
or**

**(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.**

b. *Elements.*

(1) *Rape of a child involving contact between penis and vulva or anus or mouth.*

(a) *Rape of a child who has not attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had not attained the age of 12 years.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years, and

(iii) That the accused did so by using force against that child or any other person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening the child or another person or placing that child in fear.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance.

(2) *Rape of a child involving penetration of vulva or anus or mouth by any part of the body or any object.*

(a) *Rape of a child who has not attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had not attained the age of 12 years; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva, anus, or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by using force against that child or any other person; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by threatening the

## APPENDIX 22

child or another person or placing that child in fear;  
and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by rendering that child unconscious; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 involving contact between penis and vulva or anus or mouth.*

(i) That the accused committed a sexual act upon a child causing contact between penis and vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(b) *Sexual assault of a child who has attained the age of 12 involving penetration of vulva or anus or mouth by any part of the body or any object.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part

of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(4) *Sexual abuse of a child.*

(a) *Sexual abuse of a child by sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(i) That the accused committed sexual contact upon a child by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person; and

(ii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *Sexual abuse of a child by sexual contact involving the touching of any body part.*

(i) That the accused committed sexual contact upon a child by touching, or causing another person to touch, either directly or through the clothing, any body part of any person; and

(ii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *Sexual abuse of a child by indecent exposure.*

(i) That the accused intentionally exposed his or her genitalia, anus, buttocks, or female areola or nipple to a child by any means; and

(ii) That the accused did so with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(d) *Sexual abuse of a child by indecent communication.*

(i) That the accused intentionally communicated indecent language to a child by any means; and

(ii) That the accused did so with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(e) *Sexual abuse of a child by indecent conduct.*

(i) That the accused engaged in indecent conduct, intentionally done with or in the presence of a child; and

(ii) That the indecent conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.* Terms not defined in this paragraph are defined in paragraph 45b.a.(h), supra.

d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Rape of a child.* Forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum – Dismissal or dishonorable discharge.

(2) *Sexual assault of a child.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum – Dismissal or dishonorable discharge.

(3) *Sexual abuse of a child.*

(a) *Cases involving sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

f. *Sample specifications.*

(1) *Rape of a child involving contact between penis and vulva or anus or mouth.*

(a) *Rape of a child who has not attained the age of 12.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had not attained the age of 12 years, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis.

(b) *Rape by force of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis, by using force against \_\_\_\_\_, to wit: \_\_\_\_\_.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of \_\_\_\_\_'s (vulva) (anus)

(mouth) with \_\_\_\_\_'s penis by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear).

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis by rendering \_\_\_\_\_ unconscious by \_\_\_\_\_.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis by administering to a (drug) (intoxicant) ( ), to wit: \_\_\_\_\_.

(2) *Rape of a child involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *Rape of a child who has not attained the age of 12.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had not attained the age of 12 years, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(b) *Rape by force of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by using force against \_\_\_\_\_, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_ . 20\_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of

## APPENDIX 22

\_\_\_\_\_ with (list body part or object), by (threatening \_\_\_\_\_) (placing \_\_\_\_\_ in fear), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by rendering \_\_\_\_\_ unconscious, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), by administering to \_\_\_\_\_ a (drug) (intoxicant) ( ), to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

### (3) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 years involving contact between penis and vulva or anus or mouth.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of \_\_\_\_\_'s (vulva) (anus) (mouth) with \_\_\_\_\_'s penis.

(b) *Sexual assault of a child who has attained the age of 12 years involving penetration of vulva or anus or mouth by any part of the body or any object.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a sexual act upon \_\_\_\_\_, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of \_\_\_\_\_ with (list body part or object), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

### (4) *Sexual abuse of a child.*

(a) *Sexual abuse of a child involving sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by intentionally [(touching) (causing \_\_\_\_\_ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of \_\_\_\_\_, with an intent to (abuse) (humiliate) (degrade) \_\_\_\_\_.

(b) *Sexual abuse of a child involving sexual contact involving the touching of any body part of any person.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by intentionally exposing [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] to \_\_\_\_\_, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(c) *Sexual abuse of a child involving indecent exposure.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by intentionally [(touching) (causing \_\_\_\_\_ to touch)] [(directly) (through the clothing)] (name of body part) of \_\_\_\_\_, with an intent to (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(d) *Sexual abuse of a child involving indecent communication.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by intentionally communicating to \_\_\_\_\_ indecent language to wit: \_\_\_\_\_, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) \_\_\_\_\_.

(e) *Sexual abuse of a child involving indecent conduct.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20 \_\_, commit a lewd act upon \_\_\_\_\_, a child who had not attained the age of 16 years, by engaging in indecent conduct, to wit: \_\_\_\_\_, intentionally done (with) (in the presence of) \_\_\_\_\_, which conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

relations.

**45c. Article 120c—Other sexual misconduct**

[Note: This statute applies to offenses committed between 28 June 2012 and 31 December 2018. Article 120c is a new statute designed to address miscellaneous sexual misconduct. Previous versions of these offenses are located as follows: for offenses committed on or before 30 September 2007, see Appendix 20; for offenses committed during the period 1 October 2007 through 27 June 2012, see Appendix 21.]

*a. Text of Statute*

**(a) Indecent Viewing, Visual Recording, or Broadcasting.** Any person subject to this chapter who, without legal justification or lawful authorization—

**(1) knowingly and wrongfully views the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy;**

**(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; or**

**(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2); is guilty of an offense under this section and shall be punished as a court-martial may direct.**

**(b) Forcible Pandering.** Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court-martial may direct.

**(c) Indecent Exposure.** Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

**(d) Definitions.** In this section:

**(1) Act of prostitution.** The term ‘act of prostitution’ means a sexual act or sexual contact (as defined in section 920(g) of this title (article 120(g))) on account of which anything of value is

given to, or received by, any person.

**(2) Private area.** The term ‘private area’ means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

**(3) Reasonable expectation of privacy.** The term ‘under circumstances in which that other person has a reasonable expectation of privacy’ means—

**(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or**

**(B) circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.**

**(4) Broadcast.** The term ‘broadcast’ means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

**(5) Distribute.** The term ‘distribute’ means delivering to the actual or constructive possession of another, including transmission by electronic means.

**(6) Indecent manner.** The term ‘indecent manner’ means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

*b. Elements.*

**(1) Indecent viewing.**

**(a)** That the accused knowingly and wrongfully viewed the private area of another person;

**(b)** That said viewing was without the other person’s consent; and

**(c)** That said viewing took place under circumstances in which the other person had a reasonable expectation of privacy.

**(2) Indecent recording.**

**(a)** That the accused knowingly recorded (photographed, videotaped, filmed, or recorded by any means) the private area of another person;

**(b)** That said recording was without the other person’s consent; and

**(c)** That said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

**(3) Broadcasting of an indecent recording.**

**(a)** That the accused knowingly broadcast a certain recording of another person’s private area;

**(b)** That said recording was made or broadcast

## APPENDIX 22

without the other person's consent;

(c) That the accused knew or reasonably should have known that the recording was made or broadcast without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(4) *Distribution of an indecent visual recording.*

(a) That the accused knowingly distributed a certain recording of another person's private area;

(b) That said recording was made or distributed without the other person's consent;

(c) That the accused knew or reasonably should have known that said recording was made or distributed without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(5) *Forcible pandering.* That the accused compelled another person to engage in an act of prostitution with any person.

(6) *Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the exposure was in an indecent manner; and

(c) That the exposure was intentional.

c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.*

(a) Recording. A "recording" is a still or moving visual image captured or recorded by any means.

(b) Other terms are defined in paragraph 45c.a.(d), supra.

d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Indecent viewing.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Indecent visual recording.* Dishonorable

discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Broadcasting or distribution of an indecent visual recording.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

(4) *Forcible pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 12 years.

(5) *Indecent exposure.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specifications.*

(1) *Indecent viewing, visual recording, or broadcasting.*

(a) *Indecent viewing.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, knowingly and wrongfully view the private area of \_\_\_\_\_, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(b) *Indecent visual recording.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, knowingly (photograph) (videotape) (film) (make a recording of) the private area of \_\_\_\_\_, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(c) *Broadcasting or distributing an indecent visual recording.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, knowingly (broadcast) (distribute) a recording of the private area of \_\_\_\_\_, when the said accused knew or reasonably should have known that the said recording was (made) (and/or) (distributed/ broadcast) without the consent of \_\_\_\_\_ and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(2) *Forcible pandering.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, wrongfully compel \_\_\_\_\_ to engage in (a sexual act) (sexual contact) with \_\_\_\_\_, to wit: \_\_\_\_\_, for the purpose of receiving (money) (other compensation) (\_\_\_\_\_).

(3) *Indecent exposure.* In that (personal jurisdiction data), did (at/on board location), on or about \_\_\_\_\_. 20\_\_\_\_, intentionally expose [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] in an indecent manner, to wit: \_\_\_\_\_.

**PUNITIVE ARTICLES APPLICABLE TO SEXUAL OFFENSES COMMITTED BETWEEN  
12 JUNE 2012 AND 31 DECEMBER 2018**

**97. Article 134—(Pandering and prostitution)**

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Prostitution.*

(a) That the accused engaged in a sexual act with another person not the accused's spouse;

(b) That the accused did so for the purpose of receiving money or other compensation;

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Patronizing a prostitute.*

(a) That the accused engaged in a sexual act with another person not the accused's spouse;

(b) That the accused compelled, induced, enticed, or procured such person to engage in a sexual act in exchange for money or other compensation; and

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Pandering by inducing, enticing, or procuring act of prostitution.*

(a) That the accused induced, enticed, or procured a certain person to engage in a sexual act for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Pandering by arranging or receiving consideration for arranging for a sexual act.*

(a) That the accused arranged for, or received valuable consideration for arranging for, a certain person to engage in a sexual act with another person;

(b) That the arranging (and receipt of consideration) was wrongful; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Prostitution may be committed by males or females.*

(2) *Sexual act.* See paragraph 45.a.(g)(1).

d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Prostitution and patronizing a prostitute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specifications.*

(1) *Prostitution.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ . 20\_\_ , wrongfully engage in (a sexual act) (sexual acts) with , a person not his/her spouse, for the purpose of receiving (money) ( \_\_\_\_\_ ), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

(2) *Patronizing a prostitute.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ . 20\_\_ , wrongfully (compel) (induce) (entice) (procure) \_\_\_\_\_ , a person not his/her spouse, to engage in (a sexual act) (sexual acts) with the accused in exchange for (money) ( \_\_\_\_\_ ), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

(3) *Inducing, enticing, or procuring act of prostitution.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ . 20\_\_ , wrongfully (induce)(entice)(procure) \_\_\_\_\_ to engage in (a sexual act) (sexual acts for hire and reward) with persons to be directed to him/her by the said \_\_\_\_\_ , and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline



## APPENDIX 22

in the armed forces and was of a nature to bring discredit upon the armed forces).

(4) *Arranging, or receiving consideration for arranging for sexual intercourse or sodomy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ . 20 \_\_, wrongfully (arrange for) (receive valuable consideration, to wit: \_\_\_\_\_ on account of arranging for) \_\_\_\_\_ to engage in (an act) (acts) of (sexual intercourse) (sodomy) with \_\_\_\_\_, and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

## MCM INDEX

Subject	Ref.	Page
<b>Abandoned property</b> , seizure of .....	Mil. R. Evid. 316(c)(2) .....	III-15
<b>Abandoned property of enemy</b> , offenses concerning .....	IV. Para. 44 .....	IV-58
<b>Abandoning watch or guard</b> .....	IV. Para. 10b(4) .....	IV-13
<i>See also Sentinel or lookout</i>		
<b>Abandonment or surrender of command, military property, place, unit or ship</b>		
Shamefully .....	IV. Para. 27b(2) .....	IV-39
Subordinate compelling .....	IV. Para. 28 .....	IV-41
<b>Abettor</b> .....	IV. Para. 1a(1); 1b(1) .....	IV-1
<i>See also Principals.</i>		
<b>Absence</b>		
Accused's		
After trial .....	R.C.M. 1106(e)(4) .....	II-167
During preliminary hearing .....	R.C.M. 405(j)(4) .....	II-45
During pretrial conference .....	R.C.M. 802(d) .....	II-93
During trial .....	R.C.M. 804 .....	II-93
Speedy trial, effect on .....	R.C.M. 707(c) .....	II-88
Voluntary for child testimony .....	R.C.M. 804(d) .....	II-94
Defense counsel, during trial .....	R.C.M. 805(c) .....	II-95
Members .....	R.C.M. 805(b) .....	II-95
Military judge .....	R.C.M. 805(a) .....	II-95
Trial counsel, during trial .....	R.C.M. 805(c) .....	II-95
<b>Absence without leave</b> .....	IV. Para. 10 .....	IV-13
<i>See also Desertion</i>		
<b>Abusive sexual contact</b> .....	IV. Para. 60 .....	IV-84
<b>Accessory</b>		
After the fact .....	IV. Para. 2 .....	IV-2
Before the fact .....	IV. Para. 1b(1) .....	IV-1
<b>Accident</b>		
As defense .....	R.C.M. 916(f) .....	II-130
Leaving scene of vehicle accident .....	IV. Para. 48 .....	IV-64
<b>Accomplices</b>		
<i>See also Conspiracy; Joint trial; Principals.</i>		
Co-conspirators .....	IV. Para. 5c(1) .....	IV-6
Joint charge .....	R.C.M. 307(c)(5) .....	II-32
<b>Accused</b>		
<i>See also specific topics.</i>		
Absence of		
After trial substitute service .....	R.C.M. 1106(e)(4) .....	II-167
During preliminary hearing .....	R.C.M. 405(j)(4) .....	II-45
During pretrial conference .....	R.C.M. 802(d) .....	II-93
During trial .....	R.C.M. 804 .....	II-93
Speedy trial, effect on .....	R.C.M. 707(c) .....	II-88
Voluntary for child testimony .....	R.C.M. 804(d) .....	II-94
Announcement of presence in court .....	R.C.M. 813(a)(2) .....	II-103
Appearance of, at trial .....	R.C.M. 804(a) .....	II-93
Appellate rights, advice		
By defense counsel .....	R.C.M. 502(d) .....	II-54
By military judge .....	R.C.M. 1010 .....	II-158
Character evidence .....	Mil. R. Evid. 404 .....	III-18
Charges		
Notification of .....	R.C.M. 308 .....	II-33
Service of .....	R.C.M. 602 .....	II-64
Composition of court-martial, elections .....	R.C.M. 903 .....	II-106
Conferences		
Presence at .....	R.C.M. 802(d) .....	II-93
Rights at .....	R.C.M. 802(c) .....	II-93
Counsel		
<i>See also Counsel; Defense counsel.</i>		
Explanation at trial of right to .....	R.C.M. 901(d)(4) .....	II-104
<i>Rights to</i>		

Subject	Ref.	Page
<i>See also Self-Incrimination</i>		
Appellate counsel .....	R.C.M. 1202(b)(2) .....	II-189
At general or special court-martial .....	R.C.M. 506 .....	II-59
At interrogations .....	Mil. R. Evid.305(d); 305(e) .....	III-7
At lineups .....	Mil. R. Evid. 321(c)(2).....	III-17
At preliminary hearing .....	R.C.M. 405(f)(2) .....	II-40
At summary court-martial .....	R.C.M. 1301(e) .....	II-199
Before review of pretrial confinement.....	R.C.M. 305(f) .....	II-24
Counsel advice on post-trial rights .....	R.C.M. 1010(d) .....	II-158
Decision of Court of Criminal Appeal, service on .....	R.C.M. 908(c)(3); 1203(f) .....	II-116; II-192
After appeal by accused .....	R.C.M. 1203(d) .....	II-192
After appeal by United States .....	R.C.M. 908(c)(3) .....	II-116
Entry of Judgment, service of .....	R.C.M. 1111(f)(2) .....	II-177
Joinder of .....	R.C.M. 601(e)(3) .....	II-63
Jurisdiction over.....	R.C.M. 202(a) .....	II-15
Mental examination of .....	R.C.M. 706 .....	II-86
Notification of charges .....	R.C.M. 308 .....	II-33
Post-trial rights - Advice to accused .....	R.C.M. 1010 .....	II-158
Preliminary hearing, rights .....	R.C.M. 405(f) .....	II-40
Right to submit matters to convening authority .....	R.C.M. 1010(a); 1106 .....	II-158; II-166
Presence at trial.....	R.C.M. 803; 804 .....	II-93
Removal from courtroom .....	R.C.M. 804(c)(2) .....	II-93
Restraint of		
During trial .....	R.C.M. 804(c)(2) (Discussion) .....	II-93
Pretrial .....	R.C.M. 304; 305 .....	II-21; II-23
Sentencing, <i>See Presenting procedure.</i>		
Service of appellate court decision .....	R.C.M. 908(c)(3); 1203(d) .....	II-116; II-192
Service of charges .....	R.C.M. 602 .....	II-64
Severance of, motion for		
<i>See also Joint trial.</i>		
Generally .....	R.C.M. 905(b)(5); 906(b)(9)	
and (10) .....		II-108; II-112
Time for .....	R.C.M. 905(b)(5) .....	II-108
Waiver .....	R.C.M. 905(e)(1) .....	II-109
<b>Accuser</b>		
Defined .....	Art. 1(9), UCMJ .....	A2-1
Disqualification		
Convening authority .....	R.C.M. 504(e)(1); 601(c) .....	II-57; II-62
Defense counsel .....	R.C.M. 502(d)(3)(A) .....	II-52
Member .....	R.C.M. 912(f)(1)(C) .....	II-122
Personnel of court-martial .....	R.C.M. 502(e)(2)(A) .....	II-54
Reviewer .....	R.C.M. 1201(c)(2) .....	II-187
Subordinate of convening authority .....	R.C.M. 504(e)(2) .....	II-57
Trial counsel .....	R.C.M. 502(d)(3)(A) .....	II-52
Nominal accuser .....	R.C.M. 307(a) (Discussion) .....	II-2; II-29
Notification to accused of .....	R.C.M. 308 .....	II-33
Referral of charges .....	R.C.M. 307 .....	II-29
<b>Acquittal</b>		
<i>See also Findings.</i>		
Motion for a finding of not guilty .....	R.C.M. 917 .....	II-132
Reconsideration of .....	R.C.M. 924 .....	II-138
<b>Action of convening authority</b>		
<i>See also Convening authority.</i>		
Certain General and Special Courts Martial .....	R.C.M. 1110 .....	II-175
Pretrial agreement, effect of .....	R.C.M. 705(b)(2)(E) .....	II-83
Summary Courts-Martial		
Ambiguous action .....	R.C.M. 1306(e) .....	II-204
Contents of action .....	R.C.M. 1306(d) .....	II-204
Dismissal of charges .....	R.C.M. 1306(b)(2)(B)(i) .....	II-203
Erroneous action .....	R.C.M. 1306(e) .....	II-204
Findings, action on .....	R.C.M. 1306(b)(2) .....	II-203
Generally .....	R.C.M. 1306 .....	II-203

INDEX

MCM 2019

Subject	Ref.	Page
Incomplete	R.C.M. 1306(c)	II-204
Lesser included offense, approval of	R.C.M. 1306(b)(2)(A)	II-203
Matters considered	R.C.M. 1306(b)(1)	II-203
Mental capacity, when accused lacks	R.C.M. 1306(b)(5)	II-204
Mental responsibility, lack of	R.C.M. 1306(b)(4)	II-204
Modification of	R.C.M. 1306(d)(1); 1306(e)	II-204
New trial	R.C.M. 1306(c)	II-204
Not guilty findings, action on	R.C.M. 1306(b)(4)	II-204
Other trial, ordering	R.C.M. 1306(c)	II-204
Rehearing, ordering	R.C.M. 1306(b)(2)(B)(ii); 1306(c)	II-203; II-204
Sentence, action on	R.C.M. 1306(b)(3); 1306(d)(2)	II-203; II-204
Service on accused	R.C.M. 1306(f)	II-204
When taken	R.C.M. 1306(a)	II-203
Who may take	R.C.M. 1306(a)	II-203
Withdrawal of	R.C.M. 1306(d)(1)	II-204
Suspension of sentence	R.C.M. 1107	II-168
<b>Additional charges</b>	R.C.M. 307(c)(2) (Discussion); 601(e)(2)	II-30; II-63
<b>Adequate interest to challenge search and seizure</b>	Mil. R. Evid. 311(a)(2)	III-8
<b>Adjournment of courts-martial</b>		
Generally	R.C.M. 1011	II-159
Sessions after	R.C.M. 803; 1104	II-93; II-164
<b>Administrative action</b> , to dispose of offense	R.C.M. 306(c)(2); V. Para. 1d(1)	II-28; V-1
<b>Administrative proceeding</b> , wrongful interference with	IV. Para. 88	IV-132
<b>Admissions.</b> <i>See Self-incrimination.</i>		
<b>Admonition</b>		
Of court-martial, member, military judge, or counsel	R.C.M. 104(a)(1)	II-6
Punishment, nonjudicial	V. Para. 5c(1)	V-5
<b>Adultery.</b> <i>See Extramarital Sexual Conduct</i>		
<b>Advice, pretrial</b>		
Contents	R.C.M. 406(b); 406A(a)	II-47; II-48
Distribution	R.C.M. 701(a)(1)(A); Art. 34(a)(3), UCMJ	A2-13
General court-martial, requirement for	R.C.M. 601(d)(2)(B)	II-62
Motion concerning	R.C.M. 905(b)(1); 906(b)(3)	II-108; II-111
Responsibility for	R.C.M. 406(a); 406A(a)	II-47; II-48
When required	R.C.M. 406(a); 406A(a)	II-47; II-48
<b>Affidavits</b>		
Character of accused, proof by	Mil. R. Evid. 405(c)	III-19
Sentencing proceedings	R.C.M. 1001(d)(3)	II-143
<b>Affirmation</b>		
<i>See also Oaths.</i>		
Oath, included in	R.C.M. 807(a)	II-97
<b>Affirmative defenses.</b> <i>See Defenses.</i>		
<b>Aggravated assault.</b> <i>See Assault.</i>		
<b>Aggravating circumstances, capital cases</b>	R.C.M. 1004(c)	II-152
<i>See also Capital case.</i>		
<b>Aggravation, evidence in</b>	R.C.M. 1001(b)(4)	II-141
<b>Agreement</b>		
Plea. <i>See Plea agreement.</i>		
To commit offense. <i>See Conspiracy.</i>		
<b>Aider and abettor</b>	IV. Para. 1b(1)	IV-1
<i>See also Principals.</i>		
<b>Aiding the enemy</b>		
Attempts	IV. Paras. 4c(6)(e); 33	IV-5; IV-47
Generally	IV. Para. 33	IV-47
<b>Alcohol.</b> <i>See Drunk; Intoxication.</i>		
<b>Alibi</b>		
Failure to disclose, effect of	R.C.M. 701(g)(3)	II-70
Notice of, by defense	R.C.M. 701(b)(2)	II-68
Notice of rebuttal witnesses by trial counsel	R.C.M. 701(a)(3)(B)	II-67
Withdrawal after disclosure, effect of	R.C.M. 701(b)(5)	II-69
<b>Amending charges and specifications</b>	R.C.M. 603	II-64

Subject	Ref.	Page
<i>See also Charges and specifications.</i>		
<b>Ammunition, casting away</b> .....	IV. Para. 27 .....	IV-38
<b>Amphetamines.</b> <i>See Controlled substances, offenses involving</i>		
<b>Analysis</b>		
Military Rules of Evidence .....	Appendix 16 .....	A16-1
Nonjudicial Punishment Procedure .....	Appendix 18 .....	A18-1
Punitive Articles .....	Appendix 17 .....	A17-1
Rules for Courts-Martial .....	Appendix 15 .....	A15-1
<b>Animal abuse</b> .....	IV. Para. 92 .....	IV-138
<b>Announcement</b>		
Findings .....	R.C.M. 922 .....	II-138
Persons present or absent at trial .....	R.C.M. 813 .....	II-103
Sentence .....	R.C.M. 1007 .....	II-157
<b>Appeals.</b> <i>See Appellate review.</i>		
<b>Appellate counsel.</b> <i>See Appellate review.</i>		
<b>Appellate Review</b>		
Appeal by United States (Art. 62, UCMJ) .....	R.C.M. 908 .....	II-115
Appellate counsel		
Duties .....	R.C.M. 1202(b) .....	II-189
Generally .....	R.C.M. 1202(a) .....	II-189
When appeal filed by United States .....	R.C.M. 908(c)(1) .....	II-116
Finality of courts-martial .....	R.C.M. 1209 .....	II-195
Judge Advocate General, The		
Cases of lack of mental responsibility .....	R.C.M. 1201(h)(4)(B) .....	II-188
Cases referred to Court of Criminal Appeals by		
(Art. 66, UCMJ) .....	R.C.M. 1201(k) .....	II-189
Cases reviewed by (Art 69, UCMJ) .....	R.C.M. 1201(h); 1201(j) .....	II-188
Remission and suspension of sentence by .....	R.C.M. 1201(i) .....	II-188
Review of summary court-martial by .....	R.C.M. 1307(h) .....	II-206
New trial. <i>See New trial.</i>		
Nonjudicial punishment .....	V. Para. 7 .....	V-8
Powers and responsibilities of the Service Secretary .....	R.C.M. 1206 .....	II-194
Restoration .....	R.C.M. 1208 .....	II-195
Review of summary courts-martial by a judge advocate ..	R.C.M. 1307 .....	II-206
Review by Court of Appeals for the Armed Forces. <i>See</i>		
<b>Court of Appeals for the Armed Forces.</b>		
Review by Court of Criminal Appeals. <i>See Court of</i>		
<b>Criminal Appeals.</b>		
Review by the Supreme Court (Art. 67(h)(1), (2))		
Action by Court .....	R.C.M. 1205(b) .....	II-194
Cases subject to review .....	R.C.M. 1205(a) .....	II-194
Sentence requiring approval of the President .....	R.C.M. 1207 .....	II-195
Waiver or withdrawal of .....	R.C.M. 1115 .....	II-182
<b>Appellate rights waiver form</b> .....	Appendix 13 .....	A13-1
<b>Appointment in armed forces.</b> <i>See Enlistment.</i>		
<b>Apprehension</b>		
Absence without leave terminated by .....	IV. Para. 10e(2)(d) .....	IV-15
Attachment of jurisdiction .....	R.C.M. 202(c)(2) .....	II-17
Authorization, when required .....	R.C.M. 302(e)(2) .....	II-20
Custody, defined .....	IV. Para. 12c(4)(a) .....	IV-17
Defined .....	R.C.M. 302(a) .....	II-19
Deserters, by civilian authorities .....	R.C.M. 302(b)(3) .....	II-20
Desertion terminated by .....	IV. Para. 9d(2)(a) .....	IV-12
Force, use of .....	R.C.M. 302(d)(3) .....	II-20
Grounds for .....	R.C.M. 302(c) .....	II-20
Procedure .....	R.C.M. 302(d) .....	II-20
Resisting .....	IV. Para. 12 .....	IV-17
Search incident to .....	Mil. R. Evid. 314(g) .....	III-13
<i>See also Search and seizure.</i>		
Unlawful .....	IV. Para. 25 .....	IV-37
Warrant, when required .....	R.C.M. 302(d)(2); 302(e)(2) .....	II-20
Where made .....	R.C.M. 302(e) .....	II-20
Who may apprehend .....	R.C.M. 302(b) .....	II-19

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<b>Appropriation, wrongful</b> .....	IV Para. 64 .....	IV-97
<b>Argument</b>		
Control of, by military judge .....	R.C.M. 801(a)(3) .....	II-90
Findings .....	R.C.M. 919 .....	II-134
Motions .....	R.C.M. 801(a)(3) .....	II-90
Sentence .....	R.C.M. 1001(g) .....	II-144
Statement, opening .....	R.C.M. 913(b) .....	II-126
<b>Armed forces, defined</b> .....	R.C.M. 103(23) .....	II-2
<b>Arms, casting away</b> .....	IV. Para. 27 .....	IV-38
<b>Arraignment</b>		
Accused, presence required at .....	R.C.M. 804 .....	II-93
Additional charges, effect on referral of .....	R.C.M. 601(e)(2) .....	II-63
Amending charges, effect on .....	R.C.M. 603(c); 603(e) .....	II-65
Generally .....	R.C.M. 904 .....	II-108
<b>Arrest</b>		
Attachment of jurisdiction, effecting .....	R.C.M. 202(c)(2) .....	II-17
Breaking .....	IV. Para. 12 .....	IV-17
In quarters, as nonjudicial punishment .....	V. Para. 5b(1)(B)(i); 5c(3) .....	V-4; V-5
Members, disqualification while in .....	R.C.M. 912(f)(1)(L) .....	II-122
Pretrial		
<i>See also</i> <b>Restraint, pretrial.</b>		
Defined .....	R.C.M. 304(a)(3) .....	II-22
Duties inconsistent with .....	R.C.M. 304(a)(3) .....	II-22
Grounds for .....	R.C.M. 304(c) .....	II-22
Notice to persons in .....	R.C.M. 304(e) .....	II-23
Procedure .....	R.C.M. 304(d) .....	II-22
Punishment prohibited .....	R.C.M. 304(f) .....	II-23
Release from		
Authority to grant .....	R.C.M. 304(g) .....	II-23
When required .....	R.C.M. 707(d) .....	II-88
Speedy trial, effect on .....	R.C.M. 707(b)(1); 707(b)(e) .....	II-87
Who may order .....	R.C.M. 304(b) .....	II-22
Unlawful detention, as offense .....	IV. Para. 25 .....	IV-37
<b>Arson</b>		
<i>See also</i> <b>Burning with intent to defraud.</b>		
Aggravated .....	IV. Para. 75 .....	IV-114
Murder while committing .....	IV. Para. 56 .....	IV-76
Assault with intent to commit .....	IV. Para. 77 .....	IV-117
Simple arson .....	IV. Para. 75 .....	IV-114
Unborn child, death or injury of .....	IV. Para. 58 .....	IV-80
<b>Article 15. <i>See</i> Nonjudicial punishment.</b>		
<b>Article 32. <i>See</i> Preliminary hearing.</b>		
<b>Article 39(a) session</b> .....	R.C.M. 803 .....	II-93
Presence of accused .....	R.C.M. 804(a) .....	II-93
Presence of military judge .....	R.C.M. 805(b) .....	II-95
<b>Assault</b>		
Aggravated .....	IV. Para. 77 .....	IV-117
Attempts .....	IV. Paras. 4c(6)(g); 77 .....	IV-5; IV-117
Battery .....	IV. Para. 77 .....	IV-117
Child, as victim .....	IV. Para. 77 .....	IV-117
Commissioned officer, as victim		
In execution of office .....	IV. Para. 15 .....	IV-21
Not in execution of office .....	IV. Para. 77 .....	IV-117
Of a friendly foreign power .....	IV. Para. 77d(2)(b) .....	IV-121
Defense of another .....	R.C.M. 916(e)(5) .....	II-130
Law enforcement official, as victim .....	IV. Para. 77 .....	IV-117
Maiming .....	IV. Para. 78 .....	IV-123
Noncommissioned, petty, or warrant officer, as victim		
In execution of office .....	IV. Para. 17 .....	IV-25
Not in execution of office .....	IV. Para. 77 .....	IV-117
Self-defense .....	R.C.M. 916(e) .....	II-129
Sentinel or lookout, as victim .....	IV. Para. 77 .....	IV-117
Simple assault .....	IV. Para. 77 .....	IV-117

Subject	Ref.	Page
Unborn child, death or injury of .....	IV. Para. 58 .....	IV-80
With intent to commit murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, or kidnapping .....	IV. Para. 77 .....	IV-117
<b>Assembly of court-martial</b>		
Announcement of .....	R.C.M. 901(b); 911 .....	II-104; II-120
Effect on		
Changing members .....	R.C.M. 505(e) .....	II-58
Changing military judge .....	R.C.M. 505(e) .....	II-59
Enlisted members, request for .....	R.C.M. 903(a)(1)(A); 903(d)(1) .....	II-107
Military judge alone, request for trial by .....	R.C.M. 903(a)(1)(B); 903(d)(2) .....	II-107
<b>Assistant counsel.</b> <i>See</i> <b>Counsel; Defense counsel; Trial counsel.</b>		
<b>Associate defense counsel.</b> <i>See</i> <b>Counsel; Defense counsel.</b>		
<b>Attachment, warrant of</b> .....	R.C.M. 703(g)(3)(H) .....	II-78
<b>Attempts</b>		
Aiding the enemy (Art. 103b, UCMJ) .....	IV. Paras. 4c(6)(e); 33 .....	IV-5; IV-47
Assault (Art. 128, UCMJ) .....	IV. Paras. 4c(6)(g); 77 .....	IV-5; IV-117
Death or injury of unborn child (Art. 119a, UCMJ) .....	IV. Paras. 4c(6)(f); 58 .....	IV-5; IV-80
Desertion (Art. 85, UCMJ) .....	IV. Paras. 4c(6)(a); 9 .....	IV-5; IV-10
Espionage (Art. 103a, UCMJ) .....	IV. Paras. 4c(6)(d); 32 .....	IV-5; IV-45
Generally (Art. 80, UCMJ) .....	IV. Para. 4 .....	IV-4
Mutiny (Art. 94, UCMJ) .....	IV. Paras. 4c(6)(b); 21 .....	IV-5; IV-31
Subordinate compelling surrender (Art. 100, UCMJ) .....	IV. Paras. 4c(6)(c); 28 .....	IV-5; IV-41
<b>Attorney.</b> <i>See</i> <b>Counsel; Defense counsel; Trial counsel.</b>		
<b>Attorney—client relationship</b>		
<i>See also</i> <b>Counsel; Defense counsel.</b>		
Availability of individual military counsel, effect on .....	R.C.M. 506(b)(2) .....	II-54
Change of defense counsel, effect on .....	R.C.M. 505(d)(2) .....	II-53
Privileged communications .....	Mil. R. Evid. 502 .....	III-23
<b>Attorney General, grants of immunity</b> .....	R.C.M. 704(c)(1); 704(c)(2) .....	II-70; II-71
<b>Authentication of Evidence</b> .....	Mil. R. Evid. 901; 902 .....	III-48; III-49
<i>See also</i> <b>Evidence, Authentication and identification.</b>		
<b>Authorization to search, seize and apprehend.</b> <i>See</i> <b>Search and seizure.</b>		
<b>Automobile.</b> <i>See</i> <b>Search and seizure, Automobile; Vehicle.</b>		
<b>Aviation cadet</b>		
Jurisdiction of courts-martial, subject to .....	Art. 2(a)(2), UCMJ; R.C.M. 202(a) .....	A2-1; II-15
Summary courts-martial, not subject to trial by .....	R.C.M. 1301(c) .....	II-198
<b>Bad checks.</b> <i>See</i> <b>Checks.</b>		
<b>Bad-conduct discharge</b>		
Multiple offenses, authorizing .....	R.C.M. 1003(d)(3) .....	II-151
Prior convictions authorizing .....	R.C.M. 1003(d)(2) .....	II-151
Punishment, generally .....	R.C.M. 1003(b)(8)(C) .....	II-149
Special courts-martial, power to adjudge .....	R.C.M. 201(f)(2)(B) .....	II-14
Summary courts-martial, power to adjudge .....	R.C.M. 1301(d) .....	II-190
<b>Bailiff</b>		
Detailing .....	R.C.M. 501(c) .....	II-50
Disqualification of .....	R.C.M. 502(e)(2) .....	II-54
Duties .....	R.C.M. 502(e)(3)(C) .....	II-55
Qualifications		
Generally .....	R.C.M. 502(e)(1) .....	II-54
Lack of, action on .....	R.C.M. 502(f) .....	II-55
<b>Battery.</b> <i>See</i> <b>Assault.</b>		
<b>Bestiality.</b> <i>See</i> <b>Animal abuse.</b>		
<b>Best evidence.</b> <i>See</i> <b>Evidence, Contents of writings, recordings, and photographs.</b>		
<b>Bias</b>		
Ground for challenge of		
Member .....	R.C.M. 912(f)(1)(N) .....	II-122
Military judge .....	R.C.M. 902(a); 902(b)(1) .....	II-105
Impeachment of witness .....	Mil. R. Evid. 608(c) .....	III-40
<b>Bigamy</b> .....	IV. Para. 93 .....	IV-140
<b>Bill of particulars</b> .....	R.C.M. 906(b)(6) .....	II-111

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<b>Blasting caps</b> , included in explosives .....	R.C.M. 103(11) .....	II-1
<b>Blood extraction</b> , as evidence .....	Mil. R. Evid. 312(d) .....	III-11
<b>Board, sanity.</b> <i>See</i> <b>Mental capacity; Mental responsibility.</b>		
<b>Boat.</b> <i>See</i> <b>Vessel.</b>		
<b>Bodily harm.</b> <i>See</i> <b>Assault.</b>		
<b>Body fluids</b> , seizure of .....	Mil. R. Evid. 312(d) .....	III-11
<i>See also</i> <b>Search and seizure</b> , <b>Body views and intrusions.</b>		
<b>Bomb</b>		
Explosive, included in .....		
R.C.M. 103(11) .....	II-1	
Hoax .....		
IV. Para. 53 .....	IV-73	
Threat .....		
IV. Para. 53 .....	IV-73	
<b>Breach of correctional custody</b> .....	IV. Para. 13 .....	IV-19
<b>Breach of peace</b> .....	IV. Para. 54 .....	IV-75
<b>Breaking and entering.</b> <i>See</i> <b>Burglary; Housebreaking; Unlawful entry.</b>		
<b>Breaking arrest</b> .....	IV. Para. 12 .....	IV-17
<b>Breaking medical quarantine</b> .....	IV. Para. 8 .....	IV-10
<b>Breaking restriction</b> .....	IV. Para. 13 .....	IV-19
<i>See also</i> <b>Restriction.</b>		
<b>Bribery</b> .....	IV. Para. 72 .....	IV-112
<b>Broadcasting of courts-martial</b> , prohibited .....	R.C.M. 806(c) .....	II-97
<b>Burden of proof.</b>		
<i>See also</i> <b>Search and seizure</b> , <b>Burden of proof; Self-Incrimination</b> , <b>Burden of proof.</b>		
Challenges .....		
R.C.M. 912(f)(3) .....	II-122	
Defenses .....		
R.C.M. 916(b) .....	II-129	
Findings .....		
R.C.M. 920(e)(5) .....	II-136	
Generally .....		
R.C.M. 905(c) .....	II-109	
Motions		
Admissions and confessions .....		
Mil. R. Evid. 304(f) .....	III-5	
Eyewitness identification .....		
Mil. R. Evid. 321(d) .....	III-17	
Search and seizure .....		
Mil. R. Evid. 311(d)(5) .....	III-9	
<b>Burglary</b>		
Assault with intent to commit .....		
IV. Para. 77 .....	IV-117	
Generally .....		
IV. Para. 79 .....	IV-124	
Murder while committing .....		
IV. Para. 56 .....	IV-76	
<b>Burning with intent to defraud</b> .....	IV. Para. 75 .....	IV-114
<b>Business records</b> , admissibility .....	Mil. R. Evid. 803(6) .....	III-45
<b>Cadet</b>		
Conduct unbecoming officer and gentleman .....		
IV. Para. 90 .....	IV-134	
Dismissal, punishment by .....		
R.C.M. 1003(b)(8)(A) .....	II-149	
Jurisdiction of courts-martial, subject to .....		
Art. 2(a)(2), UCMJ; R.C.M. 202. ...	A2-1; II-15	
Summary courts-martial, not subject to trial by .....		
R.C.M. 1301(c) .....	II-198	
<b>Capital case</b>		
<i>See also</i> <b>Capital offense; Death, as punishment.</b>		
Defined .....		
R.C.M. 103(3) .....	II-1	
Deposition, use in .....		
Art. 49, UCMJ; Mil. R. Evid. 804(b)(1) .....	A2-18; III-47	
Military judge alone, no jurisdiction to try .....		
R.C.M. 201(f)(1)(C) .....	II-13	
Notice of aggravating circumstances required .....		
R.C.M. 1004(c) .....	II-152	
Procedures in .....		
R.C.M. 1004(b) .....	II-151	
<b>Capital offense</b>		
Defined .....		
R.C.M. 103(4) .....	II-1	
Referral		
As noncapital .....		
R.C.M. 201(f)(1)(A) .....	II-13	
To special court-martial .....		
R.C.M. 201(f)(2)(C) .....	II-14	
To summary court-martial .....		
R.C.M. 1301(c) .....	II-198	
<b>Captain's mast.</b> <i>See</i> <b>Nonjudicial punishment</b>		
<b>Captured or abandoned property</b> , offenses concerning .....	IV. Para. 44 .....	IV-58
<b>Carrying concealed weapon</b> .....	IV. Para. 52 .....	IV-71



Subject	Ref.	Page
<b>Casting away arms or ammunition</b> .....	IV. Para. 27 .....	IV-38
<b>Causing false alarms</b> .....	IV. Para. 27 .....	IV-38
<b>Censure</b>		
Court-martial, member, military judge, or counsel, prohibited .....	R.C.M. 104(a)(1) .....	II-6
Provoking speech and gestures, distinguished .....	IV. Para. 55c(1) .....	IV-76
<b>Certificate of correction</b> .....	R.C.M. 1305(e) .....	II-203
<b>Certification of Record of Trial</b>		
By court reporter .....	R.C.M. 1112(c) .....	II-178
Certificate of correction .....	R.C.M. 1112(d) .....	II-178
Generally .....	R.C.M. 1112 .....	II-177
Summary courts-martial .....	R.C.M. 1305(c) .....	II-202
<b>Challenges</b>		
Control of, by military judge .....	R.C.M. 801(a)(3) .....	II-90
Members		
For cause .....	R.C.M. 912(f) .....	II-122
Generally .....	R.C.M. 912 .....	II-120
Peremptory .....	R.C.M. 912(g) .....	II-123
Presence of members during .....	R.C.M. 805(b) .....	II-95
Military judge .....	R.C.M. 902 .....	II-105
Change of venue .....	R.C.M. 906(b)(11) .....	II-112
<b>Chaplains, privileged communications</b> .....	Mil. R. Evid. 503 .....	III-23
<b>Character evidence. See Evidence, Character evidence;</b>		
<b>Presentencing procedure.</b>		
<b>Charges and specifications</b>		
<i>See also</i> specific offenses.		
Additional charges .....	R.C.M. 307(c)(2) (Discussion) .....	II-30
Amendment of .....	R.C.M. 603 .....	II-64
Bill of particulars .....	R.C.M. 906(b)(6) .....	II-111
Charge Sheet .....	Appendix 5 .....	A5-1
Definitions		
Charge .....	R.C.M. 307(c)(2) .....	II-30
Specification .....	R.C.M. 307(c)(3) .....	II-30
Dismissal of		
By commander .....	R.C.M. 306(c)(1); 401(c)(1) .....	II-28; II-35
By military judge .....	R.C.M. 907 .....	II-113
Speedy trial .....	R.C.M. 707(d) .....	II-88
Disposition of .....	R.C.M. 401 .....	II-35
Duplicitous .....	R.C.M. 906(b)(5) .....	II-111
Error in citation, effect of .....	R.C.M. 307(d) .....	II-33
Failure to state offense .....	R.C.M. 907(b)(2)(E) .....	II-114
Findings .....	R.C.M. 918(a) .....	II-133
Format .....	R.C.M. 307(c)(1); Appendix 5 .....	II-30; A5-1
Forwarding .....	R.C.M. 401(c)(2) .....	II-36
Joinder of .....	R.C.M. 307(c)(4); 601(e)(2) .....	II-32; II-63
Joint offenders .....	R.C.M. 307(c)(5); 601(e)(3) .....	II-32; II-63
Lesser included offenses. <i>See Findings; Lesser included offenses.</i>		
Motions as to defects in .....	R.C.M. 905(b)(2); 906(b)(4); 906(b)(5); 906(b)(6) .....	II-108; II-111
Multiple offenders .....	R.C.M. 307(c)(5) .....	II-32
Multiple offenses .....	R.C.M. 307(c)(4) .....	II-32
Multiplicious .....	R.C.M. 307(c)(4); 1003(c)(1)(C) .....	II-32; II-150
Notification to accused of .....	R.C.M. 308 .....	II-33
Papers, accompanying, discovery of .....	R.C.M. 701(a)(1) .....	II-67
Preemption .....	IV. Para.91.c(5) .....	IV-138
Preferral. <i>See Preferral of charges.</i>		
Preliminary hearing for. <i>See Preliminary hearing.</i>		
Reading of, as part of arraignment .....	R.C.M. 904 .....	II-96
Referral. <i>See Referral of charges.</i>		
Service of .....	R.C.M. 602 .....	II-64
Severance of .....	R.C.M. 905(b)(5) .....	II-108
Staff judge advocate, advice as to .....	R.C.M. 406 .....	II-47

# INDEX

MCM 2019

Subject	Ref.	Page
Statute of limitations, tolling .....	R.C.M. 403(a) (Discussion) .....	II-36
War, effect on disposition of .....	R.C.M. 401(d); 407(b) .....	II-36; II-49
Withdrawal of .....	R.C.M. 604 .....	II-65
Pursuant to pretrial agreement .....	R.C.M. 705(b)(2)(C) .....	II-83
<b>Checks</b>		
Dishonorable failure to maintain funds .....	IV. Para. 94 .....	IV-140
Forged .....	IV. Para. 37 .....	IV-50
Making, drawing, or uttering check, draft, or order without sufficient funds .....	IV. Para. 70 .....	IV-106
<b>Child</b>		
Assault consummated by battery on .....	IV. Para. 77b(3)(c) .....	IV-118
Endangerment .....	IV. Para. 59 .....	IV-82
Rape of .....	IV. Para. 45b .....	IV-91
Remote live testimony .....	R.C.M. 804(d); R.C.M. 914A; Mil. R. Evid. 611(d) .....	II-94; II-127; III-41
Pornography, as an offense .....	IV. Para. 94 .....	IV-140
Sexual abuse of .....	IV. Para. 62 .....	IV-91
Sexual assault of .....	IV. Para. 62 .....	IV-91
Unborn child, death of injury of .....	IV. Para. 58 .....	IV-80
Witness, competency .....	Mil. R. Evid. 601 .....	III-39
<b>Civilian authorities and tribunals</b>		
Authority to apprehend persons under code .....	R.C.M. 302(a)(2); 302(b)(3) .....	II-19; II-20
Control by, effect on absence without leave .....	IV. Para. 10c(5) .....	IV-14
Delivery of military offenders to .....	R.C.M. 106 .....	II-7
Former jeopardy, effect of trial by .....	R.C.M. 201(d); 907(b)(2)(C) .....	II-12; II-114
Martial law .....	I. Para. 2(a)(2) .....	I-1
Military occupation, superseding .....	I. Para. 2(a)(3) .....	I-1
Offenses subject to trial by .....	R.C.M. 201(d) .....	II-12
<b>Civilian counsel. <i>See</i> Counsel; Defense counsel. Civilians</b>		
Aiding the enemy, subject to trial for .....	IV. Para. 33c(1) .....	IV-47
Authority to apprehend deserters .....	R.C.M. 302(b)(3) .....	II-20
Contempt, punishment for .....	R.C.M. 809(a); 809(e) .....	II-98; II-99
Jurisdiction of courts-martial, subject to .....	Art. 2(a)(10); R.C.M. 202 .....	A2-2; II-15
Orders, subject to .....	IV. Para. 16c(3) .....	IV-25
Spying, subject to trial for .....	IV. Para. 31c(3) .....	IV-44
Witnesses		
Appear, neglect or refusal to .....	R.C.M. 703(g)(3)(H) .....	II-78
Subpoena of .....	R.C.M. 703(g)(3) .....	II-76
Warrant of attachment .....	R.C.M. 703(g)(3)(H) .....	II-78
<b>Claims, false</b> .....	IV. Para. 71 .....	IV-109
<b>Classified information</b>		
Closure of court-martial .....	Mil. R. Evid. 505(k)(3) .....	III-29
Privilege concerning .....	Mil. R. Evid. 505 .....	III-24
Record of trial .....	R.C.M. 1112(e)(3)(A); 1305(d)(1)(C) .....	II-179; II-202
<b>Clergy, privileged communications to</b> .....	Mil. R. Evid. 503 .....	III-23
<b>Clerk</b>		
Detailing .....	R.C.M. 501(e) .....	II-50
Disqualification .....	R.C.M. 502(e)(2) .....	II-54
Duties .....	R.C.M. 502(e)(3)(C) .....	II-55
Lack of qualifications, action .....	R.C.M. 502(f) .....	II-55
Qualifications .....	R.C.M. 502(e)(1) .....	II-54
<b>Co-accused. <i>See</i> Accomplices; Conspiracy; Principals.</b>		
<b>Code, defined</b>		
<i>See</i> Uniform Code of Military Justice (UCMJ)		
<b>Coercion</b>		
Defense, as a .....	R.C.M. 916(h) .....	II-131
Of court-martial .....	R.C.M. 104(a)(2) .....	II-6
Of guilty plea .....	R.C.M. 910(d) .....	II-118
<b>Command</b>		
Abandoning, surrendering, giving up .....	IV. Para. 27 .....	IV-38
Compelling surrender or abandonment of .....	IV. Para. 28 .....	IV-41

Subject	Ref.	Page
Detached or separate .....	R.C.M. 504(b)(2)(A); 504(b)(2)(B) .	II-57
Endangering safety of .....	IV. Para. 27 .....	IV-38
Influence		
As an offense .....	IV. Para. 87 .....	IV-131
Unlawful		
Defined .....	R.C.M. 104 .....	II-6
Over disposition of charges .....	R.C.M. 306(a) .....	II-27
<b>Commander</b>		
Appearance of accused at trial, responsibility for assistance .....	R.C.M. 804(e)(1) .....	II-95
Authorization to search. <i>See Search and seizure.</i>		
Charges and specifications, authority to change .....	R.C.M. 603(a) .....	II-64
Charges, authority to dispose of .....	R.C.M. 401 .....	II-35
Confinement		
Post-trial, authority to deliver accused .....	R.C.M. 1102(b)(2)(A) .....	II-161
Pretrial		
Action by .....	R.C.M. 305(h)(2) .....	II-24
Release, authority to order .....	R.C.M. 305(g) .....	II-24
Convening authority. <i>See Convening authority.</i>		
Defined .....	R.C.M. 103(5) .....	II-1
For authorization to search .....	Mil. R. Evid. 315(d)(1) .....	III-15
Dismissal of charges by .....	R.C.M. 401(c)(1) .....	II-35
Disposition of charges by .....	R.C.M. 401; 402 .....	II-35; II-36
Disposition of offenses .....	R.C.M. 306 .....	II-27
Forwarding charges by .....	R.C.M. 401(c)(2); 402 .....	II-36
Influence, unlawful command .....	R.C.M. 104; IV. Para. 87 .....	II-6; IV-131
Inquiry into reported offenses .....	R.C.M. 303 .....	II-21
Lack of mental capacity or responsibility action on .....	R.C.M. 706(a) .....	II-86
Nonjudicial punishment, authority to administer .....	V. Para. 1c; 1d; 2a .....	V-1; V-2
Notification to accused of charges .....	R.C.M. 308 .....	II-33
Preliminary investigation .....	R.C.M. 303 .....	II-21
Relations with court-martial, members, military judge .....	R.C.M. 104(a)(1) .....	II-6
Report of offense forwarded to .....	R.C.M. 301(b) .....	II-19
Subordinate, relations with .....	R.C.M. 306(a); 401(a); 601(b) .....	II-27; II-35; II-62
<b>Commissioned officer</b>		
Assault on .....	IV. Paras. 15; 77 .....	IV-21; IV-117
Conduct unbecoming .....	IV. Para. 90 .....	IV-134
Disobedience of .....	IV. Para. 16 .....	IV-24
Disrespect towards .....	IV. Para. 15 .....	IV-21
Preferral of charges, oath .....	R.C.M. 307(b)(1) .....	II-30
Qualification as member of court-martial .....	R.C.M. 502(a)(1)(A) .....	II-50
Summary court-martial, power to try .....	R.C.M. 1301(c)(1) .....	II-198
<b>Commission, military.</b> <i>See Military commission.</i>		
<b>Common trial.</b> <i>See Joint trial.</i>		
<b>Communicating a threat</b> .....	IV. Para. 53 .....	IV-73
<b>Communications, privileged.</b> <i>See Evidence, Privileges.</i>		
<b>Company punishment.</b> <i>See Nonjudicial punishment.</i>		
<b>Competency of witness.</b> <i>See Evidence, Competency.</i>		
<b>Composition of courts-martial</b>		
Accused's elections .....	R.C.M. 903 .....	II-106
Capital case .....	R.C.M. 201(f)(1)(C) .....	II-13
Changing .....	R.C.M. 505 .....	II-58
General court-martial .....	R.C.M. 501(a)(1) .....	II-50
Jurisdictional requisite .....	R.C.M. 201(b)(2) .....	II-11
Special court-martial .....	R.C.M. 501(a)(2) .....	II-50
Empowered to adjudge a bad-conduct discharge .....	R.C.M. 201(f)(2)(B)(ii) .....	II-14
Summary court-martial .....	R.C.M. 1301(a) .....	II-190
<b>Concealment of</b>		
Evidence, as accessory after the fact .....	IV. Para. 2c(1) .....	IV-3
Offender, as accessory after the fact .....	IV. Para. 2c(1) .....	IV-3
Stolen property .....	IV. Para. 68 .....	IV-104
Weapon .....	IV. Para. 52 .....	IV-71

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<b>Concurrent jurisdiction</b>		
Civilian courts .....	R.C.M. 201(d) .....	II-12
Investigation of offenses, subject to .....	Appendix 3 .....	A3-1
Military tribunals .....	R.C.M. 201(g) .....	II-14
<b>Conditional guilty plea</b> .....	R.C.M. 910(a)(2) .....	II-117
<b>Conditions</b>		
In pretrial agreements .....	R.C.M. 705(c) .....	II-83
Of suspension .....	R.C.M. 1107(c) .....	II-168
On liberty		
Defined .....	R.C.M. 304(a)(1) .....	II-22
Procedures .....	R.C.M. 304 .....	II-21
<b>Conduct</b>		
Cowardly .....	IV. Para. 27c(5) .....	IV-39
Service discrediting, generally .....	IV. Para. 91c(3) .....	IV-136
Unbecoming an officer and gentleman .....	IV. Para. 90 .....	IV-134
<b>Conferences, pretrial</b>		
Accused's presence at .....	R.C.M. 802(d) .....	II-93
Admissions made at .....	R.C.M. 802(e) .....	II-93
Generally .....	R.C.M. 802(a) .....	II-92
Limitations .....	R.C.M. 802(f) .....	II-93
Matters on record .....	R.C.M. 802(b) .....	II-92
Rights of parties .....	R.C.M. 802(c) .....	II-93
<b>Confessionals stipulations</b> .....	R.C.M. 705(b)(1) .....	II-83
<b>Confessions. See Self-incrimination.</b>		
<b>Confinement</b>		
Attachment of jurisdiction, effecting .....	R.C.M. 202(c)(2) .....	II-17
Capital cases .....	R.C.M. 1004(d) .....	II-154
Deferment of .....	R.C.M. 1103 .....	II-163
<i>See also Deferment of confinement.</i>		
Escape from .....	IV. Para. 12 .....	IV-17
Hard labor without. <i>See Hard labor without confinement.</i>		
Post-trial .....	R.C.M. 1102(b)(2) .....	II-161
Pretrial		
Advice to accused .....	R.C.M. 305(e) .....	II-24
Authority to order .....	R.C.M. 304(b); 305(c) .....	II-22; II-23
Conditions of .....	R.C.M. 304(f) .....	II-23
Counsel .....	R.C.M. 305(e)(3); 305(f) .....	II-24
Defined .....	R.C.M. 304(a)(4); 305(a) .....	II-22; II-23
Grounds .....	R.C.M. 304(c); 305(d); 305(h)(2)(B) .....	II-22; II-23; II-24
Illegal, remedy for .....	R.C.M. 305(j)(2); 305(k) .....	II-25
Motions concerning .....	R.C.M. 906(b)(8) .....	II-112
Procedure for ordering .....	R.C.M. 305 .....	II-23
Punishment prohibited .....	R.C.M. 304(f) .....	II-23
Release		
Authority to direct .....	R.C.M. 305(g) .....	II-24
Effect of .....	R.C.M. 305(k); 305(l) .....	II-27
Required .....	R.C.M. 707(d) .....	II-87
Review of .....	R.C.M. 305(i); 305(j) .....	II-25; II-26
Sea, effect of being at .....	R.C.M. 305(m) .....	II-27
Speedy trial, effect on .....	R.C.M. 707(b)(1); 707(b)(2) .....	II-88
Punishment		
Contempt (Art. 48, UCMJ) .....	R.C.M. 809(e) .....	II-99
Deferment .....	R.C.M. 1103 .....	II-163
<i>See also Deferment of confinement.</i>		
Execution .....	R.C.M. 1102(b)(2) .....	II-161
General court-martial .....	R.C.M. 201(f)(1)(A)(ii); 201(f)(1)(B)(ii) .....	II-13
Generally .....	R.C.M. 1003(b)(7) .....	II-149
Place of .....	R.C.M. 1102(b)(2)(F) .....	II-162
Special court-martial .....	R.C.M. 201(f)(2)(B) .....	II-14
Summary court-martial .....	R.C.M. 1301(d) .....	II-198

Subject	Ref.	Page
Release from without authority .....	IV. Para. 24 .....	IV-36
Unlawful, as offense .....	IV. Para. 25 .....	IV-37
<b>Congress, contemptuous words against</b> .....	IV. Para. 14 .....	IV-21
<b>Consent.</b> <i>See</i> Search and seizure.		
<b>Conspiracy</b>		
<i>See also</i> Principals.		
Evidence, statement of co-conspirator .....	Mil. R. Evid. 801(d)(2) .....	III-44
Generally .....	IV. Para. 5 .....	IV-6
<b>Constitution of the United States</b> .....	Appendix 1 .....	A1-1
<b>Constructive enlistment</b> .....	R.C.M. 202(a) (Discussion) .....	II-15
<b>Contempt</b>		
<i>See also</i> Disrespect.		
Power of court-martial .....	R.C.M. 801(b)(2); 809 .....	II-91; II-98
Toward noncommissioned, petty, or warrant officer .....	IV. Para. 17 .....	IV-25
Toward public officials .....	IV. Para. 14 .....	IV-21
<b>Continuances</b>		
As remedy for		
Failure to notify accused of charges .....	R.C.M. 308(c) .....	II-33
Failure to notify defense of evidence seized from the accused .....	Mil. R. Evid. 311(d)(2)(B) .....	III-9
Failure to notify defense of immunity or leniency granted to a government witness .....	Mil. R. Evid. 301(d)(2) .....	III-3
Failure to notify defense of statements of the accused .....	Mil. R. Evid. 304(f)(2) .....	III-5
Noncompliance with the discovery requirements .....	R.C.M. 701(g)(3)(B) .....	II-70
Examination of witness' prior statement, for purpose of. Generally .....	R.C.M. 914(d) .....	II-127
Speedy trial, effect on .....	R.C.M. 906(b)(1) .....	II-111
Speedy trial, effect on .....	R.C.M. 707(c) .....	II-88
<b>Controlled substances, offenses involving</b> .....	IV. Para. 50 .....	IV-66
<b>Convening authority</b>		
Accuser		
Disqualifications		
To convene general or special courts-martial .....	R.C.M. 504(c)(1) .....	II-57
To convene summary courts-martial .....	R.C.M. 1302(b) .....	II-199
To refer charges to general or special courts- martial .....	R.C.M. 601(c) .....	II-62
Subordinate of, disqualified .....	R.C.M. 504(c)(2) .....	II-57
Action by. <i>See</i> Action of convening authority.		
Censure of court .....	R.C.M. 104 .....	II-6
Changing members .....	R.C.M. 505(c) .....	II-58
Charges and specifications		
Authority to change .....	R.C.M. 603(a) .....	II-64
Authority to dispose of .....	R.C.M. 401(a); 403(b); 404; 407 ..	II-35; II-37; II-48
Command influence, unlawful .....	R.C.M. 104 .....	II-6
Communications with staff judge advocate .....	R.C.M. 105(a) .....	II-7
Contempt		
Action on .....	R.C.M. 809(e)(3); 809(f) .....	II-100
Review of .....	R.C.M. 809(d)(2) .....	II-99
Defined .....	R.C.M. 103(6) .....	II-1
Delegation of authority as, prohibited .....	R.C.M. 504(b)(4) .....	II-57
Deposition, authority to order .....	R.C.M. 702(b) .....	II-71
Detailing members .....	R.C.M. 503(a) .....	II-55
Disqualification to act as .....	R.C.M. 504(c); 601(c) .....	II-57; II-62
Execution of sentences, authority to order .....	R.C.M. 1102(a)(2); 1306(b)(3) .....	II-161; II-203
General court-martial		
Action on certain cases by .....	R.C.M. 1110 .....	II-175
Defined .....	R.C.M. 504(b)(1) .....	II-56
Disposition of charges by .....	R.C.M. 407 .....	II-48
Immunity, authority to grant .....	R.C.M. 704(c) .....	II-81
National security matters, duties regarding .....	R.C.M. 407(b) .....	II-49
Vacation of suspension, action on .....	R.C.M. 1108(e)(1) .....	II-171
Mental capacity or responsibility of accused, inquiry into .....	R.C.M. 706 .....	II-86

**INDEX**

**MCM 2019**

Subject	Ref.	Page
National security, case affecting disposition .....	R.C.M. 401(d) .....	II-36
Pretrial agreement, authority to enter .....	R.C.M. 705(a); 705(e)(4) .....	II-83; II-85
Pretrial hearing, directed by .....	R.C.M. 403(b)(5); 404(5); 405(c); 407(a)(5) .....	II-37; II-38; II-39; II-48
Referral of charges .....	R.C.M. 403(b)(4); 404(4); 407(a)(4); 407(a)(6); 601 .....	II-37; II-48; II-62
Special court-martial		
Defined .....	R.C.M. 504(b)(2) .....	II-57
Disposition of charges by .....	R.C.M. 404 .....	II-37
Staff judge advocate		
Communications with .....	R.C.M. 105(a) .....	II-7
Delegation of authority		
Excusal of court members .....	R.C.M. 505(c)(1)(B) .....	II-58
Generally prohibited .....	R.C.M. 504(b)(4) .....	II-57
Successors, included in .....	R.C.M. 103(6) .....	II-1
Summary court-martial		
Charge sheet, recording receipt .....	R.C.M. 403(a) .....	II-36
Defined .....	R.C.M. 1302(a) .....	II-199
Disposition of charges by .....	R.C.M. 403(b) .....	II-37
Superior authority calling for transmittal of charges from subordinate .....	R.C.M. 601(f) .....	II-64
Superior authority withholding from subordinate the authority to dispose of charges .....	R.C.M. 306(a); 401(a) .....	II-27; II-35
Withdrawal of charges by		
Generally .....	R.C.M. 604 .....	II-65
Pretrial agreement, pursuant to .....	R.C.M. 705(b)(2)(C) .....	II-83
<b>Convening courts-martial</b>		
<i>See also Convening authority.</i>		
Generally .....	R.C.M. 504 .....	II-56
Jurisdictional requisite, as a .....	R.C.M. 201(b) .....	II-11
Summary courts-martial .....	R.C.M. 1302 .....	II-199
<b>Convening orders</b>		
Amending .....	R.C.M. 505(b) .....	II-58
Changing .....	R.C.M. 505(b) .....	II-58
Defense, copies to .....	R.C.M. 701(a)(1)(B) .....	II-67
Forms .....	Appendix 11 .....	A11-1
Generally .....	R.C.M. 504(d) .....	II-57
Summary court-martial .....	R.C.M. 1302(c) .....	II-199
<b>Convictions, prior</b>		
Admissibility in aggravation .....	R.C.M. 1001(b)(3) .....	II-141
Finality of .....	R.C.M. 1209 .....	II-195
Impeachment by evidence of .....	Mil. R. Evid. 609 .....	III-40
Increasing punishment authorized .....	R.C.M. 1003(d)(1); 1003(d)(2) .....	<b>II-151</b>
<b>Correctional custody</b>		
Nonjudicial punishment .....	V. Para. 5b(2)(A)(ii); 5b(2)(B)(ii); V. Para. 5c(4) .....	V-4; V-5
Offenses against .....	IV. Para. 13 .....	IV-19
<b>Correction of record of trial</b>	R.C.M. 1112(d); 1305(e) .....	II-178; II-203
<b>Corroboration of confession</b>	Mil. R. Evid. 304(c) .....	III-5
<b>Counsel</b>		
<i>See also Defense counsel; Trial counsel; Victim counsel.</i>		
Appellate .....	R.C.M. 908(c)(1); 1202 .....	II-116; II-189
Detailing .....	R.C.M. 503(c) .....	II-56
General courts-martial .....	R.C.M. 501(b) .....	II-50
Special courts-martial .....	R.C.M. 501(b) .....	II-50
Summary courts-martial .....	R.C.M. 1301(c) .....	II-199
Qualifications of .....	R.C.M. 502(d) .....	II-51
Supervision of .....	R.C.M. 109 .....	II-8
Suspension of .....	R.C.M. 109 .....	II-8
<b>Counseling commission of offense</b>	IV. Para. 1 .....	IV-1
<b>Countersign, improper use of</b>	IV. Para. 29 .....	IV-42
<b>Court-martial</b>		

Subject	Ref.	Page
Defined .....	R.C.M. 103(8) .....	II-1
Types of .....	R.C.M. 201(f) .....	II-13
<b>Court of inquiry</b>		
Admissibility of evidence taken in .....	Mil. R. Evid. 804(b)(1) .....	III-47
Exercise of jurisdiction .....	I. Para. 2(b)(3) .....	I-1
Nonjudicial punishment based on .....	V. Para. 4d .....	V-4
Procedure .....	I. Para. 2(b)(3) .....	I-1
Subpoena, authority to issue .....	R.C.M. 703(g)(2)(D) .....	II-77
<b>Court of Appeals for the Armed Forces</b>		
Action on decision by .....	R.C.M. 1204(c) .....	II-185
Appeals by United States .....	R.C.M. 908(c)(3) .....	II-105
Cases reviewed by .....	R.C.M. 1204(a) .....	II-184
Generally .....	R.C.M. 1204 .....	II-184
Petition by accused to .....	R.C.M. 1204(b) .....	II-185
<b>Court of Criminal Appeals</b>		
Action on decision by .....	R.C.M. 1203(e) .....	II-191
Appeals by United States to .....	R.C.M. 908(b)(7) .....	II-115
Armed force of accused as determining which court reviews .....	R.C.M. 201(e)(5) .....	II-12
Cases reviewed by .....	R.C.M. 1203(b); 1203(c) .....	II-190
Generally .....	R.C.M. 1203 .....	II-190
Notification to accused of decision .....	R.C.M. 1203(f) .....	II-192
<b>Cowardly conduct</b> .....	IV. Para. 27 .....	IV-38
<b>Credit cards, debit cards, and other access devices;</b>		
Defined .....	IV. Para. 65(b) .....	IV-102
Fraudulent use of .....	IV. Para. 65 .....	IV-101
<b>Crimes</b>		
<i>See Offenses;</i> specific topics.		
<b>Crimes and offenses not capital</b> .....	IV. Para. 91 .....	IV-135
<b>Cross-examination at</b>		
Court-martial .....	Mil. R. Evid. 611 .....	III-41
Deposition .....	R.C.M. 702(g)(1)(A); 702(g)(2)(B) ..	II-73
Preliminary hearing .....	R.C.M. 405(e)(2); 405(f)(6) .....	II-40
<b>Cruelty and maltreatment</b> .....	IV. Para. 19 .....	IV-29
<b>Culpable negligence, defined</b> .....	IV. Para. 57c(2)(a)(i) .....	IV-79
<b>Custody</b>		
Correctional. <i>See Correctional custody.</i>		
Defined .....	IV. Para. 12c(4)(a) .....	IV-18
Escaped from .....	IV. Para. 12 .....	IV-17
<b>Damage</b>		
Military property .....	IV. Para. 43 .....	IV-57
Nonmilitary property .....	IV. Para. 45 .....	IV-60
<b>Dangerous weapon</b>		
<i>See also Assault</i>		
Defined .....	IV. Para. 77c(5)(a)(iii) .....	IV-120
Robbery .....	IV. Para. 67d(1) .....	IV-104
<b>Death, as punishment</b>		
<i>See also Capital case; Capital offense.</i>		
Aiding the enemy .....	IV. Para. 33d .....	IV-48
Assaulting officer, time of war .....	IV. Para. 15d(3) .....	IV-23
Countersign, improper use of .....	IV. Para. 29d .....	IV-43
Desertion, time of war .....	IV. Para. 9d(3) .....	IV-12
Disobedience of officer, time of war .....	IV. Para. 16d(1) .....	IV-25
Execution .....	R.C.M. 1102(b)(5) .....	II-162
General court-martial, power to adjudge .....	R.C.M. 201(f)(1)(A)(ii); 201(f)(1)(B)(ii) .....	II-13
Generally .....	R.C.M. 1003(b)(9) .....	II-149
Misbehavior before enemy .....	IV. Para. 27d .....	IV-40
Murder .....	IV. Para. 56d(1) .....	IV-78
Mutiny .....	IV. Para. 21d .....	IV-33
Number of votes required .....	R.C.M. 1006(d)(4)(A) .....	II-156
Procedures for adjudging .....	R.C.M. 1004 .....	II-151
Safeguard, forcing .....	IV. Para. 30d .....	IV-44

## INDEX

MCM 2019

Subject	Ref.	Page
Sedition .....	IV. Para. 21d .....	IV-33
Solicitation to desert, mutiny, to commit acts of misbehavior before the enemy, or to commit sedition .....	IV. Para. 6 .....	IV-7
Special court-martial, no power to adjudge .....	R.C.M. 201(f)(2)(B)(i) .....	II-14
Spying .....	IV. Para. 31d .....	IV-45
Summary court-martial, no power to adjudge .....	R.C.M. 1301(d)(1) .....	II-198
Surrender, subordinate compelling .....	IV. Para. 28d .....	IV-42
<b>Debt, dishonorably failing to pay</b> .....	IV. Para. 96 .....	IV-143
<b>Defendant. See Accused.</b>		
<b>Defense counsel</b>		
Absence of .....	R.C.M. 805(c) .....	II-95
Accused		
Inquiry as to rights .....	R.C.M. 901(d)(4) .....	II-104
Rights to, generally .....	R.C.M. 506 .....	II-59
Announcement of		
Absence .....	R.C.M. 813(a)(7) .....	II-103
Detailing .....	R.C.M. 503(c)(2) .....	II-56
Presence .....	R.C.M. 813(a)(6) .....	II-103
Qualifications .....	R.C.M. 901(d)(2) .....	II-104
Appellate .....	R.C.M. 1202 .....	II-189
Assistant and associate		
Absence of .....	R.C.M. 805(c) .....	II-95
Detailing .....	R.C.M. 501(b); 503(c) .....	II-50; II-56
Disqualification .....	R.C.M. 502(d)(3); 502(f) .....	II-52; II-55
Duties .....	R.C.M. 502(d)(5) .....	II-53
Individual counsel, effect of .....	R.C.M. 506(b)(3) .....	II-60
Oath .....	R.C.M. 807(b)(1)(A) .....	II-97
Qualifications .....	R.C.M. 502(d)(2) .....	II-52
Change of		
Announcement .....	R.C.M. 813(c) .....	II-103
Grounds .....	R.C.M. 505(d)(2); 506(b)(3); 506(c) .....	II-59; II-60
Procedure .....	R.C.M. 505(b) .....	II-58
Civilian		
Accused's right to		
Appellate review .....	R.C.M. 1202 .....	II-189
Court-martial .....	R.C.M. 506 .....	II-59
During interrogation .....	Mil. R. Evid. 305(d) .....	III-7
Preliminary hearing .....	R.C.M. 405(d)(3)(C) .....	II-40
Pretrial confinement .....	R.C.M. 305(e)(3) .....	II-24
Advice to accused at trial concerning right to .....	R.C.M. 901(d)(4)(A) .....	II-104
Disqualification, action on .....	R.C.M. 901(d)(3) .....	II-104
Qualifications .....	R.C.M. 502(d)(2)(B) .....	II-52
Deposition, detailed or assigned for .....	R.C.M. 702(d)(3)(B) .....	II-72
Detailed		
Accused's right to .....	R.C.M. 506(a) .....	II-59
Change of .....	R.C.M. 505(a); 505(b); 505(d)(2) ..	II-58; II-59
Defined .....	R.C.M. 103(10) .....	II-1
Different armed force, counsel from .....	R.C.M. 503(c)(3) .....	II-56
Disqualification, action on .....	R.C.M. 901(d)(3) .....	II-104
Duties .....	R.C.M. 502(d)(5) .....	II-53
Excusal .....	R.C.M. 505(d)(2); 506(c) .....	II-59; II-60
General court-martial .....	R.C.M. 501(b) .....	II-50
Disqualification .....	R.C.M. 502(d)(3); 901(d)(3) .....	II-52; II-104
Duties .....	R.C.M. 502(d)(5) .....	II-53
Evaluation of .....	R.C.M. 104(b)(1) .....	II-7
Identification, right to at .....	Mil. R. Evid. 321(c)(2) .....	III-17
Individual military counsel		
Accused's right to request .....	R.C.M. 506(a) .....	II-59
Advice at trial to accused concerning right to .....	R.C.M. 901(d)(4) .....	II-104
Attorney-client relationship affecting right to .....	R.C.M. 506(b)(2) .....	II-60
Availability to act as .....	R.C.M. 506(b)(1); 506(b)(2) .....	II-59; II-60
Detailed counsel, excusal of .....	R.C.M. 506(b)(3) .....	II-60
Motion on request for .....	R.C.M. 905(b)(6) .....	II-109



Subject	Ref.	Page
Preliminary hearing, right to at	R.C.M. 405(d)(3)(B)	II-40
Pretrial confinement, no right to	R.C.M. 305(f)	II-24
Request for	R.C.M. 506(b)(2)	II-60
Qualifications of	R.C.M. 502(d)(2)(B)	II-52
Motion to retain		
Generally	R.C.M. 506(b)(3)	II-60
Preserved for record	R.C.M. 906(b)(2)	II-111
When made	R.C.M. 905(b)(6)	II-109
Interrogation, right to	Mil. R. Evid. 305(d); 305(e)	III-7
Member, ineligible to serve as	R.C.M. 912(f)(1)(E)	II-122
Military judge, disqualified to act as	R.C.M. 902(b)(2)	II-105
Nonlawyer presence at counsel table	R.C.M. 506(e)	II-61
Oath		
Announcement of status as to	R.C.M. 901(d)(2)	II-104
Generally	R.C.M. 807(b)	II-97
Requirement to take	R.C.M. 901(d)(5)	II-105
Orders	R.C.M. 503(c)(2)	II-56
Post-trial duties	R.C.M. 502(d)(5) (Discussion)	II-54
Preliminary hearing, right to	R.C.M. 405(d)(3)	II-39
Presence of		
Article 39(a) sessions	R.C.M. 803	II-93
Findings announcement	R.C.M. 922(a)	II-138
Generally	R.C.M. 805	II-95
Pretrial conferences	R.C.M. 802	II-92
Sentence announcement	R.C.M. 1007(a)	II-157
Pretrial agreement, waiver not permitted	R.C.M. 705(c)(1)(B)	II-83
Pretrial confinement, right to	R.C.M. 305(f)	II-24
Privileged communications	Mil. R. Evid. 502	III-22
Qualifications of	R.C.M. 502(d)(2)	II-52
Summary courts-martial, no right to	R.C.M. 1301(e)	II-199
Special court-martial	R.C.M. 501(b)	II-50
Waiver of appellate review, right to consult with	R.C.M. 1115(b)(2)	II-182
Waiver of right to, in courts-martial	R.C.M. 506(d)	II-61
Withdrawal	R.C.M. 505(d)(2); 506(e)	II-59; II-60
Withdrawal of appellate review, right to consult with	R.C.M. 1115(b)(3)	II-183
<b>Defense of another</b>	R.C.M. 916(e)(5)	II-130
<b>Defenses</b>		
Accident	R.C.M. 916(f)	II-130
Alibi, notice of	R.C.M. 701(b)(2)	II-68
Burden of proof	R.C.M. 916(b)	II-129
Coercion	R.C.M. 916(h)	II-131
Defense of another	R.C.M. 916(e)(5)	II-130
Defined	R.C.M. 916(a)	II-128
Duress	R.C.M. 916(h)	II-131
Entrapment	R.C.M. 916(g)	II-130
Generally	R.C.M. 916	II-128
Ignorance of fact	R.C.M. 916(j)	II-131
Ignorance of law	R.C.M. 916(l)(1)	II-132
Inability	R.C.M. 916(i)	II-131
Instructions on	R.C.M. 920(e)(3)	II-136
Justification	R.C.M. 916(c)	II-129
Lack of mental responsibility		
Generally	R.C.M. 916(k)	II-131
Notice of	R.C.M. 701(b)(2)	II-68
Mistake of fact	R.C.M. 916(j)	II-131
Mistake of law	R.C.M. 916(l)(1)	II-132
Obedience to orders	R.C.M. 916(d)	II-129
Self-defense	R.C.M. 916(e)	II-129
Voluntary intoxication	R.C.M. 916(l)(2)	II-132
Withdrawn, effect of notice	R.C.M. 701(b)(5)	II-69
<b>Deferment of confinement</b>		
Action of convening authority	R.C.M. 1306(d)(4)	II-204
Contempt cases	R.C.M. 809(e)(1)	II-99

## INDEX

MCM 2019

Subject	Ref.	Page
Generally .....	R.C.M. 1103 .....	II-163
Termination of .....	R.C.M. 1103(f) .....	II-164
<b>Defraud</b>		
<i>See also Fraud.</i>		
Burning with intent to .....	IV. Para. 75 .....	IV-114
<b>Degrading questions</b> .....	Mil. R. Evid. 303 .....	III-4
<b>Delay</b>		
<i>See also Continuances.</i>		
Government appeals .....	R.C.M. 908(b)(1) .....	II-115
Responsibility for, as offense .....	IV. Para. 87 .....	IV-131
Speedy trial .....	R.C.M. 707(c) .....	II-88
<b>Delegation</b>		
Authority to impose pretrial restraint .....	R.C.M. 304(b)(3) .....	II-22
Convening courts-martial, power to .....	R.C.M. 504(b)(4) .....	II-57
Excusal of members .....	R.C.M. 505(c)(1)(B) .....	II-58
Nonjudicial punishment .....	V. Para. 2c .....	V-2
<b>Deliberations and voting</b>		
Capital cases .....	R.C.M. 1004(b)(7) .....	II-152
Findings .....	R.C.M. 921 .....	II-136
Military judge, presence during .....	R.C.M. 805(a) .....	II-95
Privilege protecting .....	Mil. R. Evid. 509 .....	III-35
Exceptions to .....	Mil. R. Evid. 606 .....	III-40
Sentencing .....	R.C.M. 1006 .....	II-155
<b>Delivering less than amount called for by receipt</b> .....	IV. Para. 71 .....	IV-109
<b>Deposition</b>		
Admissibility of .....	Mil. R. Evid. 804(b)(1); R.C.M. 1001(b)(4) .....	III-47; II-141
Generally .....	R.C.M. 702 .....	II-71
Objections .....	R.C.M. 702(h) .....	II-73
Officer .....	R.C.M. 702(d)(3)(A); 702(e) .....	II-71; II-72
Oral .....	R.C.M. 702(g)(1); 702(h)(2) .....	II-73
Procedure .....	R.C.M. 702(g) .....	II-73
Request for .....	R.C.M. 702(c) .....	II-71
Who may order .....	R.C.M. 702(b) .....	II-62
Witnesses, subpoena .....	Art. 47, UCMJ; Appendix 7 .....	A2-17; A7-1
Written .....	R.C.M. 702(g)(2); 702(h)(3) .....	II-73
<b>Dereliction in the performance of duty</b> .....	IV. Para. 18 .....	IV-27
<b>Desertion</b>		
Apprehend deserter, authority to .....	R.C.M. 302(b)(3) .....	II-20
Attempted .....	IV. Para. 4c(6)(a); 9 .....	IV-5; IV-10
Generally .....	IV. Para. 9 .....	IV-10
Solicitation to commit .....	IV. Para. 6 .....	IV-7
<b>Destroying</b>		
Mail .....	IV. Para. 46 .....	IV-61
Military property .....	IV. Para. 43 .....	IV-57
Nonmilitary property		
Offense .....	IV. Para. 45 .....	IV-60
Reparation for .....	Art. 139, UCMJ .....	A2-39
<b>Detail</b>		
Bailiff .....	R.C.M. 501(c) .....	II-50
Clerk .....	R.C.M. 501(c) .....	II-50
Defense counsel .....	R.C.M. 501(b); 503(c) .....	II-50; II-56
Defined .....	R.C.M. 103(10) .....	II-1
Escort .....	R.C.M. 501(c) .....	II-50
Interpreter .....	R.C.M. 501(c) .....	II-50
Members .....	R.C.M. 503(a) .....	II-55
Military judge .....	R.C.M. 503(b) .....	II-56
Orderly .....	R.C.M. 501(c) .....	II-50
Orders		
Amending .....	R.C.M. 505(b) .....	II-58
Appointing counsel .....	R.C.M. 503(c)(2) .....	II-56
Appointing military judge .....	R.C.M. 503(b)(2) .....	II-56
Convening .....	R.C.M. 504(d) .....	II-57

Subject	Ref.	Page
Reporter .....	R.C.M. 501(c) .....	II-50
Trial counsel .....	R.C.M. 501(b); 503(c) .....	II-50; II-56
<b>Detention, unlawful</b> .....	IV. Para. 25 .....	IV-37
<b>Discharge</b>		
<i>See also</i> <b>Bad-conduct discharge; Dishonorable discharge.</b>		
Effecting fraudulent .....	IV. Para. 36 .....	IV-50
Firearms		
Negligent .....	IV. Para. 100 .....	IV-146
Willful .....	IV. Para. 52 .....	IV-71
Fraudulent .....	IV. Para. 35 .....	IV-49
<b>Disclosure and discovery</b>		
Aggravating circumstances, notice in capital cases .....	R.C.M. 1004(b)(1) .....	II-151
Alibi defense .....	R.C.M. 701(b)(2) .....	II-68
Amending orders .....	R.C.M. 701(a)(1)(B) .....	II-67
Charges, papers, accompanying .....	R.C.M. 701(a)(1)(A) .....	II-67
Classified or privileged government information, intent to disclose at trial .....	Mil. R. Evid. 505(i); 506(i) .....	III-27; III-32
Continuing duty .....	R.C.M. 701(d) .....	II-69
Convening orders .....	R.C.M. 701(a)(1)(B) .....	II-67
Convictions, prior		
Accused, used against .....	R.C.M. 701(a)(4); 701(a)(5)(A) .....	II-67
Witnesses, impeachment by convictions older than 10 years, intent to use .....	Mil. R. Evid. 609(b) .....	III-41
Defense, disclosure by, generally .....	R.C.M. 701(b) .....	II-68
Defense, intent to use insanity .....	R.C.M. 701(b)(2) .....	II-68
Defense, withdrawn, inadmissibility .....	R.C.M. 701(b)(5) .....	II-69
Deposition, witness statements .....	R.C.M. 702(g)(1)(C) .....	II-73
Documents		
In defense possession .....	R.C.M. 701(b)(3) .....	II-69
In government possession .....	R.C.M. 701(a)(2)(A) .....	II-67
Evidence		
Access to .....	R.C.M. 701(e) .....	II-69
Favorable to defense .....	R.C.M. 701(a)(6) .....	II-68
Prior identifications of the accused .....	Mil. R. Evid. 321(d)(1) .....	III-17
Seized from the accused .....	Mil. R. Evid. 311(d)(1) .....	III-9
Examinations, physical		
In defense possession .....	R.C.M. 701(b)(4) .....	II-69
In government possession .....	R.C.M. 701(a)(2)(B) .....	II-67
Following direction of preliminary hearing .....	R.C.M. 404A(a)(2) .....	II-38
Foreign law, intent to request judicial notice of .....	Mil. R. Evid. 202(b) .....	III-3
Mental examinations		
In defense possession .....	R.C.M. 701(b)(4) .....	II-69
In government possession .....	R.C.M. 701(a)(2)(B) .....	II-67
Psychotherapist-patient privilege .....	Mil. R. Evid. 513 .....	III-36
Statements of accused related to .....	R.C.M. 706(c)(5); Mil. R. Evid. 302 .....	II-75; III-4
Military judge, regulation of .....	R.C.M. 701(g) .....	II-70
Military Rules of Evidence, pursuant to		
Evidence seized from the accused .....	Mil. R. Evid. 311(d)(1) .....	III-9
Prior identifications of the accused .....	Mil. R. Evid. 321(d)(1) .....	III-17
Statements of the accused .....	Mil. R. Evid. 304(d) .....	III-5
Motion relating to		
Generally .....	R.C.M. 906(b)(7) .....	II-112
Waiver .....	R.C.M. 905(e) .....	II-109
When made .....	R.C.M. 905(b)(4) .....	II-108
Noncompliance, remedy for .....	R.C.M. 701(g)(3) .....	II-70
Objects		
In defense possession .....	R.C.M. 701(b)(3) .....	II-69
In government possession .....	R.C.M. 701(a)(2)(A) .....	II-67
Orders, protective .....	R.C.M. 701(g)(2) .....	II-70
Photographs		
In defense possession .....	R.C.M. 701(b)(3) .....	II-69

INDEX

MCM 2019

Subject	Ref.	Page
In government possession .....	R.C.M. 701(a)(2)(A) .....	II-67
Preparation for trial, opportunity .....	R.C.M. 701(e) .....	II-69
Prior statements of witnesses .....	R.C.M. 914 .....	II-127
Privileged information .....	R.C.M. 701(f) .....	II-70
<i>See also Evidence, Privileges.</i>		
Psychiatric experts, intent to use .....	R.C.M. 701(b)(2); Mil. R. Evid. 513 .....	II-68; III-36
Psychotherapist-patient privilege .....	Mil. R. Evid. 513 .....	III-37
Regulation of .....	R.C.M. 701(g) .....	II-70
Remedy for noncompliance .....	R.C.M. 701(g)(3) .....	II-70
Sexual behavior of victim, intent to offer evidence of .....	Mil. R. Evid. 412(c) .....	III-21
Statements relating to an offense .....	R.C.M. 701(a)(1)(C) .....	II-67
Statements of the accused .....	Mil. R. Evid. 304(d) .....	III-5
Tests		
In defense possession .....	R.C.M. 701(b)(4) .....	II-69
In government possession .....	R.C.M. 701(a)(2)(B) .....	II-67
Trial counsel, disclosure by, generally .....	R.C.M. 701(a) .....	II-67
Witnesses		
Access to .....	R.C.M. 701(e) .....	II-69
Accused's limited testimony on motion, intent to use .....	Mil. R. Evid. 304(f); 311(d)(6); 321(d)(5) .....	III-5; III-10; III-17
Alibi, defense .....	R.C.M. 701(b)(2) .....	II-68
Failure to call .....	R.C.M. 701(c) .....	II-69
Merits .....	R.C.M. 701(a)(3)(A) .....	II-67
Prior statements of .....	R.C.M. 914 .....	II-127
Psychiatric experts .....	R.C.M. 701(b)(2); Mil. R. Evid. 513 .....	II-68; III-36
Psychotherapist-patient privilege .....	Mil. R. Evid. 513 .....	III-36
Rebuttal .....	R.C.M. 701(a)(3)(B) .....	II-67
Sentencing .....	R.C.M. 701(a)(5)(B) .....	II-67
Work product of counsel .....	R.C.M. 701(f) .....	II-70
<b>Discredit, conduct of a nature to bring on armed forces</b>	IV. Para. 60c(3) .....	IV-114
<b>Dishonorable discharge</b>		
Death, included in sentence of .....	R.C.M. 1004(d) .....	II-154
Execution of .....	R.C.M. 1102(b)(3) .....	II-162
General courts-martial, power to adjudge .....	R.C.M. 201(f)(1)(A)(ii) .....	II-13
Generally .....	R.C.M. 1003(b)(8)(B) .....	II-149
Previous convictions authorizing .....	R.C.M. 1003(d)(1) .....	II-151
Special courts-martial, no power to adjudge .....	R.C.M. 201(f)(2)(B)(i) .....	II-14
Summary courts-martial, no power to adjudge .....	R.C.M. 1301(d)(1) .....	II-198
<b>Dishonorably failing to maintain funds</b> .....	IV. Para. 94 .....	IV-140
<b>Dishonorably failing to pay debt</b> .....	IV. Para. 96 .....	IV-143
<b>Disloyal statements</b> .....	IV. Para. 97 .....	IV-143
<b>Dismissal</b>		
Charges. <i>See Charges and specifications.</i>		
Punishment .....		
Death, included in sentence of .....	R.C.M. 1004(d) .....	II-154
Execution of .....	R.C.M. 1102(b)(4) .....	II-162
General courts-martial, power to adjudge .....	R.C.M. 201(f)(1)(A)(ii) .....	II-13
Generally .....	R.C.M. 1003(b)(8)(A) .....	II-149
Special courts-martial, no power to adjudge .....	R.C.M. 201(f)(2)(B)(i) .....	II-14
<b>Disobedience of orders</b>		
Failure to obey .....	IV. Para. 18 .....	IV-27
Willful		
Commissioned officer .....	IV. Para. 16 .....	IV-24
Noncommissioned, petty, or warrant officer .....	IV. Para. 17 .....	IV-25
<b>Disorderly conduct</b> .....	IV. Para. 98 .....	IV-144
<b>Disposition of charges, generally</b> .....	R.C.M. 401 .....	II-35
<b>Disposition of military property, wrongful</b> .....	IV. Para. 43 .....	IV-57
<b>Disposition of offenses, generally</b> .....	R.C.M. 306 .....	II-27
<b>Disposition of record of trial after entry of judgment</b> .....	R.C.M. 1116 .....	II-183
<b>Disqualification</b>		
<i>See also specific topics.</i>		
Discovery of, as to detailed personnel .....	R.C.M. 502(f) .....	II-55
<b>Disrespect</b>		

Subject	Ref.	Page
Defined .....	IV. Para. 13c(2)(b) .....	IV-22
Sentinel or lookout .....	IV. Para. 23 .....	IV-35
Superior commissioned officer .....	IV. Para. 15 .....	IV-21
Noncommissioned, petty, or warrant officer .....	IV. Para. 17 .....	IV-25
<b>Distribution of controlled substances</b> .....	IV. Para. 50 .....	IV-66
<b>Docketing</b> .....	R.C.M. 801(a)(1) .....	II-90
<b>Documents</b>		
Authentication requirement .....	Mil. R. Evid. 901 .....	III-48
False .....	IV. Para. 41 .....	IV-55
Hearsay exceptions, declarant unavailable .....	Mil. R. Evid. 804 .....	III-47
Hearsay exceptions, generally .....	Mil. R. Evid. 803 .....	III-44
Hearsay inadmissible .....	Mil. R. Evid. 802 .....	III-44
Original needed .....	Mil. R. Evid. 1002 .....	III-50
Self-authentication .....	Mil. R. Evid. 902 .....	III-49
<b>Double jeopardy. See Former jeopardy.</b>		
<b>Draft, share or bank. See Checks.</b>		
<b>Drinking liquor with prisoner</b> .....	IV. Para. 24 .....	IV-36
<b>Driving, drunken or reckless</b> .....	IV. Para. 51 .....	IV-69
<b>Drugs</b>		
Inspection for .....	Mil. R. Evid. 313(b) .....	III-11
Offenses involving illegal .....	IV. Para. 50 .....	IV-66
<b>Drunk</b>		
<i>See also Intoxication.</i>		
And disorderly .....	IV. Para. 98 .....	IV-144
Defined .....	IV. Para. 51c(6) .....	IV-70
Driving .....	IV. Para. 51 .....	IV-69
On duty .....	IV. Para. 49 .....	IV-65
On station .....	IV. Para. 98 .....	IV-144
Prisoner .....	IV. Para. 49 .....	IV-65
Sentinal or lookout .....	IV. Para. 22 .....	IV-33
<b>Drunkenness, incapacitation for performance of duties</b>		
through .....	IV. Para. 49 .....	IV-65
<b>Dueling</b> .....		
<b>Duplicitousness, in charging</b>		
<i>See also Charges and specifications.</i>		
Motion to sever .....	R.C.M. 906(b)(5) .....	II-111
<b>Duress</b> .....	R.C.M. 916(h) .....	II-131
<b>Duty</b>		
Defined .....	IV. Para. 49c(1)(b) .....	IV-65
Dereliction in the performance of .....	IV. Para. 18 .....	IV-27
Drunk on .....	IV. Para. 49 .....	IV-65
Going from place of .....	IV. Para. 10 .....	IV-13
To obey orders .....	IV. Para. 18c(2)(c) .....	IV-28
<b>Dying declarations</b> .....	Mil. R. Evid. 804(b)(2) .....	III-47
<b>Eavesdropping</b> .....	Mil. R. Evid. 317 .....	III-16
<b>Effecting unlawful enlistment, appointment, or separation</b> .....	IV. Para. 36 .....	IV-50
<b>Efficiency reports, members, military judge, counsel</b> .....	R.C.M. 104(b) .....	II-7
<b>Elements of offense</b>		
<i>See also specific offenses.</i>		
Instruction on .....	R.C.M. 920(e)(1); 920(e)(2) .....	II-136
Lesser included offenses .....	IV. Para. 3b(2) .....	IV-4
Specification, alleging .....	R.C.M. 307(c)(1); 307(c)(3) .....	II-30
<b>Embezzlement</b> .....	IV. Para. 64 .....	IV-97
<b>Emergency searches</b> .....	Mil. R. Evid. 314(i) .....	III-14
<b>Endangering command, unit, place, or military property</b> .....	IV. Para. 27 .....	IV-38
<b>Enemy</b>		
Aiding .....	IV. Para. 33 .....	IV-47
Commission, military, jurisdiction over .....	I. Para. 2(b)(2); R.C.M. 201(g) .....	I-1; II-14
Communicating with .....	IV. Para. 33 .....	IV-47
Confinement with .....	Art. 12, UCMJ .....	A2-5
Defined .....	IV. Para. 27c(1)(b) .....	IV-34
Failing to engage .....	IV. Para. 27 .....	IV-40
Military government, subject to .....	I. Para. 2(a)(3) .....	I-1

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Misbehavior before .....	IV. Para. 27 .....	IV-38
Prisoner in hands of, misconduct .....	IV. Para. 26 .....	IV-37
Property taken from .....	IV. Para. 44 .....	IV-58
Running away before .....	IV. Para. 27 .....	IV-38
Spying .....	IV. Para. 31 .....	IV-44
<b>Enlisted persons</b>		
Detailed to serve as court members .....	R.C.M. 503(a)(2) .....	II-55
Request by accused for court members .....	R.C.M. 503(a)(2) .....	II-55
Restraint of, who may order .....	R.C.M. 304(b)(2) .....	II-22
Unit, same as accused for court members .....	R.C.M. 912(f)(1)(A); 912(f)(4) .....	II-122
<b>Enlistment</b>		
Constructive .....	Art. 2(c), UCMJ .....	A2-2
Desertion, effect .....	IV. Para. 9c(1)(d) .....	IV-12
Fraudulent .....	IV. Para. 35 .....	IV-49
Unlawful, effecting .....	IV. Para. 36 .....	IV-50
<b>Entrapment</b> .....	R.C.M. 916(g) .....	II-130
<b>Entry, unlawful</b> .....	IV. Para. 79 .....	IV-124
<b>Escalator clause</b> .....	R.C.M. 1003(d) .....	II-151
<b>Escape</b>		
Allowing prisoner to .....	IV. Para. 24 .....	IV-36
Assisting another to .....	IV. Para. 2c(1) .....	IV-3
Confinement .....	IV. Para. 12 .....	IV-17
Correctional custody .....	IV. Para. 13 .....	IV-19
Custody .....	IV. Para. 12 .....	IV-17
Prisoner of war .....	IV. Para. 33c(3) .....	IV-47
<b>Escort</b>		
Designation by military judge .....	R.C.M. 913(c)(3) .....	II-126
Detailing .....	R.C.M. 501(c) .....	II-50
Disqualification .....	R.C.M. 502(e)(2); 502(f) .....	II-54; II-55
Duties .....	R.C.M. 502(e)(3)(C); 913(c)(3) .....	II-55; II-126
Oath .....	R.C.M. 807(b)(1)(A) .....	II-97
Qualifications .....	R.C.M. 502(e)(1) .....	II-54
Views and inspections .....	R.C.M. 913(c)(3) .....	II-126
<b>Espionage</b> .....	IV. Para. 32 .....	IV-45
Solicitation to commit .....	IV. Para. 6 .....	IV-7
<b>Evidence</b>		
<i>See also Search and seizure; Self-incrimination</i>		
Absence of entry in records .....	Mil. R. Evid. 803(7) .....	III-45
Absence of public record or entry .....	Mil. R. Evid. 803(10) .....	III-45
Access to .....	R.C.M. 701(e) .....	II-6
Accident, evidence of other crimes, wrongs, or acts to prove absence of .....	Mil. R. Evid. 404(b) .....	III-19
Accused		
Character of .....	Mil. R. Evid. 404(a)(1) .....	III-18
Favorable to, disclosure by trial counsel .....	R.C.M. 701(a)(6) .....	II-68
Testimony by, concerning admissibility of an admission or confession .....	Mil. R. Evid. 304 .....	III-4
Testimony by, concerning admissibility of evidence obtained from an unlawful search or seizure .....	Mil. R. Evid. 311(d)(6) .....	III-10
Testimony by, concerning admissibility of eyewitness identification evidence .....	Mil. R. Evid. 321(d)(5) .....	III-18
Testimony upon preliminary matter, generally .....	Mil. R. Evid. 104(d) .....	III-2
Adjudicative facts .....	Mil. R. Evid. 201 .....	III-2
Admissibility		
Effect of relevancy upon .....	Mil. R. Evid. 402; 403 .....	III-18
Preserving a claim of error .....	Mil. R. Evid. 103(a) .....	III-1
For limited purpose .....	Mil. R. Evid. 105 .....	III-2
Motion as to .....	R.C.M. 906(b)(13) .....	II-101
Preliminary determinations concerning .....	Mil. R. Evid. 104(a) .....	III-2
Admissions. <i>See Self-Incrimination.</i>		
Affidavits .....	Mil. R. Evid. 405(c) .....	III-19
Amendments to the Military Rules of Evidence .....	Mil. R. Evid. 1102 .....	III-51

Subject	Ref.	Page
Analysis of the Military Rules of Evidence .....	Appendix 16 .....	A22-1
Ancient documents .....	Mil. R. Evid. 803(16) .....	III-46
Annulment of conviction, effect on impeachment .....	Mil. R. Evid. 609(c) .....	III-41
Appeal, effect on impeachment by evidence of conviction .....	Mil. R. Evid. 609(c) .....	III-41
Applicability of rules		
Military Rules of Evidence .....	Mil. R. Evid. 101(a); 1101(a) .....	III-1; III-51
Other evidentiary rules .....	Mil. R. Evid. 101(b) .....	III-1
Attorney-client privilege .....	Mil. R. Evid. 502 .....	III-22
Authentication and identification		
Attesting certificates .....	Mil. R. Evid. 902(4) .....	III-49
Generally .....	Mil. R. Evid. 901(a) .....	III-48
Illustrations of .....	Mil. R. Evid. 901(b) .....	III-48
Self-authentication .....	Mil. R. Evid. 902 .....	III-49
Subscribing witness' testimony unnecessary .....	Mil. R. Evid. 903 .....	III-50
Availability of a witness, determination of .....	Mil. R. Evid. 104(a) .....	III-2
Baptismal certificates .....	Mil. R. Evid. 803(12) .....	III-46
Best evidence rule. <i>See</i> Contents of writings, recordings, and photographs, this heading.		
Bias or prejudice		
Compromise and offer to compromise, admissibility to prove .....	Mil. R. Evid. 408 .....	III-20
Evidence of bias to impeach .....	Mil. R. Evid. 608(c) .....	III-40
Exclusion of unfairly prejudicial evidence .....	Mil. R. Evid. 403 .....	III-18
Burden of proof. <i>See</i> <b>Burden of proof.</b>		
Business entries .....	Mil. R. Evid. 803(6) .....	III-45
Certificate of rehabilitation, effect on impeachment .....	Mil. R. Evid. 609(c) .....	III-41
Chaplain, privileged communications to .....	Mil. R. Evid. 503 .....	III-23
Character		
Evidence of similar sexual crimes .....	Mil. R. Evid. 413; 414 .....	III-21
Inadmissibility to prove conduct; exceptions .....	Mil. R. Evid. 404 .....	III-18
Methods of proving .....	Mil. R. Evid. 405 .....	III-19
Circumstantial .....	R.C.M. 918(c) .....	II-134
Classified information, privilege concerning .....	Mil. R. Evid. 505 .....	III-24
Clergyman		
Defined .....	Mil. R. Evid. 503(b)(1) .....	III-23
Privileged communications to .....	Mil. R. Evid. 503(a) .....	III-23
Co-accused, statements at joint trial .....	Mil. R. Evid. 306 .....	III-8
Co-conspirator, statements of .....	Mil. R. Evid. 801(d)(2) .....	III-44
Commercial publications .....	Mil. R. Evid. 803(17) .....	III-46
Common law rules, applicability .....	Mil. R. Evid. 101(b)(2) .....	III-1
Competency		
Court members as witnesses .....	Mil. R. Evid. 606 .....	III-40
Military judge as witness .....	Mil. R. Evid. 605 .....	III-40
Witnesses, generally .....	Mil. R. Evid. 601 .....	III-39
Compromise and offer to compromise .....	Mil. R. Evid. 408 .....	III-20
Concealing, as grounds for being accessory after the fact		
Confessions. <i>See</i> <b>Self-Incrimination.</b>		
Confidential or privileged communications. <i>See</i> Privileges, this heading.		
Confusion of the issues, as grounds for, excluding relevant evidence .....	Mil. R. Evid. 403 .....	III-18
Conspiracy, statement of co-conspirator .....	Mil. R. Evid. 801(d)(2) .....	III-44
Contents of writings, recordings, and photographs		
Admissibility of duplicates .....	Mil. R. Evid. 1003 .....	III-50
Admissibility of other evidence as proof .....	Mil. R. Evid. 1004 .....	III-50
Determination of fact issues related to .....	Mil. R. Evid. 1008 .....	III-51
Proof by testimony or written admission of party ..	Mil. R. Evid. 1007 .....	III-51
Public records .....	Mil. R. Evid. 1005 .....	III-50
Requirement of an original .....	Mil. R. Evid. 1002 .....	III-50
Summaries .....	Mil. R. Evid. 1006 .....	III-51
Continuance, determination by military judge .....	Mil. R. Evid. 104(a) .....	III-2
Control, proof by subsequent remedial measures .....	Mil. R. Evid. 407 .....	III-19

## INDEX

MCM 2019

Subject	Ref.	Page
Conviction of crime, impeachment by .....	Mil. R. Evid. 609 .....	III-40
Corroboration		
Confessions or admissions .....	Mil. R. Evid. 304(c) .....	III-5
Witness' prior identification to corroborate in-court identification .....	Mil. R. Evid. 321(a) .....	III-16
Court-martial, power to obtain evidence .....	R.C.M. 801(e) .....	II-91
Credibility or weight, right to introduce evidence concerning Cross-examination	Mil. R. Evid. 104(e) .....	III-2
Scope .....	Mil. R. Evid. 611(b) .....	III-41
Specific incidents of conduct to impeach .....	Mil. R. Evid. 608(b) .....	III-40
Cumulative, as grounds for excluding relevant evidence ..	Mil. R. Evid. 403 .....	III-18
Death, statement under belief of impending .....	Mil. R. Evid. 804(b)(2) .....	III-47
Declarant		
Attacking and supporting credibility of hearsay declarant .....	Mil. R. Evid. 806 .....	III-48
Defined .....	Mil. R. Evid. 801(b) .....	III-44
Unavailability .....	Mil. R. Evid. 804(a) .....	III-47
Degrading questions .....	Mil. R. Evid. 303 .....	III-4
Deliberations of courts and juries, privilege concerning ..	Mil. R. Evid. 509; 606 .....	III-35; III-40
Disclosure, required		
Evidence of prior identification of the accused ...	Mil. R. Evid. 321(d)(1) .....	III-17
Evidence seized from the person or property of the accused .....	Mil. R. Evid. 311(d)(1) .....	III-9
Immunity or leniency granted to a witness .....	Mil. R. Evid. 301(d) .....	III-3
Statements by accused .....	Mil. R. Evid. 304(d) .....	III-5
Divorce or annulment, effect on marital privilege .....	Mil. R. Evid. 504(a) .....	III-24
Duplicate		
Admissibility of .....	Mil. R. Evid. 1003 .....	III-50
Defined .....	Mil. R. Evid. 1001(e) .....	III-50
Dying declaration .....	Mil. R. Evid. 804(b)(2) .....	III-47
Excited utterance .....	Mil. R. Evid. 803(2) .....	III-4
Exclusionary rules; <i>See also</i> Privileges, this heading; <b>Search and seizure; Self-incrimination.</b>		
Eyewitness identification .....	Mil. R. Evid. 321(b) .....	III-16
Exclusion of, noncompliance with discovery requirements	R.C.M. 701(g)(3)(C) .....	II-70
Existing mental, emotional, or physical condition .....	Mil. R. Evid. 803(3) .....	III-44
Experts		
Appointment by court .....	Mil. R. Evid. 706 .....	III-43
Bases of opinion by .....	Mil. R. Evid. 703 .....	III-43
Disclosure of facts or data underlying opinion .....	Mil. R. Evid. 705 .....	III-43
Employment at government expense .....	R.C.M. 703(d) .....	II-75
Opinion on ultimate issue .....	Mil. R. Evid. 704 .....	III-43
Selection and employment by accused .....	Mil. R. Evid. 706(c) .....	III-44
Use, generally .....	Mil. R. Evid. 702 .....	III-43
Extenuation and mitigation .....	R.C.M. 1001(d)(1)(A); 1001(d)(1)(B) .....	II-143
Eyewitness identification .....	Mil. R. Evid. 321 .....	III-16
Facts, judicial notice of .....	Mil. R. Evid. 201 .....	III-2
Family records .....	Mil. R. Evid. 803(13) .....	III-46
Feasibility of precautionary measures, proof by subsequent remedial measures .....	Mil. R. Evid. 407 .....	III-19
Foreign law, judicial notice of .....	Mil. R. Evid. 202(b) .....	III-3
Former testimony .....	Mil. R. Evid. 804(b)(1) .....	III-47
Government information, privilege concerning .....	Mil. R. Evid. 506 .....	III-30
Habit .....	Mil. R. Evid. 406 .....	III-19
Hearsay		
Defined .....	Mil. R. Evid. 801 .....	III-44
General rule .....	Mil. R. Evid. 802 .....	III-44
Exceptions, availability of declarant immaterial		
Absence of entry in records .....	Mil. R. Evid. 803(7) .....	III-45
Absence of public record of entry .....	Mil. R. Evid. 803(10) .....	III-45
Excited utterance .....	Mil. R. Evid. 803(2) .....	III-44
Family records .....	Mil. R. Evid. 803(13) .....	III-46



Subject	Ref.	Page
Government price lists .....	Mil. R. Evid. 803(17) .....	III-46
Judgment as to personal, family, or general history, or boundaries .....	Mil. R. Evid. 803(23) .....	III-47
Judgment of previous conviction .....	Mil. R. Evid. 803(22) .....	III-46
Learned treatises .....	Mil. R. Evid. 803(18) .....	III-46
Market reports, commercial publications .....	Mil. R. Evid. 803(17) .....	III-46
Marriage, baptismal, and similar certificates .....	Mil. R. Evid. 803(12) .....	III-46
Present sense impressions .....	Mil. R. Evid. 803(1) .....	III-44
Public records and reports .....	Mil. R. Evid. 803(8) .....	III-45
Recorded recollection .....	Mil. R. Evid. 803(5) .....	III-45
Records of documents affecting an interest in property .....	Mil. R. Evid. 803(14) .....	III-46
Records of regularly conducted activity .....	Mil. R. Evid. 803(6) .....	III-45
Records of religious organizations .....	Mil. R. Evid. 803(11) .....	III-46
Records of vital statistics .....	Mil. R. Evid. 803(9) .....	III-45
Reputation as to character .....	Mil. R. Evid. 803(21) .....	III-46
Reputation concerning boundaries or general history .....	Mil. R. Evid. 803(20) .....	III-46
Reputation concerning personal or family history ..	Mil. R. Evid. 803(19) .....	III-46
Statements for purposes of medical diagnosis or treatment .....	Mil. R. Evid. 803(4) .....	III-45
Statements in ancient documents .....	Mil. R. Evid. 803(16) .....	III-46
Statements in documents affecting an interest in property .....	Mil. R. Evid. 803(15) .....	III-46
Then existing mental, emotional or physical condition .....	Mil. R. Evid. 803(3) .....	III-44
Exceptions, declarant unavailable		
Former testimony .....	Mil. R. Evid. 804(b)(1) .....	III-47
Other exceptions .....	Mil. R. Evid. 804(b)(5) .....	III-48
Statement against interest .....	Mil. R. Evid. 804(b)(3) .....	III-47
Statement of personal or family history .....	Mil. R. Evid. 804(b)(4) .....	III-47
Statement under belief of impending death .....	Mil. R. Evid. 804(b)(2) .....	III-47
Hearsay within hearsay .....	Mil. R. Evid. 805 .....	III-48
History, statement of personal or family .....	Mil. R. Evid. 804(b)(4) .....	III-47
Marital, privilege .....	Mil. R. Evid. 504 .....	III-24
Identification		
Evidence of other crimes, wrongs, or acts as proof of .....	Mil. R. Evid. 404(b) .....	III-19
Eyewitness testimony as to .....	Mil. R. Evid. 321 .....	III-16
Statements of, as non-hearsay .....	Mil. R. Evid. 801(d)(1) .....	III-44
Immunity .....	R.C.M. 704 .....	II-81
<i>See also Self-incrimination.</i>		
Impeachment		
By contradiction, using certain involuntary statements .....	Mil. R. Evid. 304(e) .....	III-5
By contradiction, using illegally seized evidence .....	Mil. R. Evid. 311(c)(1) .....	III-8
Evidence of character, conduct, and bias .....	Mil. R. Evid. 608 .....	III-40
Evidence of criminal conviction .....	Mil. R. Evid. 609 .....	III-40
Juvenile adjudications .....	Mil. R. Evid. 609(d) .....	III-41
Prior statements of witnesses .....	Mil. R. Evid. 613 .....	III-42
Religious beliefs or opinions .....	Mil. R. Evid. 610 .....	III-41
Subsequent remedial measures .....	Mil. R. Evid. 407 .....	III-19
Who may impeach .....	Mil. R. Evid. 607 .....	III-40
Informant, identity of, privilege .....	Mil. R. Evid. 507 .....	III-34
Insanity .....	Mil. R. Evid. 302; R.C.M. 916(k) .	III-4; II-131
Intent, evidence of other crimes, wrongs, or acts, as proof of	Mil. R. Evid. 404(b) .....	III-19
Interest, statement against .....	Mil. R. Evid. 804(b)(3) .....	III-47
Interpreters .....	Mil. R. Evid. 604 .....	III-39
Interrogation. <i>See Self-incrimination.</i>		
Involuntary statement. <i>See Self-incrimination.</i>		
Joint clients, effect on lawyer-client privilege .....	Mil. R. Evid. 502(d)(5) .....	III-23
Joint trial, statements of accused at .....	Mil. R. Evid. 306 .....	III-8
Judgment		
As to personal, family, or general history, or	Mil. R. Evid. 803(23) .....	III-47

**INDEX**

**MCM 2019**

Subject	Ref.	Page
boundaries . . . . .		
Previous conviction . . . . .	Mil. R. Evid. 803(22) . . . . .	III-46
Judicial notice		
Adjudicative facts . . . . .	Mil. R. Evid. 201 . . . . .	III-2
Laws, domestic and foreign . . . . .	Mil. R. Evid. 202 . . . . .	III-2
Statements in learned treatises . . . . .	Mil. R. Evid. 803(18) . . . . .	III-46
Juvenile adjudications, impeachment by . . . . .	Mil. R. Evid. 609(d) . . . . .	III-41
Knowledge		
Evidence of other crimes, wrongs, or acts as proof of . . . . .	Mil. R. Evid. 404(b) . . . . .	III-19
Requirement for personal knowledge in order to testify . . . . .	Mil. R. Evid. 602 . . . . .	III-39
Law, domestic, judicial notice of . . . . .	Mil. R. Evid. 202 . . . . .	III-2
Law enforcement personnel, records and reports of observations . . . . .	Mil. R. Evid. 803(8)(B) . . . . .	III-46
Lawyer-client privilege . . . . .	Mil. R. Evid. 502 . . . . .	III-23
Lawyer, defined for purposes of privilege . . . . .	Mil. R. Evid. 502(b)(2) . . . . .	III-23
Learned treatises . . . . .	Mil. R. Evid. 803(18) . . . . .	III-47
Liability insurance, admissibility . . . . .	Mil. R. Evid. 411 . . . . .	III-21
Limited admissibility of . . . . .	Mil. R. Evid. 105 . . . . .	III-2
Lineups and other identification processes		
Right to counsel at . . . . .	Mil. R. Evid. 321(c)(2) . . . . .	III-17
When unlawful . . . . .	Mil. R. Evid. 321(c) . . . . .	III-17
Market reports . . . . .	Mil. R. Evid. 803(17) . . . . .	III-46
Marriage certificates . . . . .	Mil. R. Evid. 803(12) . . . . .	III-46
Medical diagnosis or treatment, statement for purposes of Members	Mil. R. Evid. 803(4) . . . . .	III-45
As witnesses . . . . .	Mil. R. Evid. 606 . . . . .	III-40
Hearings out of presence of . . . . .	Mil. R. Evid. 103(e); 104(c) . . . . .	III-1; III-2
Mental examination of accused, privilege concerning. <i>See Self-incrimination</i>		
Military judge		
As witness . . . . .	Mil. R. Evid. 605 . . . . .	III-40
Defined . . . . .	Mil. R. Evid. 101(c) . . . . .	III-1
Military records, authentication by attesting certificates . . . . .	Mil. R. Evid. 902(4)(A) . . . . .	III-50
Minister, privileged communication to . . . . .	Mil. R. Evid. 503 . . . . .	III-24
Misconduct, acts of, admissibility . . . . .	Mil. R. Evid. 404(b) . . . . .	III-19
Mistake, admissibility of evidence of other crimes, wrongs, or acts to prove absence of . . . . .	Mil. R. Evid. 404(b) . . . . .	III-19
Mistrial, as remedy for		
Failing to produce a writing used to refresh memory . . . . .	Mil. R. Evid. 612 . . . . .	III-43
Sustaining a claim of governmental privilege . . . . .	Mil. R. Evid. 505(j)(4)(A)(ii) . . . . .	III-28
Motive, evidence of other crimes, wrongs, or acts as proof of . . . . .	Mil. R. Evid. 404(b) . . . . .	III-19
Negligence, proof of subsequent remedial measures . . . . .	Mil. R. Evid. 407 . . . . .	III-19
Negotiations on plea, admissibility . . . . .	Mil. R. Evid. 410 . . . . .	III-20
Newly discovered, as grounds for new trial . . . . .	R.C.M. 1210(f) . . . . .	II-196
Oath or affirmation		
Interpreters . . . . .	Mil. R. Evid. 604 . . . . .	III-39
Witnesses . . . . .	Mil. R. Evid. 603 . . . . .	III-39
Objections		
Confessions and admissions, concerning . . . . .	Mil. R. Evid. 304(f) . . . . .	III-5
Eyewitness identification, concerning . . . . .	Mil. R. Evid. 321(a); 321(d) . . . . .	III-16; III-17
Generally . . . . .	Mil. R. Evid. 103 . . . . .	III-1
Member as a witness . . . . .	Mil. R. Evid. 606(a) . . . . .	III-40
Prior identification of the accused . . . . .	Mil. R. Evid. 321(d) . . . . .	III-17
Search and seizure, concerning . . . . .	Mil. R. Evid. 1101(d) . . . . .	III-51
Witnesses, calling by military judge or members . . . . .	Mil. R. Evid. 614(c) . . . . .	III-43
Offer of proof		
Record of . . . . .	Mil. R. Evid. 103(b) . . . . .	III-1
Requirements of valid . . . . .	Mil. R. Evid. 103(a)(2) . . . . .	III-1
Ruling by military judge . . . . .	Mil. R. Evid. 103(d) . . . . .	III-1
Offer to compromise . . . . .	Mil. R. Evid. 408 . . . . .	III-20

Subject	Ref.	Page
Official records	Mil. R. Evid. 803(8)	III-45
Opinion		
Bases of expert opinion	Mil. R. Evid. 703	III-43
Character, as method for proving	Mil. R. Evid. 405(a)	III-19
Disclosure of facts or data underlying opinion	Mil. R. Evid. 705	III-43
Expert testimony	Mil. R. Evid. 702	III-43
Lay witness testimony	Mil. R. Evid. 701	III-43
Rehabilitative potential of accused	R.C.M. 1001(b)(5)	II-140
Sexual behavior of alleged victim	Mil. R. Evid. 412(a)	III-20
Ultimate issue included in	Mil. R. Evid. 704	III-43
Opportunity, evidence of other crimes, wrongs, or acts as proof of	Mil. R. Evid. 404(b)	III-19
Order of interrogation and presentation	Mil. R. Evid. 611	III-41
Original		
Defined	Mil. R. Evid. 1101(d)	III-51
Requirement to use	Mil. R. Evid. 1002	III-50
When original not required. <i>See</i> Contents of writings, recordings, and photographs, this heading.		
Other crimes, wrongs, or acts, evidence of	Mil. R. Evid. 404(b)	III-19
Ownership, proof by subsequent remedial measures	Mil. R. Evid. 407	III-19
Pardon, effect on impeachment by conviction	Mil. R. Evid. 609(c)	III-41
Past sexual behavior		
Admissibility	Mil. R. Evid. 412(a); 412(b)	III-20
Defined	Mil. R. Evid. 412(d)	III-21
Degrading questions	Mil. R. Evid. 303	III-4
Evidence of similar sexual crimes	Mil. R. Evid. 413; 414	III-21
Procedural requirements for admission	Mil. R. Evid. 412(c)	III-21
Payment of medical and similar expenses	Mil. R. Evid. 409	III-20
Personal knowledge, requirement for in order to testify	Mil. R. Evid. 602	III-39
Photographs, defined	Mil. R. Evid. 1001(c)	III-50
Plain error	Mil. R. Evid. 103(f)	III-1
Plan or design of accused, evidence of other crimes, wrongs, or acts as proof of	Mil. R. Evid. 404(b)	III-19
Pleas, plea discussions and related statements, admissibility	Mil. R. Evid. 410	III-20
Political vote, privilege concerning	Mil. R. Evid. 508	III-35
Prejudice, unfair	Mil. R. Evid. 403	III-18
Preliminary questions	Mil. R. Evid. 104	III-2
Preparation, evidence of other crimes, wrongs, or acts as proof of	Mil. R. Evid. 404(b)	III-19
Presentation on merits	R.C.M. 913(c)	II-126
Present sense impression	Mil. R. Evid. 803(1)	III-44
Previous convictions		
Impeachment by evidence of	Mil. R. Evid. 609	III-40
Judgment or evidence of	Mil. R. Evid. 803(22)	III-46
Priest, privileged communications to	Mil. R. Evid. 503	III-23
Prior statements of witnesses		
Impeachment by evidence of	Mil. R. Evid. 613	III-42
Prior consistent statement as non-hearsay	Mil. R. Evid. 801(d)(1)	III-44
Prior inconsistent statement as non-hearsay	Mil. R. Evid. 801(d)(1)	III-44
Prior statement of identification as non-hearsay	Mil. R. Evid. 801(d)(1)	III-44
Privileges		
Applicability of rules concerning	Mil. R. Evid. 1101(b)	III-51
Classified information	Mil. R. Evid. 505	III-24
Comments upon or inference from claim of, at trial		
Limiting instruction	Mil. R. Evid. 512(c)	III-36
Prohibited	Mil. R. Evid. 512(a)	III-36
Communication of privileged information by		
electronic means	Mil. R. Evid. 511(b)	III-36
communication to clergy	Mil. R. Evid. 503	III-23
Compelled or unintentional disclosure of information	Mil. R. Evid. 511(a)	III-36
Deliberations of courts and juries	Mil. R. Evid. 509	III-35

INDEX

MCM 2019

Subject	Ref.	Page
Exceptions	Mil. R. Evid. 606	III-40
General rule	Mil. R. Evid. 501	III-22
Government information	Mil. R. Evid. 506	III-30
Marital	Mil. R. Evid. 504	III-24
Identify of informant	Mil. R. Evid. 507	III-34
Lawyer-client	Mil. R. Evid. 502	III-22
Medical officer or civilian physician, no privilege	Mil. R. Evid. 501(d)	III-22
Mental examination of accused. <i>See Self-incrimination</i>		
Political vote	Mil. R. Evid. 508	III-35
Preliminary determinations concerning	Mil. R. Evid. 104(a)	III-2
Psychotherapist-patient privilege	Mil. R. Evid. 513	III-36
Waiver by voluntary disclosure	Mil. R. Evid. 510	III-35
Probable cause. <i>See Search and seizure</i>		
Production of		
Motion for	R.C.M. 905(b)(4); 906(b)(7)	II-108; II-112
Procedure for	R.C.M. 703(g)(2)	II-76
Right to	R.C.M. 703(e)	II-75
Property		
Records of documents affecting interest in	Mil. R. Evid. 803(14)	III-46
Statements in documents affecting interest in	Mil. R. Evid. 803(15)	III-46
Public records and reports	Mil. R. Evid. 803(8)	III-45
Qualifications to be a witness, determination by military judge	Mil. R. Evid. 104(a)	III-2
Rabbi, privileged communications to	Mil. R. Evid. 503	III-23
Reasonable doubt	R.C.M. 918(c)	II-134
Rebuttal	R.C.M. 1001(d)	II-143
Recollection recorded	Mil. R. Evid. 803(5)	III-45
Recordings, defined	Mil. R. Evid. 1001(b); IV. Para. 63	III-50; IV-95
Refreshing memory, by use of writings	Mil. R. Evid. 612	III-42
Regularly conducted activity, records of	Mil. R. Evid. 803(6)	III-45
Relaxation of rules, in sentencing proceedings	Mil. R. Evid. 1101(b)	III-51
Relevancy		
Defined	Mil. R. Evid. 401	III-18
Effect on admissibility	Mil. R. Evid. 402	III-18
Exclusion of relevant evidence	Mil. R. Evid. 403	III-18
When conditioned on fact	Mil. R. Evid. 104(b)	III-2
Religious beliefs or opinions	Mil. R. Evid. 610	III-41
Religious organizations, record of	Mil. R. Evid. 803(11)	III-46
Remainder of, or related, writings or recorded statements	Mil. R. Evid. 106	III-2
Reputation		
Character	Mil. R. Evid. 803(21)	III-46
Community, defined	Mil. R. Evid. 405(d)	III-19
Concerning boundaries or general history	Mil. R. Evid. 803(20)	III-46
Concerning personal or family history	Mil. R. Evid. 803(19)	III-46
Defined	Mil. R. Evid. 405(d)	III-19
Routine practice	Mil. R. Evid. 406	III-19
Rule of completeness	Mil. R. Evid. 106	III-2
Rules of Evidence, Military		
Amendments to	Mil. R. Evid. 1102	III-51
Analysis of	Appendix 17	A17-1
Applicability	Mil. R. Evid. 101(a); 1101(a)	III-1; III-51
Citation to	Mil. R. Evid. 1103	III-51
Inapplicability	Mil. R. Evid. 1101(d)	III-51
Purpose and construction	Mil. R. Evid. 102	III-1
Relaxation during sentencing proceedings	Mil. R. Evid. 1101(c)	III-51
Ruling admitting or excluding evidence		
Preserving a claim of error	Mil. R. Evid. 103(a)	III-1
Plain error	Mil. R. Evid. 103(f)	III-1
Search. <i>See Search and seizure</i>		
Self-authentication	Mil. R. Evid. 902	III-49
Self-incrimination. <i>See Self-incrimination</i>		

Subject	Ref.	Page
Sentencing proceedings		
Generally	R.C.M. 1001	II-127
Relaxation of rules	Mil. R. Evid. 1101(b)	III-51
Sexual offenses		
Victim sexual behavior or predisposition	Mil. R. Evid. 412	III-20
Evidence of similar sexual crimes	Mil. R. Evid. 413; 414	III-21
Specific instances of conduct, to prove character	Mil. R. Evid. 405(b)	III-19
Spontaneous exclamations	Mil. R. Evid. 803(2)	III-44
Stipulations		
Confessional	R.C.M. 705(b)(1)	II-83
Generally	R.C.M. 811	II-102
Striking testimony		
After witness asserts self-incrimination privilege	Mil. R. Evid. 301(e)(1)	III-3
Writing to refresh memory, failure to produce	Mil. R. Evid. 612	III-42
Subscribing witness' testimony, unnecessary for authentication	Mil. R. Evid. 903	III-50
Subsequent remedial measures	Mil. R. Evid. 407	III-19
Summary court-martial, applicability of rules	Mil. R. Evid. 101(a); R.C.M. 1304	III-1; II-200
Telephonic transmissions of privileged information, effect of	Mil. R. Evid. 511(b)	III-36
Testimony		
Failure to testify by accused, instruction concerning	Mil. R. Evid. 301(f)(3)	III-4
Preliminary matter, by accused	Mil. R. Evid. 104(d)	III-2
Trial counsel, duty to disclose	R.C.M. 701(a)	II-67
Unavailability of declarant, defined	Mil. R. Evid. 804(a)	III-47
Victim, character of	Mil. R. Evid. 404(a)(2)	III-18
Vital statistics, records of	Mil. R. Evid. 803(9)	III-45
Vote, political, privilege concerning	Mil. R. Evid. 508	III-35
Waiver		
Failure to object	Mil. R. Evid. 103(a)(1)	III-1
Guilty plea	Mil. R. Evid. 304(f)(8); 311(e); 312(e); R.C.M. 910(j)	III-5; III-10; III-11; II-120
Privileges	Mil. R. Evid. 510	III-35
Waste of time, as grounds for exclusion of relevant evidence	Mil. R. Evid. 403	III-18
Witnesses		
Advice concerning self-incrimination	Mil. R. Evid. 301	III-3
Availability determination	Mil. R. Evid. 104(a)	III-2
Calling and interrogation by the court-martial	Mil. R. Evid. 614	III-42
Children	R.C.M. 804; R.C.M. 914A; Mil. R. Evid. 611(d)	II-93; II-127; III-41
Competency, general rule	Mil. R. Evid. 601	III-39
Court members as witnesses	Mil. R. Evid. 606	III-40
Exclusion from courtroom	Mil. R. Evid. 615	III-43
Impeachment of. <i>See</i> Impeachment, this heading.		
Military judge as a witness	Mil. R. Evid. 605	III-40
Mode and order of interrogation and presentation	Mil. R. Evid. 611	III-41
Oath or affirmation	Mil. R. Evid. 603	III-39
Personal knowledge, requirement for	Mil. R. Evid. 602	III-39
Production of		
Procedures for	R.C.M. 703(e)	II-75
Right to	R.C.M. 703(b)	II-74
Qualification as	Mil. R. Evid. 104(a)	III-2
Writings and recordings		
Defined	Mil. R. Evid. 1001(a); 1001(b); IV. Para. 63	III-50; IV-95
Refresh memory, to	Mil. R. Evid. 612	III-42
Remainder of or related writings	Mil. R. Evid. 106	III-2
Requirement of original to prove	Mil. R. Evid. 1002	III-50
Generally	R.C.M. 912(d)	II-121
Questionnaire, use of	R.C.M. 912(a)(1)	II-120
<b>Examination</b>		
Members		
Generally	R.C.M. 912(d)	II-121
Questionnaire, use of	R.C.M. 912(a)(1)	II-120

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Polygraph .....	Mil. R. Evid. 707 .....	III-44
Witnesses		
Deposition .....	R.C.M. 702(g)(1)(A); 702(g)(2)(C) .	II-73
Generally .....	Mil. R. Evid. 614 .....	III-42
Preliminary hearing .....	R.C.M. 405(j) .....	II-44
Remote live testimony of a child .....	R.C.M. 804; R.C.M. 914A; Mil. R. Evid. 611(d) .....	II-82; II-114; III-41
<b>Exceptions and substitutions</b>		
Findings by .....	R.C.M. 918(a)(1)(C) .....	II-133
Lesser included offenses .....	IV. Para. 3b(6) .....	IV-4
Plea, entry by .....	R.C.M. 910(a)(1)(C) .....	II-117
<b>Execution of sentence</b>		
Action, statement as to for Summary Courts-Martial .....	R.C.M. 1306(d)(3) .....	II-204
Deferment, effect on .....	R.C.M. 1103(f); 1103(g) .....	II-164
Generally .....	R.C.M. 1102 .....	II-161
Suspension. <i>See</i> <b>Suspension of sentence.</b>		
<b>Exhibits</b>		
Generally .....	R.C.M. 913(c) .....	II-137
Members, use during deliberations .....	R.C.M. 921(b) .....	II-123
Sealed .....	R.C.M. 1113 .....	II-180
<b>Expert witnesses</b>		
<i>See also</i> <b>Evidence, Experts.</b>		
Employment of .....	R.C.M. 703(d) .....	II-75
Opinion testimony by .....	Mil. R. Evid. 702; 703; 704; 705 .	III-43
<b>Explosive, defined</b> .....	R.C.M. 103(11) .....	II-1
<b>Exporting controlled substances</b> .....	IV. Para. 50 .....	IV-66
<b>Exposure, indecent</b> .....	IV. Para. 63 .....	IV-95
<b>Extenuation, matters in</b>		
Presentencing procedure .....	R.C.M. 1001(c)(1)(A); 1001(c)(2)(A); 1001(c)(3) .....	II-143
<b>Extortion</b> .....	IV. Para. 76 .....	IV-116
<b>Extra duty</b> .....	V. Para. 5b(2)(A)(v); 5b(2)(B)(v); 5c(6); 6b(4) .....	V-4; V-5; V-6; V-7
<b>Extraordinary relief, petition for</b>		
Appellate counsel .....	R.C.M. 1202(b)(2)(B)(iii) .....	II-189
Review by Court of Criminal Appeals .....	R.C.M. 1203(c) (Discussion) .....	II-190
Speedy trial, effect on .....	R.C.M. 707(b)(3)(C) .....	II-87
<b>Extramarital Sexual Conduct</b>		
<i>See also, Adultery</i>	IV. Para. 99 .....	IV-144
<b>Eyewitness identification</b> .....	Mil. R. Evid. 321 .....	III-16
<b>Failure to</b>		
Afford all practical relief and assistance in combat .....	IV. Para. 27 .....	IV-38
Enforce or comply with UCMJ .....	IV. Para. 87 .....	IV-131
Engage or do utmost to encounter enemy .....	IV. Para. 27 .....	IV-38
Enter plea .....	R.C.M. 910(b) .....	II-118
Fulfill terms of plea agreement .....	R.C.M. 705(e)(4)(B) .....	II-85
Go to appointed place of duty .....	IV. Para. 10 .....	IV-13
Maintain funds, dishonorable .....	IV. Para. 94 .....	IV-140
Obey orders or regulations .....	IV. Para. 18 .....	IV-27
Pay debts .....	IV. Para. 96 .....	IV-143
Report, prevent, or suppress mutiny .....	IV. Para. 21 .....	IV-31
Secure or report captured or abandoned property .....	IV. Para. 44 .....	IV-58
<b>False</b>		
Alarm, before enemy .....	IV. Para. 27 .....	IV-38
Claim .....	IV. Para. 71 .....	IV-109
Discharge certificate .....	IV. Para. 38 .....	IV-52
Identification card .....	IV. Para. 38 .....	IV-52
Official statement .....	IV. Para. 41 .....	IV-44
Pass .....	IV. Para. 38 .....	IV-52
Permit .....	IV. Para. 38 .....	IV-52
Pretenses		
Larceny by .....	IV. Para. 64c(1)(a) .....	IV-98
Obtaining services under .....	IV. Para. 66 .....	IV-102

Subject	Ref.	Page
Receipt .....	IV. Para. 71	IV-109
<i>See also Fraud</i> , against United States.		IV-33
Statement, during guilty plea inquiry .....	R.C.M. 910(c)(5) .....	II-118
Statements in support of probable cause .....	Mil. R. Evid. 311(d)(4)(B) .....	III-9
Swearing .....	IV. Para. 41 .....	IV-55
Writing <i>See False official statement; Forgery; Fraud</i> against United States		
<b>Federal court</b>		
Former trial in, effect of		
Final determination .....	R.C.M. 905(g) .....	II-109
Former jeopardy .....	R.C.M. 907(b)(2)(C) .....	II-114
Jurisdiction .....	R.C.M. 201(d) (Discussion) .....	II-12
Members of bar, counsel in courts-martial .....	R.C.M. 502(d)(2)(B)(i) .....	II-46
Rules of evidence in, application to courts-martial ..	Mil. R. Evid. 101(b)(1); 1102(b) ..	III-1; III-51
<b>Federal Rules of Evidence</b> , amendments .....	Mil. R. Evid. 1102 .....	III-51
<b>Finality of courts-martial</b> .....	R.C.M. 1209 .....	II-195
<b>Financial inability</b> , as a defense .....	R.C.M. 916(i) .....	II-131
<b>Findings</b>		
Action by members after reaching .....	R.C.M. 921(d) .....	II-136
Announcement of		
Effect on reconsideration .....	R.C.M. 924(a) .....	II-138
Erroneous .....	R.C.M. 922(d) .....	II-138
Examination of worksheets by military judge, effect on .....	R.C.M. 921(d) .....	II-137
Guilty plea, based on .....	R.C.M. 910(g) .....	II-120
Members .....	R.C.M. 922(b) .....	II-138
Military judge .....	R.C.M. 922(c) .....	II-138
Basis for .....	R.C.M. 918(c) .....	II-134
Charge, as to .....	R.C.M. 918(a)(2) .....	II-134
Contempt .....	R.C.M. 809(c) .....	II-99
Convening authority, action on .....	R.C.M. 1109(b); 1110(b); 1306(b)(2) ..	II-172; II-175; II-203
Deliberations and voting on .....	R.C.M. 921 .....	II-136
Exceptions and substitutions .....	R.C.M. 918(a)(1) .....	II-133
General .....	R.C.M. 918(a) .....	II-133
Guilty		
Convening authority, action on .....	R.C.M. 1109(b); 1110(b); 1306(b)(2)	II-172; II-175; II-203
Reconsideration .....	R.C.M. 924(a); 924(c) .....	II-138; II-139
Standard .....	R.C.M. 918(c) .....	II-134
Vote resulting in .....	R.C.M. 921(c)(2) .....	II-137
Guilty plea, based on .....	R.C.M. 910(g) .....	II-120
Impeachment of .....	R.C.M. 923 .....	II-138
Instructions on .....	R.C.M. 920 .....	II-135
Lesser included offense .....	R.C.M. 918(a)(1)(b) .....	II-133
Not guilty		
Convening authority, action on in Summary Courts- Martial .....	R.C.M. 1306(b)(4) .....	II-204
Motion for finding of .....	R.C.M. 917 .....	II-132
Reconsideration of .....	R.C.M. 924(b) .....	II-138
Vote resulting in .....	R.C.M. 921(c)(3) .....	II-137
Not guilty, lack of mental responsibility .....	R.C.M. 921(c)(4) .....	II-137
Post-trial hearing .....	R.C.M. 1105 .....	II-165
Reasonable doubt standard .....	R.C.M. 918(c) .....	II-134
Reconsideration .....	R.C.M. 924 .....	II-138
Special findings. <i>See Special findings.</i>		
Specifications .....	R.C.M. 918(a)(1) .....	II-133
Voting on .....	R.C.M. 921(c) .....	II-137
<b>Fine</b>		
Contempt, punishment for .....	809(e)(2) .....	II-100
Courts-martial, punishment in .....	R.C.M. 1003(b)(3) .....	II-148
<b>Fingerprints</b>		
Authentication by comparison .....	Mil. R. Evid. 901(b)(3) .....	III-48

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Fingerprint cards admissible as hearsay exception . . . . .	Mil. R. Evid. 803(6); 803(8) . . . . .	III-45
<b>Firearm</b>		
Defined . . . . .	R.C.M. 103(12) . . . . .	II-1
Discharge		
Negligent . . . . .	IV. Para. 100 . . . . .	IV-146
Willful . . . . .	IV. Para. 52 . . . . .	IV-71
Maximum punishment, affecting		
Aggravated assault . . . . .	IV. Para. 77d(3)(a)(i); 77d(3)(b)(i); 77d(3)(c)(i) . . . . .	IV-122
Larceny, wrongful appropriation . . . . .	IV. Para. 64d(1)(b); 64d(1)(c); 64d(2)(c) . . . . .	IV-101
Military property . . . . .	IV. Para. 43d(1)(b); 43d(3)(b) . . . . .	IV-58
Fitness reports, members, military judge, counsel . . . . .	R.C.M. 104(b) . . . . .	II-7
<b>Flag, striking the</b> . . . . .	IV. Para. 41 . . . . .	IV-41
<b>Forcing a safeguard</b> . . . . .	IV. Para. 39 . . . . .	IV-43
<b>Foreign law</b>		
Judicial notice of . . . . .	Mil. R. Evid. 202(b) . . . . .	III-3
Occupied territory . . . . .	R.C.M. 201(f)(1)(B)(i)(b) . . . . .	II-13
<b>Foreign nation</b>		
Interrogation by officials of . . . . .	Mil. R. Evid. 305(f)(2) . . . . .	III-7
Military jurisdiction, in friendly . . . . .	R.C.M. 201(d) (Discussion) . . . . .	II-12
Military jurisdiction, in belligerent . . . . .	I. Para. 2(a)(3); R.C.M. 201(f)(1)(B)(i)(b) . . . . .	I-1; II-13
Search by officials of . . . . .	Mil. R. Evid. 311(b)(3) . . . . .	III-8
<b>Foreign records, authentication of</b> . . . . .	Mil. R. Evid. 902(3) . . . . .	III-49
<b>Forfeiture of issue</b>		
Argument, objections to . . . . .	R.C.M. 919(e) . . . . .	II-135
Instructions, objection to . . . . .	R.C.M. 920(f); 1005(f) . . . . .	II-136; II-140
Selection of members . . . . .	R.C.M. 912(b)(3) . . . . .	II-121
Speedy Trial, failure to raise objection. . . . .	R.C.M. 707(e) . . . . .	II-88
<b>Forfeiture of pay and allowances</b>		
General courts-martial, power to adjudge . . . . .	R.C.M. 201(f)(1)(A)(ii) . . . . .	II-13
Nonjudicial punishment		
Reserve Component Personnel . . . . .	V. Para. 5e . . . . .	V-6
Enlisted member, imposed upon . . . . .	V. Para. 5b(2)(A)(iii); 5b(2)(B)(iii) . . . . .	V-4; V-5
Generally . . . . .	V. Para. 5c(8) . . . . .	V-6
Officer, imposed upon . . . . .	V. Para. 5b(1)(B)(ii) . . . . .	V-4
Sentence to		
Execution of . . . . .	R.C.M. 1102(b)(1) . . . . .	II-161
Generally . . . . .	R.C.M. 1003(b)(2) . . . . .	II-147
<b>Forgery</b>		
Fraud against United States, in connection with . . . . .	IV. Para. 71 . . . . .	IV-109
Generally . . . . .	IV. Para. 37 . . . . .	IV-50
<b>Former jeopardy</b>		
Mistrial, effect of . . . . .	R.C.M. 915(c)(2) . . . . .	II-128
Motion to dismiss for . . . . .	R.C.M. 907(b)(2)(C) . . . . .	II-114
Nonjudicial punishment as . . . . .	V. Para. 1f(1); 1f(5) . . . . .	V-1; V-2
Withdrawal of charges, effect of . . . . .	R.C.M. 604(b) . . . . .	II-65
<b>Former punishment</b>		
Bar to trial . . . . .	R.C.M. 907(b)(2)(D)(iii) . . . . .	II-114
Effect of nonjudicial punishment . . . . .	V. Para. 1f(1); 1f(5) . . . . .	V-1; V-2
<b>Former testimony, admissibility of</b> . . . . .	Mil. R. Evid. 804(b)(1) . . . . .	III-47
<b>Forwarding charges, generally</b> . . . . .	R.C.M. 401(a) . . . . .	II-35
<i>See also Charges and specifications</i>		
<b>Fraternization, as offense</b> . . . . .	IV. Para. 101 . . . . .	IV-146
<b>Fraud</b>		
<i>See also Check; Forgery; Larceny.</i>		
Against United States . . . . .	IV. Para. 71 . . . . .	IV-109
<b>Fraudulent</b>		
Credit cards, debit cards, and other access devices; use of . . . . .	IV. Para. 65 . . . . .	IV-101
Enlistment, appointment, or separation . . . . .	IV. Para. 35 . . . . .	IV-49
<b>Frisk</b> . . . . .	Mil. R. Evid. 314(f)(2) . . . . .	III-13
<b>Gambling with subordinate</b> . . . . .	IV. Para. 102 . . . . .	IV-147



Subject	Ref.	Page
<b>General article</b> (Art. 134, UCMJ) .....	IV. Para. 91 .....	IV-135
<b>General court-martial</b>		
<i>See also</i> specific topics.		
Composition .....	R.C.M. 501(a)(1) .....	II-50
Convening authority .....	R.C.M. 407; 504(b)(1) .....	II-48; II-56
<i>See also</i> <b>Convening authority</b> .		
Counsel .....	R.C.M. 502(d) .....	II-51
Jurisdiction of .....	R.C.M. 201(f)(1) .....	II-13
Prerequisites		
Preliminary hearing .....	R.C.M. 405(a) .....	II-39
Staff judge advocate advice .....	R.C.M. 406(a) .....	II-47
Record of trial .....	R.C.M. 1112 .....	II-177
Referral of charges to .....	R.C.M. 601(e) .....	II-63
<b>General order, failure to obey</b> .....	IV. Para. 18 .....	IV-27
<b>Government</b>		
Appeal by .....	R.C.M. 908 .....	II-115
Computers, offenses concerning .....	IV. Para. 69 .....	IV-104
Fraud against .....	IV. Para. 71 .....	IV-109
<b>Government information privilege</b> .....	Mil. R. Evid. 506 .....	III-30
<b>Government officials, contempt toward</b> .....	IV. Para. 14 .....	IV-21
<b>Graft</b> .....	IV. Para. 73 .....	IV-113
<b>Grievous bodily harm, defined</b> .....	IV. Para. 77c(1)(c) .....	IV-118
<b>Guard</b>		
<i>See also</i> <b>Sentinel or lookout</b> .		
Abandoning .....	IV. Para. 10b(4) .....	IV-13
Leaving place of duty .....	IV. Para. 22 .....	IV-33
Report, as hearsay exception .....	Mil. R. Evid. 803(8) .....	III-45
<b>Guilty</b>		
Findings. <i>See</i> <b>Findings</b> .		
Pleas. <i>See</i> <b>Pleas</b> .		
<b>Habit, evidence of</b> .....	Mil. R. Evid. 406 .....	III-19
<b>Handwriting, authentication of</b> .....	Mil. R. Evid. 901(b)(2); 901(b)(3) .....	III-48
<b>Hard labor without confinement</b>		
Execution of .....	R.C.M. 1102(a) .....	II-175
General court-martial, power to adjudge .....	R.C.M. 201(f)(1)(A)(ii) .....	II-13
Sentence of court-martial .....	R.C.M. 1003(b)(6) .....	II-148
Special court-martial, power to adjudge .....	R.C.M. 201(f)(2)(B)(i) .....	II-14
Summary court-martial, power to adjudge .....	R.C.M. 1301(d)(1) .....	II-198
<b>Hazarding a vessel</b> .....	IV. Para. 47 .....	IV-62
<b>Hazardous duty, absence with intent to avoid</b> .....	IV. Para. 9b(2) .....	IV-11
<b>Hearsay. See</b> <b>Evidence, Hearsay</b> .		
<b>Heroin, offenses involving</b> .....	IV. Para. 50 .....	IV-66
<b>Homicide</b>		
Defense of another .....	R.C.M. 916(e)(5) .....	II-130
Dying declarations .....	Mil. R. Evid. 804(b)(2) .....	III-47
Manslaughter .....	IV. Para. 57 .....	IV-78
Murder .....	IV. Para. 56 .....	IV-76
Negligent homicide .....	IV. Para. 103 .....	IV-147
Self-defense .....	R.C.M. 916(e) .....	II-129
Unborn child, death of injury of .....	IV. Para. 58 .....	IV-80
<b>Housebreaking. See</b> <b>Burglary</b> .		
<b>Identification card, false</b> .....	IV. Para. 38 .....	IV-52
<b>Identification of accused</b>		
Acts preceding or following offense .....	Mil. R. Evid. 404(b) .....	III-19
By witness .....	Mil. R. Evid. 321 .....	III-16
<b>Ignorance of fact, as defense</b> .....	R.C.M. 916(j) .....	II-131
<b>Ignorance of law, as defense</b> .....	R.C.M. 916(l)(1) .....	II-132
<b>Illness</b>		
Feigning .....	IV. Para. 7 .....	IV-9
Good cause for excusal .....	R.C.M. 505(f) .....	II-59
<b>Immunity</b>		

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Attorney General of United States, authorized by . . . . .	R.C.M. 704(c)(1) . . . . .	II-81
Authority to grant . . . . .	R.C.M. 704(c) . . . . .	II-81
Contents of grant . . . . .	R.C.M. 704(d) . . . . .	II-82
Defense witness, request for . . . . .	R.C.M. 704(e) . . . . .	II-82
Effect . . . . .	Mil. R. Evid. 301(f); R.C.M. 704 . . . . .	III-4; II-81
General court-martial convening authority . . . . .	R.C.M. 704(c) . . . . .	II-81
Generally . . . . .	R.C.M. 704 . . . . .	II-81
Military judge review of decision whether to grant . . . . .	R.C.M. 704(e) . . . . .	II-82
Motion to dismiss based on grant of, to accused . . . . .	R.C.M. 907(b)(2)(D)(ii) . . . . .	II-114
Notification to accused of . . . . .	Mil. R. Evid. 301(d)(2) . . . . .	III-3
Procedure . . . . .	R.C.M. 704(d) . . . . .	II-82
Self-incrimination, effect on . . . . .	Mil. R. Evid. 301(d) . . . . .	III-3
Types of . . . . .	R.C.M. 704(a) . . . . .	II-81
<b>Impeachment</b>		
<i>See also Evidence, Impeachment.</i>		
Findings . . . . .	R.C.M. 923 . . . . .	II-138
Sentence . . . . .	R.C.M. 1008 . . . . .	II-157
<b>Impersonating a commissioned officer, warrant officer, noncommissioned officer, government agent or official . . . . .</b>	IV. Para. 39 . . . . .	IV-53
<b>Importing controlled substances . . . . .</b>	IV. Para. 50 . . . . .	IV-66
<b>Inability, as defense</b>		
Generally . . . . .	R.C.M. 916(i) . . . . .	II-131
To unauthorized absence . . . . .	IV. Para. 10c(6) . . . . .	IV-14
<b>Incapacitation for duty through drunkenness . . . . .</b>	IV. Para. 49 . . . . .	IV-65
<b>Included offenses. <i>See Lesser included offenses.</i></b>		
<b>Incrimination. <i>See Self-incrimination.</i></b>		
<b>Indecent</b>		
Exposure . . . . .	IV. Para. 63 . . . . .	IV-95
Language . . . . .	IV. Para. 105 . . . . .	IV-148
Viewing . . . . .	IV. Para. 63 . . . . .	IV-95
<b>Indecent conduct . . . . .</b>	IV. Para. 104 . . . . .	IV-148
<b>Individual counsel, generally . . . . .</b>	R.C.M. 506(b) . . . . .	II-60
<i>See also Counsel; Defense counsel.</i>		
<b>Influence</b>		
Command, unlawful		
As offense . . . . .	IV. Para. 87 . . . . .	IV-131
Generally . . . . .	R.C.M. 104 . . . . .	II-6
Impeachment of sentence . . . . .	R.C.M. 1008 . . . . .	II-157
Inquiry of members as to . . . . .	Mil. R. Evid. 606(b) . . . . .	III-40
Outside, on members . . . . .	R.C.M. 923; 1008; Mil. R. Evid. 606(b) . . . . .	II-138; II-157; III-40
<b>Informant, identify of, privilege concerning . . . . .</b>	Mil. R. Evid. 507 . . . . .	III-34
<b>Injury</b>		
Bodily Harm		
Grievous bodily harm . . . . .	IV. Para. 77c(1)(a) . . . . .	IV-103
Substantial bodily harm . . . . .	IV. Para. 77c(1)(c) . . . . .	IV-103
Substantial bodily harm . . . . .	IV. Para. 77c(1)(b) . . . . .	IV-103
Maiming . . . . .	IV. Para. 78 . . . . .	IV-123
Self-inflicted . . . . .	IV. Para. 7 . . . . .	IV-9
Unborn child, death of injury of . . . . .	IV Para. 58 . . . . .	IV-80
<b>Innocence, presumption of . . . . .</b>	R.C.M. 920(e)(5)(A) . . . . .	II-136
<b>Inquiry, court of. <i>See Court of inquiry.</i></b>		
<b>Inquiry, preliminary . . . . .</b>	R.C.M. 303 . . . . .	II-21
<b>Insanity. <i>See Mental capacity; Mental responsibility.</i></b>		
<b>Inspect, defined for discovery purposes . . . . .</b>	R.C.M. 701(h) . . . . .	II-70
<b>Inspections</b>		
<i>See also Search and seizure.</i>		
By court-martial . . . . .	R.C.M. 913(c)(3) . . . . .	II-126
Health and welfare, evidence discovered in . . . . .	Mil. R. Evid. 313(b) . . . . .	III-11
<b>Inspector general, privileged communications . . . . .</b>	Mil. R. Evid. 506(d) . . . . .	III-30
<b>Instruction, extra military . . . . .</b>	V. Para. 1g . . . . .	V-2
<b>Instruction on military justice . . . . .</b>	Art. 137, UCMJ; R.C.M. 104(a)(3)(A) . . . . .	A2-48; II-6
Deposition, authority who gives . . . . .	R.C.M. 702(d)(3)(C) . . . . .	II-72

Subject	Ref.	Page
In courts-martial, by military judge		
Accomplice testimony, joint or common trial . . . . .	Mil. R. Evid. 306 . . . . .	III-8
Contempt . . . . .	R.C.M. 809(c) . . . . .	II-99
Evidence, limited purpose . . . . .	Mil. R. Evid. 105 . . . . .	III-2
Expert testimony . . . . .	Mil. R. Evid. 702 . . . . .	III-43
Findings . . . . .	R.C.M. 920 . . . . .	II-135
Generally . . . . .	R.C.M. 801(a)(5) . . . . .	II-90
Preliminary . . . . .	R.C.M. 913(a) . . . . .	II-125
Sentencing . . . . .	R.C.M. 1005 . . . . .	II-154
Preliminary hearing, procedural instruction . . . . .	R.C.M. 405(j)(1) . . . . .	II-44
Referral, convening authority . . . . .	R.C.M. 601(e)(1) . . . . .	II-63
<b>Insubordination. <i>See</i> Contempt; Disobedience of orders;</b>		
<b>Disrespect.</b>		
<b>Intelligence, giving to the enemy . . . . .</b>	IV. Para. 33 . . . . .	IV-47
<b>Intent</b>		
<i>See also</i> specific offenses		
Evidence of		
Acts preceding or following offense . . . . .	Mil. R. Evid. 404(b) . . . . .	III-19
Statements of . . . . .	Mil. R. Evid. 803(3) . . . . .	III-44
To distribute controlled substances . . . . .	IV. Para. 50c(6) . . . . .	IV-68
<b>Interception of wire and oral communications . . . . .</b>	Mil. R. Evid. 317 . . . . .	III-16
<b>Interlocutory questions</b>		
Appeal of . . . . .	R.C.M. 908 . . . . .	II-115
Evidence, right to production of . . . . .	R.C.M. 703(e) . . . . .	II-75
Generally . . . . .	R.C.M. 801(e) . . . . .	II-91
Rulings on		
By military judge . . . . .	R.C.M. 801(e)(1) . . . . .	II-91
Confessions and admissions . . . . .	Mil. R. Evid. 304(f)(5) . . . . .	III-6
Evidence of pretrial identification of accused . . . . .	Mil. R. Evid. 321(d)(7) . . . . .	III-18
Evidence seized from accused . . . . .	Mil. R. Evid. 311(d)(7) . . . . .	III-10
Generally . . . . .	R.C.M. 801(a)(4); 801(e)(1) . . . . .	II-90; II-91
Standard of proof . . . . .	R.C.M. 801(e)(4) . . . . .	II-91
Witnesses, right to, for determining . . . . .	R.C.M. 703(b)(1) . . . . .	II-74
<b>International law, judicial notice of . . . . .</b>	Mil. R. Evid. 202(b) . . . . .	III-3
<b>Interpreter</b>		
At preliminary hearing . . . . .	R.C.M. 405(d)(4) . . . . .	II-40
Detailing . . . . .	R.C.M. 501(c) . . . . .	II-50
Disqualification . . . . .	R.C.M. 502(e)(2) . . . . .	II-54
Duties . . . . .	R.C.M. 502(e)(3)(A) . . . . .	II-55
Oath . . . . .	R.C.M. 807(b)(1)(A); 901(c) . . . . .	II-97; II-104
Payment of . . . . .	R.C.M. 502(e)(4) . . . . .	II-55
Qualifications . . . . .	R.C.M. 502(e)(1) . . . . .	II-54
Testimony given through . . . . .	Mil. R. Evid. 604 . . . . .	III-39
<b>Interrogation. <i>See</i> Self-incrimination.</b>		
<b>Interrogatories. <i>See</i> Deposition.</b>		
<b>Intoxication</b>		
<i>See also</i> Drunkenness.		
Intent, effect on . . . . .	R.C.M. 916(l)(2) . . . . .	II-132
Murder, effect on intent in . . . . .	IV. Para. 56c(2)(c); 56c(3)(c) . . . . .	IV-77; IV-78
Not defense, generally . . . . .	R.C.M. 916(l)(2) . . . . .	II-132
<b>Introduction of controlled substance . . . . .</b>	IV. Para. 50 . . . . .	IV-66
<b>Inventory . . . . .</b>	Mil. R. Evid. 313(c) . . . . .	III-12
<b>Investigator. <i>See</i> Law enforcement official.</b>		
<b>Involuntary manslaughter . . . . .</b>	IV. Para. 57 . . . . .	IV-78
<b>Jeopardy. <i>See</i> Former jeopardy.</b>		
<b>Joint, defined . . . . .</b>	R.C.M. 103(13) . . . . .	II-1
<b>Joint command or task force, jurisdiction . . . . .</b>	R.C.M. 201(e)(2) . . . . .	II-12
<b>Joint offenses. <i>See</i> Accomplices; Conspiracy; Principals.</b>		
<b>Joint trial</b>		
Counsel representing more than one accused, inquiry required . . . . .	R.C.M. 901(d)(4)(D) . . . . .	II-105

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Evidence of statement of accused .....	Mil. R. Evid. 105; 306 .....	III-2; III-8
Procedure .....	R.C.M. 812 .....	II-103
Referrals to .....	R.C.M. 601(e)(3) .....	II-63
Rights of accused .....	R.C.M. 812 .....	II-103
Sever, motion to .....	R.C.M. 906(b)(9) .....	II-112
<b>Joy riding</b> .....	IV. Para. 64 .....	IV-97
<b>Judge. See Military judge.</b>		
<b>Judge advocate</b>		
Defined .....	Art. 1(13), UCMJ; ...	A2-1
Oaths, authority to administer .....	Art. 136(a)(1), UCMJ .....	A2-48
Review of Summary Court-Martial record of trial by .....	R.C.M. 1307 .....	II-205
<b>Judge Advocate General, The</b>		
Cases reviewed by .....	R.C.M. 1201(a) .....	II-187
Cases forwarded to Court of Appeals for the Armed Forces .....	R.C.M. 1204(a)(2) .....	II-193
Cases forwarded to Court of Criminal Appeals .....	R.C.M. 1201(k)(1)(A) .....	II-189
Cases reviewed by .....	R.C.M. 1201(h); 1201(j) .....	II-188
Certification of military judge .....	R.C.M. 502(c)(1) .....	II-51
Certification of military magistrate .....	R.C.M. 502(c)(2) .....	II-51
Detailing military judge .....	R.C.M. 503(b)(1) .....	II-56
Professional supervisor of military judge, counsel .....	R.C.M. 104(a)(3)(C); 109 .....	II-6; II-8
Remission and suspension of sentence .....	R.C.M. 1201(i) .....	II-188
Review of summary courts-martial .....	R.C.M. 1307(g); 1307(h) .....	II-206
Rules of court, authority to make .....	R.C.M. 108 .....	II-8
Waiver of review, by accused .....	R.C.M. 1115 .....	II-182
<b>Judgments of courts-martial, finality of</b> .....	R.C.M. 1209 .....	II-195
<i>See also Findings; Sentence.</i>		
<b>Judicial notice</b>		
Adjudicative facts .....	Mil. R. Evid. 201 .....	III-2
Of law, foreign and domestic .....	Mil. R. Evid. 202 .....	III-2
<b>Jumping from vessel into water</b> .....	IV. Para. 11 .....	IV-16
<b>Jurisdiction</b>		
Commander's .....	V. Para. 2a .....	V-2
Courts-martial		
Accused from armed force different from convening authority .....	R.C.M. 201(e) .....	II-12
Attachment of .....	R.C.M. 202(c) .....	II-16
Civilians .....	Art. 2(a)(10), UCMJ; R.C.M. 202(a) (Discussion) .....	A2-2; II-16
Composition, affecting .....	R.C.M. 201(b)(2) .....	II-11
Constructive enlistment .....	Art. 2(c), UCMJ; R.C.M. 202(a) (Discussion) .....	A2-2; II-15
Contempt power .....	R.C.M. 809(a) .....	II-98
Convening, as affecting .....	R.C.M. 201(b)(1) .....	II-11
Discharge, effect on .....	R.C.M. 202(a) (Discussion) .....	II-16
Dismissal of charges for lack of .....	R.C.M. 907(b)(1) .....	II-113
Generally .....	I. Para. 2 .....	I-1
Joint command .....	R.C.M. 201(e)(2) .....	II-12
Law of war, offense under .....	R.C.M. 201(a)(3); 201(f)(1)(B) .....	II-11; II-13
Military offense, exclusive jurisdiction .....	R.C.M. 201(d)(1) .....	II-12
Motion to dismiss for lack of		
Burden of proof .....	R.C.M. 905(c)(2)(B) .....	II-109
Generally .....	R.C.M. 907(b)(1) .....	II-113
Not waived .....	R.C.M. 905(b)(2); 905(e)(2); 907(b)(1) .....	II-108; II-109; II-113
Nature of .....	R.C.M. 201(a) .....	II-11
Offenses subject to		
Civilian tribunals, trial in .....	R.C.M. 201(d) .....	II-12
Generally .....	R.C.M. 203 .....	II-17
Service connection of .....	R.C.M. 203 .....	II-17
Persons subject to		
Generally .....	R.C.M. 202(a) .....	II-15
Law of war, under .....	R.C.M. 202(b) .....	II-16

Subject	Ref.	Page
Reservists .....	R.C.M. 204 .....	II-17
Place of offense, effect on .....	R.C.M. 201(a)(2) .....	II-11
Place of trial, effect on .....	R.C.M. 201(a)(3) .....	II-11
Reciprocal, between service .....	R.C.M. 201(e) .....	II-12
Referral, as affecting .....	R.C.M. 201(b)(3) .....	II-11
Requisites of .....	R.C.M. 201(b) .....	II-11
Review of, accused in different armed force .....	R.C.M. 201(e)(5) .....	II-12
Subject matter .....	R.C.M. 203 .....	II-17
Courts of inquiry .....	R.C.M. 201(g); I. Para. 2(b)(3) .....	II-14; I-1
Exercise of military .....	I. Para. 2 .....	I-1
Foreign nation over visiting force .....	R.C.M. 201(d) (Discussion) .....	II-12
General courts-martial .....	R.C.M. 201(f)(1) .....	II-13
Kinds of military .....	I. Para. 2(a) .....	I-1
Memorandum of understanding concerning .....	Appendix 3 .....	A3-1
Military commission .....	I. Para. 2(b)(2) .....	I-1
Not waivable by		
Failure to raise at trial .....	R.C.M. 905(e)(2) .....	II-109
Pretrial agreement .....	R.C.M. 705(c)(1)(B) .....	II-83
Provost courts .....	I. Para. 2(b)(2) .....	I-1
Sources .....	I. Para. 1 .....	I-1
Special court-martial .....	R.C.M. 201(f)(2) .....	II-12
Summary courts-martial .....	R.C.M. 1301(c) .....	II-198
<b>Jury. See Members of a court-martial.</b>		
<b>Justification</b> , as a defense .....	R.C.M. 916(e) .....	II-129
<b>Juvenile courts</b> , conviction by, admissibility .....	Mil. R. Evid. 609(d) .....	III-41
<b>Kidnapping</b> .....	IV. Para. 74 .....	IV-114
<b>Killing. See Homicide; Manslaughter; Murder.</b>		
<b>Laboratory reports</b> , admissibility .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
<b>Language, Indecent</b> .....	IV. Para. 105 .....	IV-148
<b>Larceny</b>		
Generally .....	IV. Para. 64 .....	IV-97
Of mail .....	IV. Para. 46 .....	IV-61
<b>Law</b> , judicial notice of .....	Mil. R. Evid. 202 .....	III-2
<b>Law enforcement official</b>		
Assault on .....	IV. Para. 77 .....	IV-117
Civilian, authority to apprehend persons subject to UCMJ .....	R.C.M. 302(a)(2); 302(b)(3) .....	II-19; II-20
Interrogations by .....	Mil. R. Evid. 305 .....	III-6
Military, authority to apprehend .....	R.C.M. 302(b)(1) .....	II-19
Searches by .....	Mil. R. Evid. 311(b) .....	III-8
<b>Law of war</b>		
Courts-martial, cases under .....	R.C.M. 201(a)(3); 201(f)(1)(B) .....	II-11; II-13
Exercise of jurisdiction under .....	I. Para. 2(a)(4); R.C.M. 202(b); 203 .....	I-1; II-16; II-17
<b>Lawyer. See Counsel; Defense counsel; Trial counsel.</b>		
<b>Lawyer-client privilege.</b> .....	Mil. R. Evid. 502 .....	III-22
<b>Leading questions</b> .....	Mil. R. Evid. 611(c) .....	III-41
<b>Legal officer</b>		
<i>See also Staff judge advocate.</i>		
Defined .....	Art. 1(12), UCMJ; R.C.M. 103(23) (Discussion) .....	A2-1; II-2
Disqualified		
As member .....	R.C.M. 912(f)(1)(G) .....	II-122
As military judge .....	R.C.M. 902(b)(2) .....	II-105
<b>Lesser included offense</b>		
Findings as to		
Convening authority action approving .....	R.C.M. 1306(b)(2)(A) .....	II-203
Exceptions and substitutions, by .....	R.C.M. 918(a)(1) .....	II-133
Guilty plea, on .....	R.C.M. 910(g) .....	II-120
Generally .....	IV. Para. 3 .....	IV-3
Instructions .....	R.C.M. 920(e)(2) .....	II-136
Motions for finding of not guilty, on .....	R.C.M. 917(e) .....	II-133
Plea of guilty .....	R.C.M. 910(a)(1)(B) .....	II-117
Specific offenses, of .....	Appendix 12A .....	A12A-1

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Voting on, by members .....	R.C.M. 921(c)(5) .....	II-137
<b>Letter of reprimand.</b> <i>See Reprimand.</i>		
<b>Letters</b> , authentication, of .....	Mil. R. Evid. 901; 902 .....	III-48; III-49
<b>Liberties, conditions on</b> .....	R.C.M. 304(a)(1) .....	II-21
<i>See also Restraint</i> , pretrial.		
<b>Lineup</b> , identification at .....	Mil. R. Evid. 321 .....	III-16
<b>Liquor.</b> <i>See Drunk.</i>		
<b>Logs</b> , as records, admissibility .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
<b>Loitering on post by sentinel or lookout</b> .....	IV. Para. 22 .....	IV-33
<b>Lookout</b>		
Assault on .....	IV. Para. 77 .....	IV-117
Misbehavior as .....	IV. Para. 22 .....	IV-33
Offenses by or against .....	IV. Para. 22; 23 .....	IV-33; IV-35
<b>Looting and pillaging</b> .....	IV. Para. 44 .....	IV-58
<b>Losing military property</b> .....	IV. Para. 43 .....	IV-57
<b>Loss</b>		
Notes of recordings of proceedings, of .....	R.C.M. 1112(d) .....	II-178
Records of trial, of .....	R.C.M. 1112(d) .....	II-178
<b>Lost property</b> , subject to larceny .....	IV. Para. 64c(1)(i)(i) .....	IV-100
<b>Magistrate</b> , power to authorize search .....	Mil. R. Evid. 315(d)(2) .....	III-15
<b>Mail</b>		
Obscene matters, depositing in .....	IV. Para. 61 .....	IV-91
Taking, opening, secreting, destroying, or stealing .....	IV. Para. 46 .....	IV-61
<b>Maiming</b> .....	IV. Para. 78 .....	IV-123
Unborn child, death of injury of .....	IV. Para. 58 .....	IV-80
<b>Making false claim</b> .....	IV. Para. 71 .....	IV-109
<b>Malingering</b> .....	IV. Para. 7 .....	IV-9
<b>Maltreatment of person subject to orders</b> .....	IV. Para. 19 .....	IV-29
<b>Manslaughter</b>		
<i>See also Homicide; Murder.</i>		
Assault with intent to commit voluntary .....	IV. Para. 77 .....	IV-117
Generally .....	IV. Para. 57 .....	IV-78
Unborn child, death of injury of .....	IV. Para. 58 .....	IV-80
<b>Manual for Courts-Martial</b>		
Structure and application .....	I. Para. 4 .....	I-1
Use of, by court members .....	R.C.M. 502(a)(2)(A) .....	II-50
<b>Manufacturing controlled substances</b> .....	IV. Para. 50 .....	IV-66
<b>Marijuana</b> , offenses involving .....	IV. Para. 50 .....	IV-66
<b>Martial law</b> .....	I. Para. 2(a)(2) .....	I-1
<b>Marital privilege</b> .....	Mil. R. Evid. 504 .....	III-24
<b>Marital</b> , privileged communication .....	Mil. R. Evid. 504 .....	III-24
<b>Mast.</b> <i>See Nonjudicial punishment.</i>		
<b>Members of a court-martial</b>		
Absence		
Announcement concerning .....	R.C.M. 813(a)(5) .....	II-103
Generally .....	R.C.M. 805(b); 901(e) .....	II-95; II-105
Announcement of .....	R.C.M. 813(a)(4) .....	II-103
Armed force or command different from convening authority .....	R.C.M. 503(a)(3) .....	II-56
Challenges .....	R.C.M. 912 .....	II-120
Change of .....	R.C.M. 505(c) .....	II-58
Counsel, disqualified to act as .....	R.C.M. 502(d)(3)(D) .....	II-52
Defined .....	R.C.M. 103(14) .....	II-2
Detailing .....	R.C.M. 503(a) .....	II-55
Disqualification .....	R.C.M. 912(f) .....	II-122
Duties .....	R.C.M. 502(a)(2) .....	II-50
Enlisted		
Absence of .....	R.C.M. 903(c)(1) .....	II-107
Detailing .....	R.C.M. 503(a)(2) .....	II-55
Request for .....	R.C.M. 903 .....	II-106
Evaluation of, limitations .....	R.C.M. 104(b)(1) .....	II-7
Evidence, request for .....	R.C.M. 913(c)(1)(F) .....	II-126
Examination of .....	R.C.M. 912(d) .....	II-121
Excusal .....	R.C.M. 505(c); 912(f)(3); 912(g)(1) .....	II-58; II-122; II-

Subject	Ref.	Page
		123
General court-martial, number required	R.C.M. 501(a)(1)	II-45
Influence, unlawful	R.C.M. 104	II-6
Manual for Courts-Martial, use of	R.C.M. 502(a)(2)(A)	II-50
New members, procedure	R.C.M. 805(d)(1)	II-95
New trial	R.C.M. 810(b)(1)	II-101
Notes of	R.C.M. 921(b)	II-137
Oath	R.C.M. 807(b)(1)(A)	II-97
Other trial	R.C.M. 810(b)(1)	II-101
Presence at court-martial	R.C.M. 805(b); 901(e); 921(a); 1006(a)	II-95; II-105; II-137; II-155
President	R.C.M. 502(b)	II-51
<i>See also President of court-martial.</i>		
Pretrial agreement, not informed of	R.C.M. 705(f)	II-85
Qualifications	R.C.M. 502(a)(1)	II-50
Rehearings	R.C.M. 810(b)(1)	II-101
Selection, challenge of	R.C.M. 912(b)	II-121
Sessions without	R.C.M. 803	II-93
Special court-martial, number required	R.C.M. 501(a)(2); 805(b)	II-50; II-95
Waiver of, by accused		
Generally	R.C.M. 903	II-106
Pretrial agreement, in	R.C.M. 705(c)(2)(E)	II-84
Witness, incompetent as	Mil. R. Evid. 606	III-40
<b>Mental capacity</b>		
Generally	R.C.M. 909	II-116
Inquiry into	R.C.M. 706	II-86
Lack of, effect on		
Action of convening authority	R.C.M. 909(f); 1105(c)(4); 1306(b)(5)	II-117; II-166; II- 204
Appellate review	R.C.M. 1203(e)(5)	II-191
Death sentence	R.C.M. 1102(c)(1)	II-163
Speedy trial	R.C.M. 707(c)	II-88
Motions relating to	R.C.M. 906(b)(14)	II-113
Post-trial hearing	R.C.M. 1102A	II-147
Presumption of	R.C.M. 909(b)	II-116
Standard	R.C.M. 909(c)	II-116
<b>Mental disease or defect. <i>See</i> Mental responsibility.</b>		
<b>Mental examination</b>		
Discovery of		
By defense	R.C.M. 701(a)(2)(B); Mil. R. Evid. 513	II-67; III-36
By prosecution	R.C.M. 701(a)(4); Mil. R. Evid. 513	II-69; III-36
Of accused	R.C.M. 706	II-86
Speedy trial, effect on	R.C.M. 707(c)	II-88
<b>Mental Responsibility</b>		
Discovery of defense of	R.C.M. 701(b)(2)	II-68
Disease or defect, defined	R.C.M. 916(k)(1)	II-131
Failure to disclose intent to raise	R.C.M. 701(g)(3)	II-70
Generally	Art. 50a, UCMJ; R.C.M. 916(k)	A2-18; II-131
Inquiry into	R.C.M. 706	II-86
Motions relating to	R.C.M. 906(b)(14)	II-113
Notice of defense involving	R.C.M. 701(b)(2)	II-68
Partial	R.C.M. 916(k)(2)	II-132
Post-trial hearing	R.C.M. 1105	II-165
Presumption of	R.C.M. 916(k)(3)(A)	II-132
Withdrawn, effect of	R.C.M. 701(b)(5)	II-69
<b>Midshipman</b>		
Conduct unbecoming and officer and gentleman	IV. Para. 90	IV-134
Jurisdiction of courts-martial, subject to	Art. 2(a)(2), UCMJ; R.C.M. 202(a) (Discussion)	A2-1; II-15
Summary courts-martial, not subject to trial by	R.C.M. 1301(c)(1)	II-198
<b>Military commission</b>		
Aiding the enemy, trial by	IV. Para. 33	IV-47

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Concurrent jurisdiction, other military tribunals	R.C.M. 201(g)	II-14
Contempt	Art. 48(2)(B), UCMJ	A2-17
Exercise of jurisdiction	I. Para. 2(b)(2)	I-1
Procedure	I. Para. 2(b)(2)	I-1
Spying, trial by	IV. Para. 31	IV-44
<b>Military government</b>	I. Para. 2(a)(3)	I-1
<b>Military judge</b>		
Absence of, effect	R.C.M. 805(a)	II-95
Accused, advice to concerning		
Appellate rights	R.C.M. 1010	II-158
Counsel rights	R.C.M. 901(d)(4)	II-104
Alone, trial by		
Capital case, prohibited	R.C.M. 201(f)(1)(C)	II-13
Request for	R.C.M. 903	II-106
Waiver of right to		
Generally	R.C.M. 903(e)	II-108
Pretrial agreement, in	R.C.M. 705(c)(2)(E)	II-84
Announcement of	R.C.M. 813(a)(3); 901(b)	II-103; II-104
Armed force different from accused or convening authority	R.C.M. 201(e)(4)	II-12
Assembly, announcement of	R.C.M. 911	II-120
Certification of record of trial	R.C.M. 1112(b)	II-178
Challenge of	R.C.M. 902	II-105
Change of	R.C.M. 505(e)	II-59
Conferences, with parties	R.C.M. 802	II-92
Confinement, pretrial		
Authority to order release from	R.C.M. 305(g)	II-24
Review of	R.C.M. 305(j)	II-26
Contempt, authority to exercise	R.C.M. 801(b)(2); 809(c)	II-91; II-99
Control of proceedings	R.C.M. 801(a)(3); 804(b)	II-90; II-93
Counsel		
Disqualification of	R.C.M. 901(d)(3)	II-104
Disqualified to act as	R.C.M. 502(d)(3)(C)	II-52
Oath, administering	R.C.M. 901(d)(5)	II-105
Defense counsel, permission to withdraw	R.C.M. 506(c)	II-60
Defined	R.C.M. 103(15)	II-2
Deposition		
Authority to order	R.C.M. 702(b)	II-71
Authority to prohibit	R.C.M. 702(j)(2)	II-74
Detail	R.C.M. 503(b)	II-56
Discovery, authority to regulate	R.C.M. 701(g)	II-70
Disqualification	R.C.M. 902	II-105
Docketing	R.C.M. 801(a)(1)	II-90
Duties generally	R.C.M. 801	II-90
Evaluation of	R.C.M. 104(b)(2)	II-7
Guilty plea inquiry	R.C.M. 910(c)	II-118
Instruction. <i>See</i> <b>Instructions.</b>		
Interlocutory questions, rulings on	R.C.M. 801(a)(4)	II-90
Mistrial	R.C.M. 915	II-128
Motions. <i>See</i> <b>Motions.</b>		
New trial	R.C.M. 810(b)(2)	II-90
Oath	R.C.M. 807(b)(1)	II-97
Other trial	R.C.M. 810(b)(2)	II-101
Power to authorize search	Mil. R. Evid. 315(d)(2)	III-15
Presence of, required	R.C.M. 805(a)	II-95
Pretrial agreement inquiry	R.C.M. 910(f)	II-119
Questions of law, ruling on	R.C.M. 801(a)(4)	II-90
Rehearings	R.C.M. 810(b)(2)	II-101
Reopening case	R.C.M. 913(c)(5)	II-126
Restraint of accused at trial	R.C.M. 804(e)(3)	II-95
Review of pretrial confinements	R.C.M. 305(j)	II-26
Rules of court	R.C.M. 108	II-8
Rulings by	R.C.M. 801(e)(1)	II-91



Subject	Ref.	Page
Session, call to order .....	R.C.M. 901(a) .....	II-104
Stipulation .....	R.C.M. 811 .....	II-102
Supervision of .....	R.C.M. 109 .....	II-8
Unavailability, effect on speedy trial .....	R.C.M. 707(c) .....	II-88
Views or inspections .....	R.C.M. 913(c)(3) .....	II-126
Witness		
Disqualified from acting as .....	R.C.M. 902(b)(3) .....	II-105
Incompetent .....	Mil. R. Evid. 605 .....	III-40
<b>Military Law</b>		
Generally .....	I. Para. 2(a)(1) .....	I-1
Nature and purpose .....	I. Para. 3 .....	I-1
<b>Military police. See Law enforcement official</b>		
<b>Military property, sale, loss, damage, destruction, or wrongful disposition of</b> .....	IV. Para. 43 .....	IV-57
<b>Military records, authentication of</b> .....	Mil. R. Evid. 901; 902 .....	III-48; III-49
<b>Military Rules of Evidence</b> .....	Part III .....	III-1
<i>See also Evidence.</i>		
<b>Military tribunals</b>		
Concurrent jurisdiction .....	R.C.M. 201(g) .....	II-14
Kinds of .....	I. Para. 2(b) .....	I-1
<b>Minor offenses</b>		
Generally .....	V. Para. 1e .....	V-1
Prior punishment for, barring trial .....	R.C.M. 907(b)(2)(D)(iii) .....	II-114
<b>Minors, competence as witnesses</b> .....	Mil. R. Evid. 601 .....	III-39
<b>Misbehavior before the enemy</b> .....	IV. Para. 27 .....	IV-38
<b>Misbehavior of sentinel or lookout</b> .....	IV. Para. 22 .....	IV-33
<b>Misconduct</b>		
Prisoner of war .....	IV. Para. 26 .....	IV-37
Uncharged		
Action by court-martial on .....	R.C.M. 801(d) .....	II-91
Admissibility of .....	Mil. R. Evid. 404(b) .....	III-19
Instruction .....	Mil. R. Evid. 105 .....	III-2
<b>Misprision of serious offense</b> .....	IV. Para. 84 .....	IV-129
<b>Missing movement</b> .....	IV. Para. 11 .....	IV-16
<b>Mistake of fact</b>		
Checks, insufficient funds .....	IV. Para. 70c(18) .....	IV-108
Generally .....	R.C.M. 916(j) .....	II-131
<b>Mistake of law</b> .....	R.C.M. 916(l)(1) .....	II-132
<b>Mistrial</b>		
Effect .....	R.C.M. 915(c) .....	II-128
Grounds for .....	R.C.M. 915(a) .....	II-128
Partial .....	R.C.M. 915(a) .....	II-128
Procedure .....	R.C.M. 915(b) .....	II-128
Remedy for failure to produce statement .....	R.C.M. 914(e) .....	II-127
<b>Mitigation</b>		
Evidence in sentencing .....	R.C.M. 1001(d)(1)(B) .....	II-143
<b>Modification of initial action for Summary Court-Martial</b> ..	R.C.M. 1306(d)(1); 1306(e) .....	II-204
<b>Motions</b>		
Appropriate relief		
Bill of particulars .....	R.C.M. 906(b)(6) .....	II-111
Charges and specifications .....	R.C.M. 905(b)(1); 906(b)(4) .....	II-108; II-111
Continuance .....	R.C.M. 906(b)(1) .....	II-111
Counsel .....	R.C.M. 905(b)(6); 906(b)(2) .....	II-109; II-111
Defined .....	R.C.M. 906(a) .....	II-108
Discovery .....		II-108; II-112;
Evidence, admissibility of .....	R.C.M. 905(b)(4); 906(b)(7); 914(a)	II-127
Generally .....	R.C.M. 906(b)(13) .....	II-113
Mental capacity .....	R.C.M. 906 .....	II-111
Mental responsibility .....	R.C.M. 906(b)(14) .....	II-113
Mental responsibility .....	R.C.M. 906(b)(14) .....	II-113
Multiplicity .....	R.C.M. 906(b)(12) .....	II-112
Place of trial, change of .....	R.C.M. 906(b)(11) .....	II-112
Preliminary hearing .....	R.C.M. 905(b)(1); 906(b)(3) .....	II-108; II-111

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Pretrial advice .....	R.C.M. 905(b)(1); 906(b)(3) .....	II-108; II-111
Severance of		
Accused .....	R.C.M. 905(b)(5); 906(b)(9) .....	II-108; II-112
Charges .....	R.C.M. 905(b)(5); 906(b)(10) .....	II-108; II-112
Duplicitous specification .....	R.C.M. 906(b)(5) .....	II-111
Burden of proof .....	R.C.M. 905(c) .....	II-109
Convening authority, submission to .....	R.C.M. 905(j) .....	II-110
Defined .....	R.C.M. 905(a) .....	II-108
Final determination, effect of .....	R.C.M. 905(g) .....	II-109
For finding of not guilty .....	R.C.M. 917 .....	II-132
Generally .....	R.C.M. 905 .....	II-108
Pretrial .....	R.C.M. 905(b) .....	II-108
Reconsideration .....	R.C.M. 905(f) .....	II-109
Rulings on .....	R.C.M. 905(d) .....	II-109
Scheduling .....	R.C.M. 801(a)(3) .....	II-90
Selection of members .....	R.C.M. 912(b)(1) .....	II-121
Special findings .....	R.C.M. 918(b) .....	II-134
<i>See also</i> <b>Special findings.</b>		
Speedy trial, exclusion of time for .....	R.C.M. 707(c)(1) .....	II-88
To dismiss		
Defined .....	R.C.M. 907(a) .....	II-113
Former jeopardy .....	R.C.M. 907(b)(2)(C) .....	II-114
Grounds generally .....	R.C.M. 907(b) .....	II-113
Immunity .....	R.C.M. 907(b)(2)(D)(ii) .....	II-114
Jurisdiction .....	R.C.M. 905(c)(2)(B); 907(b)(1) .....	II-109; II-113
Multiplicity .....	R.C.M. 907(b)(3)(B) .....	II-114
Nonwaivable ground .....	R.C.M. 907(b)(1) .....	II-113
Pardon .....	R.C.M. 907(b)(2)(D)(i) .....	II-114
Prior punishment .....	R.C.M. 907(b)(2)(D)(iii) .....	II-114
Specification		
Defective .....	R.C.M. 907(b)(3)(A) .....	II-114
Failure to state offense .....	R.C.M. 907(b)(2)(E) .....	II-114
Speedy trial .....	R.C.M. 905(c)(2)(B); 907(b)(2)(A) .....	II-109; II-113
Statute of limitations .....	R.C.M. 905(c)(2)(B); 907(b)(2)(B) .....	II-109; II-113
Waivable .....	R.C.M. 907(b)(2) .....	II-113
To suppress		
Procedure concerning		
Confessions and admissions .....	Mil. R. Evid. 304 .....	III-4
Eyewitness identification .....	Mil. R. Evid. 321 .....	III-16
Search and seizure .....	Mil. R. Evid. 311 .....	III-8
Production of statements for .....	R.C.M. 905(k) .....	II-110
Time for .....	R.C.M. 905(b)(3) .....	II-108
Waiver		
Conditional guilty plea, effect on .....	R.C.M. 910(a)(2) .....	II-117
Generally .....	R.C.M. 905(e) .....	II-109
Written		
Discretion of military judge .....	R.C.M. 905(a); 905(h) .....	II-108; II-110
Generally .....	R.C.M. 905(h) .....	II-110
Service of .....	R.C.M. 905(i) .....	II-110
<b>Motive</b>		
Other crimes, wrongs, or acts to prove .....	Mil. R. Evid. 404(b) .....	III-19
Statement of, as hearsay exception .....	Mil. R. Evid. 803(3) .....	III-44
To misrepresent, as impeachment .....	Mil. R. Evid. 608(c) .....	III-40
<b>Motor vehicle. <i>See</i> Vehicle.</b>		
<b>Multiplicity</b>		
Conspiracy, with substantive offense, not .....	IV. Para. 5c(8) .....	IV-7
Generally .....	R.C.M. 307(c)(4); 1003(c)(1)(C) .....	II-32; II-150
Remedies available		
Dismissal .....	R.C.M. 907(b)(3)(B) .....	II-114
Sentence limitation .....	R.C.M. 906(b)(12); 1003(c)(1)(C) .....	II-112; II-150
<b>Murder</b>		
Assault with intent to commit .....	IV. Para. 77 .....	IV-117

Subject	Ref.	Page
Generally .....	IV. Para. 56 .....	IV-76
Unborn child, death of injury of .....	IV. Para. 58 .....	IV-80
<b>Mutiny</b>		
Attempted .....	IV. Para. 4c(6)(b); 21 .....	IV-5; IV-31
Generally .....	IV. Para. 21 .....	IV-31
Solicitation to commit .....	IV. Para. 6 .....	IV-7
<b>Narcotics</b> , offenses involving .....	IV. Para. 50 .....	IV-66
<b>National security</b> , disposition of charges affecting .....	R.C.M. 401(d); 407(b) .....	II-36; II-49
<b>Neglects to prejudice of good order and discipline</b> .....	IV. Para. 91c(2) .....	IV-136
<b>Negligence</b>		
Culpable, involuntary manslaughter .....	IV. Para. 57c(2)(a) .....	IV-79
Wanton .....	IV. Para. 56c(4) .....	IV-78
<b>Negligent homicide</b> .....	IV. Para. 103 .....	IV-147
<b>Neutral and detached officer</b>		
Pretrial confinement, reviewed by .....	R.C.M. 305(i) .....	II-25
Search authorization, required for .....	Mil. R. Evid. 315(d) .....	III-14
<b>Neutral powers, citizens of, communicating with enemy</b> ..	IV. Para. 33c(6)(c) .....	IV-48
<b>New trial</b>		
Action by convening authority for Summary Court-		
Martial .....	R.C.M. 1306(c) .....	II-204
Action when granted .....	R.C.M. 1210(h) .....	II-197
Grounds for .....	R.C.M. 1210(f) .....	II-196
Petition for .....	R.C.M. 1210(b); 1210(c); 1210(d); 1210(e); 1210(g) .....	II-196; II-197
Procedures for .....	R.C.M. 810 .....	II-100
<b>Noncommissioned and petty officer</b>		
Apprehend, authority to .....	R.C.M. 302(b)(2) .....	II-20
Assault on		
In execution of office .....	IV. Para. 17 .....	IV-25
Not in execution of office .....	IV. Para. 77 .....	IV-117
Disobedience of .....	IV. Para. 17 .....	IV-25
Disrespect toward .....	IV. Para. 17 .....	IV-25
<b>Noncompliance with procedural rules</b> , as offense .....	IV. Para. 87 .....	IV-131
<b>Nonjudicial punishment</b> (Art. 15, UCMJ)		
Administrative measures, relationship with .....	V. Para. 1g .....	V-2
Appeal of		
Action by superior authority .....	V. Para. 7f .....	V-8
Format of .....	V. Para. 7c .....	V-8
Generally .....	V. Para. 7a .....	V-8
Legal review .....	V. Para. 7e .....	V-8
Time limit .....	V. Para. 7d .....	V-8
Who may act on .....	V. Para. 7b .....	V-8
Authority, commander's .....	I. Para. 2(b)(4); V. Para 1a; 2a ..	I-1; V-1; V-2
Double punishment prohibited .....	V. Para. 1f(1) .....	V-1
Effect of errors .....	V. Para. 1i .....	V-2
Generally .....	Part V .....	V-1
Increase in punishment prohibited .....	V. Para. 1f(2) .....	V-1
Limitations on .....	V. Para. 1f .....	V-1
Minor offenses		
Generally .....	V. Para. 1e .....	V-1
Trial by court-martial barred .....	R.C.M. 907(b)(2)(D)(iii) .....	II-114
Mitigation of punishment .....	V. Para. 6b .....	V-7
Nature .....	V. Para. 1b .....	V-1
Offense, disposition of .....	R.C.M. 306(c)(3); V. Para. 1 ..	II-28; V-1
Policy .....	V. Para. 1d .....	V-1
Procedure .....	V. Para. 4 .....	V-2
Punishments		
Admonition .....	V. Para. 5c(1) .....	V-5
Arrest in quarters .....	V. Para. 5c(3) .....	V-5
Combinations, limitations .....	V. Para. 5d .....	V-6
Confinement .....	V. Para. 5c(5) .....	V-5
Correctional custody .....	V. Para. 5c(4) .....	V-5
Extra duties .....	V. Para. 5c(6) .....	V-6

INDEX

MCM 2019

Subject	Ref.	Page
Forfeiture of pay	V. Para. 5c(8)	V-6
Limitations on	V. Para. 1f	V-1
Maximum authorized	V. Para. 5b	V-4
Reduction in grade	V. Para. 5c(7)	V-6
Reprimand	V. Para. 5c(1)	V-5
Restriction	V. Para. 5c(2)	V-5
Purpose	V. Para. 1c	V-1
Records of punishment	V. Para. 8	V-9
Remission of punishment	V. Para. 6c	V-7
Setting aside punishment	V. Para. 6d	V-8
Suspension of punishment	V. Para. 6a	V-7
Trial by court-martial, right to demand	V. Para. 3	V-2
Vessel, attached to or embarked in	V. Para. 3	V-2
Who may impose		
Commander	V. Para. 2a	V-2
Officer in charge	V. Para. 2b	V-2
Principal assistant	V. Para. 2c	V-2
<b>Nonmilitary property, waste, spoilage, or destruction</b>	IV. Para. 45	IV-60
<b>Nonprivileged communications</b>	Mil. R. Evid. 510	III-35
<b>Oaths</b>		
Affirmation, included in	R.C.M. 807(a)	II-97
Authority to administer	Art. 136, UCMJ	A2-48
Defense counsel	R.C.M. 807(b)(1)(A)	II-97
Defined	R.C.M. 807(a)	II-97
Deposition interpreter	R.C.M. 702(e)(4)	II-72
Deposition reporter	R.C.M. 702(e)(4)	II-72
Deposition witness	R.C.M. 702(e)(4)	II-72
Escort	R.C.M. 807(b)(1)(A)	II-97
False swearing	IV. Para. 41	IV-55
Forms of	R.C.M. 807(b)(2) (Discussion)	II-98
Fraud against United States, in connection with	IV. Para. 71	IV-109
Generally	R.C.M. 807	II-97
Guilty plea, accused	R.C.M. 910(c)(5)	II-118
Interpreter	R.C.M. 807(b)(1)(A)	II-97
Members	R.C.M. 807(b)(1)(A)	II-97
Military judge	R.C.M. 807(b)(1)(A)	II-97
Perjury	IV. Para. 81	IV-127
Preferral of charges	R.C.M. 307(b)	II-29
Preliminary hearing, witnesses	R.C.M. 405(j)(2)(A)	II-44
Probable cause information, not required	Mil. R. Evid. 315(f)(2)	III-15
Procedure	R.C.M. 807(b)(2)	II-98
Regulations of Secretary concerned	Art. 42(a), UCMJ; R.C.M. 807(b)(1)(A) (Discussion)	A2-15; II-97
Reporter	R.C.M. 807(b)(1)(A)	II-97
Trial counsel	R.C.M. 807(b)(1)(A)	II-97
Witnesses	R.C.M. 807(b)(1)(B); Mil. R. Evid. 603	II-97; III-39
<b>Obedience to orders, as a defense</b>	R.C.M. 916(d)	II-129
<b>Objection</b>		
<i>See also Evidence, Objections; Motions.</i>		
To evidence at preliminary hearing	R.C.M. 405(i)(1)(B)	II-43
To trial by summary court-martial	R.C.M. 1303	II-199
Waiver, generally	R.C.M. 905(e); Mil. R. Evid. 103(a)	II-109; III-1
<b>Obscene</b>		
<i>See also Indecent.</i>		
Mail	IV. Para. 61	IV-91
<b>Obstructing justice</b>		
Generally	IV. Para. 83	IV-129
Solicitation distinguished	IV. Para. 6c(3)	IV-8
<b>Occupied territory</b>		
Military jurisdiction exercised in	I. Para. 2(a)(3)	I-1
Violation of laws of	R.C.M. 201(f)(1)(B)(i)(b)	II-13
<b>Offenses</b>		

Subject	Ref.	Page
<i>See also Specific offenses.</i>		
Disposition of .....	R.C.M. 306 .....	II-27
Failure to report .....	IV. Para. 2c(2) .....	IV-3
Joinder of .....	R.C.M. 601(e)(2) .....	II-63
Jurisdiction of courts-martial over .....	R.C.M. 203 .....	II-17
Minor, disposition by nonjudicial punishment .....	V. Para. 1e .....	V-1
Report of .....	R.C.M. 301 .....	II-19
Uncharged, action on .....	R.C.M. 801(d) .....	II-91
<b>Offer of proof</b> .....	Mil. R. Evid. 103(a)(2); 103(b) ...	III-1
<b>Office hours.</b> <i>See Nonjudicial Punishment.</i>		
<b>Officer</b>		
Commissioned		
<i>See also Commissioned officer.</i>		
Accused as, composition of court-martial .....	R.C.M. 502(a)(1) .....	II-50
Apprehend, authority to .....	R.C.M. 302(b)(2) .....	II-20
Assault on		
In execution of office .....	IV. Para. 15 .....	IV-21
Not in execution of office .....	IV. Para. 77 .....	IV-117
Conduct unbecoming .....	IV. Para. 90 .....	IV-134
Dismissal by general court-martial .....	R.C.M. 1003(b)(8)(A) .....	II-149
Dismissal by President, right to request trial by court-martial .....	R.C.M. 107 .....	II-8
Disobedience of superior .....	IV. Para. 16 .....	IV-24
Disrespect toward superior .....	IV. Para. 15 .....	IV-21
Restraint of, pretrial .....	R.C.M. 304(b)(1) .....	II-22
In charge		
Authority to impose nonjudicial punishment .....	V. Para. 2b .....	V-2
Defined .....	Art. 1(4), UCMJ; R.C.M. 103(23) (Discussion) .....	A2-1; II-2
Noncommissioned. <i>See Noncommissioned and petty officer.</i>		
Petty. <i>See Petty officer.</i>		
Warrant. <i>See Warrant officer.</i>		
<b>Official communications, privileges</b> .....	Mil. R. Evid. 505; 506 .....	III-24; III-30
<b>Official documents</b>		
<i>See also Evidence.</i>		
False .....	IV. Para. 41 .....	IV-55
<b>Official records</b>		
<i>See also Evidence.</i>		
Absence of, evidence .....	Mil. R. Evid. 803(7); 803(10) .....	III-45
Admissibility as evidence, general rule .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Attesting certificates .....	Mil. R. Evid. 902(4a) .....	III-49
Authentication .....	Mil. R. Evid. 901; 902 .....	III-48; III-49
Extract copies .....	Mil. R. Evid. 1006 .....	III-51
Logs .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Military records .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Morning report .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Notes or memoranda, composed from .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Official publication of .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Self-authentication .....	Mil. R. Evid. 902 .....	III-49
Service record .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
Summaries of official records .....	Mil. R. Evid. 803(6); 803(8); 1006 .....	III-45; III-51
Unit personnel diary .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
<b>Officials, contempt toward</b> .....	IV. Para. 14 .....	IV-21
<b>Official statement, false</b> .....	IV. Para. 41 .....	IV-55
<b>Opening mail</b> .....	IV. Para. 46 .....	IV-61
<b>Opinion evidence.</b> <i>See Evidence, Opinion.</i>		
<b>Orderly</b>		
Detailing .....	R.C.M. 501(e) .....	II-50
Disqualification .....	R.C.M. 502(e)(2); 502(f) .....	II-54; II-55
Duties .....	R.C.M. 502(e)(3)(C) .....	II-55
Qualifications .....	R.C.M. 502(e)(1) .....	II-54
<b>Orders</b>		

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<i>See also Convening orders; Promulgating orders.</i>		
Failure to obey .....	IV. Para. 18 .....	IV-27
General orders, disobedience of .....	IV. Para. 18 .....	IV-27
Lawfulness .....	IV. Para. 16c(2)(a) .....	IV-24
Obedience to, as defense .....	R.C.M. 916(d) .....	II-129
Willful disobedience .....	IV. Paras. 16; 17 .....	IV-24; IV-25
<b>Other sexual misconduct</b> .....	IV. Para. 63 .....	IV-95
<b>Other trial</b>		
Convening authority ordering in Summary Court-Martial ..	R.C.M. 1306(c) .....	II-204
Defined .....	R.C.M. 810(e) .....	II-101
Procedure .....	R.C.M. 810(a); 810(b); 810(c) .....	II-100; II-101
Sentence limitations .....	R.C.M. 810(d) .....	II-101
<b>Overt acts</b>		
Attempts .....	IV. Para. 4c(1); 4c(2) .....	IV-5
Conspiracy .....	IV. Para. 5c(4) .....	IV-6
<b>Pandering</b>		
Forcible .....	IV. Para. 63 .....	IV-95
Generally .....	IV. Para. 106 .....	IV-148
Solicitation distinguished .....	IV. Para. 6c(3) .....	IV-8
<b>Pardon</b> , motion to dismiss based on .....	R.C.M. 907(b)(2)(D)(i) .....	II-114
<b>Parole</b> , improper use of .....	IV. Para. 29 .....	IV-42
<b>Party</b>		
To conspiracy .....	IV. Para. 5c(1) .....	IV-6
To court-martial, defined .....	R.C.M. 103(17) .....	II-2
To offense .....	IV. Para. 1b(1); 1b(2) .....	IV-1
<b>Pass, false or unauthorized</b> .....	IV. Para. 38 .....	IV-52
<b>Patient-doctor</b> , no privileged communication .....	Mil. R. Evid. 501(d) .....	III-22
<b>Peace, breach of</b> .....	IV. Para. 54 .....	IV-75
<b>Peremptory challenges</b> .....	R.C.M. 912(g) .....	II-123
<b>Perjury</b>		
<i>See also False swearing.</i>		
Generally .....	IV. Para. 81 .....	IV-127
Guilty plea inquiry, statements during .....	R.C.M. 910(c)(5) .....	II-118
Immunity, not extending to .....	R.C.M. 704(b) .....	II-81
New trial, grounds for .....	R.C.M. 1210(f)(3) (Discussion) .....	II-197
Subornation of .....	IV. Para. 82 .....	IV-128
<b>Permits, false or unauthorized</b> .....	IV. Para. 38 .....	IV-52
<b>Perpetrator</b>		
<i>See also Principals</i>		
Defined .....	IV. Para. 1b(2)(a) .....	IV-1
<b>Personnel of courts-martial</b>		
<i>See also specific topics.</i>		
Announcement of .....	R.C.M. 813 .....	II-103
Censure of, prohibited .....	R.C.M. 104 .....	II-6
Changes of .....	R.C.M. 505 .....	II-58
Detail of .....	R.C.M. 503 .....	II-55
Generally .....	R.C.M. 501 .....	II-50
Qualification and duties .....	R.C.M. 502 .....	II-50
<b>Personnel records</b> , admissibility .....	Mil. R. Evid. 803(6); 803(8) .....	III-45
<b>Petty officer</b>		
Apprehend, authority to .....	R.C.M. 302(b)(2) .....	II-20
Assault on		
In execution of office .....	IV. Para. 17 .....	IV-25
Not in execution of office .....	IV. Para. 77 .....	IV-117
Contempt toward .....	IV. Para. 17 .....	IV-25
Disobedience .....	IV. Para. 17 .....	IV-25
Disrespect toward .....	IV. Para. 17 .....	IV-25
<b>Photographs</b>		
Defined .....	Mil. R. Evid. 1001(c) .....	III-50
Disclosure by defense .....	R.C.M. 701(b)(3) .....	II-69
Disclosure upon defense request .....	R.C.M. 701(a)(2)(A) .....	II-67
Taking in courtroom, prohibited .....	R.C.M. 806(c) .....	II-97
<b>Physical examination</b>		

Subject	Ref.	Page
Disclosure by defense .....	R.C.M. 701(b)(4) .....	II-69
Disclosure upon defense request .....	R.C.M. 701(a)(2)(B) .....	II-67
Not an unlawful search .....	Mil. R. Evid. 312(f) .....	III-11
<b>Physical inability</b> , as a defense .....	R.C.M. 916(i) .....	II-131
<b>Physician</b> , no privileged communication to .....	Mil. R. Evid. 501(d) .....	III-22
<b>Pillaging</b> .....	IV. Paras. 27; 44 .....	IV-38; IV-58
<b>Place of court-martial</b>		
Change of .....	R.C.M. 906(b)(11) .....	II-112
Convening authority		
Designating .....	R.C.M. 504(d)(1); 504(d)(2) .....	II-57; II-58
Responsibility .....	R.C.M. 504(e) .....	II-58
Jurisdiction, not affected .....	R.C.M. 201(a)(3) .....	II-11
<b>Plain error</b> .....	Mil. R. Evid. 103(f) .....	III-1
<b>Plan or design of accused</b> , evidence of .....	Mil. R. Evid. 404(b) .....	III-19
<b>Pleadings</b> . <i>See</i> <b>Charges and specifications</b> .		
<b>Pleas</b>		
Alternatives .....	R.C.M. 910(a) .....	II-117
Arraignment .....	R.C.M. 904 .....	II-108
Article 39(a) session, taking at .....	R.C.M. 910(g) .....	II-120
Capital case .....	R.C.M. 910(a)(1) .....	II-117
Change .....	R.C.M. 910(h)(1) .....	II-120
Conditional guilty .....	R.C.M. 910(a)(2) .....	II-106
Defenses and objections before entered .....	R.C.M. 905(b) .....	II-117
Exceptions and substitutions .....	R.C.M. 910(a)(1)(C) .....	II-117
Failure to plead .....	R.C.M. 910(b) .....	II-118
Generally .....	R.C.M. 910 .....	II-117
Guilty		
Accuracy, determination of .....	R.C.M. 910(e) .....	II-118
Advice to accused .....	R.C.M. 910(c) .....	II-118
Capital cases, when prohibited in .....	R.C.M. 910(a)(1) .....	II-117
Effect of .....	R.C.M. 910(c) .....	II-118
Factual basis required .....	R.C.M. 910(e) .....	II-118
False statements during inquiry .....	R.C.M. 910(c)(5) .....	II-118
Findings .....	R.C.M. 910(g) .....	II-120
Generally .....	R.C.M. 910(c); 910(d); 910(e) .....	II-118
Improvidently entered .....	R.C.M. 910(h)(2) .....	II-120
Inconsistent matters after plea .....	R.C.M. 910(h)(2) .....	II-120
Inconsistent statements after findings .....	R.C.M. 910(h)(2) .....	II-120
Inquiry .....	R.C.M. 910(c); 910(d); 910(e) .....	II-118
Oath .....	R.C.M. 910(c)(5) .....	II-118
Pretrial agreement inquiry .....	R.C.M. 910(f) .....	II-119
Procedure		
Consultation with counsel .....	R.C.M. 502(d)(5) .....	II-53
Explanation to accused of effect .....	R.C.M. 910(c) .....	II-118
Rehearings, changing .....	R.C.M. 810(a)(2)(B) .....	II-100
Statements during providency		
Inadmissible on merits .....	Mil. R. Evid. 410 .....	III-20
Inconsistent with plea .....	R.C.M. 910(h)(2) .....	II-120
Voluntariness .....	R.C.M. 910(d) .....	II-118
Waiver of objections by .....	R.C.M. 910(j) .....	II-120
Withdrawal after findings .....	R.C.M. 910(h)(1) .....	II-120
Irregular .....	R.C.M. 910(b) .....	II-118
Nondisclosure of guilty plea negotiations .....	Mil. R. Evid. 410 .....	III-20
Refusal to enter .....	R.C.M. 910(b) .....	II-118
Rehearings .....	R.C.M. 810(a)(1); 810(a)(2)(B) .....	II-100
Summary courts-martial		
Entry of pleas .....	R.C.M. 1304(b)(2)(D) .....	II-201
Explanation to accused .....	R.C.M. 1304(b)(1)(H) .....	II-201
<b>Plea agreements</b>		
Authority to enter .....	R.C.M. 705(a) .....	II-83
Conditional guilty plea .....	R.C.M. 910(a)(2) .....	II-117
Confessional stipulation .....	R.C.M. 705(b)(1) .....	II-83
Disclosure of		

INDEX

MCM 2019

Subject	Ref.	Page
Plea negotiations, prohibited	Mil. R. Evid. 410	III-20
To members, prohibited	R.C.M. 705(f)	II-85
To military judge before plea	R.C.M. 910(f)(3)	II-119
Generally	R.C.M. 705	II-83
Inquiry by military judge	R.C.M. 910(f)(4)	II-119
Nature of	R.C.M. 705(b)	II-83
Notice of, to military judge	R.C.M. 910(f)(2)	II-119
Procedure to obtain		
Acceptance	R.C.M. 705(e)(3)	II-85
Formal submission	R.C.M. 705(e)(2)	II-85
Negotiation	R.C.M. 705(e)(1)	II-84
Offer	R.C.M. 705(e)(1)	II-84
Referral pursuant to	R.C.M. 705(b)(2)(A); 705(b)(2)(B)	II-83
Sentence, effect at rehearing	R.C.M. 810(d)(2)(D)	II-101
Terms and conditions		
Generally	R.C.M. 705(c)	II-83
Permissible terms	R.C.M. 705(c)(2)	II-83
Prohibited terms	R.C.M. 705(c)(1)	II-83
Withdrawal of		
Charges pursuant to	R.C.M. 705(b)(2)(C)	II-83
Parties to	R.C.M. 705(e)(4)	II-85
<b>Plunder</b>	IV. Para. 27	IV-38
<b>Police. See Law enforcement official.</b>		
<b>Political vote, privilege</b>	Mil. R. Evid. 508	III-35
<b>Polling of members, prohibited</b>	R.C.M. 922(e); 1007(d)	II-138; II-157
Exception	Mil. R. Evid. 606	III-40
<b>Polygraph Examination</b>	Mil. R. Evid. 707	III-44
<b>Possession of controlled substance</b>	IV. Para. 50	IV-66
<b>Post-trial confinement</b>	R.C.M. 1102(b)(2)	II-161
<i>See also Confinement.</i>		
<b>Post-trial legal advice</b>	R.C.M. 1109(d)(2); 1110(d)	II-173; II-175
<i>See also Staff judge advocate.</i>		
<b>Post-trial procedure</b>		
<i>See also specific topics.</i>		
Generally	Chapter XI	II-160
Matters submitted by accused		
Contents	R.C.M. 1106(b)	II-166
Right to	R.C.M. 1106(a)	II-166
Time periods	R.C.M. 1105(6)	II-166
Waiver	R.C.M. 1105(e)	II-167
Review by a judge advocate for Summary Court-martial	R.C.M. 1307	II-205
Summary courts-martial	R.C.M. 1306	II-203
Transmittal of record of trial	R.C.M. 1116	II-183
<b>Post-trial sessions</b>		
Article 39(a) sessions	R.C.M. 1104(a)	II-164
Findings; lack of mental responsibility	R.C.M. 1105	II-165
Generally	R.C.M. 1104	II-164
Matters precluded from	R.C.M. 1104(c)	II-165
Procedure		
Personnel	R.C.M. 1104(d)(1)	II-165
Record	R.C.M. 1104(d)(2)	II-165
When directed	R.C.M. 1104(a)(1)	II-164
<b>Preferral of charges</b>		
Accuser. <i>See Accuser.</i>		
Attachment of jurisdiction, effecting	R.C.M. 202(c)(2)	II-17
Charge, defined	R.C.M. 307(c)(2)	II-30
Generally	R.C.M. 307	II-29
Motion as to defects in	R.C.M. 905(b)(1)	II-108
Notification to accused of	R.C.M. 308	II-33
Oath required	R.C.M. 307(b)(1)	II-30
Procedure	R.C.M. 307(b)	II-29
Speedy trial, effect of	R.C.M. 707(a); 707(b)	II-87
Waiver of defects in, by failure to raise	R.C.M. 905(e)	II-109



Subject	Ref.	Page
Who may prefer .....	R.C.M. 307(a) .....	II-29
<b>Preliminary hearing</b> .....	R.C.M. 405 .....	II-39
Earlier preliminary hearing .....	R.C.M. 405(b) .....	II-39
In general .....	R.C.M. 405(a) .....	II-39
Military Rules of Evidence .....	R.C.M. 405(i) .....	II-43
Personnel .....	R.C.M. 405(d) .....	II-39
Preliminary hearing officer .....	R.C.M. 405(d)(1) .....	II-39
Counsel for the Government .....	R.C.M. 405(d)(2) .....	II-39
Defense counsel .....	R.C.M. 405(d)(3) .....	II-39
Detailed counsel .....	R.C.M. 405(d)(3)(A) .....	II-39
Individual military counsel .....	R.C.M. 405(d)(3)(B) .....	II-40
Civilian counsel .....	R.C.M. 405(d)(3)(C) .....	II-40
Other personnel .....	R.C.M. 405(d)(4) .....	II-40
Procedure .....	R.C.M. 405(j) .....	II-44
Generally .....	R.C.M. 405(j)(1) .....	II-44
Notice to and presence of the victim(s) .....	R.C.M. 405(g) .....	II-40
Presentation of evidence .....	R.C.M. 405(j)(2) .....	II-44
Testimony .....	R.C.M. 405(j)(2)(A) .....	II-44
Other evidence .....	R.C.M. 405(j)(2)(B) .....	II-44
Access by spectators .....	R.C.M. 405(j)(3) .....	II-44
Presence of accused .....	R.C.M. 405(j)(4) .....	II-45
Recording of the preliminary hearing .....	R.C.M. 405(j)(5) .....	II-45
Objections .....	R.C.M. 405(j)(7) .....	II-45
Sealed exhibits and proceedings .....	R.C.M. 405(j)(8) .....	II-45
Production of witnesses and other evidence .....	R.C.M. 405(h) .....	II-40
Military witnesses .....	R.C.M. 405(h)(2)(A) .....	II-41
Civilian witnesses .....	R.C.M. 405(h)(2)(B) .....	II-41
Other evidence .....	R.C.M. 405(h)(3) .....	II-42
Evidence under the control of the government .....	R.C.M. 405(h)(3)(A) .....	II-42
Evidence not under the control of the government .....	R.C.M. 405(h)(3)(B) .....	II-42
Report of preliminary hearing .....	R.C.M. 405(l) .....	II-46
In general .....	R.C.M. 405(l)(1) .....	II-46
Contents .....	R.C.M. 405(l)(2) .....	II-46
Sealed exhibits and proceedings .....	R.C.M. 405(l)(3) .....	II-47
Distribution of the report .....	R.C.M. 405(l)(4) .....	II-47
Objections .....	R.C.M. 405(l)(5) .....	II-47
Rights of the accused .....	R.C.M. 405(f) .....	II-40
Scope of preliminary hearing .....	R.C.M. 405(e) .....	II-40
Supplementary information for the convening authority .....	R.C.M. 405(k) .....	II-45
Waiver .....	R.C.M. 405(m) .....	II-47
Who may direct a preliminary hearing .....	R.C.M. 405(c) .....	II-39
<b>Preliminary inquiry</b> .....	R.C.M. 303 .....	II-21
<b>Preliminary questions</b> .....	Mil. R. Evid. 104 .....	III-2
<b>Premeditation</b> .....	IV. Para. 56c(2) .....	IV-77
<b>Preparation of record of trial. See Record of trial.</b>		
<b>Presentation of case on merits</b> .....	R.C.M. 913 .....	II-125
<i>See also</i> specific topics.		
<b>Presentencing procedure</b>		
Accused, statement by .....	R.C.M. 1001(d)(2) .....	II-143
Arguments .....	R.C.M. 1001(h) .....	II-144
Defense, matters presented by .....	R.C.M. 1001(d) .....	II-143
Deposition, for use at .....	R.C.M. 702(a)(4) .....	II-71
Evidence for		
Discovery of .....	R.C.M. 701(a)(5) .....	II-67
Production of .....	R.C.M. 703(3) .....	II-75
Generally .....	R.C.M. 1001 .....	II-140
Production of witnesses .....	R.C.M. 1001(f) .....	II-144
Prosecution, matters presented by .....	R.C.M. 1001(b) .....	II-140
Rebuttal .....	R.C.M. 1001(e) .....	II-144
Rehearings .....	R.C.M. 810(a)(2) .....	II-100
Victim, right to be reasonably heard .....	R.C.M. 1001(a)(1)(B); 1001(c) .....	II-140; II-142
<b>Presenting false claim</b> .....	IV. Para. 71 .....	IV-109

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<b>President of court-martial</b>		
Duties		
Deliberations .....	R.C.M. 921(a); 1006(b) .....	II-136; II-155
Findings, announcing .....	R.C.M. 922(b) .....	II-138
Generally .....	R.C.M. 502(b)(2) .....	II-46
Voting .....	R.C.M. 921(c)(6)(B); 1006(d)(3)(B) .....	II-137; II-156
Qualifications .....	R.C.M. 502(b)(1) .....	II-51
<b>President of the United States</b>		
Capital cases, approval of sentence .....		
	R.C.M. 1207 .....	II-195
Contempt toward .....	IV. Para. 14 .....	IV-21
Courts-martial, power to convene .....	Art. 22, UCMJ; R.C.M. 504(b) .....	A2-8; II-57
Dismissal of officer, right to trial .....	R.C.M. 107 .....	II-8
Military Rules of Evidence, action concerning amendments. ....	Mil. R. Evid. 1102 .....	III-51
<b>Presumption</b>		
Innocence, instruction on .....	R.C.M. 920(e)(5)(A) .....	II-136
Mental capacity .....	R.C.M. 909(b) .....	II-116
Mental responsibility .....	R.C.M. 916(k)(3)(A) .....	II-118
Witness competency .....	Mil. R. Evid. 601 .....	III-39
<b>Pretense, false</b> .....	IV. Paras. 64; 66 .....	IV-97; IV-102
<b>Pretrial advice</b> .....	R.C.M. 406; 406A .....	II-47; II-48
<i>See also Advice, pretrial.</i>		
<b>Pretrial confinement.</b> <i>See Confinement, pretrial.</i>		
<i>See also Investigation, pretrial.</i>		
<b>Principal assistant, delegation to</b>		
Excuse members .....	R.C.M. 505(c)(1)(B) .....	II-58
Nonjudicial punishment authority .....	V. Para. 2c .....	V-2
<b>Principals</b>		
Accessory after the fact, relationship .....	IV. Para. 2c(1); 2c(4); 2c(5) .....	IV-3
Aider and abettor .....	IV. Para. 1b(1) .....	IV-1
Generally .....	IV. Para. 1 .....	IV-1
Perpetrator .....	IV. Para. 1b(1); 1b(2)(a) .....	IV-1
Pleading .....	R.C.M. 307(c)(3) (Discussion) .....	II-30
<b>Prior testimony, admissibility</b> .....	Mil. R. Evid. 804(b)(1) .....	III-47
<b>Prisoner</b>		
<i>See also Confinement.</i>		
Allowing to escape .....	IV. Para. 24 .....	IV-36
Authority to release		
From post-trial confinement .....	R.C.M. 1103(a)(1) .....	II-163
From pretrial confinement .....	R.C.M. 305(g) .....	II-24
Drinking liquor with .....	IV. Para. 24 .....	IV-36
Drunk .....	IV. Para. 49 .....	IV-65
Jurisdiction over .....	Art. 2(a)(7), UCMJ; R.C.M. 202(a) (Discussion) .....	A2-2; II-15
Release of, without proper authority .....	IV. Para. 24 .....	IV-36
<b>Prisoner of war</b>		
Jurisdiction over .....	Art. 2(a)(9), UCMJ; R.C.M. 202(a) (Discussion) .....	A2-2; II-15
Misconduct as .....	IV. Para. 26 .....	IV-37
<b>Privileged matter.</b> <i>See Evidence, Privileges.</i>		
<b>Probable cause</b>		
<i>See also Search and seizure.</i>		
Apprehension .....	R.C.M. 302(c) .....	II-20
Confinement		
Pending vacation of suspension .....	R.C.M. 1108(c)(3) .....	II-169
Pretrial .....	R.C.M. 305(d); 305(h)(2)(B) .....	II-23; II-24
Restraint, pretrial .....	R.C.M. 304(c) .....	II-22
Search .....	Mil. R. Evid. 315(f) .....	III-15
Seizure .....	Mil. R. Evid. 316(c) .....	III-15
<b>Probation</b>		
<i>See also Suspension of sentence.</i>		

Subject	Ref.	Page
Generally	R.C.M. 1107	II-168
Pretrial agreement	R.C.M. 705(c)(2)(D)	II-84
<b>Procuring another to commit offense</b>	IV. Para. 1	IV-1
<b>Production of witnesses and evidence</b>		
<i>See also</i> <b>Witness.</b>		
Evidence	R.C.M. 703(a); 703(e)	II-74; II-75
Expert witnesses	R.C.M. 703(d)	II-75
Generally	R.C.M. 703	II-74
Interlocutory questions	R.C.M. 703(b)(1); 703(c)(2)(B)(i)	II-74; II-75
Merits	R.C.M. 703(b)(1); 703(c)(2)(B)(i)	II-74; II-75
Preliminary hearing	R.C.M. 405(h)	II-40
Procedure	R.C.M. 703(g); Appendix 7	II-76; A7-1
Sentencing	R.C.M. 703(b)(2); 1001(f)	II-74; II-144
Statements of witnesses	R.C.M. 914	II-127
Unavailable evidence	R.C.M. 703(e)(2)	II-76
Unavailable witness	R.C.M. 703(b)(3)	II-74
<b>Professional supervision, military judges and counsel</b>	R.C.M. 109	II-8
<b>Prohibited activities with military recruit or trainee by person in position of special trust</b>	IV. Para. 20	IV-30
<b>Property</b>		
Captured or abandoned, offenses concerning	IV. Para. 44	IV-58
Military, offenses concerning	IV. Para. 43	IV-57
Nonmilitary, offenses concerning	IV. Para. 45	IV-60
Preventing seizure of	IV. Para. 86	IV-131
<b>Prosecutor.</b> <i>See</i> <b>Counsel; Trial counsel.</b>		
<b>Prosecutorial discretion</b>		
Commander	R.C.M. 306	II-27
Convening authority	R.C.M. 401	II-35
Trial counsel	R.C.M. 502(d)(4)	II-53
<b>Prostitution</b>	IV. Para. 106	IV-148
<b>Protecting the enemy</b>	IV. Para. 33	IV-47
<b>Provoking speech and gestures</b>		
Breach of peace	IV. Paras. 54; 55c(1)	IV-75; IV-76
Generally	IV. Para. 55	IV-76
<b>Provost courts</b>		
Contempt power	Art. 48, UCMJ	A2-17
Jurisdiction		
Concurrent with other tribunals	R.C.M. 201(g)	II-14
Generally	I. Para. 2(b)(2)	I-1
<b>Psychiatrist</b>		
Mental examination of accused by	R.C.M. 706(c)(1)	II-86
Privileged communications	Mil. R. Evid. 513	III-36
<b>Public record, offenses concerning</b>	IV. Para. 34	IV-48
<i>See also</i> <b>Evidence.</b>		
<b>Public trial</b>	R.C.M. 806	II-96
Closure	R.C.M. 806(b)(4)	II-96
Control of spectators	R.C.M. 806(b)(1); 806(b)(2)	II-96
<b>Punishments</b>		
<i>See also</i> specific topics.		
Courts-martial		
Authorized	R.C.M. 1003(b)	II-147
Confinement	R.C.M. 1003(b)(7)	II-147
Death	R.C.M. 1003(b)(9)	II-149
Fine	R.C.M. 1003(b)(3)	II-148
Forfeiture of pay and allowances	R.C.M. 1003(b)(2)	II-147
General courts-martial	R.C.M. 201(f)(1)(A)(ii); 201(f)(1)(B)(ii)	II-13
Generally	R.C.M. 1003	II-147
Hard labor without confinement	R.C.M. 1003(b)(6)	II-148
Increase in, circumstances permitting	R.C.M. 1003(d)	II-151
Law of war	R.C.M. 1003(b)(10)	II-149
Limits	R.C.M. 1003(c)	II-149

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Maximum punishment chart .....	Appendix 12 .....	A12-1
Punitive separation .....	R.C.M. 1003(b)(8) .....	II-149
Reduction in grade .....	R.C.M. 1003(b)(4) .....	II-148
Reprimand .....	R.C.M. 1003(b)(1) .....	II-147
Restitution	Art. 6b(a)(6)	A2-3
Pretrial agreement, permissible condition .....	R.C.M. 705(c)(2)(C) .....	II-72
Restriction to specified limits .....	R.C.M. 1003(b)(5) .....	II-133
Special courts-martial .....	R.C.M. 201(f)(2)(B) .....	II-14
Summary courts-martial .....	R.C.M. 1301(d) .....	II-198
Nonjudicial. <i>See</i> <b>Nonjudicial punishment.</b>		
Prior, for minor offense, barring court-martial .....	R.C.M. 907(b)(2)(D)(iii) .....	II-114
<b>Punitive Articles</b> .....	Part IV .....	IV-1
<i>See also</i> specific offenses.		
<b>Qualifications</b>		
Assistant counsel .....	R.C.M. 502(d)(1)(B) .....	II-51
Associate defense counsel .....	R.C.M. 502(d)(2)(A) .....	II-52
Bailiff .....	R.C.M. 502(e)(1) .....	II-54
Clerk .....	R.C.M. 502(e)(1) .....	II-54
Counsel .....	R.C.M. 502(d) .....	II-51
Defense Counsel .....	R.C.M. 502(d)(2) .....	II-52
Deposition officer .....	R.C.M. 702(d)(3)(A) .....	II-71
Escort .....	R.C.M. 502(e)(1) .....	II-54
Individual counsel .....	R.C.M. 502(d)(2)(B) .....	II-52
Interpreter .....	R.C.M. 502(e)(1); Mil. R. Evid. 604	II-54; III-39
Lack of, action on discovery .....	R.C.M. 502(f) .....	II-55
Members .....	R.C.M. 502(a)(1) .....	II-50
Military judge .....	R.C.M. 502(c)(1) .....	II-51
Military magistrate .....	R.C.M. 502(c)(2) .....	II-51
Orderly .....	R.C.M. 502(e)(1) .....	II-54
President of court-martial .....	R.C.M. 502(b)(1) .....	II-51
Reporter .....	R.C.M. 502(e)(1) .....	II-54
Trial counsel .....	R.C.M. 502(d)(1) .....	II-51
<b>Quarantine, medical, breaking</b> .....	IV. Para. 8. ....	IV-10
<b>Questions</b>		
<i>See also</i> <b>Testimony; Witness.</b>		
Ambiguous and misleading .....	Mil. R. Evid. 611(a) .....	III-41
Control by military judge .....	Mil. R. Evid. 611(a) .....	III-41
Degrading .....	Mil. R. Evid. 303; 611(a) .....	III-4; III-41
Improper, insulting .....	Mil. R. Evid. 611(a) .....	III-41
Interlocutory. <i>See</i> <b>Interlocutory questions.</b>		
Leading .....	Mil. R. Evid. 611(c) .....	III-41
Refusal to answer, as offense .....	IV. Para. 85 .....	IV-130
Suggesting inadmissible matter .....	Mil. R. Evid. 611(a) .....	III-41
<b>Questions of law, rulings on</b> .....	R.C.M. 801(a)(4); 801(c)(1)	II-90; II-91
<b>Quitting guard</b> .....	IV. Para. 10 .....	IV-13
<i>See also</i> <b>Sentinel or lookout.</b>		
<b>Quitting place of duty to avoid hazardous duty</b> .....	IV. Para. 9 .....	IV-10
<b>Quitting place of duty to plunder or pillage</b> .....	IV. Para. 27 .....	IV-38
<b>Radio, broadcasting from courtroom</b> .....	R.C.M. 806(c) .....	II-97
<b>Rape</b>		
Assault with intent to commit .....	IV. Para. 77 .....	IV-117
Evidence of similar crimes .....	Mil. R. Evid. 413; 414 .....	III-21
Generally .....	IV. Para. 60 .....	IV-83
Murder while committing .....	IV. Para. 56 .....	IV-76
<b>“Rape shield”</b> .....	Mil. R. Evid. 412 .....	III-20
<b>Reasonable doubt</b>		
Guilt, basis for finding of .....	R.C.M. 918(c) .....	II-134
Instruction on .....	R.C.M. 920(e)(5) .....	II-136
<b>Rebuttal, evidence in</b> .....	R.C.M. 913(c)(1)(C); 1001(e) .....	II-126; II-144
<b>Receipt</b>		
Delivering less than amount called for by .....	IV. Para. 71 .....	IV-109
False .....	IV. Para. 71 .....	IV-109
Making or delivering, without knowledge of facts .....	IV. Para. 71 .....	IV-109

Subject	Ref.	Page
<b>Receiving stolen property</b> .....	IV. Para. 68 .....	IV-104
<b>Recess, announcement of personnel after</b> .....	R.C.M. 813(b) .....	II-103
<b>Reciprocal jurisdiction</b> .....	R.C.M. 201(e) .....	II-12
<b>Reckless endangerment</b> .....	IV. Para. 52 .....	IV-71
<b>Recklessly operating vehicle</b> .....	IV. Para. 51 .....	IV-69
<b>Recollection refreshed</b> .....	Mil. R. Evid. 612 .....	III-42
<b>Recommendation of staff judge advocate or legal officer on post-trial action</b> .....	R.C.M. 1109(d)(2); 1110(d) .....	II-173; II-175
<b>Reconsideration</b>		
Findings .....	R.C.M. 924 .....	II-138
Rulings by military judge .....	R.C.M. 905(f) .....	II-109
Sentence .....	R.C.M. 1009 .....	II-157
<b>Record of nonjudicial punishment</b> .....	V. Para. 8 .....	V-9
<b>Record of trial</b>		
Abatement .....	R.C.M. 1101(c) .....	II-160
Attachments for appellate review .....	R.C.M. 1112(f) .....	II-179
Acquittal .....	R.C.M. 1111(e)(1) .....	II-177
Appeal by United States, prepared in .....	R.C.M. 908(b)(5); 1117 .....	II-115; II-185
Attachments for appellate review .....	R.C.M. 1112(f) .....	II-179
Audiotape .....	R.C.M. 806(c), 1112(a) .....	II-97; II-177
Contempt proceedings .....	R.C.M. 809(d) .....	II-99
Certification .....	R.C.M. 1112(c) .....	II-178
Correction .....	R.C.M. 1104(d) .....	II-154
Classified information .....	M.R.E. 505(l) .....	III-29
Contents		
General and special courts-martial .....	R.C.M. 1112(b) .....	II-178
Summary courts-martial .....	R.C.M. 1304(b)1 .....	II-202
Distribution, copies of record of trial .....	R.C.M. 1112(e) .....	II-178
Additional copies authorized .....	R.C.M. 1112(e)(5) .....	II-179
General and special courts-martial, accused .....	R.C.M. 1112(e)(1)(A) .....	II-179
General and special courts-martial, victim .....	R.C.M. 1112(e)(1)(B)-(C) .....	II-179
Privacy Act .....	R.C.M. 1112(e)(4) .....	II-179
Summary courts-martial .....	R.C.M. 1305(d); Appendix 9 .....	II-202; A-9
Generally .....	R.C.M. 1112; 1305 .....	II-177; II-202
Government information .....	M.R.E. 506(m) .....	III-34
Loss of records .....	R.C.M. 1112(d) .....	II-178
New trial, use at .....	R.C.M. 810(c) .....	II-101
Not guilty, lack of mental responsibility .....	R.C.M. 1103(e); 1306(b)(4); 1307 ..	II-187; II-204; II-205
Other trial, use at .....	R.C.M. 810(c) .....	II-101
Pre-referral proceedings, inclusion in record of trial .....	R.C.M. 309(e) .....	II-34
Rehearing, use at .....	R.C.M. 810(a)(2); 810(c) .....	II-100; II-101
Sealed exhibits .....	R.C.M. 1113(a) .....	II-180
Security classification .....	R.C.M. 1112(g) .....	II-180
Summary court-martial .....	R.C.M. 1305(c) .....	II-202
Termination prior to findings .....	R.C.M. 1103(e) .....	II-177
Transcript	R.C.M. 1114 .....	II-182
Inclusion in the record of trial .....	R.C.M. 1114(d) .....	II-182
Transcription of portions of proceeding .....	R.C.M. 1114(b) .....	II-182
Verbatim required .....	R.C.M. 1114(a) .....	II-182
Trial counsel		
Responsibility for .....	R.C.M. 808 .....	II-98;
Videotape .....	R.C.M. 806(c); 1112(a) .....	II-97; II-177
Views and inspections .....	R.C.M. 913(c)(3) .....	II-126
<b>Record, public, altering, concealing, removing, mutilating, obliterating, destroying</b> .....	IV. Para. 34 .....	IV-48
<b>Recusal of military judge</b> .....	R.C.M. 902 .....	II-105
<b>Redress of grievances</b> .....	Art. 138, UCMJ .....	A2-49
<b>Referral of charges</b>		
Accuser, disqualified .....	R.C.M. 601(c) .....	II-62
Authority to .....	R.C.M. 601(b) .....	II-62

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Basis for .....	R.C.M. 601(d)(1) .....	II-62
Capital offense		
Referred as noncapital .....	R.C.M. 201(f)(1)(A)(iii)(b) .....	II-13
To special court-martial .....	R.C.M. 201(f)(2)(C) .....	II-14
Defined .....	R.C.M. 601(a) .....	II-62
Disqualification .....	R.C.M. 601(c) .....	II-62
Instructions .....	R.C.M. 601(e)(1) .....	II-63
General courts-martial .....	R.C.M. 407(a)(6); 601(d)(2) .....	II-49; II-62
Joinder of		
Accused .....	R.C.M. 601(e)(3) .....	II-63
Offenses .....	R.C.M. 601(e)(2) .....	II-63
Jurisdictional requisite, as .....	R.C.M. 201(b)(3) .....	II-11
Motion as to defect in .....	R.C.M. 905(b)(1); 905(e) .....	II-108; II-109
National security, affecting .....	R.C.M. 401(d); 407(b) .....	II-36; II-49
Order of .....	R.C.M. 601(e)(1) .....	II-63
Pretrial agreement concerning .....	R.C.M. 705(b)(2)(A); 705(b)(2)(B) .	II-83
Procedure .....	R.C.M. 601(e) .....	II-63
Special courts-martial .....	R.C.M. 404(4); 601(d)(1) .....	II-37; II-62
Summary courts-martial .....	R.C.M. 403(b)(4); 601(d)(1) .....	II-37; II-62
Superior convening authority, powers regarding .....	R.C.M. 601(f) .....	II-64
War, effect on .....	R.C.M. 401(d); 407(b) .....	II-36; II-49
Withdrawn charges .....	R.C.M. 604(b) .....	II-65
Withholding, authority to .....	R.C.M. 601(b) .....	II-62
<b>Refreshing recollection</b> .....	Mil. R. Evid. 612 .....	III-42
<b>Refusal to testify, wrongful</b> .....	IV. Para. 85 .....	IV-130
<b>Regulations, failure to obey</b> .....	IV. Para. 18 .....	IV-27
<b>Rehearing</b>		
Former testimony, admissibility at .....	Mil. R. Evid. 804(b)(1) .....	III-47
Ordering .....	R.C.M. 1110(b)(2)(B) .....	II-175
Procedure		
Composition .....	R.C.M. 810(b) .....	II-101
Generally .....	R.C.M. 810 .....	II-100
Record, examination of .....	R.C.M. 810(c) .....	II-101
Sentence limitations .....	R.C.M. 810(d) .....	II-101
Pretrial agreement, effect of .....	R.C.M. 810(d)(2)(D) .....	II-101
<b>Releasing prisoner without proper authority</b> .....	IV. Para. 24 .....	IV-36
<b>Relevancy. <i>See</i> Evidence.</b>		
<b>Relief, not affording, before enemy</b> .....	IV. Para. 27 .....	IV-38
<b>Religious beliefs or opinions, not subject to inquiry</b> .....	Mil. R. Evid. 610 .....	III-41
<b>Remission of</b>		
Nonjudicial punishment .....	V. Para. 6c .....	V-7
Sentence		
Generally .....	R.C.M. 1107(a) .....	II-168
Of suspension .....	R.C.M. 1107(e) .....	II-169
Who may remit		
Comander of the accused with authority to convene		
type of court-martial that imposed the sentence ...	R.C.M. 1107(b)(3) .....	II-168
Judge Advocate General, The .....	R.C.M. 1203(e)(4) .....	II-191
Service Secretary .....	R.C.M. 1107(b)(4) .....	II-168
<b>Reopening case</b> .....	R.C.M. 913(c)(5) .....	II-126
<b>Report of</b>		
Offense		
Failure to make .....	IV. Para. 2c(2) .....	IV-3
Generally .....	R.C.M. 301 .....	II-19
<b>Reporter</b>		
Announcement of .....	R.C.M. 813(a)(8) .....	II-103
At preliminary hearing .....	R.C.M. 405(d)(4) .....	II-40
Detailing .....	R.C.M. 501(c) .....	II-50
Disqualification .....	R.C.M. 502(e)(2); 502(f) .....	II-54; II-55
Duties .....	R.C.M. 502(e)(3)(B) .....	II-55
Oath		
Administered .....	R.C.M. 807(b)(A); 901(c) .....	II-97; II-104
Status as to .....	R.C.M. 901(c) .....	II-104

Subject	Ref.	Page
Payment of .....	R.C.M. 502(e)(4) .....	II-55
Qualifications .....	R.C.M. 502(e)(1) .....	II-54
Record of trial, preparation .....	R.C.M. 1112(c) .....	II-178
<i>See also Record of trial.</i>		
<b>Reprimand</b>		
Court-martial, military judge, member, counsel, prohibited .....	R.C.M. 104(a)(1) .....	II-6
Nonjudicial punishment .....	V. Para. 5c(1) .....	V-5
Sentence .....	R.C.M. 1003(b)(1) .....	II-147
<b>Reproachful speech or gestures</b> .....	IV. Para. 55 .....	IV-76
<b>Reputation.</b> <i>See Evidence, Character.</i>		
<b>Rescission of deferment of confinement</b> .....	R.C.M. 1103(f)(5); 1103(g) .....	II-164
<b>Reserve personnel, eligibility for court-martial duty</b> .....	R.C.M. 502(a)(1) (Discussion) .....	II-50
<b>Resignation, quitting post or duties before notification of acceptance, as desertion</b> .....	IV. Para. 9 .....	IV-10
<b>Resistance, flight, breach of arrest, and escape</b> .....	IV. Para. 12 .....	IV-17
<b>Res judicata</b>		
<i>See Motions; Final determination, effect of</i> .....		
<b>Restoration</b>		
Generally .....	R.C.M. 1208 .....	II-195
<b>Restraint</b>		
Attachment of jurisdiction, effecting .....	R.C.M. 202(c)(2) .....	II-17
During trial .....	R.C.M. 804(e)(3) .....	II-95
Pretrial		
<i>See also Confinement, pretrial.</i>		
Authority to order .....	R.C.M. 304(b) .....	II-22
Generally .....	R.C.M. 304; 305; 804(c)(2) .....	II-21; II-23; II-94
Grounds .....	R.C.M. 304(c) .....	II-22
Limitations .....	R.C.M. 304(f) .....	II-23
Types of .....	R.C.M. 304(a) .....	II-21
<b>Restriction</b>		
Administrative .....	R.C.M. 304(h) .....	II-23
Attachment of jurisdiction, effect of .....	R.C.M. 202(c)(2) .....	II-17
Breaking .....	IV. Para. 13 .....	IV-19
Defined .....	IV. Para. 13c(4); R.C.M. 304(a)(2) .....	IV-19; II-22
Nonjudicial punishment .....	V. Para. 5c(2) .....	V-5
Pretrial		
Defined .....	R.C.M. 304(a)(2) .....	II-22
Grounds for .....	R.C.M. 304(c) .....	II-22
Notice to accused .....	R.C.M. 304(e) .....	II-23
Procedure .....	R.C.M. 304(d) .....	II-22
Release .....	R.C.M. 304(g) .....	II-23
Speedy trial, effect on .....	R.C.M. 707(a); 707(b) .....	II-87
Who may order .....	R.C.M. 304(b) .....	II-22
Sentence by court-martial .....	R.C.M. 1003(b)(5) .....	II-148
<b>Retired personnel, eligibility for court-martial duty</b> .....	R.C.M. 502(a)(1) (Discussion) .....	II-50
<b>Review of courts-martial.</b> <i>See Appellate review</i>		
<b>Riot</b> .....	IV. Para. 54 .....	IV-75
<b>Robbery</b>		
Assault with intent to commit .....	IV. Para. 77 .....	IV-117
Generally .....	IV. Para. 67 .....	IV-103
Murder while committing .....	IV. Para. 56 .....	IV-76
Unborn child, death or injury of .....	IV. Para. 58 .....	IV-80
<b>Routine practice, evidence of</b> .....	Mil. R. Evid. 406 .....	III-19
<b>Rules for Courts-Martial (R.C.M.)</b>		
Analysis .....	Appendix 15 .....	A15-1
Construction .....	R.C.M. 102(b) .....	II-1
Purpose .....	R.C.M. 102(a) .....	II-1
Scope .....	R.C.M. 101(a) .....	II-1
Title .....	R.C.M. 101(b) .....	II-1
<b>Rules of court</b>		
Authority to make .....	R.C.M. 108; 801(b)(1) .....	II-8; II-91
Enforcement .....	R.C.M. 801(b)(1) .....	II-91

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<b>Safeguard, forcing</b> .....	IV. Para. 30 .....	IV-43
<b>Safety of command, unit, place, or military property, endangering</b> .....	IV. Para. 27 .....	IV-39
<b>Sale, unlawful, military property</b> .....	IV. Para. 38 .....	IV-52
<b>Sanity.</b> <i>See</i> <b>Mental capacity; Mental responsibility.</b>		
<b>Scene of accident, leaving</b> .....	IV. Para. 48 .....	IV-64
<b>Search and Seizure</b>		
Abandoned property, seizure of .....	Mil. R. Evid. 316(c)(2) .....	III-15
Apprehension, search incident to		
Generally .....	Mil. R. Evid. 314(g) .....	III-13
Scope .....	Mil. R. Evid. 314(g)(2) .....	III-14
Authority to search .....	Mil. R. Evid. 315(e) .....	III-15
Authorization. <i>See</i> Search Authorization.		
Blood samples. <i>See</i> Body views and intrusions, this heading.		
Body views and intrusions		
Evidence derived from medical intrusions .....	Mil. R. Evid. 312(f) .....	III-11
Extraction of body fluid .....	Mil. R. Evid. 312(d) .....	III-11
General rules on admissibility .....	Mil. R. Evid. 312(a) .....	III-10
Urine, order to produce .....	Mil. R. Evid. 313(b) .....	III-12
Intrusions into body cavities .....	Mil. R. Evid. 312(c) .....	III-10
Medical qualifications required .....	Mil. R. Evid. 312(g) .....	III-11
Visual examination of the body .....	Mil. R. Evid. 312(b) .....	III-10
Border searches .....	Mil. R. Evid. 314(b) .....	III-12
Burden of proof		
Generally .....	Mil. R. Evid. 311(d)(5) .....	III-9
Government's burden enhanced		
For proving voluntariness of consent .....	Mil. R. Evid. 314(e)(5) .....	III-13
For inspections targeting weapons and contraband ..	Mil. R. Evid. 313(b)(3)(B) .....	III-12
On the accused		
Challenging searches and seizure .....	Mil. R. Evid. 311(a)(2) .....	III-8
False statements, challenging probable cause .....	Mil. R. Evid. 311(d)(4)(B) .....	III-9
Commander, power to authorize searches .....	Mil. R. Evid. 315(d) .....	III-15
Confinement facilities, searches within .....	Mil. R. Evid. 314(h) .....	III-14
Consent		
Body views .....	Mil. R. Evid. 312(b)(1) .....	III-10
Entry to apprehend .....	R.C.M. 302(e)(2)(A) .....	II-20
To search .....	Mil. R. Evid. 314(e) .....	III-12
To seize .....	Mil. R. Evid. 316(c)(3) .....	III-15
Voluntariness required .....	Mil. R. Evid. 314(e)(4) .....	III-13
Who can consent .....	Mil. R. Evid. 314(e)(2) .....	III-12
Derivative evidence .....	Mil. R. Evid. 311(d) .....	III-9
Detention, temporary		
Investigative stops of persons .....	Mil. R. Evid. 314(f)(1) .....	III-13
Temporary detention of property .....	Mil. R. Evid. 316(c)(6) .....	III-16
Disclosure, required, of evidence seized .....	Mil. R. Evid. 311(d)(1) .....	III-9
Eavesdropping .....	Mil. R. Evid. 317 .....	III-16
Emergency searches .....	Mil. R. Evid. 314(i) .....	III-14
Entry and exit points		
Inspections at .....	Mil. R. Evid. 313(b) .....	III-11
Overseas, searches .....	Mil. R. Evid. 314(c) .....	III-12
Entry to apprehend, requirements for .....	R.C.M. 302(e)(2) .....	II-20
Exclusionary rule		
Generally .....	Mil. R. Evid. 311(a)(3) .....	III-8
Wire and oral communications .....	Mil. R. Evid. 317 .....	III-16
Exigent circumstances		
Entry to apprehend .....	R.C.M. 302(e)(2)(B) .....	II-18
Search .....	Mil. R. Evid. 315(g) .....	III-16
Seize .....	Mil. R. Evid. 316(c)(5)(B) .....	III-16
False statement in support of probable cause .....	Mil. R. Evid. 311(d)(4)(B) .....	III-9
Foreign officials, search by .....	Mil. R. Evid. 311(b)(3) .....	III-8
Frisks .....	Mil. R. Evid. 314(f)(2) .....	III-13
Government property		
Search of .....	Mil. R. Evid. 314(d) .....	III-12



Subject	Ref.	Page
Seizure of . . . . .	Mil. R. Evid. 316(c)(4) . . . . .	III-16
Guilty plea effect on search and seizure challenges . . . . .	Mil. R. Evid. 311(e) . . . . .	III-10
Impeachment by contradiction, using illegally seized evidence for . . . . .	Mil. R. Evid. 311(c)(1) . . . . .	III-8
Incident to apprehension . . . . .	Mil. R. Evid. 314(g) . . . . .	III-14
Inevitable discovery . . . . .	Mil. R. Evid. 311(c)(2) . . . . .	III-8
Informant, identity of, privilege . . . . .	Mil. R. Evid. 507 . . . . .	III-35
Inspections		
Generally . . . . .	Mil. R. Evid. 313(a) . . . . .	III-11
Visual examination of the body . . . . .	Mil. R. Evid. 312(b) . . . . .	III-10
Intrusions, body cavities . . . . .	Mil. R. Evid. 312(c) . . . . .	III-10
Inventories . . . . .	Mil. R. Evid. 313(c) . . . . .	III-12
Investigative detentions. <i>See Stops, investigative</i> , this heading . . . . .		
Jails, confinement facilities, searches within . . . . .	Mil. R. Evid. 314(h) . . . . .	III-14
Law enforcement, nonmilitary, standard for unlawful searches by . . . . .	Mil. R. Evid. 311(b)(2) . . . . .	III-8
Magistrate, power to authorize searches . . . . .	Mil. R. Evid. 315(d)(2) . . . . .	III-15
Medical qualifications, bodily intrusions . . . . .	Mil. R. Evid. 312(g) . . . . .	III-11
Military judge, power to authorize searches . . . . .	Mil. R. Evid. 315(d)(2) . . . . .	III-15
Motion to suppress. <i>See also Motions</i> .		
Generally . . . . .	Mil. R. Evid. 311(a)(1); 311(d) . . . . .	III-8; III-9
Objections, evidence unlawfully seized . . . . .	Mil. R. Evid. 311(a)(1); 311(d) . . . . .	III-8; III-9
Open fields or woodlands, search of . . . . .	Mil. R. Evid. 314(j) . . . . .	III-14
Oral communications, interception of . . . . .	Mil. R. Evid. 317 . . . . .	III-16
Plain view seizures . . . . .	Mil. R. Evid. 316(c)(5)(C) . . . . .	III-16
Private dwelling, entry to apprehend . . . . .	R.C.M. 302(e)(2) . . . . .	II-20
Probable cause		
Challenging the determination of		
False statements . . . . .	Mil. R. Evid. 311(d)(4)(B) . . . . .	III-9
Generally . . . . .	Mil. R. Evid. 311(d)(4) . . . . .	III-9
Searches not requiring . . . . .	Mil. R. Evid. 314 . . . . .	III-12
Searches requiring . . . . .	Mil. R. Evid. 315 . . . . .	III-14
To apprehend . . . . .	R.C.M. 302(c) . . . . .	II-20
To confine before trial . . . . .	R.C.M. 305(d) . . . . .	II-23
To restrain before trial . . . . .	R.C.M. 304(c) . . . . .	II-23
To search . . . . .	Mil. R. Evid. 315(f)(1) . . . . .	III-15
To seize . . . . .	Mil. R. Evid. 316(c)(1) . . . . .	III-15
Search		
Authorization . . . . .	Mil. R. Evid. 315(b)(1) . . . . .	III-14
Basis . . . . .	Mil. R. Evid. 315(f) . . . . .	III-15
Defined . . . . .	Mil. R. Evid. 315(b)(1) . . . . .	III-14
Execution of . . . . .	Mil. R. Evid. 315(e) . . . . .	III-15
Power to grant . . . . .	Mil. R. Evid. 315(d) . . . . .	III-15
Power to search . . . . .	Mil. R. Evid. 315(e) . . . . .	III-15
Rules of evidence not applicable to determination	Mil. R. Evid. 1101(d) . . . . .	III-52
Scope . . . . .	Mil. R. Evid. 315(c) . . . . .	III-15
Power to conduct . . . . .	Mil. R. Evid. 315(e) . . . . .	III-15
Probable cause not required . . . . .	Mil. R. Evid. 314(a) . . . . .	III-12
Probable cause required . . . . .	Mil. R. Evid. 315(a) . . . . .	III-14
Unlawful, defined . . . . .	Mil. R. Evid. 311(b) . . . . .	III-8
Warrant, defined . . . . .	Mil. R. Evid. 315(b)(2) . . . . .	III-15
<i>See also Authorization to</i> , this heading		
Seizure		
Consent . . . . .	Mil. R. Evid. 316(c)(3) . . . . .	III-16
Generally . . . . .	Mil. R. Evid. 316 . . . . .	III-16
Plain view . . . . .	Mil. R. Evid. 316(c)(5)(B) . . . . .	III-16
Power to seize . . . . .	Mil. R. Evid. 316(d) . . . . .	III-16
Probable cause to seize . . . . .	Mil. R. Evid. 316(c)(1) . . . . .	III-16
Unlawful, defined . . . . .	Mil. R. Evid. 311(b) . . . . .	III-8
Standing to contest search or seizure . . . . .	Mil. R. Evid. 311(a)(2) . . . . .	III-8
Stops, investigative		
Frisks subsequent to . . . . .	Mil. R. Evid. 314(f)(2) . . . . .	III-13

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Generally	Mil. R. Evid. 314(f)(1)	III-13
Property detention	Mil. R. Evid. 316(c)	III-16
Search of vehicle subsequent to	Mil. R. Evid. 314(f)(3)	III-13
Treaty obligations, effect of	Mil. R. Evid. 315(c)(4)	III-15
Urine, seizure		
Generally	Mil. R. Evid. 312(d)	III-11
Inspections	Mil. R. Evid. 313(b)	III-11
Vehicle, incident to a lawful stop	Mil. R. Evid. 314(f)(3)	III-13
Vehicles, search of		
Upon probable cause	Mil. R. Evid. 315(c)(3)	III-14
Upon reasonable suspicion of weapons	Mil. R. Evid. 314(f)(3)	III-13
Visual examination of the body	Mil. R. Evid. 312(b)	III-10
Voluntariness of consent	Mil. R. Evid. 314(e)(4)	III-13
Waiver of challenged search or seizure		
Conditional guilty pleas	R.C.M. 910(a)(2)	II-117
Failure to raise by timely motion	Mil. R. Evid. 311(d)(2)(A)	III-9
Guilty plea, effect of	Mil. R. Evid. 311(e)	III-10
Warrant, search		
Defined	Mil. R. Evid. 315(b)(2)	III-14
Required for entry to apprehend	R.C.M. 302(d)(2)	II-23
Wire and oral communications, interception	Mil. R. Evid. 317	III-16
<b>Secretary, Service</b>		
Convening courts-martial	Art. 22, 23, 24, UCMJ; R.C.M. 504(b); 1302(a)(4)	A2-8; II-56; II-199
Powers and responsibilities concerning review of courts-martial	R.C.M. 1206	II-194
<b>Secret Information, privilege</b>	Mil. R. Evid. 505	III-24
<b>Security</b>		
Courtroom	R.C.M. 806(b)	II-96
National. <i>See</i> <b>National security</b> .		
Police. <i>See</i> <b>Law enforcement official</b> .		
Record of trial, classification	R.C.M. 1103(h)	II-164
<b>Sedition</b>		
Generally	IV. Para. 21	IV-31
Solicitation to commit	IV. Para. 6	IV-7
<b>Seizure of evidence</b>		
<i>See also</i> <b>Search and seizure</b> .		
Destruction to prevent	IV. Para. 103	IV-146
Generally	Mil. R. Evid. 316	III-15
<b>Self-defense</b>		
Aggravated assault	R.C.M. 916(e)(1); 916(e)(2)	II-129
Defense of another	R.C.M. 916(e)(5)	II-130
Generally	R.C.M. 916(e)	II-129
Homicide	R.C.M. 916(e)(1)	II-129
Loss of right	R.C.M. 916(e)(4)	II-130
Other assaults	R.C.M. 916(e)(3)	II-130
<b>Self-incrimination</b>		
Accused's failure to testify		
Generally	Mil. R. Evid. 301(f)(1)	III-4
Instructions concerning	Mil. R. Evid. 301(f)(3)	III-4
Admissions. <i>See</i> <b>Confessions and admissions</b> , this heading.		
Advice to witnesses	Mil. R. Evid. 301	III-3
Applicability of privilege against	Mil. R. Evid. 301(a)	III-3
Burden of proof	Mil. R. Evid. 304(f)(6)	III-6
Confessions and admissions		
Admissibility	Mil. R. Evid. 304(a)	III-4
Admission defined	Mil. R. Evid. 304(a)(1)(C)	III-4
Admissions by silence or failure to deny accusations of wrongdoing	Mil. R. Evid. 304(a)(2)	III-4
Admissions made during plea or plea discussion	Mil. R. Evid. 410	III-20
Burden of proof for admissibility	Mil. R. Evid. 304(f)(6)	III-6
Coercion, effect of	Mil. R. Evid. 304(a)(1)(A)	III-4

Subject	Ref.	Page
Confession defined . . . . .	Mil. R. Evid. 304(a)(1)(B) . . . . .	III-4
Corroboration required . . . . .	Mil. R. Evid. 304(c) . . . . .	III-5
Joint trial, effect on co-accused . . . . .	Mil. R. Evid. 306 . . . . .	III-8
Oral confessions and admissions . . . . .	Mil. R. Evid. 304(i) . . . . .	III-6
Standing to challenge . . . . .	Mil. R. Evid. 304(a) . . . . .	III-4
Use of admissions made at conferences . . . . .	R.C.M. 802(e) . . . . .	II-92
Corroboration of confessions . . . . .	Mil. R. Evid. 304(c) . . . . .	III-5
Counsel rights and warnings		
Effect of request for counsel . . . . .	Mil. R. Evid. 305(c) . . . . .	III-6
Notice to counsel . . . . .	Mil. R. Evid. 305(c) . . . . .	III-6
Right to counsel . . . . .	Mil. R. Evid. 305(c) . . . . .	III-6
Waiver of counsel rights . . . . .	Mil. R. Evid. 305(e) . . . . .	III-6
When counsel rights warnings are required . . . . .	Mil. R. Evid. 305(c) . . . . .	III-7
Degrading questions . . . . .	Mil. R. Evid. 303 . . . . .	III-4
Derivative evidence . . . . .	Mil. R. Evid. 304(d); 304(f)(2) . . . . .	III-5
Disclosure by prosecution		
Accused's statements . . . . .	Mil. R. Evid. 304(d) . . . . .	III-5
Immunity or leniency to a prosecution witness . . . . .	Mil. R. Evid. 301(d)(2) . . . . .	III-3
Effect of claiming privilege against . . . . .	Mil. R. Evid. 301(f) . . . . .	III-4
Exclusionary rules . . . . .	Mil. R. Evid. 304(a); 305(a) . . . . .	III-4; III-6
Exception for impeachment . . . . .	Mil. R. Evid. 304(e) . . . . .	III-5
Exercise of privilege against . . . . .	Mil. R. Evid. 301(d) . . . . .	III-3
Guilty plea		
Conditional, to preserve motions . . . . .	R.C.M. 910(a)(2) . . . . .	II-117
Waiver by . . . . .	Mil. R. Evid. 311(e) . . . . .	III-10
Immunity. <i>See also</i> <b>Immunity.</b>		
Effect of grant . . . . .	Mil. R. Evid. 301(d)(1) . . . . .	III-3
Notice to accused . . . . .	Mil. R. Evid. 301(d)(2) . . . . .	III-3
Impeachment by contradiction, using involuntary statements	Mil. R. Evid. 304(e) . . . . .	III-5
Inadmissibility of accused's pretrial claim of privilege		
against . . . . .	Mil. R. Evid. 301(f)(2) . . . . .	III-4
Interrogation		
By foreign officials . . . . .	Mil. R. Evid. 305(f)(2) . . . . .	III-7
By nonmilitary officials . . . . .	Mil. R. Evid. 305(f) . . . . .	III-7
Custodial . . . . .	Mil. R. Evid. 305(b)(3) . . . . .	III-6
Defined . . . . .	Mil. R. Evid. 305(b)(2) . . . . .	III-6
Notice to counsel . . . . .	Mil. R. Evid. 305(c) . . . . .	III-6
Persons subject to UCMJ, defined . . . . .	Mil. R. Evid. 305(b)(1) . . . . .	III-6
Involuntary statements		
Burden of proof concerning . . . . .	Mil. R. Evid. 304(f)(6) . . . . .	III-6
Defined . . . . .	Mil. R. Evid. 304(a)(1)(A); 305(a) . . . . .	III-4; III-6
Use of certain involuntary statements to impeach . . . . .	Mil. R. Evid. 304(e) . . . . .	III-5
Mental examination of accused, privilege concerning		
Exceptions . . . . .	Mil. R. Evid. 302(b) . . . . .	III-4
Generally . . . . .	Mil. R. Evid. 302(a) . . . . .	III-4
Noncompliance by accused . . . . .	Mil. R. Evid. 302(d) . . . . .	III-4
Procedure for claiming . . . . .	Mil. R. Evid. 302(e) . . . . .	III-4
Psychotherapist-patient privilege . . . . .	Mil. R. Evid. 513 . . . . .	III-37
Release of evidence . . . . .	Mil. R. Evid. 302(c) . . . . .	III-4
Motion to suppress. <i>See also</i> <b>Motions</b>		
Effect of guilty plea . . . . .	Mil. R. Evid. 304(f)(8) . . . . .	III-6
Generally . . . . .	Mil. R. Evid. 304(a) . . . . .	III-4
Rulings by military judge . . . . .	Mil. R. Evid. 304(f)(5) . . . . .	III-6
Specificity required . . . . .	Mil. R. Evid. 304(f)(4) . . . . .	III-6
Testimony upon a preliminary matter . . . . .	Mil. R. Evid. 304(f) . . . . .	III-5
Notice to accused of leniency or immunity given a prosecution witness . . . . .	Mil. R. Evid. 301(d)(2) . . . . .	III-3
Notice to counsel of intended interrogation . . . . .	Mil. R. Evid. 305(c); 305(d) . . . . .	III-7
Rights warnings		
Article 31, UCMJ . . . . .	Mil. R. Evid. 305(c) . . . . .	III-7
Counsel warnings . . . . .	Mil. R. Evid. 305(c) . . . . .	III-7
Effect of failure to warn . . . . .	Mil. R. Evid. 305(c) . . . . .	III-7
Standing to assert privilege against . . . . .	Mil. R. Evid. 301(b) . . . . .	III-3

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Statements of co-accused .....	Mil. R. Evid. 306 .....	III-8
Striking testimony after assertion of privilege against .....	Mil. R. Evid. 301(e)(1) .....	III-3
Testimony by accused on preliminary matter .....	Mil. R. Evid. 304(f) .....	III-5
Voluntariness .....	Mil. R. Evid. 304(a)(1)(A) .....	III-4
Waiver of privilege against		
By accused .....	Mil. R. Evid. 301(c) .....	III-3
By witness .....	Mil. R. Evid. 301(e) .....	III-3
Conditional guilty plea .....	R.C.M. 910(a)(2) .....	II-106
Failure to move to suppress .....	Mil. R. Evid. 304(f)(1) .....	III-5
Generally .....	Mil. R. Evid. 305(a) .....	III-6
Guilty plea, effect of .....	Mil. R. Evid. 304(f)(8) .....	III-6
<b>Self-injury</b> , infliction of .....	IV. Para. 7 .....	IV-9
Without intent to avoid service .....	IV. Para. 107 .....	IV-150
<b>Selling military property, unlawfully</b> .....	IV. Para. 43 .....	IV-57
<b>Semen</b>		
Source of .....	Mil. R. Evid. 412(b)(1) .....	III-20
<b>Sentence</b>		
Announcement of .....	R.C.M. 1007 .....	II-157
Capital cases .....	R.C.M. 1004 .....	II-151
Confinement, credit for illegal pretrial .....	R.C.M. 305(j)(2); 305(k) .....	II-27
Contempt, sentence for .....	R.C.M. 809(c) .....	II-99
Convening authority's action		
Generally .....	R.C.M. 1107(d) .....	II-157
In summary courts-martial .....	R.C.M. 1107(f)(2) .....	II-157
In summary courts-martial .....	R.C.M. 1306(b) .....	II-203
Deliberations .....	R.C.M. 1002 .....	II-145
Execution .....	R.C.M. 1102 .....	II-161
Impeachment of .....	R.C.M. 1008 .....	II-157
Instructions on .....	R.C.M. 1005 .....	II-154
Maximum limitations		
Chart of maximum punishments .....	Appendix 12 .....	A12-1
General court-martial .....	R.C.M. 201(f)(1) .....	II-13
Generally .....	R.C.M. 1003 .....	II-147
New trial .....	R.C.M. 810(d) .....	II-101
Other trial .....	R.C.M. 810(d) .....	II-101
Rehearing .....	R.C.M. 810(d) .....	II-101
Special court-martial .....	R.C.M. 201(f)(2)(B) .....	II-13
Summary court-martial .....	R.C.M. 1301(d) .....	II-198
Multiple Offenses .....	R.C.M. 1003(c)(1)(C) .....	II-150
Reconsideration of .....	R.C.M. 1009 .....	II-157
Suspension of execution .....	R.C.M. 1107 .....	II-168
Vacation of suspension .....	R.C.M. 1108 .....	II-169
Voting .....	R.C.M. 1006(d) .....	II-156
<b>Sentencing proceedings. See Presentencing procedure</b>		
<b>Sentinel or lookout</b>		
Assault on .....	IV. Para. 77 .....	IV-117
Disrespect towards .....	IV. Para. 23 .....	IV-36
Increased punishment for drug offenses while serving as ...	IV. Para. 50 .....	IV-68
Offenses by .....	IV. Para. 22 .....	IV-33
<b>Separation</b>		
<i>See also</i> <b>Bad conduct-discharge; Dishonorable discharge; Dismissal.</b>		
Fraudulent .....	IV. Para. 35 .....	IV-49
Unlawful, effecting .....	IV. Para. 36 .....	IV-50
<b>Serious offense, misprision of</b> .....	IV. Para. 84 .....	IV-129
<b>Service (of)</b>		
Charges .....	R.C.M. 602 .....	II-64
Record of trial, certified .....	R.C.M. 1112(e) .....	II-178
Subpoena .....	R.C.M. 703(g)(3)(E) .....	II-77
Trial recording .....	R.C.M. 1109 .....	II-175
Written motions .....	R.C.M. 905(i) .....	II-110
<b>Services, obtaining under false pretenses</b> .....	IV. Para. 66 .....	IV-102
<b>Sessions</b>		
Article 39(a) .....	R.C.M. 803 .....	II-93

Subject	Ref.	Page
Closed		
Closure .....	R.C.M. 806(b) .....	II-96
Deliberations and vote, findings .....	R.C.M. 921(a) .....	II-136
Deliberation and vote, sentence .....	R.C.M. 1006(a) .....	II-155
Control of spectators .....	R.C.M. 806(b)(1) .....	II-96
Opening .....	R.C.M. 901 .....	II-104
Post-trial .....	R.C.M. 1104 .....	II-164
<b>Setting aside nonjudicial punishment</b> .....	V. Para. 6d .....	V-8
<b>Severance</b>		
In the course of appeals by the United States .....	R.C.M. 908(b)(4) .....	II-115
Motions for .....	R.C.M. 905(b)(5); 906(5) .....	II-108; II-111
Multiple accused .....	R.C.M. 906(b)(9) .....	II-112
<b>Ship.</b> <i>See</i> <b>Vessel</b>		
<b>Shore patrol.</b> <i>See</i> <b>Law enforcement official.</b>		
<b>Signing false official document or statement</b> .....	IV. Para. 41 .....	IV-55
<b>Sitting on post, sentinel or lookout</b> .....	IV. Para. 22 .....	IV-33
<b>Sleeping on post, sentinel or lookout</b> .....	IV. Para. 22 .....	IV-33
Attempt distinguished .....	IV. Para. 4c(5) .....	IV-5
Desertion .....	IV. Para. 6 .....	IV-8
Misbehavior before the enemy .....	IV. Para. 6 .....	IV-8
Mutiny .....	IV. Para. 6 .....	IV-8
Other offenses .....	IV. Para. 105 .....	IV-7
Sedition .....	IV. Para. 6 .....	IV-8
<b>Soliciation of an offense</b> .....	IV. Para. 6 .....	IV-7
<b>Special court-martial</b>		
Composition .....	R.C.M. 501(a)(2) .....	II-50
Counsel .....	R.C.M. 502 .....	II-50
Jurisdiction .....	R.C.M. 201(f)(2) .....	II-14
<b>Special defenses.</b> <i>See</i> <b>Defenses.</b>		
<b>Special findings</b>		
In conjunction with general findings .....	R.C.M. 918(b) .....	II-121
Requirement for rulings on certain motions		
Generally .....	R.C.M. 905(d) .....	II-98
Suppression of confessions and admissions .....	Mil. R. Evid. 304(f)(1) .....	III-5
Suppression of evidence of eyewitness identification ..	Mil. R. Evid. 321(a) .....	III-16
Suppression of products of search and seizure .....	Mil. R. Evid. 311(d) .....	III-9
<b>Specifications.</b> <i>See</i> <b>Charges and specifications.</b>		
<b>Spectators</b>		
Access to court-martial .....	R.C.M. 806(a) .....	II-96
Control of .....	R.C.M. 806(b) .....	II-96
Witnesses as .....	Mil. R. Evid. 615 .....	III-43
<b>Speech, provoking</b> .....	IV. Para. 42 .....	IV-60
<b>Speedy trial</b>		
Accountability		
Inception of time period .....	R.C.M. 707(b)(1) .....	II-87
Termination of time period .....	R.C.M. 707(b)(1) .....	II-87
Arrest, Effect of .....	R.C.M. 707(a)(2) .....	II-87
Dismissal of charges, Effect of .....	R.C.M. 707(b)(3)(A) .....	II-87
Motion for .....	R.C.M. 905(c)(2)(B); 907(b)(2)(B) ..	II-98; II-114
Remedy for violation .....	R.C.M. 707(d) .....	II-88
Excluded periods .....	R.C.M. 707(c) .....	II-88
Generally .....	R.C.M. 707 .....	II-87
Imposition of restraint, effect of .....	R.C.M. 707(a)(2) .....	II-87
Mistrial, effect of .....	R.C.M. 707(b)(3)(A) .....	II-87
Multiple charges, effect of .....	R.C.M. 707(b)(2) .....	II-87
Preferral of charges, effect of .....	R.C.M. 707(b)(2) .....	II-87
Pretrial agreement, waiver of right not permitted .....	R.C.M. 705(c)(1)(B) .....	II-88
Release from pretrial confinement, effect of .....	R.C.M. 707(b)(3)(B) .....	II-87
Remedy for denial of .....	R.C.M. 707(d) .....	II-88
Time periods .....	R.C.M. 707(a); 707(d) .....	II-87; II-88
<b>Spies.</b> <i>See</i> <b>Spying.</b>		
<b>Spontaneous exclamation</b> .....	Mil. R. Evid. 803(2) .....	III-44
<b>Spouses, privilege as to</b> .....	Mil. R. Evid. 504 .....	III-24

INDEX

MCM 2019

Subject	Ref.	Page
<b>Spying</b>		
Generally	IV. Para. 31	IV-44
Votes required to convict	R.C.M. 921(c)(2)(A)	II-137
<b>Staff judge advocate. See also Advice, pretrial.</b>		
Charges and specifications, amendment by	R.C.M. 603(b)	II-57
Communications with		
Convening authority	R.C.M. 105(a)	II-7
Judge Advocate General, The	R.C.M. 105(b)	II-7
Staff judge advocates	R.C.M. 105(b)	II-7
Defined	R.C.M. 103(17)	II-6
Reduction of sentence, advice on	R.C.M. 1109(d)(2)	II-172
Member, ineligible to serve as	R.C.M. 912(f)(1)(G); 912(f)(1)(H)	II-122
Military judge, disqualified after acting as	R.C.M. 902(b)(2)	II-105
Plea agreement, negotiations	R.C.M. 705(e)(1)	II-84
<b>Stalking</b>	IV. Para. 80	IV-125
<b>Standing. See Search and seizure; Self-incrimination.</b>		
<b>State law</b>		
Judicial notice of	Mil. R. Evid. 202(a)	III-2
Offenses under	IV. Para. 91(c)(4)	IV-136
<b>Statements</b>		
Accused in presentencing proceedings	R.C.M. 1001(c)(2)	II-142
Closing, by counsel	R.C.M. 919	II-134
Coercion of	Mil. R. Evid. 304(a)(1)(A)	III-5
Disclosure by trial counsel	R.C.M. 701(a)(1)(C)	II-67
Disloyal	IV. Para. 97	IV-143
False	IV. Paras. 41	IV-55
Hearsay. <i>See Evidence, Hearsay</i>		
Inconsistent, for impeachment	Mil. R. Evid. 613	III-42
Limited admissibility	Mil. R. Evid. 105	III-2
Opening, by counsel	R.C.M. 913(b)	II-126
Preliminary hearing, use in	R.C.M. 405(f)	II-37
Production of witness statements	R.C.M. 914	II-127
Unsworn, by accused	R.C.M. 1001(d)(2)(C)	II-143
Unsworn, by victim	R.C.M. 1001(c)(5)	II-143
<b>State records, self-authenticating</b>	Mil. R. Evid. 902	III-49
<b>Statement of Trial Results</b>	R.C.M. 1101(a)	II-160
<b>Statutes, judicial notice of</b>	Mil. R. Evid. 202(a)	III-2
<b>Statutes of limitations</b>		
Motion to dismiss		
Burden of proof	R.C.M. 905(c)(2)(B)	II-108
Generally	R.C.M. 907(a)	II-113
Tolling	R.C.M. 403(a)	II-36
<b>Steal. See Larceny.</b>		
<b>Stipulations</b>		
Confessional	R.C.M. 705(b)(1)	II-83
Effect	R.C.M. 811(e)	II-102
Generally	R.C.M. 811	II-102
Kinds	R.C.M. 811(a)	II-102
Military judge		
Authority to reject	R.C.M. 811(b)	II-102
Inquiry	R.C.M. 811(c)	II-102
Military Rules of Evidence, applicability	R.C.M. 811(e)	II-102
Pretrial agreement, term or condition of	R.C.M. 705(c)(2)	II-84
Procedure	R.C.M. 811(f)	II-103
Withdrawal from	R.C.M. 811(d)	II-102
<b>Stolen property, receiving, buying, concealing</b>	IV. Para. 68	IV-104
<b>Straggling</b>	IV. Para. 108	IV-151
<b>Striking. See also Assault.</b>		
Colors or flag	IV. Para. 28	IV-41
Commissioned officer	IV. Para. 15	IV-21
Noncommissioned, petty, or warrant officer	IV. Para. 17	IV-25
<i>sua sponte</i> , defined	R.C.M. 103(19)	II-2
<b>Subordinate compelling surrender</b>	IV. Para. 28	IV-41

Subject	Ref.	Page
<b>Subpoena</b>		
Form .....	Appendix 7 .....	A7-1
Generally .....	R.C.M. 703(g)(3) .....	II-76
Investigative .....	R.C.M. 703(g)(3) .....	II-76
Right to .....	R.C.M. 703(a) .....	II-74
Service .....	R.C.M. 703(g)(3)(E) .....	II-77
<b>Successor in command, included in “convening authority”</b>	R.C.M. 103(6) .....	II-1
<b>Summary court-martial</b>		
Applicability of Military Rules of Evidence .....	R.C.M. 1304(b)(2) .....	II-200
Composition .....	R.C.M. 1301(a) .....	II-198
Convening		
By accuser .....	R.C.M. 1302(b) .....	II-199
Procedure .....	R.C.M. 1302(c) .....	II-199
Who may convene .....	R.C.M. 1302(a) .....	II-199
Convening authority’s action .....	R.C.M. 1306(b) .....	II-203
Counsel, right to .....	R.C.M. 1301(e) .....	II-199
Evidence, production of .....	R.C.M. 1301(f) .....	II-199
Function .....	R.C.M. 1301(b) .....	II-198
Generally .....	Chapter XIII .....	II-198
Jurisdiction over persons and offenses .....	R.C.M. 1301(c) .....	II-198
Military judge, in context of summary court-martial .....	R.C.M. 103(15) .....	II-2
Noncapital offenses .....	R.C.M. 1301(c) .....	II-198
Objection to trial by .....	R.C.M. 1303 .....	II-199
Procedural guide .....	Appendix 9 .....	A9-1
Procedure		
Post-trial .....	R.C.M. 1306 .....	II-203
Pretrial .....	R.C.M. 1304(a) .....	II-200
Trial .....	R.C.M. 1304(b) .....	II-200
Punishments .....	R.C.M. 1301(d) .....	II-198
Record of trial		
Certification .....	R.C.M. 1305(c) .....	II-202
Format .....	Appendix 15 .....	A15-1
Forwarding copies .....	R.C.M. 1305(d) .....	II-202
Preparation .....	R.C.M. 1305 .....	II-202
Review by summary court-martial .....	R.C.M. 1305(a) .....	II-202
Referral		
Basis .....	R.C.M. 601(d)(1) .....	II-62
By general court-martial convening authority .....	R.C.M. 407(a)(4) .....	II-48
By special court-martial convening authority .....	R.C.M. 404(d) .....	II-37
By summary court-martial convening authority .....	R.C.M. 403(b)(4) .....	II-37
Review		
By a judge advocate .....	R.C.M. 1306(c) .....	II-204
By The Judge Advocate General .....	R.C.M. 1306(d) .....	II-204
Subpoena, authority to issue .....	R.C.M. 703(g)(3)(D); 1301(f) .....	II-77; II-199
Witnesses, production .....	R.C.M. 1301(f) .....	II-199
<b>Supreme Court, Appeal of courts-martial (Art.67(h), UCMJ)</b>	R.C.M. 1205 .....	II-194
<b>Surrender</b>		
Shameful .....	IV. Para. 27 .....	IV-38
Subordinate compelling .....	IV. Para. 28 .....	IV-41
<b>Suspension of military judge, counsel</b> .....	R.C.M. 109 .....	II-8
<b>Suspension of nonjudicial punishment</b> .....	V. Para. 6a .....	V-7
<b>Suspension of court-martial sentence</b>		
Generally .....	R.C.M. 1107 .....	II-168
Limitations .....	R.C.M. 1107(d) .....	II-169
Termination by remission .....	R.C.M. 1107(e) .....	II-169
Vacation of suspension		
Confinement pending .....	R.C.M. 1108(c) .....	II-169
Generally .....	R.C.M. 1108 .....	II-168
Time for .....	R.C.M. 1108(b) .....	II-169
Who may suspend .....	R.C.M. 1107(b) .....	II-168
<b>Swearing</b>		
<i>See also Oaths.</i>		
False .....	IV. Para. 41 .....	IV-55

**INDEX**

**MCM 2019**

Subject	Ref.	Page
<b>Taking, wrongful</b> .....	IV. Para. 64 .....	IV-97
<i>See also Larceny.</i>		
<b>Telephone, tapping</b>		
<i>See Interception of wire and oral communications.</i>		
<b>Television</b>		
Broadcasting from courtroom .....	R.C.M. 806(c) .....	II-97
Remote live testimony of a child .....	R.C.M. 804, 914A; Mil. R. Evid. 611(d)(3) .....	II-94; II-127; III-42
<b>Testify</b>		
Accused, failure to .....	Mil. R. Evid. 301(f)(1) .....	III-4
Wrongful refusal .....	IV. Para. 130 .....	IV-130
<b>Testimony</b>		
Expert. <i>See Evidence, Expert.</i>		
False .....	IV. Para. 81 .....	IV-127
<i>See also Perjury.</i>		
How taken in court-martial .....	R.C.M. 913(c)(2) .....	II-126
Interpreter, given through .....	Mil. R. Evid. 604 .....	III-39
Offer of proof .....	Mil. R. Evid. 103(a)(2) .....	III-1
Prior proceeding, admissibility at court-martial .....	Mil. R. Evid. 804(b)(1) .....	III-47
Privileged, <i>See Evidence, Privileges.</i>		
Remote live testimony of a child .....	R.C.M. 804; R.C.M. 914A; Mil. R. Evid. 611(d)(3) .....	II-94; II-127; III-42
Spouse of accused .....	Mil. R. Evid. 504 .....	III-24
Stipulation of expected .....	R.C.M. 811 .....	II-90
<b>Theft. <i>See Larceny</i></b>		
<b>Threat</b>		
<i>See also Extortion</i>		
To cause panic or public fear .....	IV. Para. 73 .....	IV-73
Communicating .....	IV. Para. 73 .....	IV-73
<b>Time of war. <i>See War.</i></b>		
<b>Treaties, judicial notice of</b> .....	Mil. R. Evid. 202 .....	III-2
<b>Trial counsel</b>		
<i>See also Counsel.</i>		
Absence of .....	R.C.M. 805(c) .....	II-95
Announcement of .....	R.C.M. 813(a)(6); 901(b) .....	II-103; II-104
Assistant		
Detailing .....		II-50; II-51; II-55
Duties .....	R.C.M. 501(b); 502(d)(2); 503(c) ..	55
Oath .....	R.C.M. 502(d)(5) .....	II-50
Qualifications .....	R.C.M. 807(b)(1) .....	II-97
Challenges against members, announcing grounds .....	R.C.M. 502(d)(2) .....	II-51
Changes .....	R.C.M. 912(c) .....	II-121
Charges and specifications	R.C.M. 505(d)(1) .....	II-59
Authority to change .....	R.C.M. 603 .....	II-64
Service .....	R.C.M. 602 .....	II-64
Detailing .....	R.C.M. 503(c) .....	II-56
Disclosure to defense. <i>See Disclosure and discovery.</i>		
Disqualification of .....	R.C.M. 502(d)(3); 502(f); 901(d)(3) ..	II-52; II-54; II-104
Disqualified to act as other court-martial personnel .....	R.C.M. 502(e)(2)(D) .....	II-54
Duties .....	R.C.M. 502(d)(4) .....	II-53
Evidence, production of .....	R.C.M. 703(e) .....	II-75
Mental examination of accused, disclosure of results to ..	R.C.M. 706(c)(3); 706(c)(5) .....	II-86; II-87
Oath		
Generally .....	R.C.M. 807(b)(1) .....	II-97
Unsworn previously .....	R.C.M. 901(d)(5) .....	II-105
Opening statement .....	R.C.M. 913(b) .....	II-126
Presence at court-martial .....	R.C.M. 803; 805 .....	II-93; II-95
Qualifications		
Announcement of .....	R.C.M. 901(d)(1) .....	II-104
General court-martial .....	R.C.M. 502(d)(1) .....	II-51



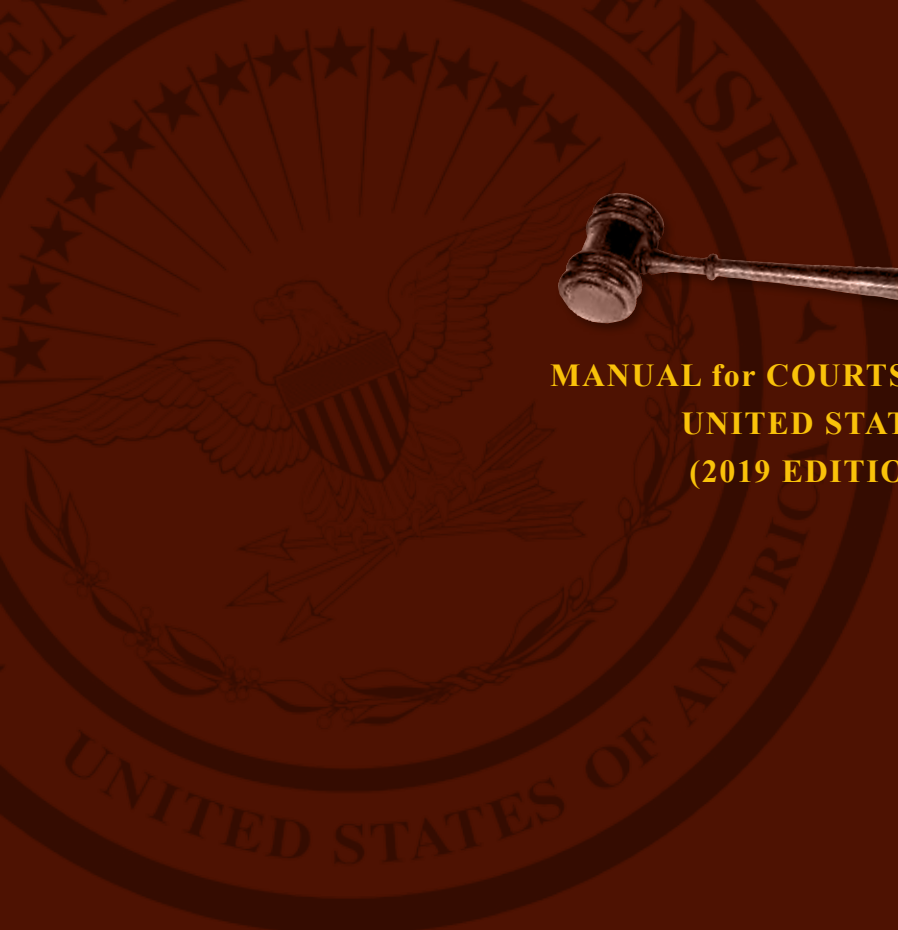
Subject	Ref.	Page
Special court-martial .....	R.C.M. 502(d)(2) .....	II-52
Record of trial, responsibility .....	R.C.M. 808 .....	II-98
Service of charges .....	R.C.M. 602 .....	II-64
Statement of Trial, distribution, .....	R.C.M. 1101(d) .....	II-160
Witnesses, production of .....	R.C.M. 703(c); 703(d); 703(g) .....	II-75; II-76
<b>Unauthorized absence</b> .....	IV. Para. 10 .....	IV-13
<i>See also</i> <b>Desertion</b> .		
<b>Unauthorized insignia, badge, ribbon, device, or lapel button, wearing of</b> .....	IV. Para. 40 .....	IV-54
<b>Unauthorized pass</b> .....	IV. Para. 38 .....	IV-52
<b>Uncharged misconduct</b>		
Action with presented to court-martial .....	R.C.M. 801(d) .....	II-91
Evidence, when admissible .....	Mil. R. Evid. 404(b); 608(b) .....	III-19; III-40
Instruction on .....	Mil. R. Evid. 105 .....	III-2
<b>Uniform</b>		
For courts-martial		
Accused, responsibility for .....	R.C.M. 804(e)(1) .....	II-95
Military judge, determination .....	R.C.M. 801(e)(1) .....	II-95
Wearing unauthorized insignia, badge, ribbon, device, or lapel button .....	IV. Para. 40 .....	IV-54
<b>Uniform Code of Military Justice (UCMJ)</b>	Appendix 2 .....	A2-1
Failure to enforce or comply with .....	IV. Para. 87 .....	IV-131
<b>Unit, separate or detached, defined</b> .....	R.C.M. 504(b)(2)(A) .....	II-57
<b>Unlawful apprehension</b> .....	IV. Para. 25 .....	IV-37
<b>Unlawful detention</b> .....	IV. Para. 25 .....	IV-37
<b>Unlawful enlistment, appointment, separation</b> .....	IV. Paras. 35; 36 .....	IV-49; IV-50
<b>Unlawful entry</b> .....	IV. Para. 79 .....	IV-124
<b>Unsworn charges</b>		
Amendment resulting in .....	R.C.M. 603(d) .....	II-65
Preferral .....	R.C.M. 307(b) .....	II-29
<b>Unsworn statement</b>		
Accused		
Preliminary hearing, right to make .....	R.C.M. 405(j)(2)(A) .....	II-44
Presentencing proceeding, right to make .....	R.C.M. 1001(d)(2)(C) .....	II-143
<b>Use, wrongful, of controlled substance</b> .....	IV. Para. 50 .....	IV-66
<b>Uttering forged instrument</b> .....	IV. Para. 37 .....	IV-50
<b>Uttering worthless check</b> .....	IV. Para. 70 .....	IV-106
<b>Vacation of suspended punishment</b>		
Confinement, pending .....	R.C.M. 1108(c) .....	II-169
General court-martial sentence .....	R.C.M. 1108(d)(1)(A) .....	II-170
Generally .....	R.C.M. 1108 .....	II-169
Nonjudicial punishment .....	V. Para. 6a(4); 6a(5) .....	V-7
Special courts-martial sentence .....	R.C.M. 1108(d)(1)(A-B) .....	II-170
Summary court-martial sentence .....	R.C.M. 1108(d)(1)(C) .....	II-170
<b>Value, discussed under larceny</b> .....	IV. Para. 46c(1)(g) .....	IV-100
<b>Vehicle</b>		
Defined .....	R.C.M. 103 .....	II-1
Driving recklessly or while drunk .....	IV. Para. 51 .....	IV-69
<b>Venue. See Place of court-martial.</b>		
<b>Veracity, impeachment of witnesses. See Evidence, Impeachment.</b>		
<b>Verbatim recording</b> .....	R.C.M. 1112(b) .....	II-178
<b>Verdict. See Findings.</b>		
<b>Vessel</b>		
Hazarding .....	IV. Para. 47 .....	IV-62
Jumping from .....	IV. Para. 11 .....	IV-16
<b>Victim counsel</b>		
Counsel for the accused request for victim interview victim, through .....	R.C.M. 701(e)(1) .....	II-69
Delivering unsworn statement during presentencing .....	R.C.M. 1001A .....	II-143
Prohibition against less favorable rating .....	R.C.M. 104(b)(1)(B) .....	II-7

**INDEX**

**MCM 2019**

Subject	Ref.	Page
Right to be heard through .....	R.C.M. 305(i)(2)(A)(iv); 906(b)(6); Mil. R. Evid. 412(c)(2); 513(e)(2); 514(e)(2) .....	II-26; II-111; III-21; III-37; III-39
<b>Videotaped record of trial</b> .....	R.C.M. 1112(a) .....	II-177
<b>Views and inspections, by court-martial</b> .....	R.C.M. 913(c)(3) .....	II-126
<b>Voir dire</b>		
<i>See also Challenges.</i>		
Members .....	R.C.M. 912(d) .....	II-121
Military judge .....	R.C.M. 902(d)(2) .....	II-106
Use of questionnaire .....	R.C.M. 912(a)(1) .....	II-120
<b>Voluntary manslaughter</b> .....	IV. Para. 57 .....	IV-78
<b>Voting.</b> <i>See Deliberations and voting.</i>		
<b>Waiver</b>		
Appellate review .....	R.C.M. 1115 .....	II-182
Form for waiver .....	Appendix 13 .....	A13-1
By pretrial agreement .....	R.C.M. 705(c)(2)(E) .....	II-84
Challenges		
Cause .....	R.C.M. 912(f)(4) .....	II-122
Peremptory .....	R.C.M. 912(g)(2) .....	II-122
Conditional guilty plea, effect on .....	R.C.M. 910(a)(2) .....	II-117
Deposition		
Objections in .....	R.C.M. 702(h) .....	II-73
Enlisted members, request for .....	R.C.M. 903(e) .....	II-108
Evidence, admissibility and objections .....	Mil. R. Evid. 103 .....	III-1
Guilty plea, effect of .....	R.C.M. 910(c)(4); 910(j) .....	II-118; II-120
Military judge alone, request for trial by .....	R.C.M. 903(e) .....	II-108
Motions, generally .....	R.C.M. 905(e); 907(b)(2) .....	II-109; II-113
Objections, generally .....	R.C.M. 801(g); Mil. R. Evid. 103 .....	II-81; III-1
Self-incrimination		
Accused .....	Mil. R. Evid. 301(c) .....	III-3
Witness .....	Mil. R. Evid. 301(e) .....	III-3
<b>War</b>		
Judicial notice of .....	Mil. R. Evid. 201 .....	III-2
Law of. <i>See Law of War.</i>		
Prosecution of, case affecting .....	R.C.M. 401(d); 407(b) .....	II-36; II-49
Time of		
Defined .....	R.C.M. 103(21) .....	II-2
Element of offense .....	IV. Paras. 26; 29; 31 .....	IV-37; IV-42; IV-44
Maximum punishment .....	IV. Paras. 6; 7; 9; 15; 22 .....	IV-7; IV-9; IV-10; IV-21; IV-33
<b>Warrant of attachment</b> .....	R.C.M. 703(g)(3)(H) .....	II-78
<b>Warrant officer</b>		
Apprehension by .....	R.C.M. 302(b)(2) .....	II-20
Assault on		
In execution of office .....	IV. Para. 17 .....	IV-25
Not in execution of office .....	IV. Para. 77 .....	IV-117
Dishonorable discharge .....	R.C.M. 1003(b)(8)(B) .....	II-149
Dismissal of commissioned .....	R.C.M. 1003(b)(8)(A) .....	II-149
Disobedience of .....	IV. Para. 17 .....	IV-25
Disrespect toward .....	IV. Para. 17 .....	IV-25
Member of court-martial .....	R.C.M. 502(a)(1)(B) .....	II-50
Restraint of, pretrial .....	R.C.M. 304(b)(1) .....	II-22
<b>Warrant, search.</b> <i>See Search and seizure.</i>		
<b>Waste or spoilage, nonmilitary property</b> .....	IV. Para. 45 .....	IV-60
<b>Weapon</b>		
<i>See also Assault; Firearm.</i>		
Carrying concealed .....	IV. Para. 52 .....	IV-71
<b>Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel button</b> .....	IV. Para. 40 .....	IV-54
<b>Willful disobedience of orders</b> .....	IV. Paras. 16; 16 .....	IV-24; IV-25
<b>Wiretapping, evidence</b> .....	Mil. R. Evid. 317 .....	III-16

Subject	Ref.	Page
<b>Withdrawal</b>		
Appellate review waiver, of .....	R.C.M. 1115 .....	II-182
Charges, of		
Authority to .....	R.C.M. 604(a) .....	II-65
Effect of .....	R.C.M. 604(b) .....	II-65
Generally .....	R.C.M. 604 .....	II-65
Mistrial .....	R.C.M. 915(c)(1) .....	II-128
Pretrial agreement, term of .....	R.C.M. 705(b)(2)(C) .....	II-83
From conspiracy .....	IV. Para. 5c(6) .....	IV-7
From offense, as principal .....	IV. Para. 1b(7) .....	IV-2
From pretrial agreement .....	R.C.M. 705(c)(4) .....	II-85
Guilty plea, of .....	R.C.M. 910(h)(1) .....	II-120
<b>Witness</b>		
Access to, by parties .....	R.C.M. 701(e) .....	II-69
Appear, neglect or refusal to .....	R.C.M. 703(g)(3)(H) .....	II-78
Children .....	R.C.M. 804(d), 914A; Mil. R. Evid. 611(d) .....	II-94; II-127 III-39
Competency .....	Mil. R. Evid. 601 .....	III-39
Discovery. <i>See</i> <b>Disclosure and discovery.</b>		
Examination. <i>See</i> <b>Questions; Testimony.</b>		
Expert, employment of .....	R.C.M. 703(d) .....	II-75
Failure to call .....	R.C.M. 701(c) .....	II-69
Immunity. <i>See</i> <b>Immunity.</b>		
Impeachment. <i>See</i> <b>Evidence, Impeachment.</b>		
Members, disqualified as .....	R.C.M. 912(f)(1)(D) .....	II-122
Military judge, disqualified as .....	R.C.M. 902(b)(3) .....	II-105
Oath .....	R.C.M. 807(b)(1)(B) .....	II-87
Perjury (for witnesses subject to the UCMJ) .....	IV. Para. 81 .....	IV-127
Presence .....	R.C.M. 703(b)(1) .....	II-74
Pretrial agreement concerning .....	R.C.M. 705(c)(2)(B); 705(c)(2)(E) .	II-83; II-84
Privileges. <i>See</i> <b>Evidence, Privileges.</b>		
Production of		
Determination .....	R.C.M. 703(c) .....	II-75
Generally .....	R.C.M. 703 .....	II-74
Motion for .....	R.C.M. 905(b)(4); 906(b)(7) .....	II-108; II-112
Preliminary hearing .....	R.C.M. 405(h)(2) .....	II-41
Procedure for .....	R.C.M. 703(g); Appendix 7 .....	II-76; A7-1
Rights of parties, court-martial .....	R.C.M. 703(b) .....	II-74
Sentencing .....	R.C.M. 1001(f) .....	II-144
Subpoena .....	R.C.M. 703(g)(3); Appendix 7 .....	II-76; A7-1
Trial counsel, responsibility .....	R.C.M. 703(c)(1); 703(c)(2)(D) .....	II-75
Statements of, production .....	R.C.M. 914 .....	II-127
Unavailable at court-martial .....	R.C.M. 703(b)(3) .....	II-74
<b>Worthless checks.</b> <i>See</i> <b>Checks.</b>		
<b>Writings</b>		
Authentication of .....	Mil. R. Evid. 901; 902 .....	III-48; III-49
Best evidence rule. <i>See</i> <b>Evidence, Contents of writings</b> recordings, and photographs.		
Used to refresh memory .....	Mil. R. Evid. 612 .....	III-42
<b>Wrongful appropriation</b> .....	IV. Para. 64 .....	IV-97



**MANUAL for COURTS-MARTIAL  
UNITED STATES  
(2019 EDITION)**

**UNCLASSIFIED**

PUBLIC LAW 116-92—DEC. 20, 2019

NATIONAL DEFENSE AUTHORIZATION  
ACT FOR FISCAL YEAR 2020

Public Law 116–92  
116th Congress

An Act

Dec. 20, 2019  
[S. 1790]

National Defense  
Authorization  
Act for Fiscal  
Year 2020.

To authorize appropriations for fiscal year 2020 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “National Defense Authorization Act for Fiscal Year 2020”.

**SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.**

(a) DIVISIONS.—This Act is organized into four divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
- (4) Division D—Funding Tables.
- (5) Division E—Intelligence Authorizations for Fiscal Years 2018, 2019, and 2020.
- (6) Division F—Other Matters.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title.  
Sec. 2. Organization of Act into divisions; table of contents.  
Sec. 3. Congressional defense committees.  
Sec. 4. Budgetary effects of this Act.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization Of Appropriations

Sec. 101. Authorization of appropriations.

Subtitle B—Army Programs

Sec. 111. Authority of the Secretary of the Army to waive certain limitations related to the Distributed Common Ground System-Army Increment 1.

Subtitle C—Navy Programs

- Sec. 121. Ford-class aircraft carrier cost limitation baselines.  
Sec. 122. Modification of annual report on cost targets for certain aircraft carriers.  
Sec. 123. Refueling and complex overhauls of the U.S.S. John C. Stennis and U.S.S. Harry S. Truman.  
Sec. 124. Ford class aircraft carrier support for F-35C aircraft.  
Sec. 125. Prohibition on use of funds for reduction of aircraft carrier force structure.

- Sec. 126. Modification of prohibition on availability of funds for Navy waterborne security barriers.
- Sec. 127. LHA Replacement Amphibious Assault Ship Program.
- Sec. 128. Strategic sealift fleet vessel.
- Sec. 129. Design and construction of amphibious transport dock designated LPD–31.
- Sec. 130. Limitation on availability of funds for the Littoral Combat Ship.
- Sec. 131. Limitation on the next new class of Navy large surface combatants.
- Sec. 132. Limitation on availability of funds pending quarterly updates on the CH–53K King Stallion helicopter program.
- Sec. 133. Limitation on availability of funds for VH–92A helicopter.
- Sec. 134. Report on carrier wing and aviation combat element composition.

#### Subtitle D—Air Force Programs

- Sec. 141. Modification of requirement to preserve certain C–5 aircraft.
- Sec. 142. OC–135B aircraft recapitalization program.
- Sec. 143. Requirement to align Air Force aviation force structure with National Defense Strategy.
- Sec. 144. Prohibition on availability of funds for reduction in KC–10 primary mission aircraft inventory.
- Sec. 145. Limitation on availability of funds for F–15EX aircraft.
- Sec. 146. Limitation on availability of funds for VC–25B aircraft.
- Sec. 147. Limitation on availability of funds for RC–26B aircraft.
- Sec. 148. Limitation on availability of funds for retirement of RC–135 aircraft.
- Sec. 149. Air Force aggressor squadron modernization.
- Sec. 150. Air Force plan for Combat Rescue Helicopter fielding.
- Sec. 151. Report on feasibility of multiyear contract for procurement of JASSM–ER missiles.
- Sec. 152. Report on aircraft fleet of the Civil Air Patrol.
- Sec. 153. Sense of Congress on the light attack aircraft initiative of the Air Force.

#### Subtitle E—Defense-wide, Joint, and Multiservice Matters

- Sec. 161. Economic order quantity contracting and buy-to-budget acquisition for F–35 aircraft program.
- Sec. 162. Relief from contractors for failure to deliver ready-for-issue spare parts for the F–35 aircraft program.
- Sec. 163. Limitation on availability of funds for reallocation of Turkish F–35A aircraft to the United States.
- Sec. 164. Requirement to establish the use of an Agile DevOps software development solution as an alternative for Joint Strike Fighter Autonomic Logistics Information System.
- Sec. 165. F–35 sustainment cost.
- Sec. 166. Reports on the progress and performance of the F–35 aircraft program.
- Sec. 167. Other reports on the F–35 aircraft program.
- Sec. 168. Limitation on availability of funds for communications systems lacking certain resiliency features.
- Sec. 169. Repeal of tactical unmanned vehicle common data link requirement.

### TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

#### Subtitle A—Authorization of Appropriations

- Sec. 201. Authorization of appropriations.

#### Subtitle B—Program Requirements, Restrictions, and Limitations

- Sec. 211. Program on enhancement of preparation of dependents of members of Armed Forces for careers in science, technology, engineering, and mathematics.
- Sec. 212. Updates to the Department of Defense personnel management authority to attract experts in science and engineering.
- Sec. 213. Establishment of joint reserve detachment of the Defense Innovation Unit.
- Sec. 214. Research and educational programs and activities for Historically Black Colleges and Universities and Minority-Serving Institutions of Higher Education.
- Sec. 215. Modification of authority for prizes for advanced technology achievements.
- Sec. 216. Joint hypersonics transition office.
- Sec. 217. Modification of proof of concept commercialization program.
- Sec. 218. Modification of authority and addition of technology areas for expedited access to technical talent.
- Sec. 219. Expansion of coordination in support of national security innovation and entrepreneurial education.

- Sec. 220. Modification of defense quantum information science and technology research and development program.
- Sec. 221. Understanding of investments in artificial intelligence and development of capabilities by adversaries.
- Sec. 222. Advisory role of JASON scientific advisory group.
- Sec. 223. Direct Air Capture and Blue Carbon Removal Technology Program.
- Sec. 224. Requiring defense microelectronics products and services meet trusted supply chain and operational security standards.
- Sec. 225. Development and acquisition strategy to procure secure, low probability of detection data link network capability.
- Sec. 226. Establishment of secure next-generation wireless network (5G) infrastructure for the Nevada Test and Training Range and base infrastructure.
- Sec. 227. Administration of manufacturing innovation institutes funded by the Department of Defense.
- Sec. 228. Research program on foreign malign influence operations.
- Sec. 229. Diversification of the research and engineering workforce of the Department of Defense.
- Sec. 230. Policy on the talent management of digital expertise and software professionals.
- Sec. 231. Digital engineering capability to automate testing and evaluation.
- Sec. 232. Process to align policy formulation and emerging technology development.
- Sec. 233. Improvement of the Strategic Capabilities Office of the Department of Defense.
- Sec. 234. Pilot program on enhanced civics education.
- Sec. 235. Technology and national security fellowship.
- Sec. 236. Documentation relating to the Advanced Battle Management System.
- Sec. 237. Sensor data integration for fifth generation aircraft.
- Sec. 238. Sense of Congress on future vertical lift technologies.
- Sec. 239. Use of funds for Strategic Environmental Research Program, Environmental Security Technical Certification Program, and Operational Energy Capability Improvement.
- Sec. 240. Limitation and report on Indirect Fire Protection Capability Increment 2 capability.

#### Subtitle C—Plans, Reports, and Other Matters

- Sec. 251. Master plan for implementation of authorities relating to science and technology reinvention laboratories.
- Sec. 252. Infrastructure to support research, development, test, and evaluation missions.
- Sec. 253. Energetics plan.
- Sec. 254. Strategy and implementation plan for fifth generation information and communications technologies.
- Sec. 255. Department-wide software science and technology strategy.
- Sec. 256. Artificial intelligence education strategy.
- Sec. 257. Cyber science and technology activities roadmap and reports.
- Sec. 258. Report on B–52 commercial engine replacement program.
- Sec. 259. Commercial edge computing technologies and best practices for Department of Defense warfighting systems.
- Sec. 260. Biannual report on the Joint Artificial Intelligence Center.
- Sec. 261. Quarterly updates on the Optionally Manned Fighting Vehicle program.
- Sec. 262. National Study on Defense Research At Historically Black Colleges and Universities and Other Minority Institutions.
- Sec. 263. Study on national security emerging biotechnologies for the Department of Defense.
- Sec. 264. Independent study on optimizing resources allocated to Combating Terrorism Technical Support Office.
- Sec. 265. Independent assessment of electronic warfare plans and programs.
- Sec. 266. Technical correction to Global Research Watch Program.

### TITLE III—OPERATION AND MAINTENANCE

#### Subtitle A—Authorization of Appropriations

- Sec. 301. Authorization of appropriations.

#### Subtitle B—Energy and Environment

- Sec. 311. Timeline for Clearinghouse review of applications for energy projects that may have an adverse impact on military operations and readiness.
- Sec. 312. Authority to accept contributions of funds from applicants for energy projects for mitigation of impacts on military operations and readiness.
- Sec. 313. Use of proceeds from sale of recyclable materials.
- Sec. 314. Disposal of recyclable materials.



- Sec. 315. Department of Defense improvement of previously conveyed utility systems serving military installations.
- Sec. 316. Modification of Department of Defense environmental restoration authorities to include Federal Government facilities used by National Guard.
- Sec. 317. Use of operational energy cost savings of Department of Defense.
- Sec. 318. Sale of electricity from alternate energy and cogeneration production facilities.
- Sec. 319. Energy resilience programs and activities.
- Sec. 320. Technical and grammatical corrections and repeal of obsolete provisions relating to energy.
- Sec. 321. Transfer authority for funding of study and assessment on health implications of per- and polyfluoroalkyl substances contamination in drinking water by Agency for Toxic Substances and Disease Registry.
- Sec. 322. Replacement of fluorinated aqueous film-forming foam with fluorine-free fire-fighting agent.
- Sec. 323. Prohibition of uncontrolled release of fluorinated aqueous film-forming foam at military installations.
- Sec. 324. Prohibition on use of fluorinated aqueous film forming foam for training exercises.
- Sec. 325. Real-time sound-monitoring at Navy installations where tactical fighter aircraft operate.
- Sec. 326. Development of extreme weather vulnerability and risk assessment tool.
- Sec. 327. Removal of barriers that discourage investments to increase military installation resilience.
- Sec. 328. Budgeting of Department of Defense relating to extreme weather.
- Sec. 329. Prohibition on Perfluoroalkyl Substances and Polyfluoroalkyl Substances in Meals Ready-to-Eat Food Packaging.
- Sec. 330. Disposal of materials containing per- and polyfluoroalkyl substances or aqueous film-forming foam.
- Sec. 331. Agreements to share monitoring data relating to perfluoroalkyl and polyfluoroalkyl substances and other contaminants of concern.
- Sec. 332. Cooperative agreements with States to address contamination by perfluoroalkyl and polyfluoroalkyl substances.
- Sec. 333. Plan to phase out use of burn pits.
- Sec. 334. Information relating to locations of burn pit use.
- Sec. 335. Data quality review of radium testing conducted at certain locations of the Department of the Navy.
- Sec. 336. Reimbursement of Environmental Protection Agency for certain costs in connection with the Twin Cities Army Ammunition Plant, Minnesota.
- Sec. 337. Pilot program for availability of working-capital funds for increased combat capability through energy optimization.
- Sec. 338. Report on efforts to reduce high energy intensity at military installations.

#### Subtitle C—Treatment of Contaminated Water Near Military Installations

- Sec. 341. Short title.
- Sec. 342. Definitions.
- Sec. 343. Provision of water uncontaminated with perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) for agricultural purposes.
- Sec. 344. Acquisition of real property by Air Force.
- Sec. 345. Remediation plan.

#### Subtitle D—Logistics and Sustainment

- Sec. 351. Materiel readiness metrics and objectives.
- Sec. 352. Clarification of authority regarding use of working-capital funds for unspecified minor military construction projects related to revitalization and recapitalization of defense industrial base facilities.
- Sec. 353. Modification to limitation on length of overseas forward deployment of naval vessels.
- Sec. 354. Extension of temporary installation reutilization authority for arsenals, depots, and plants.
- Sec. 355. F–35 Joint Strike Fighter sustainment.
- Sec. 356. Report on strategic policy for prepositioned materiel and equipment.
- Sec. 357. Pilot program to train skilled technicians in critical shipbuilding skills.
- Sec. 358. Requirement for military department inter-service depot maintenance.
- Sec. 359. Strategy to improve infrastructure of certain depots of the Department of Defense.

#### Subtitle E—Reports

- Sec. 361. Readiness reporting.
- Sec. 362. Technical correction to deadline for transition to Defense Readiness Reporting System Strategic.

- Sec. 363. Report on Navy ship depot maintenance budget.
- Sec. 364. Report on Runit Dome.
- Sec. 365. Prohibition on subjective upgrades by commanders of unit ratings in monthly readiness reporting on military units.
- Sec. 366. Requirement to include foreign language proficiency in readiness reporting systems of Department of Defense.

#### Subtitle F—Other Matters

- Sec. 371. Prevention of encroachment on military training routes and military operations areas.
- Sec. 372. Expansion and enhancement of authorities on transfer and adoption of military animals.
- Sec. 373. Extension of authority for Secretary of Defense to use Department of Defense reimbursement rate for transportation services provided to certain non-Department of Defense entities.
- Sec. 374. Extension of authority of Secretary of Transportation to issue non-premium aviation insurance.
- Sec. 375. Defense personal property program.
- Sec. 376. Public events about Red Hill Bulk Fuel Storage Facility.
- Sec. 377. Sense of Congress regarding Innovative Readiness Training program.
- Sec. 378. Detonation chambers for explosive ordnance disposal.

### TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

#### Subtitle A—Active Forces

- Sec. 401. End strengths for active forces.
- Sec. 402. Revisions in permanent active duty end strength minimum levels.

#### Subtitle B—Reserve Forces

- Sec. 411. End strengths for Selected Reserve.
- Sec. 412. End strengths for Reserves on active duty in support of the reserves.
- Sec. 413. End strengths for military technicians (dual status).
- Sec. 414. Maximum number of reserve personnel authorized to be on active duty for operational support.
- Sec. 415. Authorized strengths for Marine Corps Reserves on active duty.
- Sec. 416. Modification of authorized strength of Air Force Reserve serving on full-time reserve component duty for administration of the reserves or the National Guard.

#### Subtitle C—Authorization of Appropriations

- Sec. 421. Military personnel.

### TITLE V—MILITARY PERSONNEL POLICY

#### Subtitle A—Officer Personnel Policy

- Sec. 501. Maker of original appointments in a regular or reserve component of commissioned officers previously subject to original appointment in other type of component.
- Sec. 502. Furnishing of adverse information on officers to promotion selection boards.
- Sec. 503. Limitation on number of officers recommendable for promotion by promotion selection boards.
- Sec. 504. Expansion of authority for continuation on active duty of officers in certain military specialties and career tracks.
- Sec. 505. Management policies for joint qualified officers.
- Sec. 506. Modification of authorities on management of deployments of members of the Armed Forces and related unit operating and personnel tempo matters.
- Sec. 507. Personnel tempo of the Armed Forces and the United States Special Operations Command during periods of inapplicability of high-deployment limitations.
- Sec. 508. Permanent authority to defer past age 64 the retirement of chaplains in general and flag officer grades.
- Sec. 509. Higher grade in retirement for officers following reopening of determination or certification of retired grade.
- Sec. 510. Authority of promotion boards to recommend that officers of particular merit be placed higher on promotion list.
- Sec. 510A. Availability on the internet of certain information about officers serving in general or flag officer grades.
- Sec. 510B. Functional badge or insignia upon commission for chaplains.

#### Subtitle B—Reserve Component Management

- Sec. 511. Modification of grade level threshold for Junior Reserve Officers' Training Corps.

- Sec. 512. Inclusion of STEM in courses of instruction for the Junior Reserve Officers' Training Corps.
- Sec. 513. Inclusion of homeschooled students in Junior Reserve Officers' Training Corps units.
- Sec. 514. Clarification of eligibility to serve as Commander, Marine Forces Reserve.
- Sec. 515. Extension and periodic evaluation of suicide prevention and resilience program for the reserve components.
- Sec. 516. Authority to defer mandatory separation at age 68 of officers in medical specialties in the reserve components.
- Sec. 517. Modernization of inspection authorities applicable to the National Guard.
- Sec. 518. Consultation with Chief of the National Guard Bureau in the appointment or designation of National Guard property and fiscal officers.
- Sec. 519. Coast Guard Junior Reserve Officers' Training Corps.
- Sec. 520. Repeal of requirement for review of certain Army Reserve officer unit vacancy promotions by commanders of associated active duty units.
- Sec. 520A. Report on methods to enhance domestic response to large scale, complex and catastrophic disasters.
- Sec. 520B. Report and briefing on the Senior Reserve Officers' Training Corps.
- Sec. 520C. Sense of Congress on increase in number of Junior Reserve Officers' Training Corps units.

#### Subtitle C—General Service Authorities and Correction of Military Records

- Sec. 521. Advice and counsel of trauma experts in review by boards for correction of military records and discharge review boards of certain claims.
- Sec. 522. Reduction in required number of members of discharge review boards.
- Sec. 523. Establishment of process to review a request for upgrade of discharge or dismissal.
- Sec. 524. Prohibition on reduction in the number of personnel assigned to duty with a service review agency.
- Sec. 525. Training of members of boards for correction of military records and discharge review boards on sexual trauma, intimate partner violence, spousal abuse, and related matters.
- Sec. 526. Time requirements for certification of honorable service.
- Sec. 527. Correction of certain discharge characterizations.
- Sec. 528. Development of guidelines for use of unofficial sources of information to determine eligibility of members and former members of the Armed Forces for decorations when the service records are incomplete because of damage to the official record.
- Sec. 529. Strategic plan for diversity and inclusion.
- Sec. 530. Study regarding screening individuals who seek to enlist in the Armed Forces.
- Sec. 530A. Feasibility study regarding notification to Secretary of Homeland Security of honorable discharges of non-citizens.
- Sec. 530B. Sense of Congress regarding accession physicals.

#### Subtitle D—Military Justice

- Sec. 531. Expansion of pre-referral matters reviewable by military judges and military magistrates in the interest of efficiency in military justice.
- Sec. 532. Command influence.
- Sec. 533. Statute of limitations for certain offenses.
- Sec. 534. Public access to dockets, filings, and court records of courts-martial or other records of trial of the military justice system.
- Sec. 535. Extension of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.
- Sec. 536. Authority for return of personal property to victims of sexual assault who file a Restricted Report before conclusion of related proceedings.
- Sec. 537. Guidelines on sentences for offenses committed under the Uniform Code of Military Justice.
- Sec. 538. Notification of significant events and documentation of preference for prosecution jurisdiction for victims of sexual assault.
- Sec. 539. Increase in number of digital forensic examiners for certain military criminal investigative organizations.
- Sec. 540. Increase in investigative personnel and Victim Witness Assistance Program liaisons.
- Sec. 540A. Training for sexual assault initial disposition authorities on exercise of disposition authority for sexual assault and collateral offenses.
- Sec. 540B. Training for commanders in the Armed Forces on their role in all stages of military justice in connection with sexual assault.
- Sec. 540C. Timely disposition of nonprosecutable sex-related offenses.
- Sec. 540D. Department of Defense-wide policy and military department-specific programs on reinvigoration of the prevention of sexual assault involving members of the Armed Forces.

- Sec. 540E. Recommendations on separate punitive article in the Uniform Code of Military Justice on sexual harassment.
- Sec. 540F. Report on military justice system involving alternative authority for determining whether to prefer or refer changes for felony offenses under the Uniform Code of Military Justice.
- Sec. 540G. Report on standardization among the military departments in collection and presentation of information on matters within the military justice system.
- Sec. 540H. Report on expansion of Air Force safe to report policy across the Armed Forces.
- Sec. 540I. Assessment of racial, ethnic, and gender disparities in the military justice system.
- Sec. 540J. Pilot programs on defense investigators in the military justice system.
- Sec. 540K. Report on preservation of recourse to restricted report on sexual assault for victims of sexual assault following certain victim or third-party communications.
- Sec. 540L. Report on establishment of guardian ad litem program for certain military dependents who are a victim or witness of an offense under the Uniform Code of Military Justice involving abuse or exploitation.
- Sec. 540M. Comptroller General of the United States report on implementation by the Armed Forces of recent statutory requirements on sexual assault prevention and response in the military.
- Sec. 540N. Sense of Congress on the Port Chicago 50.

#### Subtitle E—Other Legal Matters

- Sec. 541. Improvement of certain Special Victims' Counsel authorities.
- Sec. 542. Availability of Special Victims' Counsel at military installations.
- Sec. 543. Notification of issuance of military protective order to civilian law enforcement.
- Sec. 544. Copyright protection for civilian faculty of certain accredited institutions.
- Sec. 545. Termination of leases of premises and motor vehicles of servicemembers who incur catastrophic injury or illness or die while in military service.
- Sec. 546. Military orders required for termination of leases pursuant to the Servicemembers Civil Relief Act.
- Sec. 547. Preservation of right to bring class action under Servicemembers Civil Relief Act.
- Sec. 548. Legal counsel for victims of alleged domestic violence offenses.
- Sec. 549. Notice to victims of alleged sexual assault of pendency of further administrative action following a determination not to refer to trial by court-martial.
- Sec. 550. Treatment of information in Catch a Serial Offender Program for certain purposes.
- Sec. 550A. Policies and procedures on registration at military installations of civilian protective orders applicable to members of the Armed Forces assigned to such installations and certain other individuals.
- Sec. 550B. Defense Advisory Committee for the Prevention of Sexual Misconduct.
- Sec. 550C. Training for Special Victims' Counsel on civilian criminal justice matters in the States of the military installations to which assigned.
- Sec. 550D. Enhancing the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.
- Sec. 550E. Feasibility study on establishment of database of military protective orders.
- Sec. 550F. GAO review of USERRA and SCRA.

#### Subtitle F—Member Education

- Sec. 551. Authority for detail of certain enlisted members of the Armed Forces as students at law schools.
- Sec. 552. Inclusion of Coast Guard in Department of Defense STARBASE Program.
- Sec. 553. Degree granting authority for United States Army Armament Graduate School; limitation on establishment of certain educational institutions.
- Sec. 554. Prohibition on off-duty employment for cadets and midshipmen completing obligated service after graduation.
- Sec. 555. Consideration of request for transfer of a cadet or midshipman at a military service academy who is the victim of a sexual assault or related offense.
- Sec. 556. Redesignation of the Commandant of the United States Air Force Institute of Technology as the Director and Chancellor of such Institute.
- Sec. 557. Eligibility of additional enlisted members for associate degree programs of the Community College of the Air Force.
- Sec. 558. Speech disorders of cadets and midshipmen.
- Sec. 559. Requirement to continue provision of tuition assistance for members of the Armed Forces.

- Sec. 560. Information on institutions of higher education participating in the Department of Defense Tuition Assistance Program.
- Sec. 560A. Inclusion of information on free credit monitoring in annual financial literacy briefing.
- Sec. 560B. Programs to facilitate the award of private pilot's certificates.

Subtitle G—Member Training and Transition

- Sec. 561. Requirement to provide information regarding benefits claims to members during TAP counseling.
- Sec. 562. Participation of other Federal agencies in the SkillBridge apprenticeship and internship program for members of the Armed Forces.
- Sec. 563. First modification of elements of report on the improved Transition Assistance Program.
- Sec. 564. Second modification of elements of report on the improved Transition Assistance Program.
- Sec. 565. Prohibition on gender-segregated training at Marine Corps Recruit Depots.
- Sec. 566. Assessment of deaths of recruits under the jurisdiction of the Secretaries of the military departments.
- Sec. 567. Review of Department of Defense training programs regarding disinformation campaigns.
- Sec. 568. Command matters in connection with transition assistance programs.
- Sec. 569. Machine readability and electronic transferability of Certificate of Release or Discharge from Active Duty (DD Form 214).
- Sec. 570. Records of service for Reserves.
- Sec. 570A. Limitations and requirements in connection with separations for members of the Armed Forces who suffer from mental health conditions in connection with a sex-related, intimate partner violence-related, or spousal-abuse offense.
- Sec. 570B. Prohibition on involuntary separation of certain members of the Armed Forces; consideration of military service in removal determinations.
- Sec. 570C. Inclusion of question regarding immigration status on preseparation counseling checklist (DD Form 2648).
- Sec. 570D. Counseling for members of the Armed Forces who are not citizens of the United States on naturalization in the United States.
- Sec. 570E. Pilot program on information sharing between Department of Defense and designated relatives and friends of members of the Armed Forces regarding the experiences and challenges of military service.
- Sec. 570F. Connections of members retiring or separating from the Armed Forces with community-based organizations and related entities.
- Sec. 570G. Pilot program regarding online application for the Transition Assistance Program.

Subtitle H—Military Family Readiness and Dependents' Education

- Sec. 571. Authorizing members to take leave for a birth or adoption in more than one increment.
- Sec. 572. Deferred deployment for members who give birth.
- Sec. 573. Authority of the Secretary concerned to transport remains of a covered decedent to no more than two places selected by the person designated to direct disposition of the remains.
- Sec. 574. Military funeral honors matters.
- Sec. 575. Improvement of occupational license portability for relocated spouses of members of the uniformed services.
- Sec. 576. Continued eligibility for education and training opportunities for spouses of promoted members.
- Sec. 577. Modification to authority to reimburse for State licensure and certification costs of a spouse of a servicemember arising from relocation.
- Sec. 578. Clarification regarding eligibility to transfer entitlement under Post-9/11 Educational Assistance Program.
- Sec. 579. Annual State report card.
- Sec. 580. Improvements to child care for members of the Armed Forces.
- Sec. 580A. Transportation of remains of casualties; travel expenses for next of kin.
- Sec. 580B. Meetings of officials of the Department of Defense with representative groups of survivors of deceased members of the Armed Forces.
- Sec. 580C. Information and opportunities for registration for voting and absentee ballot requests for members of the Armed Forces undergoing deployment overseas.
- Sec. 580D. Study on two-way military ballot barcode tracking.
- Sec. 580E. Assistance to schools with military dependent students.
- Sec. 580F. First expansion of the My Career Advancement Account program for military spouses.

- Sec. 580G. Second expansion of the My Career Advancement Account program for military spouses.
- Sec. 580H. Report on training and support available to military spouses.
- Sec. 580I. Rikatak Guest Student Program at United States Army Garrison—Kwajalein Atoll.

#### Subtitle I—Decorations and Awards

- Sec. 581. Modification of authorities on eligibility for and replacement of gold star lapel buttons.
- Sec. 582. Standardization of honorable service requirement for award of military decorations.
- Sec. 583. Authorization for award of the Medal of Honor to John J. Duffy for acts of valor in Vietnam.
- Sec. 584. Review of World War I valor medals.

#### Subtitle J—Miscellaneous Reports and Other Matters

- Sec. 591. Clarification of the term “assault” for purposes of Workplace and Gender Relations Surveys.
- Sec. 592. Inclusion of certain veterans on temporary disability or permanent disabled retirement lists in military adaptive sports programs.
- Sec. 593. Questions in surveys regarding extremist activity in the workplace.
- Sec. 594. Study on best practices for providing financial literacy education for separating members of the Armed Forces.
- Sec. 595. Report on oversight of authorized strengths of certain grades of commissioned regular and reserve officers of the Armed Forces.
- Sec. 596. Report on certain waivers.
- Sec. 597. Notifications on manning of afloat naval forces.
- Sec. 598. Report regarding use of aerial systems of the Department of Defense to support agencies of States, Territories, and the Federal Government.
- Sec. 599. Information for members of the Armed Forces on availability of services of the Department of Veterans Affairs relating to sexual trauma.
- Sec. 599A. Authority to issue an honorary promotion to Colonel Charles E. McGee, United States Air Force (ret.), to the grade of brigadier general.
- Sec. 599B. Authority to issue an honorary and posthumous promotion to Lieutenant Colonel Richard Cole, United States Air Force (ret.), to the grade of colonel.
- Sec. 599C. Sense of Congress on the honorable and distinguished service of General Joseph F. Dunford, United States Marine Corps, to the United States.

### TITLE VI—MILITARY COMPENSATION

#### Subtitle A—Pay and Allowances

- Sec. 601. Clarification of continuation of pays during hospitalization and rehabilitation resulting from wounds, injury, or illness incurred while on duty in a hostile fire area or exposed to an event of hostile fire or other hostile action.
- Sec. 602. Continued entitlements while a member of the Armed Forces participates in a career intermission program.
- Sec. 603. Exemption from repayment of voluntary separation pay.
- Sec. 604. Consideration of service on active duty to reduce age of eligibility for retired pay for non-regular service.
- Sec. 605. Temporary adjustment of rates of basic allowance for housing following determination that local civilian housing costs significantly differ from such rates.
- Sec. 606. Reinvestment of travel refunds by the Department of Defense.
- Sec. 607. Addition of partial dislocation allowance to allowable travel and transportation expenses for servicemembers.
- Sec. 608. Reductions on account of earnings from work performed while entitled to an annuity supplement.
- Sec. 609. Increase in basic pay.

#### Subtitle B—Bonuses and Special Incentive Pays

- Sec. 611. One-year extension of certain expiring bonus and special pay authorities.

#### Subtitle C—Family and Survivor Benefits

- Sec. 621. Expansion of eligibility for exceptional transitional compensation for dependents to dependents of current members.
- Sec. 622. Phase-out of reduction of Survivor Benefit Plan survivor annuities by amount of dependency and indemnity compensation.
- Sec. 623. Death gratuity for ROTC graduates.
- Sec. 624. Expansion of authority to provide financial assistance to civilian providers of child care services or youth program services who provide such services to survivors of members of the Armed Forces who die in combat in the line of duty.

Sec. 625. Casualty assistance for survivors of deceased ROTC graduates.

Subtitle D—Defense Resale Matters

Sec. 631. Defense resale system matters.

Sec. 632. Procurement by commissary stores of certain locally sourced products.

Sec. 633. GAO review of defense resale optimization study.

Subtitle E—Morale, Welfare, and Recreation Privileges

Sec. 641. Extension of certain morale, welfare, and recreation privileges to Foreign Service officers on mandatory home leave.

Sec. 642. Extension of pilot program on a Government lodging program.

Subtitle F—Reports and Other Matters

Sec. 651. Annual reports on approval of employment or compensation of retired general or flag officers by foreign governments for emoluments clause purposes.

Sec. 652. Report regarding transition from overseas housing allowance to basic allowance for housing for servicemembers in the territories.

Sec. 653. Report on extension to members of the reserve components of the Armed Forces of special and incentive pays for members of the Armed Forces not currently payable to members of the reserve components.

Sec. 654. Study regarding recoupment of separation pay, special separation benefits, and voluntary separation incentive payments from members of the Armed Forces and veterans who receive disability compensation under laws administered by the Secretary of Veterans Affairs.

Sec. 655. Report on implementation of contributions to the Department of Defense Military Retirement Fund based on pay costs per Armed Force rather than on Armed Forces-wide basis.

Sec. 656. Report on food insecurity among members of the Armed Forces and their dependents.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—TRICARE and Other Health Care Benefits

Sec. 701. Modification of eligibility for TRICARE Reserve Select for certain members of the Selected Reserve.

Sec. 702. TRICARE payment options for retirees and their dependents.

Sec. 703. Lead level screening and testing for children.

Sec. 704. Exposure to open burn pits and toxic airborne chemicals or other airborne contaminants as part of periodic health assessments and other physical examinations.

Sec. 705. Enhancement of recordkeeping with respect to exposure by members of the Armed Forces to certain occupational and environmental hazards while deployed overseas.

Sec. 706. Modifications to post-deployment mental health assessments for members of the Armed Forces deployed in support of a contingency operation.

Sec. 707. Provision of blood testing for firefighters of Department of Defense to determine exposure to perfluoroalkyl and polyfluoroalkyl substances.

Subtitle B—Health Care Administration

Sec. 711. Modification of organization of military health system.

Sec. 712. Support by military health system of medical requirements of combatant commands.

Sec. 713. Requirements for certain prescription drug labels.

Sec. 714. Officers authorized to command Army dental units.

Sec. 715. Improvements to interagency program office of the Department of Defense and the Department of Veterans Affairs.

Sec. 716. Expansion of strategy to improve acquisition of managed care support contracts under TRICARE program.

Sec. 717. Inclusion of blast exposure history in medical records of members of the Armed Forces.

Sec. 718. Comprehensive policy for provision of mental health care to members of the Armed Forces.

Sec. 719. Limitation on the realignment or reduction of military medical Manning end strength.

Sec. 720. Strategy to recruit and retain mental health providers.

Sec. 721. Development of partnerships to improve combat casualty care for personnel of the Armed Forces.

Sec. 722. Modification to referrals for mental health services.

Subtitle C—Reports and Other Matters

- Sec. 731. Authorization of claims by members of the uniformed services against the United States for personal injury or death caused by medical malpractice.
- Sec. 732. Extension and clarification of authority for Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund.
- Sec. 733. Appointment of non-ex officio members of the Henry M. Jackson Foundation for the Advancement of Military Medicine.
- Sec. 734. Establishment of Academic Health System in National Capital Region.
- Sec. 735. Provision of veterinary services by veterinary professionals of the Department of Defense in emergencies.
- Sec. 736. Three-year extension of authority to continue the DOD-VA Health Care Sharing Incentive Fund.
- Sec. 737. Preservation of resources of the Army Medical Research and Materiel Command and continuation as Center of Excellence.
- Sec. 738. Encouragement of participation in Women’s Health Transition Training pilot program.
- Sec. 739. National Guard suicide prevention pilot program.
- Sec. 740. Pilot Program on civilian and military partnerships to enhance interoperability and medical surge capability and capacity of National Disaster Medical System.
- Sec. 741. Reports on suicide among members of the Armed Forces and suicide prevention programs and activities of the Department of Defense.
- Sec. 742. Modification of requirements for longitudinal medical study on blast pressure exposure of members of the Armed Forces and collection of exposure information.
- Sec. 743. Study and plan on the use of military-civilian integrated health delivery systems.
- Sec. 744. Study on case management in the military health system.
- Sec. 745. Report on Global Health Security Strategy and the National Biodefense Security.
- Sec. 746. Study on establishment of wounded warrior service dog program.
- Sec. 747. GAO report on Department of Defense quality assurance program and impacts of medical malpractice actions.
- Sec. 748. Reports on Millennium Cohort Study relating to women members of the Armed Forces.
- Sec. 749. Study on effects of sleep deprivation on readiness of members of the Armed Forces.
- Sec. 750. Study and report on traumatic brain injury mitigation efforts.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

- Sec. 800. Authority for continuous integration and delivery of software applications and upgrades to embedded systems.
- Sec. 801. Pilot program on intellectual property evaluation for acquisition programs.
- Sec. 802. Pilot program to use alpha contracting teams for complex requirements.
- Sec. 803. Failure to provide other than certified cost or pricing data upon request.
- Sec. 804. Comptroller General report on price reasonableness.
- Sec. 805. Limitation on transfer of funds related to cost overruns and cost underruns.
- Sec. 806. Standardizing data collection and reporting on use of source selection procedures by Federal agencies.
- Sec. 807. Department of Defense use of fixed-price contracts.
- Sec. 808. Repeal of continuation of data rights during challenges.
- Sec. 809. Repeal of authority to waive acquisition laws to acquire vital national security capabilities.
- Sec. 810. Repeal of the Defense Cost Accounting Standards Board.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

- Sec. 815. Modification of Director of Operational Test and Evaluation report.
- Sec. 816. Modification of written approval requirement for task and delivery order single contract awards.
- Sec. 817. Responsibility for data analysis and requirements validation for services contracts.
- Sec. 818. Documentation of market research related to commercial item determinations.



- Sec. 819. Availability of data on the use of other transaction authority and report on the use of authority to carry out prototype projects.
- Sec. 820. Notification of Navy procurement production disruptions.
- Sec. 821. Modification to acquisition authority of the Commander of the United States Cyber Command.
- Sec. 822. Extension of Never Contract With the Enemy.
- Sec. 823. Modification of justification and approval requirement for certain Department of Defense contracts.
- Sec. 824. Extension of sunset relating to Federal Data Center Consolidation Initiative.
- Sec. 825. Pilot program to accelerate contracting and pricing processes.
- Sec. 826. Uniformity in application of micro-purchase threshold to certain task or delivery orders.
- Sec. 827. Requirement for cost estimates on models of commercial e-commerce portal program.

Subtitle C—Provisions Relating to Major Defense Acquisition Programs

- Sec. 830. Modification of requirements for reporting to Congress on certain acquisition programs.
- Sec. 831. Pilot program to streamline decision-making processes for weapon systems.
- Sec. 832. Analysis of alternatives pursuant to materiel development decisions.
- Sec. 833. Naval vessel certification required before Milestone B approval.

Subtitle D—Provisions Relating to the Acquisition System

- Sec. 835. Extramural acquisition innovation and research activities.
- Sec. 836. Report on realignment of the defense acquisition system to implement acquisition reforms.
- Sec. 837. Report and limitation on the availability of funds relating to the “middle tier” of acquisition programs.
- Sec. 838. Report on intellectual property policy and the cadre of intellectual property experts.
- Sec. 839. Guidance and reports relating to covered defense business systems.
- Sec. 840. Implementation guidance for use of a modular open system approach.
- Sec. 841. Limitation on availability of funds for the Office of the Chief Management Officer of the Department of Defense.

Subtitle E—Industrial Base Matters

- Sec. 845. Modernization of acquisition processes to ensure integrity of industrial base.
- Sec. 846. Report requirements for the national technology and industrial base.
- Sec. 847. Mitigating risks related to foreign ownership, control, or influence of Department of Defense contractors or subcontractors.
- Sec. 848. Prohibition on operation or procurement of foreign-made unmanned aircraft systems.
- Sec. 849. Modification of prohibition on acquisition of sensitive materials from non-allied foreign nations.
- Sec. 850. Acquisition and disposal of certain rare earth materials.
- Sec. 851. Pilot program for development of technology-enhanced capabilities with partnership intermediaries.
- Sec. 852. Authorized official to carry out the procurement technical assistance cooperative agreement program.
- Sec. 853. Requirement that certain ship components be manufactured in the national technology and industrial base.
- Sec. 854. Addition of domestically produced stainless steel flatware and dinnerware to the Berry Amendment.
- Sec. 855. Application of miscellaneous technology base policies and programs to the Columbia-class submarine program.
- Sec. 856. Application of limitation on procurement of goods other than United States goods to the FFG–Frigate Program.
- Sec. 857. Sense of Congress regarding consideration of price in procurement of the FFG(X) frigate.

Subtitle F—Provisions Relating to Acquisition Workforce

- Sec. 860. Establishment of Defense Civilian Training Corps.
- Sec. 861. Defense acquisition workforce certification, education, and career fields.
- Sec. 862. Software development and software acquisition training and management programs.
- Sec. 863. Modification of temporary assignments of Department of Defense employees to a private-sector organization.
- Sec. 864. Incentives and consideration for qualified training programs.

Sec. 865. Use of qualified apprentices by military construction contractors.

Subtitle G—Small Business Matters

- Sec. 870. Requirements relating to credit for certain small business concern subcontractors.
- Sec. 871. Inclusion of best in class designations in annual report on small business goals.
- Sec. 872. Reauthorization and improvement of Department of Defense Mentor-Protege Program.
- Sec. 873. Accelerated payments applicable to contracts with certain small business concerns under the Prompt Payment Act.
- Sec. 874. Postaward explanations for unsuccessful offerors for certain contracts.
- Sec. 875. Small business contracting credit for subcontractors that are Puerto Rico businesses or covered territory businesses.
- Sec. 876. Technical amendment regarding treatment of certain surviving spouses under the definition of small business concern owned and controlled by service-disabled veterans.
- Sec. 877. Extension of loan assistance and deferral eligibility to reservists and members of the National Guard beyond periods of military conflict.
- Sec. 878. Modification to the Defense Research and Development Rapid Innovation Program.
- Sec. 879. Alignment of the Department of Defense Small Business Innovation Research Program and Small Business Technology Transfer Program with the National Defense Science and Technology Strategy.
- Sec. 880. Assistance for small business concerns participating in the SBIR and STTR programs.
- Sec. 881. Cybersecurity technical assistance for SBIR and STTR programs.
- Sec. 882. Funding for defense research activities of small business concerns.
- Sec. 883. Modifications to budget display requirements for the Department of Defense Small Business Innovation Research Program and Small Business Technology Transfer Program.
- Sec. 884. Pilot program for domestic investment under the SBIR program.

Subtitle H—Other Matters

- Sec. 885. Review of guidance to contractors on nondiscrimination on the basis of sex.
- Sec. 886. Comptroller General report on contractor violations of certain labor laws.
- Sec. 887. Comptroller General report on contingency contracting.
- Sec. 888. Policies and procedures for contractors to report gross violations of internationally recognized human rights.
- Sec. 889. Comptroller General report on oversight of contractors providing private security functions.
- Sec. 890. Prohibition on contracting with persons that have business operations with the Maduro regime.
- Sec. 891. Report on the Combating Trafficking in Persons initiative.
- Sec. 892. Improved management of information technology and cyberspace investments.
- Sec. 893. Modification to requirements for purchase of commercial leasing services pursuant to multiple award contracts.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Office of the Secretary of Defense and Related Matters

- Sec. 901. Headquarters activities of the Department of Defense matters.
- Sec. 902. Clarifying the roles and responsibilities of the Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Defense for Research and Engineering.
- Sec. 903. Return to Chief Information Officer of the Department of Defense of responsibility for business systems and related matters.
- Sec. 904. Assessments of responsibilities and authorities of the Chief Management Officer of the Department of Defense.
- Sec. 905. Senior Military Advisor for Cyber Policy and Deputy Principal Cyber Advisor.
- Sec. 906. Exclusion from limitations on personnel in the Office of the Secretary of Defense and Department of Defense headquarters of fellows appointed under the John S. McCain Defense Fellows Program.

Subtitle B—Organization and Management of Other Department of Defense Offices and Elements

- Sec. 911. Codification of Assistant Secretaries for Energy, Installations, and Environment of the Army, Navy, and Air Force.

## Subtitle C—Other Department of Defense Organization and Management Matters

- Sec. 921. Prohibition on ownership or trading of stocks in certain companies by certain officials of the Department of Defense.
- Sec. 922. Limitation on consolidation of Defense Media Activity.
- Sec. 923. Report on resources to implement the civilian casualty policy of the Department of Defense.

## Subtitle D—United States Space Force

- Sec. 951. Short title.
- Sec. 952. The Space Force.
- Sec. 953. Chief of Space Operations.
- Sec. 954. Space Force Acquisition Council.
- Sec. 955. Assistant Secretary of Defense for Space Policy.
- Sec. 956. Assistant Secretary of the Air Force for Space Acquisition and Integration.
- Sec. 957. Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs.
- Sec. 958. Conforming amendments and clarification of authorities.
- Sec. 959. Effects on military installations.
- Sec. 960. Availability of funds.
- Sec. 961. Implementation.

## TITLE X—GENERAL PROVISIONS

## Subtitle A—Financial Matters

- Sec. 1001. General transfer authority.
- Sec. 1002. Defense Business Audit Remediation Plan.
- Sec. 1003. Financial improvement and audit remediation plan.
- Sec. 1004. Reporting requirements relating to Department of Defense audits.
- Sec. 1005. Inclusion of certain military construction projects in annual reports on unfunded priorities of the Armed Forces and the combatant commands.
- Sec. 1006. Prohibition on delegation of responsibility for submittal to Congress of Out-Year Unconstrained Total Munitions Requirements and Out-Year Inventory numbers.
- Sec. 1007. Annual budget justification display for service-common and other support and enabling capabilities for special operations forces.
- Sec. 1008. Element in annual reports on the Financial Improvement and Audit Remediation Plan on activities with respect to classified programs.
- Sec. 1009. Plan of the Department of Defense for financial management information.
- Sec. 1010. Update of authorities and renaming of Department of Defense Acquisition Workforce Development Fund.
- Sec. 1011. Transparency of accounting firms used to support Department of Defense audit.
- Sec. 1012. Modification of required elements of annual reports on emergency and extraordinary expenses of the Department of Defense.

## Subtitle B—Counterdrug Activities

- Sec. 1021. Modification of authority to support a unified counterdrug and counterterrorism campaign in Colombia.
- Sec. 1022. Extension of authority for joint task forces to provide support to law enforcement agencies conducting counter-terrorism activities.
- Sec. 1023. Sense of Congress regarding Department of Defense counterdrug activities in the transit zone and Caribbean basin.
- Sec. 1024. Assessment of impact of any planned or proposed border wall on volume of illegal narcotics.

## Subtitle C—Naval Vessels

- Sec. 1031. Modification of authority to purchase vessels using funds in National Defense Sealift Fund.
- Sec. 1032. Use of National Defense Sealift Fund for procurement of two used vessels.
- Sec. 1033. Transportation by sea of supplies for the Armed Forces and Defense Agencies.
- Sec. 1034. Senior Technical Authority for each naval vessel class.
- Sec. 1035. Permanent authority for sustaining operational readiness of littoral combat ships on extended deployment.
- Sec. 1036. Formal training for shipboard system programs of record.
- Sec. 1037. Report on shipbuilder training and the defense industrial base.
- Sec. 1038. Use of competitive procedures for CVN–80 and CVN–81 dual aircraft carrier contract.

Sec. 1039. Report on expanding naval vessel maintenance.

Subtitle D—Counterterrorism

- Sec. 1041. Modification of support of special operations to combat terrorism.
- Sec. 1042. Extension of prohibition on use of funds for transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, to certain countries.
- Sec. 1043. Extension of prohibition on use of funds for transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, to the United States.
- Sec. 1044. Extension of prohibition on use of funds to construct or modify facilities in the United States to house detainees transferred from United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1045. Extension of prohibition on use of funds to close or relinquish control of United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1046. Chief Medical Officer at United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1047. Independent assessment on gender and countering violent extremism.

Subtitle E—Miscellaneous Authorities and Limitations

- Sec. 1051. Scheduling of Department of Defense executive aircraft controlled by Secretaries of military departments.
- Sec. 1052. Explosive ordnance defense disposal program.
- Sec. 1053. Technical correction and extension of reporting requirement regarding enhancement of information sharing and coordination of military training between Department of Homeland Security and Department of Defense.
- Sec. 1054. Notification on the provision of defense sensitive support.
- Sec. 1055. Revision to authorities relating to mail service for members of the Armed Forces and Department of Defense civilians overseas.
- Sec. 1056. Access to and use of military post offices by United States citizens employed overseas by the North Atlantic Treaty Organization who perform functions in support of military operations of the Armed Forces.
- Sec. 1057. Expenditure of funds for Department of Defense intelligence and counterintelligence activities.
- Sec. 1058. Limitation on use of funds for the inactivation of Army watercraft units.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Subtitle A—General Provisions

- Sec. 1101. Defense Advanced Research Projects Agency personnel management authority.
- Sec. 1102. Report on the probationary period for Department of Defense employees.
- Sec. 1103. Civilian personnel management.
- Sec. 1104. One-year extension of temporary authority to grant allowances, benefits, and gratuities to civilian personnel on official duty in a combat zone.
- Sec. 1105. One-year extension of authority to waive annual limitation on premium pay and aggregate limitation on pay for Federal civilian employees working overseas.
- Sec. 1106. Performance of civilian functions by military personnel.
- Sec. 1107. Extension of direct hire authority for domestic industrial base facilities and Major Range and Test Facilities Base.
- Sec. 1108. Authority to provide additional allowances and benefits for certain Defense Clandestine Service employees.
- Sec. 1109. Modification of direct hire authorities for the Department of Defense.
- Sec. 1110. Designating certain FEHBP and FEGLI services provided by Federal employees as excepted services under the Anti-Deficiency Act.
- Sec. 1111. Continuing supplemental dental and vision benefits and long-term care insurance coverage during a Government shutdown.
- Sec. 1112. Limitation on transfer of Office of Personnel Management.
- Sec. 1113. Assessment of Accelerated Promotion Program suspension.
- Sec. 1114. Reimbursement for Federal, State, and local income taxes incurred during travel, transportation, and relocation.
- Sec. 1115. Clarification of limitation on expedited hiring authority for post-secondary students.
- Sec. 1116. Modification of temporary assignments of Department of Defense employees to a private-sector organization.
- Sec. 1117. Extension of authority for part-time reemployment.

Subtitle B—Fair Chance Act

- Sec. 1121. Short title.

- Sec. 1122. Prohibition on criminal history inquiries prior to conditional offer for Federal employment.
- Sec. 1123. Prohibition on criminal history inquiries by contractors prior to conditional offer.
- Sec. 1124. Report on employment of individuals formerly incarcerated in Federal prisons.

#### Subtitle C—ATC Hiring Reform

- Sec. 1131. Short title; definition.
- Sec. 1132. Hiring of air traffic control specialists.
- Sec. 1133. Ensuring hiring preference for applicants with experience at an air traffic control facility of the National Guard.
- Sec. 1134. FAA reports on air traffic controller hiring and training.
- Sec. 1135. DOT Inspector General review and report.

### TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

#### Subtitle A—Assistance and Training

- Sec. 1201. Modification of authority to build capacity of foreign security forces.
- Sec. 1202. Modification and extension of cross servicing agreements for loan of personnel protection and personnel survivability equipment in coalition operations.
- Sec. 1203. Modifications of authorities relating to acquisition and cross-servicing agreements.
- Sec. 1204. Modification of quarterly report on obligation and expenditure of funds for security cooperation programs and activities.
- Sec. 1205. Gender perspectives and participation by women in security cooperation activities.
- Sec. 1206. Plan to provide consistency of administration of authorities relating to vetting of units of security forces of foreign countries; modification of assessment, monitoring, and evaluation of security cooperation programs and activities.
- Sec. 1207. Extension of authority for support of special operations for irregular warfare.
- Sec. 1208. Extension and modification of Commanders' Emergency Response Program and elimination of certain payments to redress injury and loss.
- Sec. 1209. Two-year extension of program authority for Global Security Contingency Fund.
- Sec. 1210. Legal institutional capacity building initiative for foreign defense institutions.
- Sec. 1210A. Department of Defense support for stabilization activities in national security interest of the United States.

#### Subtitle B—Matters Relating to Afghanistan and Pakistan

- Sec. 1211. Extension of authority to transfer defense articles and provide defense services to the military and security forces of Afghanistan.
- Sec. 1212. Extension and modification of authority to acquire products and services produced in countries along a major route of supply to Afghanistan.
- Sec. 1213. Authority for certain payments to redress injury and loss.
- Sec. 1214. Extension and modification of semiannual report on enhancing security and stability in Afghanistan.
- Sec. 1215. Special Immigrant Visa program reporting requirement.
- Sec. 1216. Meaningful inclusion of Afghan women in peace negotiations.
- Sec. 1217. Extension and modification of authority for reimbursement of certain coalition nations for support provided to United States military operations.
- Sec. 1218. Support for reconciliation activities led by the Government of Afghanistan.
- Sec. 1219. Modification and extension of the Afghan Special Immigrant Visa Program.

#### Subtitle C—Matters Relating to Syria, Iraq, and Iran

- Sec. 1221. Modification of authority and limitation on use of funds to provide assistance to counter the Islamic State of Iraq and Syria.
- Sec. 1222. Extension and modification of authority to provide assistance to vetted Syrian groups and individuals.
- Sec. 1223. Modification of authority to support operations and activities of the Office of Security Cooperation in Iraq.
- Sec. 1224. Establishing a coordinator for detained ISIS members and relevant displaced populations in Syria.
- Sec. 1225. Report on lessons learned from efforts to liberate Mosul and Raqqa from control of the Islamic State of Iraq and Syria.

- Sec. 1226. Expansion of availability of financial assets of Iran to victims of terrorism.
- Sec. 1227. Report on the status of deconfliction channels with Iran.
- Sec. 1228. Prohibition on provision of weapons and other forms of support to certain organizations.

Subtitle D—Matters Relating to the Russian Federation

- Sec. 1231. Extension of limitation on military cooperation between the United States and Russia.
- Sec. 1232. Prohibition on availability of funds relating to sovereignty of Russia over Crimea.
- Sec. 1233. Sense of Congress on updating and modernizing existing agreements to avert miscalculation between the United States and Russia.
- Sec. 1234. United States participation in Open Skies Treaty.
- Sec. 1235. Modifications of briefing, notification, and reporting requirements relating to non-compliance by the Russian Federation with its obligations under the INF Treaty.
- Sec. 1236. Report on treaties relating to nuclear arms control.
- Sec. 1237. Reports relating to the New START Treaty.
- Sec. 1238. Report on military activities of the Russian Federation and the People's Republic of China in the Arctic region.
- Sec. 1239. Updated strategy to counter the threat of malign influence by the Russian Federation and other countries.

Subtitle E—Matters Relating to Europe and NATO

- Sec. 1241. Sense of Congress on support for the North Atlantic Treaty Organization.
- Sec. 1242. Prohibition on the use of funds to suspend, terminate, or provide notice of denunciation of the North Atlantic Treaty.
- Sec. 1243. Future years plans and planning transparency for the European Deterrence Initiative.
- Sec. 1244. Modification and extension of Ukraine Security Assistance Initiative.
- Sec. 1245. Limitation on transfer of F–35 aircraft to Turkey.
- Sec. 1246. Baltic defense assessment; extension and modification of security assistance for Baltic countries for joint program for interoperability and deterrence against aggression.
- Sec. 1247. Extension of authority for and report on training for Eastern European national security forces in the course of multilateral exercises.
- Sec. 1248. Extension and modification of NATO Special Operations Headquarters.
- Sec. 1249. North Atlantic Treaty Organization Joint Force Command.
- Sec. 1250. Report on North Atlantic Treaty Organization Readiness Initiative.
- Sec. 1250A. Repeal of prohibition on transfer of articles on the United States munitions list to the Republic of Cyprus.

Subtitle F—Matters Relating to the Indo-Pacific Region

- Sec. 1251. Modification of Indo-Pacific Maritime Security Initiative.
- Sec. 1252. Expansion of Indo-Pacific Maritime Security Initiative and limitation on use of funds.
- Sec. 1253. Report on resourcing United States defense requirements for the Indo-Pacific region and study on competitive strategies.
- Sec. 1254. Limitation on use of funds to reduce the total number of members of the Armed Forces serving on active duty who are deployed to South Korea.
- Sec. 1255. Report on direct, indirect, and burden-sharing contributions of Japan and South Korea.
- Sec. 1256. Sense of Congress on security commitments to the Governments of Japan and the Republic of Korea and trilateral cooperation among the United States, Japan, and the Republic of Korea.
- Sec. 1257. Sense of Congress on North Korea.
- Sec. 1258. Statement of policy and sense of Congress on, and strategy to fulfill obligations under, Mutual Defense Treaty with the Republic of the Philippines.
- Sec. 1259. Report on security cooperation with the Philippine National Police.
- Sec. 1260. Modification of annual report on military and security developments involving the People's Republic of China.
- Sec. 1260A. Report on foreign military activities in Pacific Island countries.
- Sec. 1260B. Report on cybersecurity activities with Taiwan.
- Sec. 1260C. Review and report related to the Taiwan Relations Act.
- Sec. 1260D. Sense of Congress on enhancement of the United States-Taiwan defense relationship.
- Sec. 1260E. Chinese foreign direct investment in countries of the Arctic region.
- Sec. 1260F. Sense of Congress on policy toward Hong Kong.

- Sec. 1260G. Sense of Congress on enhancing defense and security cooperation with the Republic of Singapore.
- Sec. 1260H. Authority to transfer funds for Bien Hoa dioxin cleanup.
- Sec. 1260I. Limitation on removal of Huawei Technologies Co. Ltd. from entity list of Bureau of Industry and Security.
- Sec. 1260J. Report on ZTE compliance with Superseding Settlement Agreement and Superseding Order.
- Sec. 1260K. Report on the lay-down of United States Marines in the Indo-Pacific Region.

#### Subtitle G—Other Matters

- Sec. 1261. Modification to report on legal and policy frameworks for the use of military force.
- Sec. 1262. Independent review of sufficiency of resources available to United States Southern Command and United States Africa Command.
- Sec. 1263. United States Central Command posture assessment and review.
- Sec. 1264. Limitation on production of nuclear proliferation assessment statements.
- Sec. 1265. Western Hemisphere resource assessment.
- Sec. 1266. Human rights in Brazil.
- Sec. 1267. Certification relating to assistance for Guatemala.
- Sec. 1268. Independent analysis of human rights situation in Honduras.
- Sec. 1269. Briefing on strategy to improve the efforts of the Nigerian military to prevent, mitigate, and respond to civilian harm.
- Sec. 1270. Report on implications of Chinese military presence in Djibouti.
- Sec. 1271. Rule of construction on the permanent stationing of United States Armed Forces in Somalia.
- Sec. 1272. Defense and diplomatic strategy for Libya.
- Sec. 1273. Prohibition on in-flight refueling to non-United States aircraft that engage in hostilities in the ongoing civil war in Yemen.
- Sec. 1274. Report on Saudi-led coalition strikes in Yemen.
- Sec. 1275. Reports on expenses incurred for in-flight refueling of Saudi coalition aircraft conducting missions relating to civil war in Yemen.
- Sec. 1276. Report on Saudi Arabia's human rights record.
- Sec. 1277. Report on intelligence community assessment relating to the killing of Washington Post columnist Jamal Khashoggi.
- Sec. 1278. United States-Israel cooperation to counter unmanned aerial systems.
- Sec. 1279. Extension and modification of authority for United States-Israel anti-tunnel cooperation activities.
- Sec. 1280. Report on cost imposition strategy.
- Sec. 1281. Modification of initiative to support protection of national security academic researchers from undue influence and other security threats.
- Sec. 1282. Modification of responsibility for policy on civilian casualty matters.
- Sec. 1283. Report on export of certain satellites to entities with certain beneficial ownership structures.
- Sec. 1284. Rule of construction relating to the use of military force.
- Sec. 1285. Reports and briefings on use of military force and support of partner forces.

#### TITLE XIII—COOPERATIVE THREAT REDUCTION

- Sec. 1301. Funding allocations; specification of cooperative threat reduction funds.

#### TITLE XIV—OTHER AUTHORIZATIONS

##### Subtitle A—Military Programs

- Sec. 1401. Working capital funds.
- Sec. 1402. Chemical agents and munitions destruction, defense.
- Sec. 1403. Drug interdiction and counter-drug activities, defense-wide.
- Sec. 1404. Defense inspector general.
- Sec. 1405. Defense health program.

##### Subtitle B—Other Matters

- Sec. 1411. Authority for transfer of funds to joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund for Captain James A. Lovell Health Care Center, Illinois.
- Sec. 1412. Authorization of appropriations for Armed Forces Retirement Home.

#### TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

- Sec. 1501. Purpose.
- Sec. 1502. Treatment as additional authorizations.

## Subtitle A—Authorization of Appropriations for Overseas Contingency Operations

- Sec. 1511. Overseas contingency operations.
- Sec. 1512. Procurement.
- Sec. 1513. Research, development, test, and evaluation.
- Sec. 1514. Operation and maintenance.
- Sec. 1515. Military personnel.
- Sec. 1516. Working capital funds.
- Sec. 1517. Drug interdiction and counter-drug activities, defense-wide.
- Sec. 1518. Defense inspector general.
- Sec. 1519. Defense health program.
- Sec. 1520. Afghanistan security forces fund.
- Sec. 1520A. Special transfer authority.

## Subtitle B—Authorization of Appropriations for Emergency Funds for Recovery and Restoration

- Sec. 1521. Procurement.
- Sec. 1522. Research, development, test, and evaluation.
- Sec. 1523. Operation and maintenance.
- Sec. 1524. Restriction on transfer of funds authorized by this subtitle.

## TITLE XVI—STRATEGIC PROGRAMS, CYBER, AND INTELLIGENCE MATTERS

## Subtitle A—Space Activities

- Sec. 1601. Repeal of requirement to establish United States Space Command as a subordinate unified command of the United States Strategic Command.
- Sec. 1602. Coordination of modernization efforts relating to military-code capable GPS receiver cards.
- Sec. 1603. Demonstration of backup and complementary positioning, navigation, and timing capabilities of Global Positioning System.
- Sec. 1604. Annual determination on plan on full integration and exploitation of overhead persistent infrared capability.
- Sec. 1605. Space-based environmental monitoring mission requirements.
- Sec. 1606. Resilient enterprise ground architecture.
- Sec. 1607. Prototype program for multi-global navigation satellite system receiver development.
- Sec. 1608. Commercial space situational awareness capabilities.
- Sec. 1609. Program to enhance and improve launch support and infrastructure.
- Sec. 1610. Preparation to implement plan for use of allied launch vehicles.
- Sec. 1611. Independent study on plan for deterrence in space.
- Sec. 1612. Study on leveraging diverse commercial satellite remote sensing capabilities.
- Sec. 1613. Annual report on Space Command and Control program.
- Sec. 1614. Report on space debris.

## Subtitle B—Defense Intelligence and Intelligence-Related Activities

- Sec. 1621. Redesignation of Under Secretary of Defense for Intelligence as Under Secretary of Defense for Intelligence and Security.
- Sec. 1622. Modifications to ISR Integration Council and annual briefing requirements.
- Sec. 1623. Modification of annual authorization of appropriations for National Flagship Language Initiative.
- Sec. 1624. Improving the onboarding methodology for intelligence personnel.
- Sec. 1625. Defense Counterintelligence and Security Agency activities on facilitating access to local criminal records historical data.
- Sec. 1626. Survey and report on alignment of intelligence collections capabilities and activities with Department of Defense requirements.
- Sec. 1627. Reports on Consolidated Adjudication Facility of the Defense Counterintelligence and Security Agency.
- Sec. 1628. Report on the expanded purview of the Defense Counterintelligence and Security Agency.
- Sec. 1629. Termination of requirement for Department of Defense facility access clearances for joint ventures composed of previously-cleared entities.

## Subtitle C—Cyberspace-Related Matters

- Sec. 1631. Matters relating to military operations in the information environment.
- Sec. 1632. Notification requirements for sensitive military cyber operations.
- Sec. 1633. Evaluation of cyber vulnerabilities of major weapon systems of the Department of Defense.
- Sec. 1634. Quarterly assessments of the readiness of Cyber Mission Forces.
- Sec. 1635. Cyber posture review.



- Sec. 1636. Modification of elements of assessment required for termination of dual-hat arrangement for Commander of the United States Cyber Command.
- Sec. 1637. Modification of cyber scholarship program.
- Sec. 1638. Tier 1 exercise of support to civil authorities for a cyber incident.
- Sec. 1639. Extension of the Cyberspace Solarium Commission.
- Sec. 1640. Authority to use operation and maintenance funds for cyber operations-peculiar capability development projects.
- Sec. 1641. Role of Chief Information Officer in improving enterprise-wide cybersecurity.
- Sec. 1642. Notification of delegation of authorities to the Secretary of Defense for military operations in cyberspace.
- Sec. 1643. Limitation of funding for Consolidated Afloat Networks and Enterprise Services.
- Sec. 1644. Annual military cyberspace operations report.
- Sec. 1645. Annual report on cyber attacks and intrusions against the Department of Defense by certain foreign entities.
- Sec. 1646. Control and analysis of Department of Defense data stolen through cyberspace.
- Sec. 1647. Use of National Security Agency cybersecurity expertise to support evaluation of commercial cybersecurity products.
- Sec. 1648. Framework to enhance cybersecurity of the United States defense industrial base.
- Sec. 1649. Report on cybersecurity training programs.
- Sec. 1650. National Security Presidential Memorandums relating to Department of Defense operations in cyberspace.
- Sec. 1651. Reorientation of Big Data Platform program.
- Sec. 1652. Zero-based review of Department of Defense cyber and information technology personnel.
- Sec. 1653. Study on improving cyber career paths in the Navy.
- Sec. 1654. Accreditation standards and processes for cybersecurity and information technology products and services.
- Sec. 1655. Study on future cyber warfighting capabilities of Department of Defense.
- Sec. 1656. Study to determine the optimal strategy for structuring and manning elements of the Joint Force Headquarters–Cyber Organizations, Joint Mission Operations Centers, and Cyber Operations–Integrated Planning Elements.
- Sec. 1657. Cyber governance structures and Principal Cyber Advisors on military cyber force matters.
- Sec. 1658. Designation of test networks for testing and accreditation of cybersecurity products and services.
- Sec. 1659. Consortia of universities to advise Secretary of Defense on cybersecurity matters.
- Sec. 1660. Joint assessment of Department of Defense cyber red team capabilities, capacity, demand, and requirements.

#### Subtitle D—Nuclear Forces

- Sec. 1661. Conforming amendment to Council on Oversight of the National Leadership Command, Control, and Communications System.
- Sec. 1662. Modification of authorities relating to nuclear command, control, and communications system.
- Sec. 1663. Briefings on meetings held by Nuclear Weapons Council.
- Sec. 1664. Consideration of budget matters at meetings of Nuclear Weapons Council.
- Sec. 1665. Improvement to annual report on the modernization of the nuclear weapons enterprise.
- Sec. 1666. Expansion of officials required to conduct biennial assessments of delivery platforms for nuclear weapons and nuclear command and control system.
- Sec. 1667. Extension of annual briefing on costs of forward-deploying nuclear weapons in Europe.
- Sec. 1668. Elimination of conventional requirement for long-range standoff weapon.
- Sec. 1669. Briefing on long-range standoff weapon and sea-launched cruise missile.
- Sec. 1670. Extension of prohibition on availability of funds for mobile variant of ground-based strategic deterrent missile.
- Sec. 1671. Reports on development of ground-based strategic deterrent weapon.
- Sec. 1672. Prohibition on reduction of the intercontinental ballistic missiles of the United States.
- Sec. 1673. Independent study on policy of no-first-use of nuclear weapons.
- Sec. 1674. Independent study on risks of nuclear terrorism and nuclear war.
- Sec. 1675. Report on military-to-military dialogue to reduce risks of miscalculation leading to nuclear war.

- Sec. 1676. Report on nuclear forces of the United States and near-peer countries.
- Sec. 1677. Report on operation of conventional forces of military departments under employment or threat of employment of nuclear weapons.
- Sec. 1678. Report on operation of conventional forces of certain combatant commands under employment or threat of employment of nuclear weapons.
- Sec. 1679. Briefings on plan for future-systems-level architecture of nuclear command, control, and communications systems.
- Sec. 1680. Sense of Congress on nuclear deterrence commitments of the United States.

#### Subtitle E—Missile Defense Programs

- Sec. 1681. National missile defense policy.
- Sec. 1682. Development of space-based ballistic missile intercept layer.
- Sec. 1683. Development of hypersonic and ballistic missile tracking space sensor payload.
- Sec. 1684. Modifications to required testing by Missile Defense Agency of ground-based midcourse defense element of ballistic missile defense system.
- Sec. 1685. Iron Dome short-range rocket defense system and Israeli cooperative missile defense program co-development and co-production.
- Sec. 1686. Limitation on availability of funds for lower tier air and missile defense sensor.
- Sec. 1687. Plan for the redesigned kill vehicle replacement.
- Sec. 1688. Organization, authorities, and billets of the Missile Defense Agency.
- Sec. 1689. Annual assessment of ballistic missile defense system.
- Sec. 1690. Command and control, battle management, and communications program.
- Sec. 1691. Missile defense interceptor site in contiguous United States.
- Sec. 1692. Independent study on impacts of missile defense development and deployment.
- Sec. 1693. Report and briefing on multi-volume kill capability.

#### Subtitle F—Other Matters

- Sec. 1694. Extension of authorization for protection of certain facilities and assets from unmanned aircraft.
- Sec. 1695. Repeal of requirement for commission on electromagnetic pulse attacks and similar events.
- Sec. 1696. Repeal of review requirement for ammonium perchlorate report.
- Sec. 1697. Transferability of conventional prompt global strike weapon system technologies to surface-launched platforms.
- Sec. 1698. Prohibition on availability of funds for certain offensive ground-launched ballistic or cruise missile systems.
- Sec. 1699. Hard and deeply buried targets.

### TITLE XVII—REPORTS AND OTHER MATTERS

#### Subtitle A—Studies and Reports

- Sec. 1701. Modification of annual reporting requirements on defense manpower.
- Sec. 1702. Termination of requirement for submittal to Congress of certain recurring reports.
- Sec. 1703. Modification of annual report on civilian casualties in connection with United States military operations.
- Sec. 1704. Extension of requirement for briefings on the national biodefense strategy.
- Sec. 1705. Authorization of appropriations for title III of the Defense Production Act of 1950.
- Sec. 1706. Report on the Department of Defense plan for mass-casualty disaster response operations in the Arctic.
- Sec. 1707. Transmittal to Congress of requests for assistance from other departments of the Federal Government that are approved by the Department of Defense.
- Sec. 1708. Report and briefing on implementation of national defense strategy.
- Sec. 1709. Actions to increase analytic support.
- Sec. 1710. Inclusion of certain individuals investigated by Inspectors General in the semiannual report.
- Sec. 1711. Annual report on Joint Military Information Support Operations Web Operations Center.
- Sec. 1712. Mobility capability requirements study.
- Sec. 1713. Assessment of special operations force structure.
- Sec. 1714. Army aviation strategic plan and modernization roadmap.
- Sec. 1715. Report on ground-based long-range artillery to counter land and maritime threats.

- Sec. 1716. Independent review of transportation working-capital fund.
- Sec. 1717. Geographic command risk assessment of proposed use of certain aircraft capabilities.
- Sec. 1718. Report on backlog of personnel security clearance adjudications.
- Sec. 1719. Report regarding outstanding Government Accountability Office recommendations.
- Sec. 1720. Report on National Guard and United States Northern Command capacity to meet homeland defense and security incidents.
- Sec. 1721. Assessment of standards, processes, procedures, and policy relating to civilian casualties.
- Sec. 1722. Report on transfers of equipment to prohibited entities.
- Sec. 1723. Annual report on strikes undertaken by the United States against terrorist targets outside areas of active hostilities.
- Sec. 1724. Review and assessment of mitigation of military helicopter noise.

#### Subtitle B—Other Matters

- Sec. 1731. Technical, conforming, and clerical amendments.
- Sec. 1732. Establishment of lead Inspector General for an overseas contingency operation based on Secretary of Defense notification.
- Sec. 1733. Clarification of authority of Inspectors General for overseas contingency operations.
- Sec. 1734. Employment status of annuitants for Inspectors General for overseas contingency operations.
- Sec. 1735. Extension of National Security Commission on Artificial Intelligence.
- Sec. 1736. Exemption from calculation of monthly income, for purposes of bankruptcy laws, of certain payments from the Department of Veterans Affairs and the Department of Defense.
- Sec. 1737. Extension of postage stamp for breast cancer research.
- Sec. 1738. National Commission on Military Aviation Safety.
- Sec. 1739. Guarantee of residency for spouses of members of the uniformed services.
- Sec. 1740. Electromagnetic pulses and geomagnetic disturbances.
- Sec. 1741. Improvements to Manufacturing USA Program.
- Sec. 1742. Regional innovation program.
- Sec. 1743. Aviation workforce development.
- Sec. 1744. Oversight of Department of Defense execute orders.
- Sec. 1745. Processes and procedures for notifications regarding special operations forces.
- Sec. 1746. Securing American science and technology.
- Sec. 1747. Standardized policy guidance for calculating aircraft operation and sustainment costs.
- Sec. 1748. Special Federal Aviation Regulation Working Group.
- Sec. 1749. Prohibition on names related to the Confederacy.
- Sec. 1750. Support for National Maritime Heritage Grants program.
- Sec. 1751. Support for world language advancement and readiness.
- Sec. 1752. Designation of Department of Defense strategic Arctic ports.
- Sec. 1753. Independent studies regarding potential cost savings with respect to the nuclear security enterprise and force structure .
- Sec. 1754. Comprehensive Department of Defense policy on collective self-defense.
- Sec. 1755. Policy regarding the transition of data and applications to the cloud.
- Sec. 1756. Integrated public alert and warning system.
- Sec. 1757. Improving quality of information in background investigation request packages.
- Sec. 1758. Parole in place for members of the Armed Forces and certain military dependents.
- Sec. 1759. Report on reducing the backlog in legally required historical declassification obligations of the Department of Defense.
- Sec. 1760. Military type certification for light attack experimentation aircraft.

#### DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

- Sec. 2001. Short title.
- Sec. 2002. Expiration of authorizations and amounts required to be specified by law.
- Sec. 2003. Effective date.

#### TITLE XXI—ARMY MILITARY CONSTRUCTION

- Sec. 2101. Authorized Army construction and land acquisition projects.
- Sec. 2102. Family housing.
- Sec. 2103. Authorization of appropriations, Army.
- Sec. 2104. Modification of authority to carry out certain fiscal year 2019 projects.

#### TITLE XXII—NAVY MILITARY CONSTRUCTION

- Sec. 2201. Authorized Navy construction and land acquisition projects.

- Sec. 2202. Family housing.
- Sec. 2203. Improvements to military family housing units.
- Sec. 2204. Authorization of appropriations, Navy.
- Sec. 2205. Modification of authority to carry out certain fiscal year 2017 project.

## TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION

- Sec. 2301. Authorized Air Force construction and land acquisition projects.
- Sec. 2302. Family housing.
- Sec. 2303. Improvements to military family housing units.
- Sec. 2304. Authorization of appropriations, Air Force.
- Sec. 2305. Modification of authorities to carry out phased Joint Intelligence Analysis Complex consolidation.
- Sec. 2306. Modification of authority to carry out certain fiscal year 2016 project.
- Sec. 2307. Modification of authority to carry out certain fiscal year 2017 project.
- Sec. 2308. Modification of authority to carry out certain fiscal year 2018 projects.
- Sec. 2309. Modification of authority to carry out certain fiscal year 2019 projects.

## TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION

- Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.
- Sec. 2402. Authorized Energy Resilience and Conservation Investment Program projects.
- Sec. 2403. Authorization of appropriations, Defense Agencies.

## TITLE XXV—INTERNATIONAL PROGRAMS

## Subtitle A—North Atlantic Treaty Organization Security Investment Program

- Sec. 2501. Authorized NATO construction and land acquisition projects.
- Sec. 2502. Authorization of appropriations, NATO.

## Subtitle B—Host Country In-kind Contributions

- Sec. 2511. Republic of Korea funded construction projects.

## TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

- Sec. 2601. Authorized Army National Guard construction and land acquisition projects.
- Sec. 2602. Authorized Army Reserve construction and land acquisition projects.
- Sec. 2603. Authorized Navy Reserve and Marine Corps Reserve construction and land acquisition projects.
- Sec. 2604. Authorized Air National Guard construction and land acquisition projects.
- Sec. 2605. Authorized Air Force Reserve construction and land acquisition projects.
- Sec. 2606. Authorization of appropriations, National Guard and Reserve.

## TITLE XXVII—BASE REALIGNMENT AND CLOSURE ACTIVITIES

- Sec. 2701. Authorization of appropriations for base realignment and closure activities funded through Department of Defense base closure account.
- Sec. 2702. Prohibition on conducting additional base realignment and closure (BRAC) round.

## TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS

## Subtitle A—Military Construction Program

- Sec. 2801. Military installation resilience plans and projects.
- Sec. 2802. Improved consultation with tribal governments when proposed military construction projects potentially impact Indian tribes.
- Sec. 2803. Increased authority for use of certain appropriations amounts for restoration or replacement of damaged or destroyed facilities.
- Sec. 2804. Amendment of Unified Facilities Criteria to promote military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience.
- Sec. 2805. Modification to Department of Defense Form 1391 regarding consideration of potential long-term adverse environmental effects.
- Sec. 2806. Improved flood risk disclosure for military construction.
- Sec. 2807. Prioritization of projects in annual report on unfunded requirements for laboratory military construction projects.
- Sec. 2808. Technical corrections and improvements to defense access road resilience.
- Sec. 2809. Military construction projects for child development centers at military installations.
- Sec. 2810. Prohibition on use of funds to reduce air base resiliency or demolish protected aircraft shelters in the European theater without creating a similar protection from attack.

Sec. 2811. Prohibition on use of funds to close or return certain bases to the host nation.

Subtitle B—Real Property and Facilities Administration

Sec. 2821. Improved energy security for main operating bases in Europe.  
Sec. 2822. Access to Department of Defense installations for credentialed transportation workers.  
Sec. 2823. Improved recording and maintaining of Department of Defense real property data.

Subtitle C—Land Conveyances

Sec. 2831. Land conveyance, Hill Air Force Base, Ogden, Utah.  
Sec. 2832. Release of interests retained in Camp Joseph T. Robinson, Arkansas, for use of such land as a veterans cemetery.  
Sec. 2833. Modification of authorized uses of certain property conveyed by the United States in Los Angeles, California.  
Sec. 2834. Transfer of administrative jurisdiction over certain parcels of Federal land in Arlington, Virginia.

Subtitle D—Military Land Withdrawals

Sec. 2841. Public notice regarding upcoming periods of Secretary of the Navy management of Shared Use Area of the Johnson Valley Off-Highway Vehicle Recreation Area.

Subtitle E—White Sands National Park and White Sands Missile Range

Sec. 2851. White Sands Missile Range Land Enhancements.

Subtitle F—Other Matters

Sec. 2861. Installation and maintenance of fire extinguishers in Department of Defense facilities.  
Sec. 2862. Definition of community infrastructure for purposes of military base reuse studies and community planning assistance.  
Sec. 2863. Temporary authority for acceptance and use of contributions for certain design and construction projects mutually beneficial to the Department of Defense and the Republic of Korea.  
Sec. 2864. Black start exercises at military installations.  
Sec. 2865. Pilot program to extend service life of roads and runways under the jurisdiction of the Secretary of Defense.  
Sec. 2866. Restrictions on rehabilitation of Over-the-Horizon Backscatter Radar System receiving station, Modoc County, California.  
Sec. 2867. Designation of Sumpter Smith Joint National Guard Base.  
Sec. 2868. Santa Ynez Band of Chumash Indians land affirmation.  
Sec. 2869. Lands to be taken into trust as part of the reservation of the Lytton Rancheria.  
Sec. 2870. Little Shell Tribe of Chippewa Indians of Montana.  
Sec. 2871. Sense of Congress on restoration of Tyndall Air Force Base.

TITLE XXIX—AUTHORIZATION OF OVERSEAS CONTINGENCY OPERATIONS  
MILITARY CONSTRUCTION AND EMERGENCY MILITARY CONSTRUCTION

Subtitle A—Overseas Contingency Operations Military Construction

Sec. 2901. Authorized Army construction and land acquisition projects.  
Sec. 2902. Authorized Navy construction and land acquisition projects.  
Sec. 2903. Authorized Air Force construction and land acquisition projects.  
Sec. 2904. Authorized Defense Agencies construction and land acquisition projects.  
Sec. 2905. Authorization of appropriations.

Subtitle B—Emergency Military Construction

Sec. 2911. Authorization of emergency Navy construction and land acquisition projects.  
Sec. 2912. Authorization of emergency Air Force construction and land acquisition projects.  
Sec. 2913. Authorization of emergency Army National Guard construction and land acquisition projects.  
Sec. 2914. Authorization of emergency Defense Agencies construction and land acquisition projects.  
Sec. 2915. Authorization of emergency supplemental appropriations for military construction projects.

TITLE XXX—MILITARY HOUSING PRIVATIZATION REFORM

Sec. 3001. Definitions.

## Subtitle A—Addition of New Reform Subchapter

- Sec. 3011. Improved accountability and oversight of privatized military housing and protections and responsibilities for tenants of privatized military housing.
- Sec. 3012. Designation of Chief Housing Officer for privatized military housing.
- Sec. 3013. Additional requirements relating to contracts for privatized military housing.
- Sec. 3014. Additional requirements relating to management of privatized military housing.
- Sec. 3015. Consideration of contractor history in contracts for privatized military housing.
- Sec. 3016. Additional improvements for management of privatized military housing.
- Sec. 3017. Maintenance work order system for privatized military housing.
- Sec. 3018. Access by tenants of privatized military housing to maintenance work order system.
- Sec. 3019. Access by tenants to historical maintenance information for privatized military housing.
- Sec. 3020. Prohibition on requirement to disclose personally identifiable information in certain requests for maintenance of privatized military housing.
- Sec. 3021. Treatment of incentive fees for landlords of privatized military housing for failure to remedy a health or environmental hazard.
- Sec. 3022. Dispute resolution process for landlord-tenant disputes regarding privatized military housing and requests to withhold payments during dispute resolution process.
- Sec. 3023. Investigation of reports of reprisals relating to privatized military housing and congressional notification.
- Sec. 3024. Prohibition on use of nondisclosure agreements in connection with leases of privatized military housing.

## Subtitle B—Other Amendatory Provisions

- Sec. 3031. Installation of carbon monoxide detectors in military family housing.
- Sec. 3032. Authority to furnish certain services in connection with use of alternative authority for acquisition and improvement of military housing.
- Sec. 3033. Treatment of breach of contract for privatized military housing.
- Sec. 3034. Modification to requirements for window fall prevention devices in military family housing units.
- Sec. 3035. Expansion of direct hire authority for Department of Defense for childcare services providers for Department child development centers to include direct hire authority for installation military housing office personnel.
- Sec. 3036. Modification of authority to make payments to lessors of privatized military housing.
- Sec. 3037. Technical correction to definition used to make payments to lessors of privatized military housing.

## Subtitle C—One-Time Reporting Requirements

- Sec. 3041. Report on civilian personnel shortages for appropriate oversight of management of military housing constructed or acquired using alternative authority for acquisition and improvement of military housing.
- Sec. 3042. Plans for creation of councils on privatized military housing.
- Sec. 3043. Plan for establishment of Department of Defense jurisdiction over off-base privatized military housing.
- Sec. 3044. Inspector General review of Department of Defense oversight of privatized military housing.
- Sec. 3045. Information on legal services provided to members of the Armed Forces harmed by health or environmental hazards at military housing.

## Subtitle D—Development of Housing Reform Standards and Processes

- Sec. 3051. Uniform code of basic standards for privatized military housing and plan to conduct inspections and assessments.
- Sec. 3052. Tool for assessment of hazards in Department of Defense housing.
- Sec. 3053. Process to identify and address environmental health hazards in Department of Defense housing.
- Sec. 3054. Department of Defense policy on lead-based paint testing on military installations.
- Sec. 3055. Standard for minimum credentials for health and environmental inspectors of privatized military housing.
- Sec. 3056. Requirements relating to move-in, move-out, and maintenance of privatized military housing.

- Sec. 3057. Standardized documentation, templates, and forms for privatized military housing.
- Sec. 3058. Satisfaction survey for tenants of military housing.

Subtitle E—Other Housing Reform Matters

- Sec. 3061. Radon testing of privatized military housing.
- Sec. 3062. Mitigation of risks posed by certain items in military family housing units.
- Sec. 3063. Suspension of Resident Energy Conservation Program and related programs for privatized military housing.
- Sec. 3064. Department of the Army pilot program to build and monitor use of single family homes.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY  
AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs and Authorizations

- Sec. 3101. National Nuclear Security Administration.
- Sec. 3102. Defense environmental cleanup.
- Sec. 3103. Other defense activities.
- Sec. 3104. Nuclear energy.

Subtitle B—Program Authorizations, Restrictions, and Limitations

- Sec. 3111. Personnel matters at National Nuclear Security Administration.
- Sec. 3112. Estimation of costs of meeting defense environmental cleanup milestones required by consent orders.
- Sec. 3113. Office of Cost Estimating and Program Evaluation.
- Sec. 3114. Clarification of certain Stockpile Responsiveness Program objectives.
- Sec. 3115. Elimination of limitation on availability of funds relating to submission of annual reports on unfunded priorities.
- Sec. 3116. Modification to certain requirements relating to plutonium pit production capacity.
- Sec. 3117. Annual certification of shipments to Waste Isolation Pilot Plant.
- Sec. 3118. Extension and modification of pilot program on unavailability for overhead costs of amounts specified for laboratory-directed research and development.
- Sec. 3119. Modification to limitation on availability of funds for acceleration of nuclear weapons dismantlement.
- Sec. 3120. Implementation of common financial reporting system for nuclear security enterprise.
- Sec. 3121. Limitation relating to reclassification of high-level waste.
- Sec. 3122. National Laboratory Jobs ACCESS Program.

Subtitle C—Reports and Other Matters

- Sec. 3131. Civil penalties for violations of certain whistleblower protections.
- Sec. 3132. Repeal of assessments of adequacy of budget requests relating to nuclear weapons stockpile.
- Sec. 3133. Repeal of requirement for review relating to enhanced procurement authority.
- Sec. 3134. Improvements to Energy Employees Occupational Illness Compensation Program Act of 2000.
- Sec. 3135. Replacement of W78 warhead.
- Sec. 3136. Independent review of capabilities for detection, verification, and monitoring of nuclear weapons and fissile material.
- Sec. 3137. Assessment of high energy density physics.
- Sec. 3138. Determination of effect of treaty obligations with respect to producing tritium.
- Sec. 3139. Technical corrections to National Nuclear Security Administration Act and Atomic Energy Defense Act.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

- Sec. 3201. Authorization.
- Sec. 3202. Improvements to Defense Nuclear Facilities Safety Board.
- Sec. 3203. Membership of Defense Nuclear Facilities Safety Board.

TITLE XXXIV—NAVAL PETROLEUM RESERVES

- Sec. 3401. Authorization of appropriations.

TITLE XXXV—MARITIME MATTERS

Subtitle A—Maritime Administration

- Sec. 3501. Authorization of the Maritime Administration.

- Sec. 3502. Reauthorization of Maritime Security Program.
- Sec. 3503. Maritime technical assistance program.
- Sec. 3504. Appointment of candidates attending sponsored preparatory school.
- Sec. 3505. General support program.
- Sec. 3506. Improvements to the maritime guaranteed loan program.
- Sec. 3507. Requirement for small shipyard grantees.
- Sec. 3508. Salvage recoveries of cargoes.
- Sec. 3509. Salvage recoveries for subrogated ownership of vessels and cargoes.
- Sec. 3510. Maritime Occupational Safety and Health Advisory Committee.
- Sec. 3511. Military to mariner.
- Sec. 3512. Department of Transportation Inspector General Report.
- Sec. 3513. Independent study on the United States Merchant Marine Academy.
- Sec. 3514. Port operations, research, and technology.
- Sec. 3515. Assessment and report on strategic seaports.
- Sec. 3516. Technical corrections.
- Sec. 3517. United States Merchant Marine Academy sexual assault prevention and response program.
- Sec. 3518. Report on vessels for emerging offshore energy infrastructure.
- Sec. 3519. Report on United States flagged fuel tanker vessel capacity.

#### Subtitle B—Cable Security Fleet

- Sec. 3521. Establishment of Cable Security Fleet.

#### Subtitle C—Maritime SAFE Act

- Sec. 3531. Short titles.
- Sec. 3532. Definitions.
- Sec. 3533. Purposes.
- Sec. 3534. Statement of policy.

#### PART I—PROGRAMS TO COMBAT IUU FISHING AND INCREASE MARITIME SECURITY

- Sec. 3541. Coordination with international organizations.
- Sec. 3542. Engagement of diplomatic missions of the United States.
- Sec. 3543. Assistance by Federal agencies to improve law enforcement within priority regions and priority flag states.
- Sec. 3544. Expansion of existing mechanisms to combat IUU fishing.
- Sec. 3545. Improvement of transparency and traceability programs.
- Sec. 3546. Technology programs.
- Sec. 3547. Savings clause.

#### PART II—ESTABLISHMENT OF INTERAGENCY WORKING GROUP ON IUU FISHING

- Sec. 3551. Interagency Working Group on IUU Fishing.
- Sec. 3552. Strategic plan.
- Sec. 3553. Reports.
- Sec. 3554. Gulf of Mexico IUU Fishing Subworking Group.

#### PART III—COMBATING HUMAN TRAFFICKING IN CONNECTION WITH THE CATCHING AND PROCESSING OF SEAFOOD PRODUCTS

- Sec. 3561. Finding.
- Sec. 3562. Adding the Secretary of Commerce to the Interagency Task Force to Monitor and Combat Trafficking.
- Sec. 3563. Human trafficking in the seafood supply chain report.

#### PART IV—AUTHORIZATION OF APPROPRIATIONS

- Sec. 3571. Authorization of appropriations.
- Sec. 3572. Accounting of funds.

#### DIVISION D—FUNDING TABLES

- Sec. 4001. Authorization of amounts in funding tables.

#### TITLE XLI—PROCUREMENT

- Sec. 4101. Procurement.
- Sec. 4102. Procurement for overseas contingency operations.
- Sec. 4103. Procurement for emergency requirements.

#### TITLE XLII—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

- Sec. 4201. Research, development, test, and evaluation.
- Sec. 4202. Research, development, test, and evaluation for overseas contingency operations.
- Sec. 4203. Research, development, test, and evaluation for emergency requirements.



## TITLE XLIII—OPERATION AND MAINTENANCE

- Sec. 4301. Operation and maintenance.
- Sec. 4302. Operation and maintenance for overseas contingency operations.
- Sec. 4303. Operation and maintenance for emergency requirements.

## TITLE XLIV—MILITARY PERSONNEL

- Sec. 4401. Military personnel.
- Sec. 4402. Military personnel for overseas contingency operations.

## TITLE XLV—OTHER AUTHORIZATIONS

- Sec. 4501. Other authorizations.
- Sec. 4502. Other authorizations for overseas contingency operations.

## TITLE XLVI—MILITARY CONSTRUCTION

- Sec. 4601. Military construction.
- Sec. 4602. Military construction for overseas contingency operations.
- Sec. 4603. Military construction for emergency requirements.

## TITLE XLVII—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

- Sec. 4701. Department of Energy national security programs.

DIVISION E—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEARS 2018,  
2019, AND 2020

- Sec. 5001. Short title.
- Sec. 5002. Subdivisions and table of contents.
- Sec. 5003. Definitions.

## SUBDIVISION 1—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEAR 2020

- Sec. 5100. Table of contents.

## TITLE LI—INTELLIGENCE ACTIVITIES

- Sec. 5101. Authorization of appropriations.
- Sec. 5102. Classified schedule of authorizations.
- Sec. 5103. Intelligence community management account.

TITLE LII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND  
DISABILITY SYSTEM

- Sec. 5201. Authorization of appropriations.

## TITLE LIII—INTELLIGENCE COMMUNITY MATTERS

## Subtitle A—General Intelligence Community Matters

- Sec. 5301. Restriction on conduct of intelligence activities.
- Sec. 5302. Increase in employee compensation and benefits authorized by law.
- Sec. 5303. Expansion of scope of protections for identities of covert agents.
- Sec. 5304. Required counterintelligence assessments, briefings, notifications, and reports.
- Sec. 5305. Inclusion of security risks in program management plans required for acquisition of major systems in National Intelligence Program.
- Sec. 5306. Intelligence community public-private talent exchange.
- Sec. 5307. Assessment of contracting practices to identify certain security and counterintelligence concerns.

## Subtitle B—Office of the Director of National Intelligence

- Sec. 5321. Establishment of Climate Security Advisory Council.
- Sec. 5322. Foreign Malign Influence Response Center.
- Sec. 5323. Encouragement of cooperative actions to detect and counter foreign influence operations.
- Sec. 5324. Transfer of National Intelligence University to the Office of the Director of National Intelligence.

## Subtitle C—Inspector General of the Intelligence Community

- Sec. 5331. Definitions.
- Sec. 5332. Inspector General external review panel.
- Sec. 5333. Harmonization of whistleblower processes and procedures.
- Sec. 5334. Oversight by Inspector General of the Intelligence Community over intelligence community whistleblower matters.
- Sec. 5335. Report on cleared whistleblower attorneys.

Subtitle D—Central Intelligence Agency

Sec. 5341. Clarification of certain authority of the Central Intelligence Agency.

TITLE LIV—SECURITY CLEARANCES

Sec. 5401. Improving visibility into the security clearance process.

Sec. 5402. Making certain policies and execution plans relating to personnel clearances available to industry partners.

TITLE LV—MATTERS RELATING TO FOREIGN COUNTRIES

Subtitle A—Matters Relating to Russia

Sec. 5501. Annual reports on influence operations and campaigns in the United States by the Russian Federation.

Sec. 5502. Assessment of legitimate and illegitimate financial and other assets of Vladimir Putin.

Sec. 5503. Assessments of intentions of political leadership of the Russian Federation.

Subtitle B—Matters Relating to China

Sec. 5511. Annual reports on influence operations and campaigns in the United States by the Communist Party of China.

Sec. 5512. Report on repression of ethnic Muslim minorities in the Xinjiang region of the People's Republic of China.

Sec. 5513. Report on efforts by People's Republic of China to influence election in Taiwan.

Subtitle C—Matters Relating to Other Countries

Sec. 5521. Sense of Congress and report on Iranian efforts in Syria and Lebanon.

Sec. 5522. Assessments regarding the Northern Triangle and Mexico.

TITLE LVI—FEDERAL EFFORTS AGAINST DOMESTIC TERRORISM

Sec. 5601. Definitions.

Sec. 5602. Strategic intelligence assessment of and reports on domestic terrorism.

TITLE LVII—REPORTS AND OTHER MATTERS

Subtitle A—Reports and Briefings

Sec. 5701. Modification of requirements for submission to Congress of certain reports.

Sec. 5702. Increased transparency regarding counterterrorism budget of the United States.

Sec. 5703. Study on role of retired and former personnel of intelligence community with respect to certain foreign intelligence operations.

Sec. 5704. Collection, analysis, and dissemination of workforce data.

Sec. 5705. Plan for strengthening the supply chain intelligence function.

Sec. 5706. Comprehensive economic assessment of investment in key United States technologies by companies or organizations linked to China.

Sec. 5707. Report by Director of National Intelligence on fifth-generation wireless network technology.

Sec. 5708. Report on use by intelligence community of facial recognition technology.

Sec. 5709. Report on deepfake technology, foreign weaponization of deepfakes, and related notifications.

Sec. 5710. Annual report by Comptroller General of the United States on cybersecurity and surveillance threats to Congress.

Sec. 5711. Analysis of and periodic briefings on major initiatives of intelligence community in artificial intelligence and machine learning.

Sec. 5712. Report on best practices to protect privacy and civil liberties of Chinese Americans.

Sec. 5713. Oversight of foreign influence in academia.

Sec. 5714. Report on death of Jamal Khashoggi.

Sec. 5715. Report on terrorist screening database.

Sec. 5716. Report containing threat assessment on terrorist use of conventional and advanced conventional weapons.

Sec. 5717. Assessment of homeland security vulnerabilities associated with certain retired and former personnel of the intelligence community.

Sec. 5718. Study on feasibility and advisability of establishing Geospatial-Intelligence Museum and learning center.

Subtitle B—Other Matters

Sec. 5721. Whistleblower disclosures to Congress and committees of Congress.

- Sec. 5722. Task force on illicit financing of espionage and foreign influence operations.
- Sec. 5723. Establishment of fifth-generation technology prize competition.
- Sec. 5724. Establishment of deepfakes prize competition.
- Sec. 5725. Identification of and countermeasures against certain International Mobile Subscriber Identity-catchers.
- Sec. 5726. Securing energy infrastructure.

## SUBDIVISION 2—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEARS 2018 AND 2019

- Sec. 6100. Table of contents.

## TITLE LXI—INTELLIGENCE ACTIVITIES

- Sec. 6101. Authorization of appropriations.
- Sec. 6102. Intelligence Community Management Account.

## TITLE LXII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

- Sec. 6201. Authorization of appropriations.
- Sec. 6202. Computation of annuities for employees of the Central Intelligence Agency.

## TITLE LXIII—GENERAL INTELLIGENCE COMMUNITY MATTERS

- Sec. 6301. Restriction on conduct of intelligence activities.
- Sec. 6302. Increase in employee compensation and benefits authorized by law.
- Sec. 6303. Modification of special pay authority for science, technology, engineering, or mathematics positions and addition of special pay authority for cyber positions.
- Sec. 6304. Modification of appointment of Chief Information Officer of the Intelligence Community.
- Sec. 6305. Director of National Intelligence review of placement of positions within the intelligence community on the Executive Schedule.
- Sec. 6306. Supply Chain and Counterintelligence Risk Management Task Force.
- Sec. 6307. Consideration of adversarial telecommunications and cybersecurity infrastructure when sharing intelligence with foreign governments and entities.
- Sec. 6308. Cyber protection support for the personnel of the intelligence community in positions highly vulnerable to cyber attack.
- Sec. 6309. Elimination of sunset of authority relating to management of supply-chain risk.
- Sec. 6310. Limitations on determinations regarding certain security classifications.
- Sec. 6311. Joint Intelligence Community Council.
- Sec. 6312. Intelligence community information technology environment.
- Sec. 6313. Report on development of secure mobile voice solution for intelligence community.
- Sec. 6314. Policy on minimum insider threat standards.
- Sec. 6315. Submission of intelligence community policies.
- Sec. 6316. Expansion of intelligence community recruitment efforts.

## TITLE LXIV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

## Subtitle A—Office of the Director of National Intelligence

- Sec. 6401. Authority for protection of current and former employees of the Office of the Director of National Intelligence.
- Sec. 6402. Designation of the program manager-information-sharing environment.
- Sec. 6403. Technical modification to the executive schedule.
- Sec. 6404. Chief Financial Officer of the Intelligence Community.
- Sec. 6405. Chief Information Officer of the Intelligence Community.

## Subtitle B—Central Intelligence Agency

- Sec. 6411. Central Intelligence Agency subsistence for personnel assigned to austere locations.
- Sec. 6412. Special rules for certain monthly workers' compensation payments and other payments for Central Intelligence Agency personnel.
- Sec. 6413. Expansion of security protective service jurisdiction of the Central Intelligence Agency.
- Sec. 6414. Repeal of foreign language proficiency requirement for certain senior level positions in the Central Intelligence Agency.

## Subtitle C—Office of Intelligence and Counterintelligence of Department of Energy

- Sec. 6421. Consolidation of Department of Energy Offices of Intelligence and Counterintelligence.

- Sec. 6422. Repeal of Department of Energy Intelligence Executive Committee and budget reporting requirement.

Subtitle D—Other Elements

- Sec. 6431. Plan for designation of counterintelligence component of Defense Security Service as an element of intelligence community.  
 Sec. 6432. Notice not required for private entities.  
 Sec. 6433. Establishment of advisory board for National Reconnaissance Office.  
 Sec. 6434. Collocation of certain Department of Homeland Security personnel at field locations.

TITLE LXV—ELECTION MATTERS

- Sec. 6501. Report on cyber attacks by foreign governments against United States election infrastructure.  
 Sec. 6502. Review of intelligence community's posture to collect against and analyze Russian efforts to influence the Presidential election.  
 Sec. 6503. Assessment of foreign intelligence threats to Federal elections.  
 Sec. 6504. Strategy for countering Russian cyber threats to United States elections.  
 Sec. 6505. Assessment of significant Russian influence campaigns directed at foreign elections and referenda.  
 Sec. 6506. Information sharing with State election officials.  
 Sec. 6507. Notification of significant foreign cyber intrusions and active measures campaigns directed at elections for Federal offices.  
 Sec. 6508. Designation of counterintelligence officer to lead election security matters.

TITLE LXVI—SECURITY CLEARANCES

- Sec. 6601. Definitions.  
 Sec. 6602. Reports and plans relating to security clearances and background investigations.  
 Sec. 6603. Improving the process for security clearances.  
 Sec. 6604. Goals for promptness of determinations regarding security clearances.  
 Sec. 6605. Security Executive Agent.  
 Sec. 6606. Report on unified, simplified, Governmentwide standards for positions of trust and security clearances.  
 Sec. 6607. Report on clearance in person concept.  
 Sec. 6608. Reports on reciprocity for security clearances inside of departments and agencies.  
 Sec. 6609. Intelligence community reports on security clearances.  
 Sec. 6610. Periodic report on positions in the intelligence community that can be conducted without access to classified information, networks, or facilities.  
 Sec. 6611. Information-sharing program for positions of trust and security clearances.  
 Sec. 6612. Report on protections for confidentiality of whistleblower-related communications.  
 Sec. 6613. Reports on costs of security clearance background investigations.

TITLE LXVII—REPORTS AND OTHER MATTERS

Subtitle A—Matters Relating to Russia and Other Foreign Powers

- Sec. 6701. Limitation relating to establishment or support of cybersecurity unit with the Russian Federation.  
 Sec. 6702. Assessment of threat finance relating to Russia.  
 Sec. 6703. Notification of an active measures campaign.  
 Sec. 6704. Notification of travel by accredited diplomatic and consular personnel of the Russian Federation in the United States.  
 Sec. 6705. Report and annual briefing on Iranian expenditures supporting foreign military and terrorist activities.  
 Sec. 6706. Expansion of scope of committee to counter active measures.

Subtitle B—Reports

- Sec. 6711. Technical correction to Inspector General study.  
 Sec. 6712. Reports on authorities of the Chief Intelligence Officer of the Department of Homeland Security.  
 Sec. 6713. Review of intelligence community whistleblower matters.  
 Sec. 6714. Report on role of Director of National Intelligence with respect to certain foreign investments.  
 Sec. 6715. Report on surveillance by foreign governments against United States telecommunications networks.  
 Sec. 6716. Biennial report on foreign investment risks.

- Sec. 6717. Modification of certain reporting requirement on travel of foreign diplomats.
- Sec. 6718. Semiannual reports on investigations of unauthorized disclosures of classified information.
- Sec. 6719. Congressional notification of designation of covered intelligence officer as persona non grata.
- Sec. 6720. Reports on intelligence community participation in vulnerabilities equities process of Federal Government.
- Sec. 6721. Inspectors General reports on classification.
- Sec. 6722. Reports and briefings on national security effects of global water insecurity and emerging infectious disease and pandemics.
- Sec. 6723. Annual report on memoranda of understanding between elements of intelligence community and other entities of the United States Government regarding significant operational activities or policy.
- Sec. 6724. Study on the feasibility of encrypting unclassified wireline and wireless telephone calls.
- Sec. 6725. Reports on intelligence community loan repayment and related programs.
- Sec. 6726. Repeal of certain reporting requirements.
- Sec. 6727. Inspector General of the Intelligence Community report on senior executives of the Office of the Director of National Intelligence.
- Sec. 6728. Briefing on Federal Bureau of Investigation offering permanent residence to sources and cooperators.
- Sec. 6729. Intelligence assessment of North Korea revenue sources.
- Sec. 6730. Report on possible exploitation of virtual currencies by terrorist actors.

#### Subtitle C—Other Matters

- Sec. 6741. Public Interest Declassification Board.
- Sec. 6742. Technical and clerical amendments to the National Security Act of 1947.
- Sec. 6743. Bug bounty programs.
- Sec. 6744. Technical amendments related to the Department of Energy.
- Sec. 6745. Sense of Congress on notification of certain disclosures of classified information.
- Sec. 6746. Sense of Congress on consideration of espionage activities when considering whether or not to provide visas to foreign individuals to be accredited to a United Nations mission in the United States.
- Sec. 6747. Sense of Congress on WikiLeaks.

### DIVISION F—OTHER MATTERS

#### TITLE LXXI—SANCTIONS WITH RESPECT TO NORTH KOREA

- Sec. 7101. Short title.

#### Subtitle A—Sanctions With Respect to North Korea

- Sec. 7111. Sense of Congress.
- Sec. 7112. Definitions.

#### PART I—EXPANSION OF SANCTIONS AND RELATED MATTERS

- Sec. 7121. Sanctions with respect to foreign financial institutions that provide financial services to certain sanctioned persons.
- Sec. 7122. Mandatory designations under North Korea Sanctions and Policy Enhancement Act of 2016.
- Sec. 7123. Extension of applicability period of proliferation prevention sanctions.
- Sec. 7124. Opposition to assistance by the international financial institutions.
- Sec. 7125. Support for capacity of the International Monetary Fund to prevent money laundering and financing of terrorism.
- Sec. 7126. Report and briefings on compliance, penalties, and technical assistance.
- Sec. 7127. Sense of Congress on identification and blocking of property of North Korean officials.
- Sec. 7128. Modification of report on implementation of United Nations Security Council resolutions by other governments.
- Sec. 7129. Report on use by the Government of North Korea of beneficial ownership rules to access the international financial system.

#### PART II—CONGRESSIONAL REVIEW AND OVERSIGHT

- Sec. 7131. Notification of termination or suspension of sanctions.
- Sec. 7132. Reports on certain licensing actions.
- Sec. 7133. Report and briefings on financial networks and financial methods of the Government of North Korea.
- Sec. 7134. Report on countries of concern with respect to transshipment, reexportation, or diversion of certain items to North Korea.

## PART III—GENERAL MATTERS

- Sec. 7141. Rulemaking.
- Sec. 7142. Authority to consolidate reports.
- Sec. 7143. Waivers, exemptions, and termination.
- Sec. 7144. Procedures for review of classified and certain other information.
- Sec. 7145. Briefing on resourcing of sanctions programs.
- Sec. 7146. Briefing on proliferation financing.
- Sec. 7147. Exception relating to importation of goods.

## Subtitle B—Financial Industry Guidance to Halt Trafficking

- Sec. 7151. Short title.
- Sec. 7152. Sense of Congress.
- Sec. 7153. Coordination of human trafficking issues by the Office of Terrorism and Financial Intelligence.
- Sec. 7154. Strengthening the role of anti-money laundering and other financial tools in combating human trafficking.
- Sec. 7155. Sense of Congress on resources to combat human trafficking.

## TITLE LXXII—SANCTIONS WITH RESPECT TO FOREIGN TRAFFICKERS OF ILLICIT SYNTHETIC OPIOIDS

- Sec. 7201. Short title.
- Sec. 7202. Sense of Congress.
- Sec. 7203. Definitions.

## Subtitle A—Sanctions With Respect to Foreign Opioid Traffickers

- Sec. 7211. Identification of foreign opioid traffickers.
- Sec. 7212. Imposition of sanctions.
- Sec. 7213. Description of sanctions.
- Sec. 7214. Waivers.
- Sec. 7215. Procedures for judicial review of classified information.
- Sec. 7216. Briefings on implementation.
- Sec. 7217. Inclusion of additional material in International Narcotics Control Strategy Report.

## Subtitle B—Commission on Combating Synthetic Opioid Trafficking

- Sec. 7221. Commission on combating synthetic opioid trafficking.

## Subtitle C—Other Matters

- Sec. 7231. Director of National Intelligence program on use of intelligence resources in efforts to sanction foreign opioid traffickers.
- Sec. 7232. Authorization of appropriations.
- Sec. 7233. Regulatory authority.
- Sec. 7234. Termination.
- Sec. 7235. Exception relating to importation of goods.

## TITLE LXXIII—PFAS

- Sec. 7301. Short title.
- Sec. 7302. Definition of Administrator.

## Subtitle A—Drinking Water

- Sec. 7311. Monitoring and detection.
- Sec. 7312. Drinking water state revolving funds.

## Subtitle B—PFAS Release Disclosure

- Sec. 7321. Additions to toxics release inventory.

## Subtitle C—USGS Performance Standard

- Sec. 7331. Definitions.
- Sec. 7332. Performance standard for the detection of highly fluorinated compounds.
- Sec. 7333. Nationwide sampling.
- Sec. 7334. Data usage.
- Sec. 7335. Collaboration.

## Subtitle D—Emerging Contaminants

- Sec. 7341. Definitions.
- Sec. 7342. Research and coordination plan for enhanced response on emerging contaminants.

## Subtitle E—Toxic Substances Control Act

- Sec. 7351. PFAS data call.

Sec. 7352. Significant new use rule for long-chain PFAS.

Subtitle F—Other Matters

Sec. 7361. PFAS destruction and disposal guidance.

Sec. 7362. PFAS research and development.

TITLE LXXIV—CAESAR SYRIA CIVILIAN PROTECTION ACT OF 2019

Sec. 7401. Short title.

Sec. 7402. Statement of policy.

Subtitle A—Additional Actions in Connection With the National Emergency With Respect to Syria

Sec. 7411. Measures with respect to Central Bank of Syria.

Sec. 7412. Sanctions with respect to foreign persons that engage in certain transactions.

Sec. 7413. Strategy relating to areas of Syria in which civilians are subject to forced displacement.

Subtitle B—Assistance for the People of Syria

Sec. 7421. Sense of Congress.

Sec. 7422. Briefing on monitoring and evaluating of ongoing assistance programs in Syria and to the Syrian people.

Sec. 7423. Assessment of potential methods to enhance the protection of civilians.

Sec. 7424. Assistance to support entities taking actions relating to gathering evidence for investigations into war crimes or crimes against humanity in Syria since March 2011.

Sec. 7425. Codification of certain services in support of nongovernmental organizations' activities authorized.

Sec. 7426. Briefing on strategy to facilitate humanitarian assistance.

Subtitle C—General Provisions

Sec. 7431. Suspension of sanctions.

Sec. 7432. Waivers and exemptions.

Sec. 7433. Implementation and regulatory authorities.

Sec. 7434. Exception relating to importation of goods.

Sec. 7435. Cost limitation.

Sec. 7436. Rule of construction.

Sec. 7437. Prohibition on construction of provisions of this title as an authorization for use of military force.

Sec. 7438. Sunset.

TITLE LXXV—PROTECTING EUROPE'S ENERGY SECURITY

Sec. 7501. Short title.

Sec. 7502. Sense of Congress.

Sec. 7503. Imposition of sanctions with respect to provision of certain vessels for the construction of certain Russian energy export pipelines.

TITLE LXXVI—OTHER MATTERS

Subtitle A—Federal Employee Paid Leave Act

Sec. 7601. Short title.

Sec. 7602. Paid parental leave under title 5.

Sec. 7603. Paid parental leave for congressional employees.

Sec. 7604. Conforming amendment to Family and Medical Leave Act for GAO and Library of Congress employees.

Sec. 7605. Clarification for members of the National Guard and Reserves.

Sec. 7606. Conforming amendment for certain TSA employees.

Subtitle B—Other Matters

Sec. 7611. Liberian refugee immigration fairness.

Sec. 7612. Pensacola Dam and Reservoir, Grand River, Oklahoma.

Sec. 7613. Limitation on certain rolling stock procurements; cybersecurity certification for rail rolling stock and operations.

**SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES.**

In this Act, the term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10, United States Code.

Definition.  
10 USC 101 note.

**SEC. 4. BUDGETARY EFFECTS OF THIS ACT.**

The budgetary effects of this Act, for the purposes of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on the conference report or amendment between the Houses.

## **DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS**

### **TITLE I—PROCUREMENT**

#### Subtitle A—Authorization Of Appropriations

Sec. 101. Authorization of appropriations.

#### Subtitle B—Army Programs

Sec. 111. Authority of the Secretary of the Army to waive certain limitations related to the Distributed Common Ground System-Army Increment 1.

#### Subtitle C—Navy Programs

- Sec. 121. Ford-class aircraft carrier cost limitation baselines.  
 Sec. 122. Modification of annual report on cost targets for certain aircraft carriers.  
 Sec. 123. Refueling and complex overhauls of the U.S.S. John C. Stennis and U.S.S. Harry S. Truman.  
 Sec. 124. Ford class aircraft carrier support for F-35C aircraft.  
 Sec. 125. Prohibition on use of funds for reduction of aircraft carrier force structure.  
 Sec. 126. Modification of prohibition on availability of funds for Navy waterborne security barriers.  
 Sec. 127. LHA Replacement Amphibious Assault Ship Program.  
 Sec. 128. Strategic sealift fleet vessel.  
 Sec. 129. Design and construction of amphibious transport dock designated LPD-31.  
 Sec. 130. Limitation on availability of funds for the Littoral Combat Ship.  
 Sec. 131. Limitation on the next new class of Navy large surface combatants.  
 Sec. 132. Limitation on availability of funds pending quarterly updates on the CH-53K King Stallion helicopter program.  
 Sec. 133. Limitation on availability of funds for VH-92A helicopter.  
 Sec. 134. Report on carrier wing and aviation combat element composition.

#### Subtitle D—Air Force Programs

- Sec. 141. Modification of requirement to preserve certain C-5 aircraft.  
 Sec. 142. OC-135B aircraft recapitalization program.  
 Sec. 143. Requirement to align Air Force aviation force structure with National Defense Strategy.  
 Sec. 144. Prohibition on availability of funds for reduction in KC-10 primary mission aircraft inventory.  
 Sec. 145. Limitation on availability of funds for F-15EX aircraft.  
 Sec. 146. Limitation on availability of funds for VC-25B aircraft.  
 Sec. 147. Limitation on availability of funds for RC-26B aircraft.  
 Sec. 148. Limitation on availability of funds for retirement of RC-135 aircraft.  
 Sec. 149. Air Force aggressor squadron modernization.  
 Sec. 150. Air Force plan for Combat Rescue Helicopter fielding.  
 Sec. 151. Report on feasibility of multiyear contract for procurement of JASSM-ER missiles.  
 Sec. 152. Report on aircraft fleet of the Civil Air Patrol.  
 Sec. 153. Sense of Congress on the light attack aircraft initiative of the Air Force.

#### Subtitle E—Defense-wide, Joint, and Multiservice Matters

Sec. 161. Economic order quantity contracting and buy-to-budget acquisition for F-35 aircraft program.



- Sec. 162. Relief from contractors for failure to deliver ready-for-issue spare parts for the F–35 aircraft program.
- Sec. 163. Limitation on availability of funds for reallocation of Turkish F–35A aircraft to the United States.
- Sec. 164. Requirement to establish the use of an Agile DevOps software development solution as an alternative for Joint Strike Fighter Autonomic Logistics Information System.
- Sec. 165. F–35 sustainment cost.
- Sec. 166. Reports on the progress and performance of the F–35 aircraft program.
- Sec. 167. Other reports on the F–35 aircraft program.
- Sec. 168. Limitation on availability of funds for communications systems lacking certain resiliency features.
- Sec. 169. Repeal of tactical unmanned vehicle common data link requirement.

## **Subtitle A—Authorization Of Appropriations**

### **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for procurement for the Army, the Navy and the Marine Corps, the Air Force, and Defense-wide activities, as specified in the funding table in section 4101.

## **Subtitle B—Army Programs**

### **SEC. 111. AUTHORITY OF THE SECRETARY OF THE ARMY TO WAIVE CERTAIN LIMITATIONS RELATED TO THE DISTRIBUTED COMMON GROUND SYSTEM-ARMY INCREMENT 1.**

Section 113(d) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2028) is amended by striking “Secretary of Defense” both places it appears and inserting “Secretary of the Army”.

## **Subtitle C—Navy Programs**

### **SEC. 121. FORD-CLASS AIRCRAFT CARRIER COST LIMITATION BASELINES.**

(a) IN GENERAL.—Chapter 863 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 8692. Ford-class aircraft carriers: cost limitation baselines** 10 USC 8692.

“(a) LIMITATION.—The total amounts obligated or expended from funds authorized to be appropriated or otherwise made available for Shipbuilding and Conversion, Navy, or for any other procurement account, may not exceed the following amounts for the following aircraft carriers:

“(1) \$13,224,000,000 for the construction of the aircraft carrier designated CVN–78.

“(2) \$11,398,000,000 for the construction of the aircraft carrier designated CVN–79.

“(3) \$12,202,000,000 for the construction of the aircraft carrier designated CVN–80.

“(4) \$12,451,000,000 for the construction of the aircraft carrier designated CVN–81.

“(b) EXCLUSION OF BATTLE AND INTERIM SPARES FROM COST LIMITATION.—The Secretary of the Navy shall exclude from the

determination of the amounts set forth in subsection (a) the costs of the following items:

“(1) CVN–78 class battle spares.

“(2) Interim spares.

“(3) Increases attributable to economic inflation after December 1, 2018, not otherwise included in the amounts listed in subsection (a).

Time period.

“(c) WRITTEN NOTICE AND BRIEFING ON CHANGE IN AMOUNT.—The Secretary of the Navy may adjust an amount listed in subsection (a) not fewer than 15 days after submitting written notice and providing a briefing to the congressional defense committees, each of which shall include the amount and rationale of any change and the resulting amount after such change.”.

10 USC 8661  
prec.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 863 of such title is amended by inserting after the item relating to section 8691 the following new item:

“8692. Ford-class aircraft carriers: cost limitation baselines.”.

(c) REPEAL OF SUPERSEDED PROVISION.—Section 122 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2104) is repealed.

**SEC. 122. MODIFICATION OF ANNUAL REPORT ON COST TARGETS FOR CERTAIN AIRCRAFT CARRIERS.**

Section 126(c) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2035) is amended—

(1) in the subsection heading, by striking “AND CVN–80” and inserting “, CVN–80, AND CVN–81”;

(2) in paragraph (1)—

(A) by striking “2021” and inserting “2032”; and

(B) by striking “costs described in subsection (b) for the CVN–79 and CVN–80” and inserting “cost targets for the CVN–79, the CVN–80, and the CVN–81”; and

(3) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking “ and the CVN–80” and inserting “, the CVN–80, and the CVN–81”

(B) in subparagraph (A), by striking “costs described in subsection (b)” and inserting “cost targets”;

(C) in subparagraph (F), by striking “costs specified in subsection (b)” and inserting “cost targets”; and

(D) in subparagraph (G), by striking “costs specified in subsection (b)” and inserting “cost targets”.

**SEC. 123. REFUELING AND COMPLEX OVERHAULS OF THE U.S.S. JOHN C. STENNIS AND U.S.S. HARRY S. TRUMAN.**

(a) REFUELING AND COMPLEX OVERHAUL.—The Secretary of the Navy shall carry out the nuclear refueling and complex overhaul of the U.S.S. John C. Stennis (CVN–74) and U.S.S. Harry S. Truman (CVN–75).

Time period.

(b) USE OF INCREMENTAL FUNDING.—With respect to any contract entered into under subsection (a) for the nuclear refueling and complex overhauls of the U.S.S. John C. Stennis (CVN–74) and U.S.S. Harry S. Truman (CVN–75), the Secretary may use incremental funding for a period not to exceed six years after advance procurement funds for such nuclear refueling and complex overhaul effort are first obligated.

(c) **CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.**—Any contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2020 is subject to the availability of appropriations for that purpose for that later fiscal year.

**SEC. 124. FORD CLASS AIRCRAFT CARRIER SUPPORT FOR F-35C AIRCRAFT.**

Before completing the post-shakedown availability of the Ford class aircraft carrier designated CVN–79, the Secretary of the Navy shall ensure that the aircraft carrier is capable of operating and deploying with the F–35C aircraft.

**SEC. 125. PROHIBITION ON USE OF FUNDS FOR REDUCTION OF AIRCRAFT CARRIER FORCE STRUCTURE.**

None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense may be obligated or expended to reduce the number of operational aircraft carriers of the Navy below the number specified in section 8062(b) of title 10, United States Code.

**SEC. 126. MODIFICATION OF PROHIBITION ON AVAILABILITY OF FUNDS FOR NAVY WATERBORNE SECURITY BARRIERS.**

Section 130 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

132 Stat. 1665.

(1) in subsection (a) by striking “for fiscal year 2019 may be obligated or expended to procure legacy waterborne security barriers for Navy ports” and inserting “for fiscal year 2019 or fiscal year 2020 may be obligated or expended to procure legacy waterborne security barriers for Navy ports, including as replacements for legacy barriers”;

(2) in subsection (c)(1), by inserting “of not more than 30 percent” after “replacement”; and

(3) by adding at the end the following new subsection:

“(d) **NOTIFICATION.**—Not later than 15 days after an exception is made pursuant to subsection (c)(2), the Secretary of the Navy shall submit a written notification to the congressional defense committees that includes—

Deadline.

“(1) the name and position of the government official who determined exigent circumstances exist;

“(2) a description of the exigent circumstances; and

“(3) a description of how waterborne security will be maintained until new waterborne security barriers are procured and installed.”.

**SEC. 127. LHA REPLACEMENT AMPHIBIOUS ASSAULT SHIP PROGRAM.**

(a) **AUTHORITY TO USE INCREMENTAL FUNDING.**—The Secretary of the Navy may enter into and incrementally fund a contract for detail design and construction of the LHA replacement ship designated LHA 9 and, subject to subsection (b), funds for payments under the contract may be provided from amounts authorized to be appropriated for the Department of Defense for Shipbuilding and Conversion, Navy, for fiscal years 2019 through 2025.

(b) **CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.**—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for any subsequent fiscal year is subject to the availability of appropriations for that purpose for such subsequent fiscal year.

(c) **REPEAL OF OBSOLETE AUTHORITY.**—Section 125 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2106) is repealed.

**SEC. 128. STRATEGIC SEALIFT FLEET VESSEL.**

Contracts. (a) **IN GENERAL.**—Subject to the availability of appropriations, the Secretary of the Navy shall seek to enter into a contract for the construction of one sealift vessel.

Deadline. (b) **DELIVERY DATE.**—The contract entered into under subsection (a) shall specify a delivery date for the sealift vessel of not later than September 30, 2026.

(c) **DESIGN AND CONSTRUCTION REQUIREMENTS.**—

(1) **USE OF EXISTING DESIGN.**—The design of the sealift vessel shall be based on a domestic or foreign design that exists as of the date of the enactment of this Act.

(2) **COMMERCIAL STANDARDS AND PRACTICES.**—Subject to paragraph (1), the sealift vessel may be constructed using commercial design standards and commercial construction practices that are consistent with the best interests of the Federal Government.

(3) **DOMESTIC SHIPYARD.**—The sealift vessel shall be constructed in a shipyard that is located in the United States.

(d) **CERTIFICATE AND ENDORSEMENT.**—The sealift vessel shall meet the requirements necessary to receive a certificate of documentation and a coastwise endorsement under chapter 121 of title 46, United States Code, and the Secretary of the Navy shall ensure that the completed vessel receives such a certificate and endorsement.

(e) **EXECUTIVE AGENT.**—

Contracts. (1) **IN GENERAL.**—The Secretary of the Navy may seek to enter into a contract or other agreement with a private-sector entity under which the entity may act as executive agent for the Secretary for purposes of the contract under subsection (a).

(2) **RESPONSIBILITIES.**—The executive agent described in paragraph (1) may be responsible for—

(A) selecting a shipyard for the construction of the sealift vessel;

(B) managing and overseeing the construction of the sealift vessel; and

(C) such other matters as the Secretary of the Navy determines to be appropriate

(f) **USE OF INCREMENTAL FUNDING.**—With respect to the contract entered into under subsection (a), the Secretary of the Navy may use incremental funding to make payments under the contract.

(g) **SEALIFT VESSEL DEFINED.**—In this section, the term “sealift vessel” means the sealift vessel constructed pursuant to the contract entered into under subsection (a).

**SEC. 129. DESIGN AND CONSTRUCTION OF AMPHIBIOUS TRANSPORT DOCK DESIGNATED LPD–31.**

Contracts.  
Effective date. (a) **IN GENERAL.**—Using funds authorized to be appropriated for the Department of Defense for Shipbuilding and Conversion, Navy, the Secretary of the Navy may enter into a contract, beginning with the fiscal year 2020 program year, for the design and construction of the amphibious transport dock designated LPD–31.

(b) **USE OF INCREMENTAL FUNDING.**—With respect to the contract entered into under subsection (a), the Secretary may use incremental funding to make payments under the contract.

(c) **CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.**—The contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under such contract for any fiscal year after fiscal year 2020 is subject to the availability of appropriations for that purpose for such later fiscal year.

**SEC. 130. LIMITATION ON AVAILABILITY OF FUNDS FOR THE LITTORAL COMBAT SHIP.**

(a) **LIMITATIONS.**—None of the funds authorized to be appropriated by this Act for fiscal year 2020 for the Department of Defense may be used to exceed, and the Department may not otherwise exceed, the total procurement quantity of thirty-five Littoral Combat Ships, unless the Under Secretary of Defense for Acquisition and Sustainment submits to the congressional defense committees the certification described in subsection (b).

(b) **CERTIFICATION.**—The certification described in this subsection is a certification by the Under Secretary that awarding a contract for the procurement of a Littoral Combat Ship that exceeds the total procurement quantity listed in revision five of the Littoral Combat Ship acquisition strategy—

(1) is in the national security interests of the United States;

(2) will not result in exceeding the low-rate initial production quantity approved in the Littoral Combat Ship acquisition strategy in effect as of the date of the certification; and

(3) is necessary to maintain a full and open competition for the Guided Missile Frigate (FFG(X)) with a single source award in fiscal year 2020.

**SEC. 131. LIMITATION ON THE NEXT NEW CLASS OF NAVY LARGE SURFACE COMBATANTS.**

(a) **IN GENERAL.**—Milestone B approval may not be granted for the next new class of Navy large surface combatants unless the class of Navy large surface combatants incorporates prior to such approval—

(1) design changes identified during the full duration of the combat system ship qualification trials and operational test periods of the first Arleigh Burke-class destroyer in the Flight III configuration to complete such events; and

(2) final results of test programs of engineering development models or prototypes for critical systems specified by the Senior Technical Authority pursuant to section 8669b of title 10, United States Code, as added by section 1034 of this Act, in their final form, fit, and function and in a realistic environment, which shall include a land-based engineering site for the propulsion system.

(b) **LIMITATION.**—The Secretary of the Navy may not release a detail design or construction request for proposals or obligate funds from the Shipbuilding and Conversion, Navy account for the next new class of Navy large surface combatants until the class of Navy large surface combatants receives Milestone B approval and the milestone decision authority notifies the congressional defense committees, in writing, of the actions taken to comply with the requirements under subsection (a).

(c) **DEFINITIONS.**—In this section:

Notification.

(1) The term “Milestone B approval” has the meaning given the term in section 2366(e)(7) of title 10, United States Code.

(2) The term “milestone decision authority” means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.

(3) The term “large surface combatants” means Navy surface ships that are designed primarily to engage in attacks against airborne, surface, subsurface, and shore targets, excluding frigates and littoral combat ships.

**SEC. 132. LIMITATION ON AVAILABILITY OF FUNDS PENDING QUARTERLY UPDATES ON THE CH-53K KING STALLION HELICOPTER PROGRAM.**

Time period.	(a) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for aircraft procurement, Navy, for the CH-53K King Stallion helicopter program, not more than 50 percent may be obligated or expended until a period of 30 days has elapsed following the date on which the Secretary of the Navy provides the first briefing required under subsection (b).
Deadline.	(b) QUARTERLY BRIEFINGS REQUIRED.— (1) IN GENERAL.—Beginning not later than 30 days after the date of the enactment of this Act, and on a quarterly basis thereafter through the end of fiscal year 2022, the Secretary of the Navy shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on the progress of the CH-53K King Stallion helicopter program. (2) ELEMENTS.—Each briefing under paragraph (1) shall include, with respect to the CH-53K King Stallion helicopter program, the following:
Assessment.	(A) An overview of the program schedule. (B) A statement of the total cost of the program as of the date of the briefing, including the costs of development, testing, and production. (C) A comparison of the total cost of the program relative to the approved acquisition program baseline. (D) An assessment of flight testing under the program, including identification of the number of test events that have been conducted on-time in accordance with the joint integrated program schedule.
Update.	(E) An update on the correction of technical deficiencies under the program, including—
Estimate.	(i) identification of the technical deficiencies that have been corrected as of the date of the briefing; (ii) identification of the technical deficiencies that have been discovered, but not corrected, as of such date; (iii) an estimate of the total cost of correcting technical deficiencies under the program; and (iv) an explanation of any significant deviations from the testing and program schedule that are anticipated due to the discovery and correction of technical deficiencies.

**SEC. 133. LIMITATION ON AVAILABILITY OF FUNDS FOR VH-92A HELICOPTER.**

(a) **LIMITATION.**—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for procurement for the VH-92A helicopter, not more than 80 percent may be obligated or expended until the date on which the Secretary of Navy submits to the Committees on Armed Services of the Senate and the House of Representatives the report required under subsection (b).

(b) **REPORT REQUIRED.**—The Secretary of the Navy shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report assessing the status of the VH-92A helicopter program industrial base and the potential impact of proposed manufacturing base changes on the acquisition program. The report shall include a description of—

Assessments.

(1) estimated effects on the manufacturing readiness level of the VH-92 program due to potential changes to the program manufacturing base;

(2) the estimated costs and assessment of cost risk to the program due to potential changes to the program manufacturing base;

(3) any estimated schedule impacts, including impacts on delivery dates for the remaining low-rate initial production lots and full rate production, resulting from any changes to the manufacturing base;

(4) an assessment of the effect of changes to the manufacturing base on VH-92A sustainment; and

(5) the impact of such changes on production and sustainment capacity for the MH-60 and CH-53K helicopters of the Navy.

Estimates.

**SEC. 134. REPORT ON CARRIER WING AND AVIATION COMBAT ELEMENT COMPOSITION.**

(a) **IN GENERAL.**—Not later than May 1, 2020, the Secretary of the Navy shall submit to the congressional defense committees a report on the optimal composition of the carrier air wing (CVW) on aircraft carriers and aviation combat element (ACE) embarked on amphibious ships in 2030 and 2040, including alternative force design concepts.

(b) **ELEMENTS.**—The report required under subsection (a) shall include the following elements for the CVW and ACE:

Analyses.

(1) Analysis and justification for the Department of the Navy's stated goal of a 50/50 mix of 4th and 5th generation aircraft for 2030.

(2) Analysis and justification for an optimal mix of aircraft for 2040.

(3) A plan for incorporating unmanned aerial vehicles and associated communication capabilities to effectively implement the future force design.

Plan.

(4) Analysis of the support equipment requirement for each aircraft type and the space needed to accommodate such equipment.

(5) A description of existing and potential ship designs or design changes that would enable greater commonality and interoperability of embarked naval aircraft, including aircraft arresting gear and launch catapults.

Deadline. (c) BRIEFING.—Not later than March 1, 2020, the Secretary of the Navy shall provide the congressional defense committees a briefing on the report required under subsection (a).

## Subtitle D—Air Force Programs

### SEC. 141. MODIFICATION OF REQUIREMENT TO PRESERVE CERTAIN C-5 AIRCRAFT.

Section 141(d) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1661) is amended—

(1) in paragraph (1), by striking “until the date that is 30 days after the date on which the briefing under section 144(b) of the National Defense Authorization Act for Fiscal Year 2018 is provided to the congressional defense committees” and inserting “until the date that is 30 days after the date on which the final report and briefing required under section 1712(c)(2) of the National Defense Authorization Act for Fiscal Year 2020 have each been provided to the congressional defense committees”; and

(2) in paragraph (2)(A), by striking “can be returned to service” and inserting “is inducted into or maintained in type 1000 recallable storage”.

### SEC. 142. OC-135B AIRCRAFT RECAPITALIZATION PROGRAM.

The Secretary of the Air Force shall ensure that any request for proposals for the procurement of an OC-135B aircraft under a recapitalization program for such aircraft meets the requirements for full and open competition as set forth in section 2304 of title 10, United States Code, and includes, as part of such request for proposals, consideration of proposals for the provision of new production aircraft and recently manufactured aircraft.

### SEC. 143. REQUIREMENT TO ALIGN AIR FORCE AVIATION FORCE STRUCTURE WITH NATIONAL DEFENSE STRATEGY.

Deadline. (a) REQUIRED SUBMISSION OF STRATEGY.—Not later than March 1, 2020, the Secretary of the Air Force shall submit to the congressional defense committees an aviation force structure acquisition strategy that aligns with the stated capability and capacity requirements of the Department of the Air Force to meet the National Defense Strategy.

Waivers. (b) ALIGNMENT WITH STRATEGY.—The Secretary of the Air Force may not deviate from the strategy submitted under subsection (a) until—

Consultation. (1) the Secretary receives a waiver from the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff; and

Documentation. (2) the Secretary of Defense provides the congressional defense committees with the waiver approval documentation.

### SEC. 144. PROHIBITION ON AVAILABILITY OF FUNDS FOR REDUCTION IN KC-10 PRIMARY MISSION AIRCRAFT INVENTORY.

None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force may be obligated or expended to reduce the number of KC-10 aircraft in the primary mission aircraft inventory of the Air Force.



**SEC. 145. LIMITATION ON AVAILABILITY OF FUNDS FOR F-15EX AIRCRAFT.**

(a) **LIMITATION.**—Except as provided in subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force may be obligated or expended to procure any F-15EX aircraft, other than the first two prototypes of such aircraft, until a period of 15 days has elapsed following the date on which the Secretary of the Air Force submits to the congressional defense committees a report on the following topics relating to the F-15EX program:

Time period.  
Reports.  
Strategies.

- (1) Acquisition strategy.
- (2) Cost and schedule estimates.
- (3) Test and evaluation strategy.
- (4) Logistics strategy.
- (5) Post-production fielding strategy.

Estimates.

**(b) EXCEPTION FOR LONG-LEAD ITEMS.—**

(1) **IN GENERAL.**—Notwithstanding subsection (a), the Secretary of the Air Force may use the funds described in paragraph (2) to procure long-lead items for up to six additional F-15EX aircraft beyond the first two prototypes of such aircraft.

(2) **FUNDS DESCRIBED.**—The funds described in this paragraph are funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force for any of the following:

- (A) Research and development, nonrecurring engineering.
- (B) Aircraft procurement.

(c) **F-15EX PROGRAM DEFINED.**—In this section, the term “F-15EX program” means the F-15EX aircraft program of the Air Force as described in the materials submitted to Congress by the Secretary of Defense in support of the budget of the President for fiscal year 2020 (as submitted to Congress under section 1105(a) of title 21, United States Code).

**SEC. 146. LIMITATION ON AVAILABILITY OF FUNDS FOR VC-25B AIRCRAFT.**

(a) **LIMITATION.**—Except as provided in subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 or any subsequent fiscal year for the Air Force may be obligated or expended to carry out over and above work on the VC-25B aircraft until a period of 30 days has elapsed following the date on which the Secretary of the Air Force notifies the congressional defense committees of the intent of the Secretary to authorize such work.

Time period.  
Notification.

(b) **EXCEPTION.**—The limitation under subsection (a) shall not apply to over and above work carried out—

- (1) to repair or replace items damaged during the testing of the VC-25B aircraft; or
- (2) to make changes necessary to meet operational requirements.

(c) **DEFINITIONS.**—In this section:

(1) The term “operational requirements” means any of the operational requirements for the VC-25B aircraft described in the capability development document or the system requirements document for the Presidential Aircraft Recapitalization Program.

(2) The term “over and above work” means work performed pursuant to line 0012 (CLIN 0012) of the contract for Presidential Aircraft Recapitalization entered into between the Department of the Air Force and the Boeing Company (contract number FA8625–16–C–6599).

**SEC. 147. LIMITATION ON AVAILABILITY OF FUNDS FOR RC-26B AIRCRAFT.**

(a) **LIMITATION.**—Except as provided in subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force may be obligated or expended to retire, divest, realign, or place in storage or on backup aircraft inventory status, or prepare to retire, divest, realign, or place in storage or backup inventory status, any RC-26B aircraft until the date on which the Secretary of the Air Force submits to the congressional defense committees—

- (1) the report required under subsection (c); and
- (2) the certification required under subsection (d).

Determination. (b) **EXCEPTION.**—The limitation in subsection (a) shall not apply to individual RC-26B aircraft that the Secretary of the Air Force determines, on a case-by-case basis, to be no longer mission capable because of mishaps or other damage.

(c) **REPORT REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the congressional defense committees a report that includes the following:

Survey. (1) A survey of any requirements for the Air Force to provide intelligence, surveillance, and reconnaissance support to other military forces and civil authorities that the Air Force and the Air National Guard meet using the RC-26B aircraft.

Assessment. (2) An assessment of the extent to which such requirements are appropriate for the Air Force to fulfill.

(3) The manner in which the Secretary would meet such requirements if the RC-26B aircraft were to be retired.

(4) A comparison of costs and effectiveness of alternative means of providing intelligence, surveillance, and reconnaissance support to other military forces and civil authorities.

Assessment. (5) An assessment of the utility of entering into one or more memoranda of agreement with other military forces and civil authorities to govern the process for providing intelligence, surveillance, and reconnaissance support to those forces and authorities.

Deadline. (d) **CERTIFICATION REQUIRED.**—Not later than 60 days after the date on which the Secretary of the Air Force submits the report required under subsection (c), the Secretary shall certify to the congressional defense committees—

(1) whether there are requirements for the Air Force to provide intelligence, surveillance, and reconnaissance support to other military forces and civil authorities that the Air Force meets using the RC-26B aircraft; and

(2) whether the Secretary has identified methods of meeting such requirements that are more effective and more efficient than meeting such requirements through the use of the RC-26B aircraft.

**SEC. 148. LIMITATION ON AVAILABILITY OF FUNDS FOR RETIREMENT OF RC–135 AIRCRAFT.**

(a) **LIMITATION.**—Except as provided in subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force may be obligated or expended to retire, or prepare to retire, any RC–135 aircraft until a period of 60 days has elapsed following the date on which the Secretary of Defense certifies to the congressional defense committees that—

Time period.  
Certification.

(1) technologies other than the RC–135 aircraft provide capacity and capabilities equivalent to the capacity and capabilities of the RC–135 aircraft; and

(2) the capacity and capabilities of such other technologies meet the requirements of combatant commanders with respect to indications and warning, intelligence preparation of the operational environment, and direct support for kinetic and non-kinetic operations.

(b) **EXCEPTION.**—The limitation in subsection (a) shall not apply to individual RC–135 aircraft that the Secretary of the Air Force determines, on a case-by-case basis, to be no longer mission capable because of mishaps, other damage, or being uneconomical to repair.

Determination.

**SEC. 149. AIR FORCE AGGRESSOR SQUADRON MODERNIZATION.**

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) it is critical that the Air Force has the capability to train against an advanced air adversary in order to be prepared for conflicts against a modern enemy force, and that in order to have this capability, the Air Force must have access to an advanced adversary force prior to United States adversaries fielding a 5th-generation operational capability; and

(2) the Air Force’s plan to use low-rate initial production F–35As as aggressor aircraft reflects a recognition of the need to field a modernized aggressor fleet.

(b) **REPORT.**—

(1) **IN GENERAL.**—The Secretary of the Air Force may not transfer any low-rate initial production F–35 aircraft for use as aggressor aircraft until the Chief of Staff of the Air Force submits to the congressional defense committees a comprehensive plan and report on the strategy for modernizing its organic aggressor fleet.

Plan.

(2) **ELEMENTS.**—The report required under paragraph (1) shall include the following elements:

Analyses.

(A) Potential locations for F–35A aggressor aircraft, including an analysis of installations that—

(i) have the size and availability of airspace necessary to meet flying operations requirements;

(ii) have sufficient capacity and availability of range space;

(iii) are capable of hosting advanced-threat training exercises; and

(iv) meet or require minimal addition to the environmental requirements associated with the basing action.

(B) An analysis of the potential cost and benefits of expanding aggressor squadrons currently operating 18 Primary Assigned Aircraft (PAA) to a level of 24 PAA each.

(C) An analysis of the cost and timelines associated with modernizing the current Air Force aggressor squadrons to include upgrading aircraft radar, infrared search-and-track systems, radar warning receiver, tactical datalink, threat-representative jamming pods, and other upgrades necessary to provide a realistic advanced adversary threat.

**SEC. 150. AIR FORCE PLAN FOR COMBAT RESCUE HELICOPTER FIELDING.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that, given delays to Operational Loss Replacement (OLR) program fielding and the on-time fielding of Combat Rescue Helicopter (CRH), the Air National Guard should retain additional HH–60G helicopters at Air National Guard locations to meet their recommended primary aircraft authorized (PAA) per the Air Force’s June 2018 report on Air National Guard HH–60 requirements.

(b) REPORT ON FIELDING PLAN.—

(1) IN GENERAL.—Not later than 45 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the congressional defense committees a report on its fielding plan for the CRH program.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

(A) A description of the differences in capabilities between the HH–60G, OLR, and CRH helicopters.

(B) A description of the costs and risks associated with changing the CRH fielding plan to reduce or eliminate inventory shortfalls.

(C) A description of the measures for accelerating the program available within the current contract.

(D) A description of the operational risks and benefits associated with fielding the CRH to the active component first, including—

(i) how the differing fielding plan may affect deployment schedules;

(ii) what capabilities active-component units deploying with the CRH will have that reserve component units deploying with OLR will not; and

(iii) an analysis of the potential costs and benefits that could result from accelerating CRH fielding to all units through additional funding in the future years defense program.

(c) REPORT ON TRAINING PLAN.—

(1) IN GENERAL.—Not later than 45 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the congressional defense committees a report on the plan to sustain training for initial-entry reserve component HH–60G pilots once the active component of the Air Force has received all of its CRH helicopters.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

(A) Projected reserve component aircrew initial HH–60G/OLR qualification training requirements, by year.

(B) The number of legacy HH–60G/OLR helicopters required to continue providing initial HH–60G qualification

Analysis.

training through the 150th Special Operations Wing at Kirtland Air Force Base.

(C) The number of personnel required to continue providing initial HH–60G/OLR qualification training through the 150th Special Operations Wing at Kirtland Air Force Base.

(D) The number of flying hours required per pilot to perform “differences training” at home station for initial entry HH–60 pilots receiving CRH training at Kirtland Air Force Base to become qualified in the HH–60G/OLR at their home station.

(E) The projected effect of using local flying training hours at reserve component units on overall unit training readiness and ability to meet Ready Aircrew Program requirements.

**SEC. 151. REPORT ON FEASIBILITY OF MULTIYEAR CONTRACT FOR PROCUREMENT OF JASSM-ER MISSILES.**

(a) IN GENERAL.—Not later than March 31, 2020, the Secretary of the Air Force shall submit a report to the congressional defense committees assessing the feasibility of entering into a multiyear contract for procurement of JASSM–ER missiles starting in fiscal year 2022.

(b) ELEMENTS.—The report required under subsection (a) shall include the following elements:

(1) An initial assessment of cost savings to the Air Force from a multiyear contract.

(2) An analysis of at least two different multiyear contract options that vary in either duration or quantity, at least one of which assumes a maximum procurement of 550 missiles per year for 5 years.

(3) An assessment of how a multiyear contract will impact the industrial base.

(4) An assessment of how a multiyear contract will impact the Long Range Anti-Ship Missile.

(5) An assessment of how a multiyear contract will impact the ability of the Air Force to develop additional capabilities for the JASSM–ER missile.

Assessments.

Analysis.

**SEC. 152. REPORT ON AIRCRAFT FLEET OF THE CIVIL AIR PATROL.**

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the congressional defense committees a report on the aircraft fleet of the Civil Air Patrol.

(b) ELEMENTS.—The report required by subsection (a) shall include an assessment of each of the following:

(1) Whether the number of aircraft, types of aircraft, and operating locations that comprise the Civil Air Patrol fleet are suitable for the missions and responsibilities assigned to the Civil Air Patrol, including—

(A) flight proficiency and training;

(B) operational mission training; and

(C) support for cadet orientation and cadet flight training programs in the Civil Air Patrol wing of each State.

(2) The ideal overall size of the Civil Air Patrol aircraft fleet, including a description of the factors used to determine that ideal size.

Assessments.

(3) The process used by the Civil Air Patrol and the Air Force to determine the number and location of aircraft operating locations and whether State Civil Air Patrol wing commanders are appropriately involved in that process.

(4) The process used by the Civil Air Patrol, the Air Force, and other relevant entities to determine the type and number of aircraft that are needed to support the emergency, operational, and training missions of the Civil Air Patrol.

**SEC. 153. SENSE OF CONGRESS ON THE LIGHT ATTACK AIRCRAFT INITIATIVE OF THE AIR FORCE.**

It is the sense of the Congress that—

(1) The United States Special Operations Command has a mission requirement to support foreign internal defense training and a light attack aircraft platform could potentially facilitate meeting that requirement.

(2) The Secretary of the Air Force should coordinate with the Commander of the United States Special Operations Command to assess how general purpose forces and special operations forces can leverage the light attack aircraft phase three experimentation activities of the Air Force.

(3) The Secretary of the Air Force, in coordination with the Commander of the United States Special Operations Command, should explore options for coordinating light attack aircraft experiment activities between general purpose and special operations forces to maximize efficiency and effectiveness and to further the mission requirements of both forces, including options to transfer a portion of funds authorized for Air Force light attack aircraft experiments to procure aircraft for supporting the combat air advisor mission of the Special Operations Command.

## **Subtitle E—Defense-wide, Joint, and Multiservice Matters**

**SEC. 161. ECONOMIC ORDER QUANTITY CONTRACTING AND BUY-TO-BUDGET ACQUISITION FOR F-35 AIRCRAFT PROGRAM.**

(a) ECONOMIC ORDER QUANTITY CONTRACT AUTHORITY.—

(1) IN GENERAL.—Subject to paragraphs (2) through (4), from amounts made available for obligation under the F-35 aircraft program, the Secretary of Defense may enter into one or more contracts, beginning with the fiscal year 2020 program year, for the procurement of economic order quantities of material and equipment that has completed formal hardware qualification testing for the F-35 aircraft program for use in procurement contracts to be awarded for such program during fiscal years 2021, 2022, and 2023.

(2) LIMITATION.—The total amount obligated under all contracts entered into under paragraph (1) shall not exceed \$574,000,000.

(3) PRELIMINARY FINDINGS.—Before entering into a contract under paragraph (1), the Secretary of Defense shall make each of the following findings with respect to such contract:

(A) The use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

(B) The minimum need for the property to be procured is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(C) There is a reasonable expectation that, throughout the contemplated contract period, the Secretary will request funding for the contract at the level required to avoid contract cancellation.

(D) That there is a stable, certified, and qualified design for the property to be procured and that the technical risks and redesign risks associated with such property are low.

(E) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of an economic order quantity contract are realistic.

(F) Entering into the contract will promote the national security interests of the United States.

(4) CERTIFICATION REQUIREMENT.—The Secretary of Defense may not enter into a contract under paragraph (1) until a period of 30 days has elapsed following the date on which the Secretary certifies to the congressional defense committees, in writing, that each of the following conditions is satisfied:

Time period.

(A) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most recently available estimates of the program acquisition unit cost or procurement unit cost for such system to determine that the estimates of the unit costs are realistic.

(B) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program submitted to Congress under section 221 of title 10, United States Code, for that fiscal year will include the funding required to execute the program without cancellation.

(C) The contract is a fixed-price type contract.

(D) The proposed contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(E) The Secretary has determined that each of the conditions described in subparagraphs (A) through (F) of paragraph (3) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

Determination.

(b) BUY-TO-BUDGET ACQUISITION.—Subject to section 2308 of title 10, United States Code, the Secretary of Defense may procure a quantity of F–35 aircraft in excess of the quantity authorized by this Act.

**SEC. 162. RELIEF FROM CONTRACTORS FOR FAILURE TO DELIVER READY-FOR-ISSUE SPARE PARTS FOR THE F-35 AIRCRAFT PROGRAM.**

(a) REQUIREMENT TO SEEK RELIEF.—Consistent with the findings and recommendations of the Inspector General of the Department of Defense in the report titled “Audit of F–35 Ready-For-Issue Spare Parts and Sustainment Performance Incentive

Fees” (DODIG–2019–094) and dated June 13, 2019, the Secretary of Defense shall seek relief, as described in subsection (b), from prime contractors that delivered noncompliant ready-for-issue spare parts pursuant a contract under the F–35 aircraft program.

(b) RELIEF DESCRIBED.—The relief sought by the Secretary of Defense under subsection (a) may include the following:

(1) Specific performance.

(2) Compensation for costs incurred by the Department of Defense as a result of the contractor’s failure to deliver compliant ready-for-issue spare parts under the contract.

(3) Any other form of remediation or compensation the Secretary determines to be appropriate.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to alter the terms of a contract under the F–35 aircraft program; or

(2) to authorize the Secretary of Defense to seek forms of relief beyond those otherwise available under law.

**SEC. 163. LIMITATION ON AVAILABILITY OF FUNDS FOR REALLOCATION OF TURKISH F-35A AIRCRAFT TO THE UNITED STATES.**

Time period.  
Certification.

(a) LIMITATION.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force may be obligated or expended to procure a covered F–35A aircraft for the United States Air Force until a period of 15 days has elapsed following the date on which the Secretary of Defense certifies to the congressional defense committees that—

(1) ancillary mission equipment, initial spare parts and materials, technical data, and publications will be procured for each covered F–35A aircraft delivered to the Air Force; and

(2) each such aircraft will be delivered to the Air Force in a common configuration that may be operated and integrated within the fleet of F–35A aircraft of the Air Force.

(b) COVERED F–35A AIRCRAFT DEFINED.—In this section, the term “covered F–35A aircraft” means an F–35A aircraft previously procured by or on behalf of the Government of the Republic of Turkey in F–35 production lot 12, 13, or 14.

**SEC. 164. REQUIREMENT TO ESTABLISH THE USE OF AN AGILE DEVOPS SOFTWARE DEVELOPMENT SOLUTION AS AN ALTERNATIVE FOR JOINT STRIKE FIGHTER AUTONOMIC LOGISTICS INFORMATION SYSTEM.**

Deadline.

(a) COMPETITIVE ANALYSIS.—The Secretary of Defense shall conduct a competitive analysis of the performance and design architecture enhancement efforts between the currently fielded Autonomic logistics Information System, Autonomic Logistics Information System–Next, and the Department of the Air Force Agile Development Operations Madhatter initiative efforts, including system technology transition opportunities and timelines.

(c) BRIEFING.—Not later than September 30, 2020, the Secretary of Defense shall provide the congressional defense committees a briefing on the findings of the competitive analysis carried out under subsection (a).



**SEC. 165. F-35 SUSTAINMENT COST.**

(a) **QUARTERLY UPDATE.**—The Under Secretary of Defense for Acquisition and Sustainment shall include in the quarterly report required under section 155 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232)—

(1) sustainment cost data related to the F-35 program, including a comparison in itemized format of the cost of legacy aircraft and the cost of the F-35 program, based on a standardized set of criteria; and

Data.

(2) an evaluation and metrics on the extent to which the goals developed pursuant to subsection (b) are being achieved.

Evaluation.

(b) **COST REDUCTION PLAN.**—

(1) **IN GENERAL.**—The Under Secretary of Defense for Acquisition and Sustainment shall develop and implement a plan for achieving significant reductions in the costs to operate, maintain, and sustain the F-35 system.

(2) **ELEMENTS.**—The plan required under paragraph (1) shall include the following elements:

(A) Specific changes in the management and execution of operation and support (O&S) cost elements to engender continuous and measurable process improvements.

(B) Specific actions the Department will implement in the near, mid, and long terms to reduce O&S costs.

(C) Firm and achievable timelines for implementing the specific actions and process changes.

(3) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary shall submit to the congressional defense committees a report on the baseline plan developed pursuant to paragraph (1).

**SEC. 166. REPORTS ON THE PROGRESS AND PERFORMANCE OF THE F-35 AIRCRAFT PROGRAM.**

Assessments.

(a) **F-35 BLOCK 4 AND CONTINUOUS CAPABILITY DEVELOPMENT AND DELIVERY PROGRAM.**—The Secretary of Defense shall include with the annual report required by section 224(d) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2059) an integrated master schedule and past performance assessment for each planned phase of the F-35 Block 4 Upgrade and Continuous Capability Development and Delivery Program.

(b) **COMPTROLLER GENERAL REPORTS.**—

(1) **ANNUAL REPORT REQUIRED.**—Not later than 30 days after the date on which the budget of the President is submitted to Congress under section 1105(a) of title 31, United States Code, for each of fiscal years 2021 through 2025, the Comptroller General of the United States shall submit to the congressional defense committees a report on the F-35 aircraft program.

(2) **ELEMENTS.**—Each report under paragraph (1) shall include, with respect to the F-35 aircraft program, the following:

(A) An assessment of the progress of manufacturing processes improvement under the program.

(B) The progress and results of the F-35 Block 4 Upgrade and Continuous Capability Development and Delivery Program and other follow-on modernization development and testing efforts.

(C) An assessment of the Department’s schedule for delivering software upgrades in six-month, scheduled increments.

(D) The progress and results of any other significant hardware development and fielding efforts necessary for the F–35 Block 4 Upgrade and Continuous Capability Development and Delivery Program.

(E) Any other issues the Comptroller General determines to be appropriate.

(c) F–35 BLOCK 4 DEFINED.—In this section, the term “F–35 Block 4 Upgrade and Continuous Capability Development and Delivery Program” means Block 4 capability upgrades for the F–35 aircraft program as described in the Selected Acquisition Report for the program submitted to Congress in March 2019, pursuant to section 2432 of title 10, United States Code.

**SEC. 167. OTHER REPORTS ON THE F–35 AIRCRAFT PROGRAM.**

(a) REPORT ON F–35 RELIABILITY AND MAINTAINABILITY METRICS.—The Secretary of Defense shall submit to the congressional defense committees a report on the reliability and maintainability metrics for the F–35 aircraft. The report shall include the following:

Review.  
Assessment.

(1) The results of a review and assessment, conducted by the program office for the F–35 aircraft program, of the reliability and maintainability metrics for the aircraft as set forth in the most recent operational requirements document for the program.

Determination.

(2) A determination of whether the reliability and maintainability metrics for the aircraft, as set forth in the most recent operational requirements document for the program, are feasible and attainable, and what changes, if any, will be made to update the metrics.

Certification.

(3) A certification that the program office for the F–35 aircraft program has revised the reliability and maintainability improvement plan for the aircraft—

(A) to identify specific and measurable reliability and maintainability objectives in the improvement plan guidance; and

(B) to identify and document which projects included in the improvement plan will achieve the objectives identified under subparagraph (A).

(b) REPORT ON F–35 BLOCK 4 UPGRADE AND CONTINUOUS CAPABILITY DEVELOPMENT AND DELIVERY PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense shall submit to the congressional defense committees a report on the F–35 Block 4 Upgrade and Continuous Capability Development and Delivery Program. The report shall include the following:

Cost estimate.

(A) The results of the independent cost estimate for the Program conducted by the Director of Cost Assessment and Program Evaluation.

Plan.

(B) An approved test and evaluation master plan that addresses the adequacy of testing resources, testing aircraft shortfalls, and testing funding.

Review.

(C) A review of the feasibility and schedule of the continuous capability development and delivery strategy for fielding technologies under the Program as conducted

by the Under Secretary of Defense for Research and Engineering.

(2) F-35 BLOCK 4 DEFINED.—In this subsection, the term “F-35 Block 4 Upgrade and Continuous Capability Development and Delivery Program” has the meaning given that term in section 166.

(c) REPORT ON F-35 AUTONOMIC LOGISTICS INFORMATION SYSTEM.—The Secretary of Defense shall submit to the congressional defense committees a report on the autonomic logistics information system of the F-35 aircraft. The report shall include a description of each of the following:

(1) All shortfalls, capability gaps, and deficiencies in the system that have been identified as of the date of the enactment of this Act.

(2) The strategy and performance requirements that will be implemented to improve the system.

(3) The strategy, implementation plan, schedule, and estimated costs of developing and fielding—

(A) the next generation of the system; or

(B) future increments of the system.

(d) F-35 LIFE-CYCLE COST ESTIMATES.—

(1) JOINT COST ESTIMATE.—The Secretary of the Air Force and the Secretary of the Navy shall jointly develop a joint service cost estimate for the life-cycle costs of the F-35 aircraft program.

(2) INDEPENDENT COST ESTIMATE.—The Director of Cost Assessment and Program Evaluation shall develop an independent cost estimate for the life-cycle costs of the F-35 aircraft program.

(e) DEADLINE FOR SUBMITTAL.—The reports required under subsections (a) through (d) shall be submitted to the congressional defense committees not later than 180 days after the date of the enactment of this Act.

Requirements.

Implementation plan.  
Cost estimates.

**SEC. 168. LIMITATION ON AVAILABILITY OF FUNDS FOR COMMUNICATIONS SYSTEMS LACKING CERTAIN RESILIENCY FEATURES.**

(a) IN GENERAL.—Except as provided under subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense may be obligated or expended for the procurement of a current or future Department of Defense communications program of record, and the Department may not otherwise procure a current or future communications program of record, unless the communications equipment—

(1) mitigates geolocation of a transmission that would allow a like echelon enemy force to target the user;

(2) securely communicates classified information in a contested communications environment that includes operationally representative jamming;

(3) reduces, within two years of continued development and upgrades, electronic signature and susceptibility to geolocation by using low probability of intercept/detect (LPI/LPD) waveforms, or other capability that would provide the same resiliency on the battlefield; and

(4) utilizes a waveform that is either made available through the Department of Defense Waveform Information

Deadline.

Repository, or is a commercial off the shelf (COTS) waveform available for government licensing with waveform analysis through the Joint Tactical Networking Center (JTNC) Tactical Communications Marketplace.

Certification.

(b) **WAIVER.**—The Secretary of a military department may waive the requirement under subsection (a) with respect to a communications system upon certifying to the congressional defense committees that the system’s intended use is not for contested environments or will meet the requirement when operated as a component of an integrated network.

**SEC. 169. REPEAL OF TACTICAL UNMANNED VEHICLE COMMON DATA LINK REQUIREMENT.**

(a) **REPORT REQUIRED.**—

(1) **IN GENERAL.**—Not later than February 1, 2020, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report on the status of the Common Data Link program and plans to meet new and emerging manned and unmanned intelligence, surveillance, and reconnaissance (ISR) vehicle secure and interoperable communication requirements.

(2) **ELEMENTS.**—The report required under paragraph (1) shall include the following elements:

(A) A description of each Common Data Link (CDL) waveform in use and which platforms or systems utilize each CDL waveform.

(B) A list of manned and unmanned ISR platforms or systems in development requiring networked, secure, low latency communications, and an assessment of the suitability of CDL to meet the requirements of each planned program.

(C) A description of in-progress or planned technology development efforts to address networking requirements for manned and unmanned ISR systems operating in contested and denied environments.

(b) **REPEAL.**—Section 157 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1667) is hereby repealed.

List.  
Assessment.

## **TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION**

### Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.

### Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. Program on enhancement of preparation of dependents of members of Armed Forces for careers in science, technology, engineering, and mathematics.

Sec. 212. Updates to the Department of Defense personnel management authority to attract experts in science and engineering.

Sec. 213. Establishment of joint reserve detachment of the Defense Innovation Unit.

Sec. 214. Research and educational programs and activities for Historically Black Colleges and Universities and Minority-Serving Institutions of Higher Education.

Sec. 215. Modification of authority for prizes for advanced technology achievements.

Sec. 216. Joint hypersonics transition office.

Sec. 217. Modification of proof of concept commercialization program.

- Sec. 218. Modification of authority and addition of technology areas for expedited access to technical talent.
- Sec. 219. Expansion of coordination in support of national security innovation and entrepreneurial education.
- Sec. 220. Modification of defense quantum information science and technology research and development program.
- Sec. 221. Understanding of investments in artificial intelligence and development of capabilities by adversaries.
- Sec. 222. Advisory role of JASON scientific advisory group.
- Sec. 223. Direct Air Capture and Blue Carbon Removal Technology Program.
- Sec. 224. Requiring defense microelectronics products and services meet trusted supply chain and operational security standards.
- Sec. 225. Development and acquisition strategy to procure secure, low probability of detection data link network capability.
- Sec. 226. Establishment of secure next-generation wireless network (5G) infrastructure for the Nevada Test and Training Range and base infrastructure.
- Sec. 227. Administration of manufacturing innovation institutes funded by the Department of Defense.
- Sec. 228. Research program on foreign malign influence operations.
- Sec. 229. Diversification of the research and engineering workforce of the Department of Defense.
- Sec. 230. Policy on the talent management of digital expertise and software professionals.
- Sec. 231. Digital engineering capability to automate testing and evaluation.
- Sec. 232. Process to align policy formulation and emerging technology development.
- Sec. 233. Improvement of the Strategic Capabilities Office of the Department of Defense.
- Sec. 234. Pilot program on enhanced civics education.
- Sec. 235. Technology and national security fellowship.
- Sec. 236. Documentation relating to the Advanced Battle Management System.
- Sec. 237. Sensor data integration for fifth generation aircraft.
- Sec. 238. Sense of Congress on future vertical lift technologies.
- Sec. 239. Use of funds for Strategic Environmental Research Program, Environmental Security Technical Certification Program, and Operational Energy Capability Improvement.
- Sec. 240. Limitation and report on Indirect Fire Protection Capability Increment 2 capability.

Subtitle C—Plans, Reports, and Other Matters

- Sec. 251. Master plan for implementation of authorities relating to science and technology reinvention laboratories.
- Sec. 252. Infrastructure to support research, development, test, and evaluation missions.
- Sec. 253. Energetics plan.
- Sec. 254. Strategy and implementation plan for fifth generation information and communications technologies.
- Sec. 255. Department-wide software science and technology strategy.
- Sec. 256. Artificial intelligence education strategy.
- Sec. 257. Cyber science and technology activities roadmap and reports.
- Sec. 258. Report on B–52 commercial engine replacement program.
- Sec. 259. Commercial edge computing technologies and best practices for Department of Defense warfighting systems.
- Sec. 260. Biannual report on the Joint Artificial Intelligence Center.
- Sec. 261. Quarterly updates on the Optionally Manned Fighting Vehicle program.
- Sec. 262. National Study on Defense Research At Historically Black Colleges and Universities and Other Minority Institutions.
- Sec. 263. Study on national security emerging biotechnologies for the Department of Defense.
- Sec. 264. Independent study on optimizing resources allocated to Combating Terrorism Technical Support Office.
- Sec. 265. Independent assessment of electronic warfare plans and programs.
- Sec. 266. Technical correction to Global Research Watch Program.

## Subtitle A—Authorization of Appropriations

### SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Department of Defense for research, development, test, and evaluation, as specified in the funding table in section 4201.

## Subtitle B—Program Requirements, Restrictions, and Limitations

### SEC. 211. PROGRAM ON ENHANCEMENT OF PREPARATION OF DEPENDENTS OF MEMBERS OF ARMED FORCES FOR CAREERS IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS.

(a) PROGRAM REQUIRED.—Chapter 111 of title 10, United States Code, is amended by inserting after section 2192a the following new section:

10 USC 2192b.

#### **“§ 2192b. Program on enhancement of preparation of dependents of members of armed forces for careers in science, technology, engineering, and mathematics**

“(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to—

“(1) enhance the preparation of students at covered schools for careers in science, technology, engineering, and mathematics; and

“(2) provide assistance to teachers at covered schools to enhance preparation described in paragraph (1).

“(b) COORDINATION.—In carrying out the program, the Secretary shall coordinate with the following:

“(1) The Secretaries of the military departments.

“(2) The Secretary of Education.

“(3) The National Science Foundation.

“(4) Other organizations as the Secretary of Defense considers appropriate.

“(c) ACTIVITIES.—Activities under the program may include the following:

“(1) Establishment of targeted internships and cooperative research opportunities at defense laboratories and other technical centers for students and teachers at covered schools.

“(2) Establishment of scholarships and fellowships for students at covered schools.

“(3) Efforts and activities that improve the quality of science, technology, engineering, and mathematics educational and training opportunities for students and teachers at covered schools, including with respect to improving the development of curricula at covered schools.

“(4) Development of travel opportunities, demonstrations, mentoring programs, and informal science education for students and teachers at covered schools.

“(d) **METRICS.**—The Secretary shall establish outcome-based metrics and internal and external assessments to evaluate the merits and benefits of activities conducted under the program with respect to the needs of the Department of Defense. Assessments. Evaluation.

“(e) **COVERED SCHOOLS DEFINED.**—In this section, the term ‘covered schools’ means elementary or secondary schools at which the Secretary determines a significant number of dependents of members of the armed forces are enrolled.”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2192a the following new item:

10 USC 2191  
prec.

“2192b. Program on enhancement of preparation of dependents of members of armed forces for careers in science, technology, engineering, and mathematics.”

(c) **CONFORMING REPEAL.**—Section 233 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 2193a note) is repealed.

**SEC. 212. UPDATES TO THE DEPARTMENT OF DEFENSE PERSONNEL MANAGEMENT AUTHORITY TO ATTRACT EXPERTS IN SCIENCE AND ENGINEERING.**

(a) **IN GENERAL.**—Subsection (a) of section 1599h of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(6) **JOINT ARTIFICIAL INTELLIGENCE CENTER.**—The Director of the Joint Artificial Intelligence Center may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Center. The authority to carry out the program under this paragraph shall terminate on December 31, 2024.”

Termination  
date.

(b) **SCOPE OF APPOINTMENT AUTHORITY.**—Subsection (b)(1) of such section is amended—

- (1) in subparagraph (D), by striking “and” at the end;
- (2) in subparagraph (E), by adding “and” at the end; and
- (3) by adding at the end the following new subparagraph:
 

“(F) in the case of the Joint Artificial Intelligence Center, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Center;”

(c) **EXTENSION OF TERMS OF APPOINTMENT.**—Subsection (c)(2) of such section is amended by striking “or the Defense Innovation Unit Experimental” and inserting “the Defense Innovation Unit, or the Joint Artificial Intelligence Center”.

(d) **UPDATE TO ORGANIZATIONAL NAME.**—Such section is further amended—

- (1) in subsection (a)(5)—
  - (A) in the subsection heading by striking “DIUX” and inserting “DIU”; and
  - (B) by striking “Experimental”; and
- (2) in subsection (b)(1)(E), by striking “Experimental”.

**SEC. 213. ESTABLISHMENT OF JOINT RESERVE DETACHMENT OF THE DEFENSE INNOVATION UNIT.**

(a) **IN GENERAL.**—

- (1) **ESTABLISHMENT OF JOINT RESERVE DETACHMENT OF THE DEFENSE INNOVATION UNIT.**—Chapter 139 of title 10, United

States Code, is amended by inserting after section 2358a the following new section:

10 USC 2358b. **“§ 2358b. Joint reserve detachment of the Defense Innovation Unit**

Consultation.

“(a) ESTABLISHMENT.—The Secretary of Defense, in consultation with the Secretaries of the military departments, may establish a joint reserve detachment (referred to in this section as the ‘Detachment’) composed of members of the reserve components described in subsection (b) to be assigned to each office of the Defense Innovation Unit to—

“(1) support engagement and collaboration with private-sector industry and the community surrounding the location of such office; and

“(2) to accelerate the use and adoption of commercially-developed technologies for national security purposes.

“(b) MEMBERS.—Each Secretary of a military department shall select for the Detachment, and make efforts to retain, members of the reserve components who possess relevant private-sector experience in the fields of business, acquisition, intelligence, engineering, technology transfer, science, mathematics, program management, logistics, cybersecurity, or such other fields as determined by the Under Secretary of Defense for Research and Engineering.

“(c) DUTIES.—The Detachment shall have the following duties:

“(1) Providing the Department of Defense with—

“(A) expertise on and analysis of commercially-developed technologies;

“(B) commercially-developed technologies to be used as alternatives for technologies in use by the Department; and

“(C) opportunities for greater engagement and collaboration between the Department and private-sector industry on innovative technologies.

“(2) On an ongoing basis—

“(A) partnering with the military departments, the combatant commands, and other Department of Defense organizations to—

“(i) identify and rapidly prototype commercially-developed technologies; and

“(ii) use alternative contracting mechanisms to procure such technologies;

“(B) increasing awareness of—

“(i) the work of the Defense Innovation Unit; and

“(ii) the technology requirements of the Department of Defense as identified in the National Defense Science and Technology Strategy developed under section 218 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1679); and

“(C) using the investment in research and development made by private-sector industry in assessing and developing dual-use technologies.

“(3) Carrying out other activities as directed by the Under Secretary of Defense for Research and Engineering.

“(d) JOINT DUTY.—Assignment to a Detachment shall not qualify as a joint duty assignment, as defined in section 668(b)(1)



of title 10, United States Code, unless approved by the Secretary of Defense.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2358a the following new item:

10 USC 2351  
prec.

“2358b. Joint reserve detachment of the Defense Innovation Unit.”.

(b) IMPLEMENTATION REPORT.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense for Research and Engineering, in consultation with the Director of the Defense Innovation Unit and the Secretaries of the military departments, shall submit to the congressional defense committees a report that includes—

Consultation.

(1) an organizational plan and the estimated costs for establishing the joint reserve detachment required under section 2358b of title 10, United States Code (as added by subsection (a)); and

Organizational  
plan.  
Cost estimates.

(2) a timeline specifying when such detachment will attain initial operational capability and full operational capability, respectively.

Timeline.

**SEC. 214. RESEARCH AND EDUCATIONAL PROGRAMS AND ACTIVITIES FOR HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY-SERVING INSTITUTIONS OF HIGHER EDUCATION.**

Section 2362 of title 10, United States Code, is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection:

“(d) INCENTIVES.—The Secretary of Defense may develop incentives to encourage research and educational collaborations between covered educational institutions and other institutions of higher education.”.

**SEC. 215. MODIFICATION OF AUTHORITY FOR PRIZES FOR ADVANCED TECHNOLOGY ACHIEVEMENTS.**

Section 2374a(a) of title 10, United States Code, is amended by striking “Assistant Secretary of Defense for Research and Engineering” and inserting “Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment.”.

**SEC. 216. JOINT HYPERSONICS TRANSITION OFFICE.**

Section 218 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2358 note) is amended—

(1) in subsection (a), by striking “the program required under subsection (b), and shall” and inserting “the program and activities described in subsections (b) through (f), and shall”;

(2) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively;

(3) by inserting after subsection (b) the following new subsection (c):

“(c) UNIVERSITY EXPERTISE.—

“(1) ARRANGEMENT WITH INSTITUTIONS OF HIGHER EDUCATION.—Using the authority specified in section 217 of the

National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2358 note) or another similar authority, the Office shall seek to enter into an arrangement with one or more institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) under which such institutions may provide the Office with—

“(A) access to research, technology development, and workforce development expertise to support the mission of the Office; and

“(B) foundational and applied hypersonic research, development, and workforce support in areas that the Office determines to be relevant for the Department of Defense.

“(2) AVAILABILITY OF INFORMATION.—The Office shall ensure that the results of any research and reports produced pursuant to an arrangement under paragraph (1) are made available to the Federal Government, the private sector, academia, and international partners consistent with appropriate security classification guidance.”;

(4) in subsection (d), as so redesignated—

(A) in paragraph (4), by striking the comma before the period; and

(B) in paragraph (5), by striking “certified under subsection (e) as being consistent with the roadmap under subsection (d)” and inserting “certified under subsection (f) as being consistent with the roadmap under subsection (e)”;

(5) in subsection (e), as so redesignated, by adding at the end the following new paragraph:

“(4) SUBMITTAL TO CONGRESS.—

“(A) INITIAL SUBMISSION.—Not later than 180 days after the date of the enactment of this paragraph, the Secretary of Defense shall submit to the congressional defense committees the most recent roadmap developed under paragraph (1).

“(B) SUBSEQUENT SUBMISSIONS.—The Secretary of Defense shall submit to the congressional defense committees each roadmap revised under paragraph (1) together with the budget submitted to Congress under section 1105 of title 31, United States Code, for the fiscal year concerned.”; and

(6) in subsection (f), as so redesignated—

(A) by striking “subsection (d)” each place it appears and inserting “subsection (e)”;

(B) in paragraph (3), by striking “2016” and inserting “2026”.

Deadline.

**SEC. 217. MODIFICATION OF PROOF OF CONCEPT COMMERCIALIZATION PROGRAM.**

(a) EXTENSION OF PROGRAM.—Section 1603(g) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2359 note) is amended by striking “2019” and inserting “2024”.

(b) ADDITIONAL IMPROVEMENTS.—Section 1603 of such Act, as amended by subsection (a), is further amended—

(1) in the section heading, by inserting “**OF DUAL-USE TECHNOLOGY**” after “**COMMERCIALIZATION**”;

(2) in subsection (a)—

(A) by inserting “of Dual-Use Technology” after “Commercialization”; and

(B) by inserting “with a focus on priority defense technology areas that attract public and private sector funding, as well as private sector investment capital, including from venture capital firms in the United States,” before “in accordance”;

(3) in subsection (c)(4)(A)(iv), by inserting “, which may include access to venture capital” after “award”;

(4) by striking subsection (d);

(5) by redesignating subsection (e) as subsection (d);

(6) by inserting after subsection (d), as so redesignated, the following new subsection (e):

“(e) **AUTHORITIES.**—In carrying out this section, the Secretary may use the following authorities:

“(1) Section 1599g of title 10 of the United States Code, relating to public-private talent exchanges.

“(2) Section 2368 of such title, relating to Centers for Science, Technology, and Engineering Partnerships.

“(3) Section 2374a of such title, relating to prizes for advanced technology achievements.

“(4) Section 2474 of such title, relating to Centers of Industrial and Technical Excellence.

“(5) Section 2521 of such title, relating to the Manufacturing Technology Program.

“(6) Section 225 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2359 note).

“(7) Section 1711 of such Act (Public Law 115–91; 10 U.S.C. 2505 note), relating to a pilot program on strengthening manufacturing in the defense industrial base.

“(8) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) and section 6305 of title 31, United States Code, relating to cooperative research and development agreements.”

(7) by striking subsection (f); and

(8) by redesignating subsection (g) as subsection (f).

**SEC. 218. MODIFICATION OF AUTHORITY AND ADDITION OF TECHNOLOGY AREAS FOR EXPEDITED ACCESS TO TECHNICAL TALENT.**

(a) **MODIFICATION OF AUTHORITY.**—Subsection (a)(1) of section 217 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2358 note) is amended by striking “The Secretary of Defense shall, acting through the secretaries of the military departments, establish” and inserting “Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall direct the secretaries of the military departments to establish”.

Deadline.

(b) **ADDITIONAL TECHNOLOGY AREAS.**—Subsection (e) of such section is amended—

(1) by redesignating paragraph (27) as paragraph (30); and

(2) by inserting after paragraph (26) the following new paragraph (27):

“(27) Rapid prototyping.

“(28) Infrastructure resilience.  
“(29) Hypersonics.”.

**SEC. 219. EXPANSION OF COORDINATION IN SUPPORT OF NATIONAL SECURITY INNOVATION AND ENTREPRENEURIAL EDUCATION.**

Section 225(e) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2359 note) is amended by adding at the end the following new paragraph:

“(18) The Lab-Embedded Entrepreneurship Programs of the Department of Energy.”.

**SEC. 220. MODIFICATION OF DEFENSE QUANTUM INFORMATION SCIENCE AND TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.**

Section 234 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2358 note) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking “private sector entities” and inserting “private sector and international entities”; and

(B) in paragraph (6), by striking “facilities and infrastructure” and inserting “facilities, workforce, and infrastructure”;

Consultations.

(2) in subsection (c)—

(A) in paragraph (2), by striking “quantum sciences;” and inserting “quantum information sciences, including through consultation with—

“(A) the National Quantum Coordination Office;

“(B) the subcommittee on Quantum Information Science of the National Science and Technology Council;

“(C) other organizations and elements of the Department of Defense;

“(D) other Federal agencies; and

“(E) appropriate private sector organizations;”;

(B) by redesignating paragraphs (3) and (4) as paragraphs (6) and (7), respectively;

(C) by inserting after paragraph (2), the following new paragraphs:

Plans.

“(3) in consultation with the entities listed in paragraph (2), develop plans for—

“(A) the development of the quantum information science and technology workforce;

“(B) enhancing awareness of quantum information science and technology;

“(C) reducing the risk of cybersecurity threats posed by quantum information science technology; and

“(D) development of ethical guidelines for the use of quantum information science technology;

“(4) in consultation with the National Institute of Standards and Technology and other appropriate Federal entities, develop a quantum information science taxonomy and standards and requirements for quantum information technology;

“(5) support efforts to increase the technology readiness level of quantum information science technologies under development in the United States;”;

(D) in paragraph (6), as so redesignated, by striking “quantum science” and inserting “quantum information science”; and

(E) in paragraph (7), as so redesignated, by striking “for meeting the long-term challenges and achieving the specific technical goals” and inserting “for carrying out the program under subsection (a)”;

(3) by redesignating subsection (d) as subsection (e);

(4) by inserting after subsection (c) the following new subsection (d):

“(d) **QUANTUM INFORMATION SCIENCE RESEARCH CENTERS.**—The Secretary of each military department may establish or designate a defense laboratory or establish activities to engage with appropriate public and private sector organizations, including academic organizations, to enhance and accelerate the research, development, and deployment of quantum information sciences and quantum information science-enabled technologies and systems. The Secretary of Defense shall ensure that not less than one such laboratory or center is established or designated.”; and

(5) in paragraph (2) of subsection (e), as so redesignated—  
 (A) in subparagraph (A), by inserting “information” before “sciences”;

(B) in subparagraph (B),

(i) by inserting “information” before “sciences”; and

(ii) by inserting “, including a discussion of likely impacts of quantum information science and technology on military capabilities” before the period at the end;

(C) in subparagraph (C), by inserting “information” before “sciences”;

(D) by redesignating subparagraph (E) as subparagraph (F); and

(E) by striking subparagraph (D) and inserting the following new subparagraphs:

“(D) A description of the activities carried out in accordance with this section, including, for each such activity—

“(i) a roadmap for the activity;

“(ii) a summary of the funding provided for the activity; and

“(iii) an estimated timeline for the development and military deployment of quantum technologies supported through the activity.

“(E) A description of the efforts of the Department of Defense to update classification and cybersecurity practices relating to quantum technology, including—

“(i) security processes and requirements for engagement with allied countries; and

“(ii) a plan for security-cleared government and contractor workforce development.”.

**SEC. 221. UNDERSTANDING OF INVESTMENTS IN ARTIFICIAL INTELLIGENCE AND DEVELOPMENT OF CAPABILITIES BY ADVERSARIES.**

Section 238(c)(2)(I) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

(1) in clause (i), by striking “; and” and inserting a semicolon;

Summary.

Timeline.

Requirements.

Plan.

10 USC 2358 note.

(2) in clause (ii), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new clause:

“(iii) that appropriate entities in the Department are reviewing all open source publications from both the United States and outside the United States that contribute to, affect, or advance—

“(I) artificial intelligence research and development; or

“(II) the understanding of the Secretary concerning the investments by adversaries of the United States in artificial intelligence and the development by such adversaries of capabilities relating to artificial intelligence.”.

**SEC. 222. ADVISORY ROLE OF JASON SCIENTIFIC ADVISORY GROUP.**

**(a) ONGOING ENGAGEMENT OF CERTAIN SCIENTIFIC ADVISORY PERSONNEL.—**

(1) **IN GENERAL.**—The Secretary of Defense shall seek to engage the members of the independent, private scientific advisory group known as “JASON” as advisory personnel to provide advice, on an ongoing basis, on matters involving science, technology, and national security, including methods to defeat existential and technologically-amplified threats to national security.

(2) **AVAILABILITY TO OTHER FEDERAL AGENCIES.**—At the request of a Federal agency outside the Department of Defense, the Secretary of Defense shall seek to make personnel engaged under paragraph (1) available to such agency for the purpose of providing advice to the agency on the matters described in such subsection.

**(b) ARRANGEMENT FOR CONDUCT OF NATIONAL SECURITY STUDIES AND ANALYSIS.—**

(1) **IN GENERAL.**—Pursuant to subsection (a), the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall seek to enter into an arrangement under which JASON may provide national security research studies and other analyses to the Department of Defense and other Federal agencies to meet mission requirements and agency needs.

(2) **FORM OF ARRANGEMENT.**—The arrangement entered into under paragraph (1) shall be in a form the Under Secretary of Defense for Acquisition and Sustainment determines to be appropriate for the Department of Defense, which may include a contract, a grant, a cooperative agreement, the use of other transaction authority under section 2371 of title 10, United States Code, or another such arrangement.

Deadline.

(3) **TIMING OF ARRANGEMENT.**—The Secretary of Defense shall seek to enter into the arrangement under paragraph (1) not later than 120 days after the date of the enactment of this Act.

(4) **TERMS OF ARRANGEMENT.**—The arrangement entered into under paragraph (1) shall—

Reimbursement.

(A) if specifically negotiated as part of the arrangement, provide for the Department of Defense to reimburse the entity supporting JASON for all or a portion of the overhead costs incurred in support of the arrangement;

(B) allow Federal Government entities outside the Department of Defense with responsibilities relating to national security to seek to engage JASON to perform individual studies relating to national security matters as part of the arrangement; and

(C) require that a Federal agency that engages JASON to perform a study under the arrangement will fully fund such study, including a proportional percentage to the total overhead costs incurred under the arrangement.

(5) LIMITATION ON TERMINATION.—

(A) IN GENERAL.—The Secretary of Defense may not terminate the arrangement under paragraph (1) until a period of 180 days has elapsed following the date on which the Secretary—

(i) notifies the congressional defense committees of the intent of the Secretary to terminate the arrangement; and

(ii) submits the report required under subparagraph (B).

(B) REPORT REQUIRED.—

(i) IN GENERAL.—If the Secretary of Defense determines that the arrangement under paragraph (1) should be terminated, the Secretary shall submit to the congressional defense committees a report on the proposed termination of the arrangement.

(ii) ELEMENTS.—The report required under clause (i) shall include the following:

(I) A summary of the execution of research projects conducted by JASON over the four fiscal years preceding the date of the report, including the projects requested by the Department of Defense and the projects requested by other Federal agencies.

(II) An analysis of the costs to the Department of Defense of maintaining the arrangement under which JASON provided national security research studies, including any overhead costs incurred by the Department or shared among Federal agencies over the four fiscal years preceding the date of the report.

(III) A timeline for the potential transition or termination of the activities, functions, and expertise provided by JASON under the arrangement.

(IV) An assessment of the impact that the termination of the arrangement with JASON will have on defense research studies and analytical capabilities, including a mitigation plan that identifies where alternative and comparable scientific advice and expertise is available and a comparison of the costs associated with each alternative.

(iii) FORM OF REPORT.—The report required under clause (i) may be submitted in unclassified or classified form.

(6) ANNUAL SUMMARY REPORT.—Not later than March 1 of each year beginning after the date of the enactment of

this Act, the Secretary of Defense shall submit to the congressional defense committees a report that includes—

- (A) a summary of expenditures made under the arrangement with JASON under paragraph (1); and
- (B) a summary of the studies and other activities carried out by JASON pursuant to such arrangement in the preceding calendar year.

10 USC 2358  
note.

**SEC. 223. DIRECT AIR CAPTURE AND BLUE CARBON REMOVAL TECHNOLOGY PROGRAM.**

(a) PROGRAM REQUIRED.—

Coordination.

(1) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Homeland Security, the Secretary of Energy, and the heads of such other Federal agencies as the Secretary of Defense considers appropriate, shall carry out a program on research, development, testing, evaluation, study, and demonstration of technologies related to blue carbon capture and direct air capture.

(2) PROGRAM GOALS.—The goals of the program established under paragraph (1) are as follows:

(A) To develop technologies that capture carbon dioxide from seawater and the air to turn such carbon dioxide into clean fuels to enhance fuel and energy security.

(B) To develop and demonstrate technologies that capture carbon dioxide from seawater and the air to reuse such carbon dioxide to create products for military uses.

(C) To develop direct air capture technologies for use—

(i) at military installations or facilities of the Department of Defense; or

(ii) in modes of transportation by the Navy or the Coast Guard.

(3) PHASES.—The program established under paragraph (1) shall be carried out in two phases as follows:

(A) The first phase shall consist of research and development and shall be carried out as described in subsection (b).

Evaluation.  
Determination.

(B) The second phase shall consist of testing and evaluation and shall be carried out as described in subsection (c), if the Secretary determines that the results of the research and development phase justify implementing the testing and evaluation phase.

(4) DESIGNATION.—The program established under paragraph (1) shall be known as the “Direct Air Capture and Blue Carbon Removal Technology Program” (in this section referred to as the “Program”).

(b) RESEARCH AND DEVELOPMENT PHASE.—

(1) IN GENERAL.—During the research and development phase of the Program, the Secretary of Defense shall conduct research and development in pursuit of the goals set forth in subsection (a)(2).

Study.  
Evaluation.

(2) DIRECT AIR CAPTURE.—The research and development phase of the Program may include, with respect to direct air capture, a front end engineering and design study that includes an evaluation of direct air capture designs to produce fuel for use—

(A) at military installations or facilities of the Department of Defense; or



(B) in modes of transportation by the Navy or the Coast Guard.

(3) COMMENCEMENT.—The Secretary shall commence carrying out the research and development phase of the Program not later than 90 days after the date of the enactment of this Act. Deadline.

(4) GRANTS AUTHORIZED.—The Secretary may carry out the research and development phase of the Program through the award of grants to private persons and eligible laboratories.

(5) REPORT REQUIRED.—Not later than 180 days after the date of the completion of the research and development phase of the Program, the Secretary shall submit to Congress a report on the research and development carried out under the Program.

(c) TESTING AND EVALUATION PHASE.—

(1) IN GENERAL.—During the testing and evaluation phase of the Program, the Secretary shall, in pursuit of the goals set forth in subsection (a)(2), conduct tests and evaluations of the technologies researched and developed during the research and development phase of the Program.

(2) DIRECT AIR CAPTURE.—The testing and evaluation phase of the Program may include demonstration projects for direct air capture to produce fuels for use—

(A) at military installations or facilities of the Department of Defense; or

(B) in modes of transportation by the Navy or the Coast Guard.

(3) COMMENCEMENT.—Subject to subsection (a)(3)(B), the Secretary shall commence carrying out the testing and evaluation phase of the Program on the date of the completion of the research and development phase described in subsection (b), except that the testing and evaluation phase of the Program with respect to direct air capture may commence at such time after a front end engineering and design study demonstrates to the Secretary that commencement of such phase is appropriate.

(4) GRANTS AUTHORIZED.—The Secretary may carry out the testing and evaluation phase of the Program through the award of grants to private persons and eligible laboratories.

(5) LOCATIONS.—The Secretary shall carry out the testing and evaluation phase of the Program at military installations or facilities of the Department of Defense.

(6) REPORT REQUIRED.—Not later than September 30, 2026, the Secretary shall submit to Congress a report on the findings of the Secretary with respect to the effectiveness of the technologies tested and evaluated under the Program.

(d) DEFINITIONS.—In this section:

(1) The term “blue carbon capture” means the removal of dissolved carbon dioxide from seawater through engineered or inorganic processes, including filters, membranes, or phase change systems.

(2)(A) The term “direct air capture”, with respect to a facility, technology, or system, means that the facility, technology, or system uses carbon capture equipment to capture carbon dioxide directly from the air.

(B) The term “direct air capture” does not include any facility, technology, or system that captures carbon dioxide—

(i) that is deliberately released from a naturally occurring subsurface spring; or

(ii) using natural photosynthesis.

(3) The term “eligible laboratory” means—

(A) a National Laboratory (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801));

(B) a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2358 note);

(C) the Major Range and Test Facility Base (as defined in section 2358a(f) of title 10, United States Code); or

(D) any other facility that supports the research, development, test, and evaluation activities of the Department of Defense or the Department of Energy.

10 USC 2302 note.

**SEC. 224. REQUIRING DEFENSE MICROELECTRONICS PRODUCTS AND SERVICES MEET TRUSTED SUPPLY CHAIN AND OPERATIONAL SECURITY STANDARDS.**

Deadline.

(a) PURCHASES.—To protect the United States from intellectual property theft and to ensure national security and public safety in the application of new generations of wireless network technology and microelectronics, beginning no later than January 1, 2023, the Secretary of Defense shall ensure that each microelectronics product or service that the Department of Defense purchases on or after such date meets the applicable trusted supply chain and operational security standards established pursuant to subsection (b), except in a case in which the Department seeks to purchase a microelectronics product or service but—

(1) no such product or service is available for purchase that meets such standards; or

(2) no such product or service is available for purchase that—

(A) meets such standards; and

(B) is available at a price that the Secretary does not consider prohibitively expensive.

(b) TRUSTED SUPPLY CHAIN AND OPERATIONAL SECURITY STANDARDS.—

Deadline.

(1) STANDARDS REQUIRED.—(A) Not later than January 1, 2021, the Secretary shall establish trusted supply chain and operational security standards for the purchase of microelectronics products and services by the Department.

(B) For purposes of this section, a trusted supply chain and operational security standard—

(i) is a standard that systematizes best practices relevant to—

(I) manufacturing location;

(II) company ownership;

(III) workforce composition;

(IV) access during manufacturing, suppliers’ design, sourcing, manufacturing, packaging, and distribution processes;

(V) reliability of the supply chain; and

(VI) other matters germane to supply chain and operational security; and

(ii) is not a military standard (also known as “MIL-STD”) or a military specification (also known as “MIL-SPEC”) for microelectronics that—

(I) specifies individual features for Department of Defense microelectronics; or

(II) otherwise inhibits the acquisition by the Department of securely manufactured, commercially-available products.

(2) CONSULTATION REQUIRED.—In developing standards under paragraph (1), the Secretary shall consult with the following:

(A) The Secretary of Homeland Security, the Secretary of State, the Secretary of Commerce, and the Director of the National Institute of Standards and Technology.

(B) Suppliers of microelectronics products and services from the United States and allies and partners of the United States.

(C) Representatives of major United States industry sectors that rely on a trusted supply chain and the operational security of microelectronics products and services.

(D) Representatives of the United States insurance industry.

(3) TIERS OF TRUST AND LEVELS OF SECURITY AUTHORIZED.—

In carrying out paragraph (1), the Secretary may establish tiers and levels of trust and security within the supply chain and operational security standards for microelectronics products and services.

(4) GENERAL APPLICABILITY.—The standards established pursuant to paragraph (1) shall be, to the greatest extent practicable, generally applicable to the trusted supply chain and operational security needs and use cases of the United States Government and commercial industry, such that the standards could be widely adopted by government agencies, commercial industry, and allies and partners of the United States as the basis for procuring microelectronics products and services.

(5) ANNUAL REVIEW.—Not later than October 1 of each year, the Secretary shall, in consultation with persons and entities set forth under paragraph (2), review the standards established pursuant to paragraph (1) and issue updates or modifications as the Secretary considers necessary or appropriate.

Deadlines.  
Consultation.  
Updates.

(c) ENSURING ABILITY TO SELL COMMERCIALY.—

(1) IN GENERAL.—The Secretary shall, to the greatest extent practicable, ensure that suppliers of microelectronics products and services for the Department of Defense subject to subsection (a) are able and incentivized to sell products commercially and to governments of allies and partners of the United States that are produced on the same production lines as the microelectronics products supplied to the Department of Defense.

(2) EFFECT OF REQUIREMENTS AND ACQUISITIONS.—The Secretary shall, to the greatest extent practicable, ensure that the requirements of the Department and the acquisition by the Department of microelectronics enable the success of a dual-use microelectronics industry.

(d) MAINTAINING COMPETITION AND INNOVATION.—The Secretary shall take such actions as the Secretary considers necessary

and appropriate, within the Secretary's authorized activities to maintain the health of the defense industrial base, to ensure that—

(1) providers of microelectronics products and services that meet the standards established under subsection (b) are exposed to competitive market pressures to achieve competitive pricing and sustained innovation; and

(2) the industrial base of microelectronics products and services that meet the standards established under subsection (b) includes providers manufacturing in the United States or in countries that are allies or partners of the United States.

**SEC. 225. DEVELOPMENT AND ACQUISITION STRATEGY TO PROCURE SECURE, LOW PROBABILITY OF DETECTION DATA LINK NETWORK CAPABILITY.**

Deadline.

(a) **STRATEGY REQUIRED.**—Not later than March 1, 2020, the Chief of Staff of the Air Force, the Chief of Naval Operations, and the Chief of Staff of the Army shall jointly submit to the congressional defense committees a joint development and acquisition strategy to procure a secure, low probability of detection data link network capability, with the ability to effectively operate in hostile jamming environments while preserving the low observability characteristics of the relevant platforms, including both existing and planned platforms.

(b) **NETWORK CHARACTERISTICS.**—The data link network capability to be procured pursuant to the development and acquisition strategy submitted under subsection (a) shall—

(1) ensure that any network made with such capability will be low risk and affordable, with minimal impact or change to existing host platforms and minimal overall integration costs;

(2) use a non-proprietary and open systems approach compatible with the Rapid Capabilities Office Open Mission Systems initiative of the Air Force, the Future Airborne Capability Environment initiative of the Navy, and the Modular Open Systems Architecture initiative of the Army; and

(3) provide for an architecture to connect, with operationally relevant throughput and latency—

(A) fifth-generation combat aircraft;

(B) fifth-generation and fourth-generation combat aircraft;

(C) fifth-generation and fourth-generation combat aircraft and appropriate support aircraft and other network nodes for command, control, communications, intelligence, surveillance, and reconnaissance purposes; and

(D) fifth-generation and fourth-generation combat aircraft and their associated network-enabled precision weapons.

Time period.

(c) **LIMITATION.**—Of the funds authorized to be appropriated by this Act for fiscal year 2020 for operation and maintenance for the Office of the Secretary of the Air Force, for operation and maintenance for the Office of the Secretary of the Navy, and for operations and maintenance for the Office of the Secretary of the Army, not more than 50 percent may be obligated or expended until the date that is 15 days after the date on which the Chief of Staff of the Air Force, the Chief of Naval Operations, and the Chief of Staff of the Army, respectively, submit the development and acquisition strategy required by subsection (a).

**SEC. 226. ESTABLISHMENT OF SECURE NEXT-GENERATION WIRELESS NETWORK (5G) INFRASTRUCTURE FOR THE NEVADA TEST AND TRAINING RANGE AND BASE INFRASTRUCTURE.**

10 USC 2223a  
note.

(a) **ESTABLISHMENT REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall establish secure fifth-generation wireless network components and capabilities at no fewer than two Department of Defense installations in accordance with this section.

Deadline.

(b) **INSTALLATIONS.**—

(1) **LOCATIONS.**—The Secretary shall establish components and capabilities under subsection (a) at the following:

(A) The Nevada Test and Training Range, which shall serve as a Major Range and Test Facility Base (MRTFB) for fifth-generation wireless networking.

(B) Such Department installations or other installations as the Secretary considers appropriate for the purpose set forth in paragraph (2).

(2) **PURPOSE.**—The purpose of the establishment of components and capabilities under subsection (a) at the locations described in paragraph (1) of this subsection is to demonstrate the following:

(A) The potential military utility of high bandwidth, scalable, and low latency fifth-generation wireless networking technology.

(B) Advanced security technology that is applicable to fifth-generation networks as well as legacy Department command and control networks.

(C) Secure interoperability with fixed and wireless systems (legacy and future systems).

(D) Enhancements such as spectrum and waveform diversity, frequency hopping and spreading, and beam forming for military requirements.

(E) Technology for dynamic network slicing for specific use cases and applications requiring varying levels of latency, scale, and throughput.

(F) Technology for dynamic spectrum sharing and network isolation.

(G) Base infrastructure installation of high bandwidth, scalable, and low latency fifth-generation wireless networking technology.

(H) Applications for secure fifth-generation wireless network capabilities for the Department, such as the following:

(i) Interactive augmented reality or synthetic training environments.

(ii) Internet of things devices.

(iii) Autonomous systems.

(iv) Advanced manufacturing through the following:

(I) Department-sponsored centers for manufacturing innovation (as defined in section 34(c) of the National Institute of Standards and Technology Act (15 U.S.C. 278s(c))).

(II) Department research and development organizations.

(III) Manufacturers in the defense industrial base of the United States.

10 USC 2521  
note.

**SEC. 227. ADMINISTRATION OF MANUFACTURING INNOVATION  
INSTITUTES FUNDED BY THE DEPARTMENT OF DEFENSE.**

(a) **IN GENERAL.**—The Secretary of Defense shall make such changes to the administration of covered institutes so as—

Evaluation.

(1) to encourage covered institutes to leverage existing workforce development programs across the Federal Government and State governments in order to build successful workforce development programs;

(2) to develop metrics to evaluate the workforce development performed by the covered institutes, including metrics on job quality, career pathways, wages and benefits, and efforts to support veterans, and progress in aligning workforce skillsets with the current and long-term needs of the Department of Defense and the defense industrial base;

Updates.  
Evaluation.

(3) to allow metrics to vary between covered institutes and be updated and evaluated continuously in order to more accurately evaluate covered institutes with different goals and missions;

(4) to encourage covered institutes to consider developing technologies that were previously funded by Federal Government investment for early-stage research and development and expand cross-government coordination and collaboration to achieve this goal;

(5) to provide an opportunity for increased Department of Defense input and oversight from senior-level military and civilian personnel on future technology roadmaps produced by covered institutes;

(6) to reduce the barriers to collaboration between and among multiple covered institutes;

(7) to use contracting vehicles that can increase flexibility, reduce barriers for contracting with subject-matter experts and small and medium enterprises, enhance partnerships between covered institutes, and reduce the time to award contracts at covered institutes; and

(8) to overcome barriers to the adoption of manufacturing processes and technologies developed by the covered institutes by the defense and commercial industrial base, particularly small and medium enterprises, by engaging with public and private sector partnerships and appropriate government programs and activities, including the Hollings Manufacturing Extension Partnership.

(b) **COORDINATION WITH OTHER ACTIVITIES.**—The Secretary shall carry out this section in coordination with activities undertaken under—

(1) the Manufacturing Technology Program established under section 2521 of title 10, United States Code;

(2) the Manufacturing Engineering Education Program established under section 2196 of such title;

(3) the Defense Manufacturing Community Support Program established under section 846 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232);

(4) manufacturing initiatives of the Secretary of Commerce, the head of the National Office of the Manufacturing USA Network, the Secretary of Energy, and such other government and private sector organizations as the Secretary of Defense considers appropriate; and

(5) such other activities as the Secretary considers appropriate.

(c) DEFINITION OF COVERED INSTITUTE.—In this section, the term “covered institute” means a manufacturing innovation institute that is funded by the Department of Defense.

**SEC. 228. RESEARCH PROGRAM ON FOREIGN MALIGN INFLUENCE OPERATIONS.** 10 USC 2358 note.

(a) PROGRAM AUTHORIZED.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, may carry out a research program on foreign malign influence operations as part of the university research programs of the Department of Defense.

(b) PROGRAM OBJECTIVES.—The objectives of a research program carried out under subsection (a) should include the following:

(1) Enhance the understanding of foreign malign influence operations, including activities conducted on social media platforms.

(2) Facilitate the analysis of publicly available or voluntarily provided indicators of foreign malign influence operations.

(3) Promote collaborative research and information exchange with relevant entities within the Department of Defense and with other agencies or nongovernmental organizations relating to foreign malign influence operations, as appropriate.

(c) NOTICE TO CONGRESS.—Not later than 30 days before initiating a research program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees notice of the intent of the Secretary to initiate such a program, which shall include—

(1) a detailed description of the program and any related research activities;

(2) the estimated cost and duration of the program; and

(3) any other matters the Secretary determines to be relevant.

**SEC. 229. DIVERSIFICATION OF THE RESEARCH AND ENGINEERING WORKFORCE OF THE DEPARTMENT OF DEFENSE.** 10 USC 2358 note.

(a) ASSESSMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in consultation with the Under Secretary of Defense for Personnel and Readiness, shall conduct an assessment of critical skillsets required across, and the diversity of, the research and engineering workforce of the Department of Defense, including the science and technology reinvention laboratories, to support emerging and future warfighter technologies.

(2) ELEMENTS.—The assessment required by paragraph (1) shall include analysis of the following:

(A) The percentage of women and minorities employed in the research and engineering workforce of the Department of Defense as of the date of the assessment.

(B) Of the individuals hired into the research and engineering workforce of the Department in the five years preceding the date of the assessment, the percentage of such individuals who are women and minorities.

(C) The effectiveness of existing hiring, recruitment, and retention incentives for women and minorities in the research and engineering workforce of the Department.

(D) The effectiveness of the Department in recruiting women and minorities into the laboratory workforce after such individuals complete work on Department-funded research, projects, grant projects, fellowships, and STEM programs.

(E) The geographical diversity of the workforce across various geographic regions.

(b) PLAN REQUIRED.—

Consultation.

(1) IN GENERAL.—Based on the results of the assessment conducted under subsection (a), the Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in consultation with the Secretaries of the military departments, shall develop and implement a plan to diversify and strengthen the research and engineering workforce of the Department of Defense.

(2) ELEMENTS.—The plan required by paragraph (1) shall—

(A) align with science and technology strategy priorities of the Department of Defense, including the emerging and future warfighter technology requirements identified by the Department;

(B) except as provided in subsection (c)(2), set forth steps for the implementation of each recommendation included in the 2013 report of the RAND corporation titled “First Steps Toward Improving DoD STEM Workforce Diversity”;

(C) harness the full range of the Department’s STEM programs and other Department sponsored programs to develop and attract top talent;

(D) use existing authorities to attract and retain students, academics, and other talent;

(E) establish and use contracts, agreements, or other arrangements with institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), including historically black colleges and universities and other minority-serving institutions (as described in section 371(a) of such Act (20 U.S.C. 1067q(a)) to enable easy and efficient access to research and researchers for Government sponsored basic and applied research and studies at each institution, including contracts, agreements, and other authorized arrangements such as those authorized under—

(i) section 217 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2358 note); and

(ii) such other authorities as the Secretary determines to be appropriate; and

Recommendations.

(F) include recommendations for changes in authorities, regulations, policies, or any other relevant areas that would support the achievement of the goals set forth in the plan.

Reports.

(3) SUBMITTAL TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report that includes—



(A) the plan developed under paragraph (1); and  
 (B) with respect to each recommendation described in paragraph (2)(B) that the Secretary has implemented or expects to implement—

(i) a summary of actions that have been taken to implement the recommendation; and

(ii) a schedule, with specific milestones, for completing the implementation of the recommendation.

(c) DEADLINE FOR IMPLEMENTATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 18 months after the date of the enactment of this Act the Secretary of Defense shall carry out activities to implement the plan developed under subsection (b).

(2) EXCEPTION FOR IMPLEMENTATION OF CERTAIN RECOMMENDATIONS.—

(A) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described in subsection (b)(2)(B) after the date specified in paragraph (1) if the Secretary provides the congressional defense committees with a specific justification for the delay in implementation of such recommendation on or before such date.

(B) NONIMPLEMENTATION.—The Secretary of Defense may opt not to implement a recommendation described in subsection (b)(2)(B) if the Secretary provides to the congressional defense committees, on or before the date specified in paragraph (1)—

(i) a specific justification for the decision not to implement the recommendation; and

(ii) a summary of the alternative actions the Secretary plans to take to address the issues underlying the recommendation.

(d) STEM DEFINED.—In this section, the term “STEM” means science, technology, engineering, and mathematics.

**SEC. 230. POLICY ON THE TALENT MANAGEMENT OF DIGITAL EXPERTISE AND SOFTWARE PROFESSIONALS.**

10 USC 501 note  
 prec.  
 Deadlines.

(a) POLICY.—

(1) IN GENERAL.—It shall be a policy of the Department of Defense to promote and maintain digital expertise and software development as core competencies of civilian and military workforces of the Department, and as a capability to support the National Defense Strategy, which policy shall be achieved by—

(A) the recruitment, development, and incentivization of retention in and to the civilian and military workforce of the Department of individuals with aptitude, experience, proficient expertise, or a combination thereof in digital expertise and software development;

(B) at the discretion of the Secretaries of the military departments, the development and maintenance of civilian and military career tracks related to digital expertise, and related digital competencies for members of the Armed Forces, including the development and maintenance of training, education, talent management, incentives, and promotion policies in support of members at all levels of such career tracks; and

(C) the development and application of appropriate readiness standards and metrics to measure and report on the overall capability, capacity, utilization, and readiness of digital engineering professionals to develop and deliver operational capabilities and employ modern business practices.

(2) DIGITAL ENGINEERING DEFINED.—For purposes of this section, the term “digital engineering” means the discipline and set of skills involved in the creation, processing, transmission, integration, and storage of digital data, including data science, machine learning, software engineering, software product management, and artificial intelligence product management.

(b) IMPLEMENTATION PLAN.—Not later than May 1, 2020, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan that describes how the Department of Defense will execute the policy described in subsection (a).

(c) RESPONSIBILITY.—

(1) APPOINTMENT OF OFFICER.—Not later than 270 days after the date of enactment of this Act, the Secretary of Defense may appoint a civilian official responsible for the development and implementation of the policy and implementation plan set forth in subsections (a) and (b), respectively. The official shall be known as the “Chief Digital Engineering Recruitment and Management Officer of the Department of Defense”.

(2) EXPIRATION OF APPOINTMENT.—The appointment of the Officer under paragraph (1) shall expire on September 30, 2024.

10 USC 2223a  
note.

**SEC. 231. DIGITAL ENGINEERING CAPABILITY TO AUTOMATE TESTING AND EVALUATION.**

(a) DIGITAL ENGINEERING CAPABILITY.—

(1) IN GENERAL.—The Secretary of Defense shall establish a digital engineering capability to be used—

(A) for the development and deployment of digital engineering models for use in the defense acquisition process; and

(B) to provide testing infrastructure and software to support automated approaches for testing, evaluation, and deployment throughout the defense acquisition process.

(2) REQUIREMENTS.—The capability developed under subsection (a) shall meet the following requirements:

(A) The capability will be accessible to, and useable by, individuals throughout the Department of Defense who have responsibilities relating to capability design, development, testing, evaluation, and operation.

(B) The capability will provide for the development, validation, use, curation, and maintenance of technically accurate digital systems, models of systems, subsystems, and their components, at the appropriate level of fidelity to ensure that test activities adequately simulate the environment in which a system will be deployed.

(C) The capability will include software to automate testing throughout the program life cycle, including to satisfy developmental test requirements and operational test

requirements. Such software may be developed in accordance with the authorities provided under section 800, and shall support—

(i) security testing that includes vulnerability scanning and penetration testing performed by individuals, including threat-based red team exploitations and assessments with zero-trust assumptions; and

(ii) high-confidence distribution of software to the field on a time-bound, repeatable, frequent, and iterative basis.

(b) DEMONSTRATION ACTIVITIES.—

(1) IN GENERAL.—In developing the capability required under subsection (a), the Secretary of Defense shall carry out activities to demonstrate digital engineering approaches to automated testing that—

(A) enable continuous software development and delivery;

(B) satisfy developmental test requirements for the software-intensive programs of the Department of Defense; and

(C) satisfy operational test and evaluation requirements for such programs.

(2) PROGRAM SELECTION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall assess and select not fewer than four and not more than ten programs of the Department of Defense to participate in the demonstration activities under paragraph (1), including—

(A) at least one program participating in the pilot program authorized under section 873 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2223a note);

(B) at least one program participating in the pilot program authorized under section 874 of such Act (Public Law 115–91; 10 U.S.C. 2302 note);

(C) at least one major defense acquisition program (as defined in section 2430 of title 10, United States Code);

(D) at least one command and control program;

(E) at least one defense business system (as defined in section 2222(i) of title 10, United States Code); and

(F) at least one program from each military service.

(3) ADDITIONAL REQUIREMENTS.—As part of the demonstration activities under paragraph (1), the Secretary shall—

(A) conduct a comparative analysis that assesses the risks and benefits of the digital engineering supported automated testing approaches of the programs participating in the demonstration activities relative to traditional testing approaches that are not supported by digital engineering;

(B) ensure that the intellectual property strategy for each of the programs participating in the demonstration activities is best aligned to meet the goals of the program; and

(C) develop a workforce and infrastructure plan to support any new policies and guidance implemented in connection with the demonstration activities, including any policies and guidance implemented after the completion of such activities.

Deadline.  
Assessment.

Analysis.

Plan.

- Deadline. (c) **POLICIES AND GUIDANCE REQUIRED.**—Not later than one year after the date of the enactment of this Act, based on the results of the demonstration activities carried out under subsection (b), the Secretary of Defense shall issue or modify policies and guidance to—
- (1) promote the use of digital engineering capabilities for development and for automated testing; and
  - (2) address roles, responsibilities, and procedures relating to such capabilities.
- (d) **STEERING COMMITTEE.**—
- (1) **IN GENERAL.**—The Secretary of Defense shall establish a steering committee to assist the Secretary in carrying out subsections (a) through (c).
  - (2) **MEMBERSHIP.**—The steering committee shall be composed of the following members or their designees:
    - (A) The Under Secretary of Defense for Research and Engineering.
    - (B) The Under Secretary of Defense for Acquisition and Sustainment.
    - (C) The Chief Information Officer.
    - (D) The Director of Operational Test and Evaluation.
    - (E) The Director of Cost Assessment and Program Evaluation.
    - (F) The Service Acquisition Executives.
    - (G) The Service testing commands.
    - (H) The Director of the Defense Digital Service.
- (e) **REPORTS REQUIRED.**—
- (1) **IMPLEMENTATION.**—Not later than March 15, 2020, the Secretary of Defense shall submit to the congressional defense committees a report on the progress of the Secretary in implementing subsections (a) through (c). The report shall include an explanation of how the results of the demonstration activities carried out under subsection (b) will be incorporated into the policy and guidance required under subsection (c), particularly the policy and guidance of the members of the steering committee established under subsection (d).
  - (2) **LEGISLATIVE RECOMMENDATIONS.**—Not later than October 15, 2020, the Secretary of Defense shall provide to the congressional defense committees a briefing that identifies any changes to existing law that may be necessary to facilitate the implementation of subsections (a) through (c).
- Deadline. Briefing. (f) **INDEPENDENT ASSESSMENT.**—
- (1) **IN GENERAL.**—Not later than March 15, 2021, the Defense Innovation Board and the Defense Science Board shall jointly complete an independent assessment of the progress of the Secretary in implementing subsections (a) through (c). The Secretary of Defense shall ensure that the Defense Innovation Board and the Defense Science Board have access to the resources, data, and information necessary to complete the assessment.
  - (2) **INFORMATION TO CONGRESS.**—Not later than 30 days after the date on which the assessment under paragraph (1) is completed, the Defense Innovation Board and the Defense Science Board shall jointly provide to the congressional defense committees—
    - (A) a report summarizing the assessment; and
    - (B) a briefing on the findings of the assessment.
- Deadlines. Reports. Briefing.

**SEC. 232. PROCESS TO ALIGN POLICY FORMULATION AND EMERGING TECHNOLOGY DEVELOPMENT.** 10 USC 2358 note.

(a) **ALIGNMENT OF POLICY AND TECHNOLOGICAL DEVELOPMENT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish a process to ensure that the policies of the Department of Defense relating to emerging technology are formulated and updated continuously as such technology is developed by the Department. Deadline.

(b) **ELEMENTS.**—As part of the process established under subsection (a), the Secretary shall—

(1) specify the role of each covered official in ensuring that the formulation of policies relating to emerging technology is carried out concurrently with the development of such technology; and

(2) incorporate procedures for the continuous legal review of— Procedures.

(A) weapons and other defense systems that incorporate or use emerging technology; and

(B) treaties that may be affected by such technology. Deadline.

(c) **BRIEFING REQUIRED.**—Not later than 30 days after the date on which the Secretary of Defense establishes the process required under subsection (a), the Secretary shall provide to the congressional defense committees a briefing on such process.

(d) **DEFINITIONS.**—In this section:

(1) The term “covered official” means the following:

(A) The Chairman of the Joint Chiefs of Staff.

(B) The Under Secretary of Defense for Research and Engineering.

(C) The Under Secretary of Defense for Acquisition and Sustainment.

(D) The Under Secretary of Defense for Policy.

(E) The commanders of combatant commands with responsibilities involving the use of weapons or other defense systems that incorporate or use emerging technology, as determined by the Secretary of Defense.

(F) The Secretaries of the military departments.

(2) The term “emerging technology” means technology determined to be in an emerging phase of development by the Secretary of Defense, including quantum computing, technology for the analysis of large and diverse sets of data (commonly known as “big data analytics”), artificial intelligence, autonomous technology, robotics, directed energy, hypersonics, biotechnology, and such other technology as may be identified by the Secretary.

**SEC. 233. IMPROVEMENT OF THE STRATEGIC CAPABILITIES OFFICE OF THE DEPARTMENT OF DEFENSE.** 10 USC 132 note.

(a) **ORGANIZATION.**—

(1) **AUTHORITY OF DEPUTY SECRETARY OF DEFENSE.**—The Deputy Secretary of Defense shall exercise authority and direction over the Strategic Capabilities Office of the Department of Defense (referred to in this section as the “Office”).

(2) **AUTHORITY OF DIRECTOR.**—The Director of the Office shall report directly to the Deputy Secretary of Defense.

(3) **DELEGATION.**—In exercising authority and direction over the Office under subsection (a), the Deputy Secretary of Defense may delegate administrative, management, and other duties

to the Director of the Defense Advanced Research Projects Agency, as needed, to effectively and efficiently execute the mission of the Office.

(b) CROSS-FUNCTIONAL TEAMS.—

Deadline.

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Deputy Secretary of Defense shall establish the following cross-functional teams to improve the effectiveness of the Office:

(A) A transition cross-functional team to improve the efficiency and effectiveness with which the programs of the Office may be transitioned into—

(i) research and development programs of the military services and other agencies of the Department of Defense; and

(ii) programs of such services and agencies in operational use.

(B) A technical cross functional team to improve the continuous technical assessment and review of the programs of the Office during program selection and execution.

(2) MEMBERSHIP.—The Deputy Secretary of Defense shall select individuals to serve on the cross-functional teams described in paragraph (1) from among individuals in the defense research and engineering enterprise, acquisition community, Joint Staff, combatant commands, and other organizations, as determined to be appropriate by the Deputy Secretary.

10 USC 2164  
note.  
Consultation.

**SEC. 234. PILOT PROGRAM ON ENHANCED CIVICS EDUCATION.**

(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Education, shall carry out a pilot program under which the Secretary provides enhanced educational support and funding to eligible entities to improve civics education programs taught by such entities.

(b) PURPOSE.—The purpose of the pilot program is to provide enhanced civics education on the following topics:

(1) Critical thinking and media literacy.

(2) Voting and other forms of political and civic engagement.

(3) Interest in employment, and careers, in public service.

(4) Understanding of United States law, history, and Government.

(5) The ability of participants to collaborate and compromise with others to solve problems.

(c) CONSIDERATIONS.—In carrying out the pilot program, the Secretary of Defense shall consider innovative approaches for improving civics education.

(d) METRICS AND EVALUATIONS.—The Secretary of Defense shall establish metrics and undertake evaluations to determine the effectiveness of the pilot program, including each of the activities carried out under subsection (e).

(e) TYPES OF SUPPORT AUTHORIZED.—Under the pilot program the Secretary of Defense—

(1) shall provide support to eligible entities to address, at a minimum—

(A) the development or modification of curricula relating to civics education;

(B) classroom activities, thesis projects, individual or team projects, internships, or community service activities relating to civics;

(C) collaboration with government entities, nonprofit organizations, or consortia of such entities and organizations to provide participants with civics-related experiences;

(D) civics-related faculty development programs;

(E) recruitment of educators who are highly qualified in civics education to teach civics or to assist with the development of curricula for civics education;

(F) presentation of seminars, workshops, and training for the development of skills associated with civic engagement;

(G) activities that enable participants to interact with government officials and entities;

(H) expansion of civics education programs and outreach for members of the Armed Forces, dependents and children of such members, and employees of the Department of Defense; and

(I) opportunities for participants to obtain work experience in fields relating to civics; and

(2) may provide any other form of support the Secretary determines to be appropriate to enhance the civics education taught by eligible entities.

(f) **REPORT.**—Not later than 180 days after the conclusion of the first full academic year during which the pilot program is carried out, the Secretary of Defense shall submit to the congressional defense committees a report that includes—

(1) a description of the pilot program, including the a description of the specific activities carried out under subsection (e); and

(2) the metrics and evaluations used to assess the effectiveness of the program as required under subsection (d).

(g) **DEFINITIONS.**—In this section:

(1) The term “civics education program” means an educational program that provides participants with—

(A) knowledge of law, government, and the rights of citizens; and

(B) skills that enable participants to responsibly participate in democracy.

(2) The term “eligible entity” means any of following:

(A) A local education agency that hosts a unit of the Junior Reserve Officers’ Training Corps.

(B) A school operated by the Department of Defense Education Activity.

**SEC. 235. TECHNOLOGY AND NATIONAL SECURITY FELLOWSHIP.**

(a) **FELLOWSHIP PROGRAM.**—

(1) **IN GENERAL.**—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, may establish a civilian fellowship program designed to place eligible individuals within the Department of Defense and Congress to increase the number of national security professionals with science, technology, engineering, and mathematics credentials employed by the Department.

(2) **DESIGNATION.**—The fellowship program established under paragraph (1) shall be known as the “Technology and

10 USC 1580  
note prec.

- National Security Fellowship” (in this section referred to as the “fellows program”).
- Time period. (3) ASSIGNMENTS.—Each individual selected for participation in the fellows program shall be assigned to a one year position within—
- (A) the Department of Defense; or
  - (B) a congressional office with emphasis on defense and national security matters.
- (4) PAY AND BENEFITS.—To the extent practicable, each individual assigned to a position under paragraph (3)—
- (A) shall be compensated at a rate of basic pay that is equivalent to the rate of basic pay payable for a position at level 10 of the General Schedule; and
  - (B) shall be treated as an employee of the United States during the assignment.
- (b) ELIGIBLE INDIVIDUALS.—
- (1) ELIGIBILITY FOR DOD ASSIGNMENT.—Subject to subsection (e), an individual eligible for an assignment in the Department of Defense under subsection (a)(3)(A) is an individual who—
- Determinations. (A) is a citizen of the United States; and
- Deadline. (B) either—
- (i) expects to be awarded a bachelor’s degree, associate’s degree, or graduate degree that, as determined by the Secretary, focuses on science, technology, engineering, or mathematics course work not later than 180 days after the date on which the individual submits an application for participation in the fellows program;
  - (ii) possesses a bachelor’s degree, associate’s degree, or graduate degree that, as determined by the Secretary, focuses on science, technology, engineering, or mathematics course work; or
  - (iii) is an employee of the Department of Defense and possesses a bachelor’s degree, associate’s degree, or graduate degree that, as determined by the Secretary, focuses on science, technology, engineering, or mathematics course work.
- (2) ELIGIBILITY FOR CONGRESSIONAL ASSIGNMENT.—Subject to subsection (e), an individual eligible for an assignment in a congressional office under subsection (a)(3)(B) is an individual who—
- (A) meets the requirements specified in paragraph (1); and
  - (B) has not less than 3 years of relevant work experience in the field of science, technology, engineering, or mathematics.
- (c) APPLICATION.—Each individual seeking to participate in the fellows program shall submit to the Secretary an application therefor at such time and in such manner as the Secretary shall specify.
- (d) COORDINATION.—In carrying out this section, the Secretary may consider working through the following entities:
- (1) The National Security Innovation Network.
  - (2) Universities.
  - (3) Science and technology reinvention laboratories and test and evaluation centers of the Department of Defense.



(4) Other organizations of the Department of Defense or public and private sector organizations, as determined appropriate by the Secretary.

(e) **MODIFICATIONS TO FELLOWS PROGRAM.**—The Secretary may modify the terms and procedures of the fellows program in order to better achieve the goals of the program and to support workforce needs of the Department of Defense.

(f) **CONSULTATION.**—The Secretary may consult with the heads of the agencies, components, and other elements of the Department of Defense, Members and committees of Congress, and such institutions of higher education and private entities engaged in work on national security and emerging technologies as the Secretary considers appropriate for purposes of the fellows program, including with respect to assignments in the fellows program.

**SEC. 236. DOCUMENTATION RELATING TO THE ADVANCED BATTLE MANAGEMENT SYSTEM.**

(a) **DOCUMENTATION REQUIRED.**—Not later than the date specified in subsection (b), the Secretary of the Air Force shall submit to the congressional defense committees the following documentation relating to the Advanced Battle Management System:

Deadline.

(1) A list that identifies each program, project, and activity that contributes to the architecture of the Advanced Battle Management System.

List.

(2) The final analysis of alternatives for the Advanced Battle Management System.

Analysis.

(3) The requirements for the networked data architecture necessary for the Advanced Battle Management System to provide multidomain command and control and battle management capabilities and a development schedule for such architecture.

Requirements.

(b) **DATE SPECIFIED.**—The date specified in this subsection is the earlier of—

(1) the date that is 180 days after the date on which the final analysis of alternatives for the Advanced Battle Management System is completed; or

(2) June 1, 2020.

(c) **ADVANCED BATTLE MANAGEMENT SYSTEM DEFINED.**—In this section, the term “Advanced Battle Management System” means the Advanced Battle Management System of Systems capability of the Air Force, including each program, project, and activity that contributes to such capability.

**SEC. 237. SENSOR DATA INTEGRATION FOR FIFTH GENERATION AIRCRAFT.**

(a) **F–35 SENSOR DATA.**—The Secretary of Defense shall ensure that—

(1) information collected by the passive and active on-board sensors of the F–35 Joint Strike Fighter aircraft is capable of being shared, in real time, with joint service users in cases in which the Joint Force Commander determines that sharing such information would be operationally advantageous; and

(2) the Secretary has developed achievable, effective, and suitable concepts and supporting technical architectures to collect, store, manage, and disseminate information collected by such sensors.

(b) **GAO STUDY AND REPORT.**—

(1) **STUDY.**—The Comptroller General of the United States shall conduct a study of the sensor data collection and dissemination capability of fifth generation aircraft of the Department of Defense.

Assessments.

(2) **ELEMENTS.**—The study required by paragraph (1) shall include an assessment of the following—

(A) the extent to which the Department has established doctrinal, organizational, or technological methods of managing the large amount of sensor data that is currently collected and which may be collected by existing and planned advanced fifth generation aircraft;

(B) the status of the existing sensor data collection, storage, dissemination, and management capability and capacity of fifth generation aircraft, including the F–35, the F–22, and the B–21; and

(C) the ability of the F–35 aircraft and other fifth generation aircraft to share information collected by the aircraft in real-time with other joint service users as described in subsection (a)(1).

(3) **STUDY RESULTS.**—

Deadline.

(A) **INTERIM BRIEFING.**—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall provide to the congressional defense committees a briefing on the preliminary findings of the study conducted under this subsection.

(B) **FINAL RESULTS.**—The Comptroller General shall provide the final results of the study conducted under this subsection to the congressional defense committees at such time and in such format as is mutually agreed upon by the committees and the Comptroller General at the time of the briefing under subparagraph (A).

**SEC. 238. SENSE OF CONGRESS ON FUTURE VERTICAL LIFT TECHNOLOGIES.**

It is the sense of Congress that the Army should continue to invest in research, development, test, and evaluation programs to mature future vertical lift technologies, including programs to improve pilot situational awareness, increase flight operations safety, and reduce operation and maintenance costs.

**SEC. 239. USE OF FUNDS FOR STRATEGIC ENVIRONMENTAL RESEARCH PROGRAM, ENVIRONMENTAL SECURITY TECHNICAL CERTIFICATION PROGRAM, AND OPERATIONAL ENERGY CAPABILITY IMPROVEMENT.**

Of the funds authorized to be appropriated for fiscal year 2020 for the use of the Department of Defense for research, development, test, and evaluation, as specified in the funding table in section 4201 for the Strategic Environmental Research Program, Operational Energy Capability Improvement, and the Environmental Security Technical Certification Program, the Secretary of Defense shall, acting through the Under Secretary of Defense for Acquisition and Sustainment, expend amounts as follows:

(1) Not less than \$10,000,000 on the development and demonstration of long duration on-site energy battery storage for distributed energy assets.

(2) Not less than \$10,000,000 on the development, demonstration, and validation of non-fluorine based firefighting foams.

(3) Not less than \$10,000,000 on the development, demonstration, and validation of secure microgrids for both installations and forward operating bases.

(4) Not less than \$1,000,000 on the development, demonstration, and validation of technologies that can harvest potable water from air.

**SEC. 240. LIMITATION AND REPORT ON INDIRECT FIRE PROTECTION CAPABILITY INCREMENT 2 CAPABILITY.**

(a) **LIMITATION AND REPORT ON INDIRECT FIRE PROTECTION CAPABILITY INCREMENT 2.**—Not more than 50 percent of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Army may be obligated or expended for research, development, test, and evaluation for the Indirect Fire Protection Capability Increment 2 capability until the Secretary of the Army submits to the congressional defense committees a report on the Indirect Fire Protection Capability Increment 2 program that contains the following:

(1) An assessment of whether the requirements previously established for the enduring program meet the anticipated threat at the time of planned initial operating capability and fully operating capability.

(2) A list of candidate systems considered to meet the Indirect Fire Protection Capability Increment 2 enduring requirement, including those fielded or in development by the Army and other elements of the Department of Defense.

(3) An assessment of each candidate system’s capability against representative threats.

(4) An assessment of other relevant specifications of each candidate system, including cost of development, cost per round if applicable, technological maturity, and logistics and sustainment.

(5) A plan for how the Army will integrate the chosen system or systems into the Integrated Air and Missile Defense Battle Command System.

(6) An assessment of the results of the performance, test, evaluation, integration, and interoperability of batteries one and two of the interim solution.

(b) **NOTIFICATION REQUIRED.**—Not later than 10 days after the date on which the President submits the annual budget request of the President for fiscal year 2021 pursuant to section 1105 of title 31, United States Code, the Secretary of the Defense shall, without delegation, submit to the congressional defense committees a notification identifying the military services or agencies that will be responsible for the conduct of air and missile defense in support of joint campaigns as it applies to defense against current and emerging missile threats. The notification shall identify the applicable programs of record to address such threats, including each class of cruise missile threat.

## Subtitle C—Plans, Reports, and Other Matters

### SEC. 251. MASTER PLAN FOR IMPLEMENTATION OF AUTHORITIES RELATING TO SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.

- Consultation. (a) **PLAN REQUIRED.**—The Secretary of Defense, jointly with the Secretaries of the military departments and in consultation with the Under Secretary of Defense for Research and Engineering, shall develop a master plan for using existing authorities to strengthen and modernize the workforce and capabilities of the science and technology reinvention laboratories of the Department of Defense (referred to in this section as the “laboratories”) to enhance the ability of the laboratories to execute missions in the most efficient and effective manner.
- Summaries. (b) **ELEMENTS.**—The master plan required under subsection (a) shall include, with respect to the laboratories, the following:
- (1) A summary of hiring and staffing deficiencies at laboratories, by location, and the effect of such deficiencies on the ability of the laboratories—
    - (A) to meet existing and future requirements of the Department of Defense; and
    - (B) to recruit and retain qualified personnel.
  - (2) A summary of existing and emerging military research, development, test, and evaluation mission areas requiring the use of the laboratories.
  - (3) An explanation of the laboratory staffing capabilities required for each mission area identified under paragraph (2).
  - (4) Identification of specific projects, including hiring efforts and management reforms, that will be carried out—
    - (A) to address the deficiencies identified in paragraph (1); and
    - (B) to support the existing and emerging mission areas identified in paragraph (2).
  - (5) For each project identified under paragraph (4)—
    - (A) a summary of the plan for the project;
    - (B) a description of the resources that will be applied to the project; and
    - (C) a schedule of required investments that will be made as part of the project.
  - (6) A description of how the Department, including each military department concerned, will carry out the projects identified in paragraph (4) using existing authorities.
  - (7) Identification of any statutory, regulatory, or management-related barriers to implementing the master plan and a description of policy and legislative options that may be applied to address such barriers.
- (c) **CONSULTATION.**—In developing the master plan required under subsection (a), the Secretary of Defense, the Secretaries of the military departments, and the Under Secretary of Defense for Research and Engineering shall consult with—
- (1) the Service Acquisition Executives with responsibilities relevant to the laboratories;
  - (2) the commander of each military command with responsibilities relating to research and engineering that is affected by the master plan; and

(3) any other officials determined to be relevant by the Secretary of Defense, the Secretaries of the military departments, and the Under Secretary of Defense for Research and Engineering.

(d) **FINAL REPORT.**—Not later than October 30, 2020, the Secretary of Defense, jointly with the Secretaries of the military departments and in consultation with the Under Secretary of Defense for Research and Engineering, shall submit to the congressional defense committees—

Consultation.

(1) the master plan developed under subsection (a);

(2) a report on the activities carried out under this section;

and

(3) a report that identifies any barriers that prevent the full use and implementation of existing authorities, including any barriers presented by the policies, authorities, and activities of—

(A) organizations and elements of the Department of Defense; and

(B) organizations outside the Department.

**SEC. 252. INFRASTRUCTURE TO SUPPORT RESEARCH, DEVELOPMENT, TEST, AND EVALUATION MISSIONS.**

10 USC 2358  
note.

(a) **MASTER PLAN REQUIRED.**—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in coordination with the Secretaries of the military departments, shall develop and implement a master plan that addresses the research, development, test, and evaluation infrastructure and modernization requirements of the Department of Defense, including the science and technology reinvention laboratories and the facilities of the Major Range and Test Facility Base.

Coordination.

(b) **ELEMENTS.**—The master plan required under subsection (a) shall include, with respect to the research, development, test, and evaluation infrastructure of the Department of Defense, the following:

Summaries.

(1) A summary of deficiencies in the infrastructure, by location, and the effect of the deficiencies on the ability of the Department—

(A) to meet current and future military requirements identified in the National Defense Strategy;

(B) to support science and technology development and acquisition programs; and

(C) to recruit and train qualified personnel.

(2) A summary of existing and emerging military research, development, test, and evaluation mission areas, by location, that require modernization investments in the infrastructure—

(A) to improve operations in a manner that may benefit all users;

(B) to enhance the overall capabilities of the research, development, test, and evaluation infrastructure, including facilities and resources;

(C) to improve safety for personnel and facilities; and

(D) to reduce the long-term cost of operation and maintenance.

(3) Identification of specific infrastructure projects that are required to address the infrastructure deficiencies identified under paragraph (1) or to support the existing and emerging mission areas identified under paragraph (2).

- (4) For each project identified under paragraph (3)—
- (A) a description of the scope of work;
  - (B) a cost estimate;
  - (C) a summary of the plan for the project;
  - (D) an explanation of the level of priority that will be given to the project; and
  - (E) a schedule of required infrastructure investments.
- (5) A description of how the Department, including each military department concerned, will carry out the infrastructure projects identified in paragraph (3) using the range of authorities and methods available to the Department, including—
- (A) military construction authority under section 2802 of title 10, United States Code;
  - (B) unspecified minor military construction authority under section 2805(a) of such title;
  - (C) laboratory revitalization authority under section 2805(d) of such title;
  - (D) the authority to carry out facility repair projects, including the conversion of existing facilities, under section 2811 of such title;
  - (E) the authority provided under the Defense Laboratory Modernization Pilot Program under section 2803 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2358 note);
  - (F) methods that leverage funding from entities outside the Department, including public-private partnerships, enhanced use leases and real property exchanges;
  - (G) the authority to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation, under section 2681 of title 10, United States Code; and
  - (H) any other authorities and methods determined to be appropriate by the Secretary of Defense.
- (6) Identification of any regulatory or policy barriers to the effective and efficient implementation of the master plan.
- (c) CONSULTATION AND COORDINATION.—In developing and implementing the plan required under subsection (a), the Secretary of Defense shall—
- (1) consult with existing and anticipated customers and users of the capabilities of the Major Range and Test Facility Base and science and technology reinvention laboratories;
  - (2) ensure consistency with the science and technology roadmaps and strategies of the Department of Defense and the Armed Forces; and
  - (3) ensure consistency with the strategic plan for test and evaluation resources required by section 196(d) of title 10, United States Code.
- (d) SUBMITTAL TO CONGRESS.—Not later than January 1, 2021, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall submit to the congressional defense committees the master plan developed under subsection (a).
- (e) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION INFRASTRUCTURE DEFINED.—In this section, the term “research, development, test, and evaluation infrastructure” means the infrastructure of—
- (1) the science and technology reinvention laboratories (as designated under section 1105 of the National Defense

Cost estimate.

Deadline.

Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note));

(2) the Major Range and Test Facility Base (as defined in section 2358a(f)(3) of title 10, United States Code); and

(3) other facilities that support the research development, test, and evaluation activities of the Department.

**SEC. 253. ENERGETICS PLAN.**

(a) **PLAN REQUIRED.**—The Under Secretary of Defense for Research and Engineering shall, in coordination with the technical directors at defense laboratories and such other officials as the Under Secretary considers appropriate, develop an energetics research and development plan to ensure a long-term multi-domain research, development, prototyping, and experimentation effort that—

(1) maintains United States technological superiority in energetics technology critical to national security;

(2) efficiently develops new energetics technologies and transitions them into operational use, as appropriate; and

(3) maintains a robust industrial base and workforce to support Department of Defense requirements for energetic materials.

(b) **BRIEFING.**—Not later than one year after the date of the enactment of this Act, the Under Secretary shall brief the congressional defense committees on the plan developed under subsection (a).

**SEC. 254. STRATEGY AND IMPLEMENTATION PLAN FOR FIFTH GENERATION INFORMATION AND COMMUNICATIONS TECHNOLOGIES.**

(a) **IN GENERAL.**—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall develop—

(1) a strategy for harnessing fifth generation (commonly known as “5G”) information and communications technologies to enhance military capabilities, maintain a technological advantage on the battlefield, and accelerate the deployment of new commercial products and services enabled by 5G networks throughout the Department of Defense; and

(2) a plan for implementing the strategy developed under paragraph (1).

(b) **ELEMENTS.**—The strategy required under subsection (a) shall include the following elements:

(1) Adoption and use of secure fourth generation (commonly known as “4G”) communications technologies and the transition to advanced and secure 5G communications technologies for military applications and for military infrastructure.

(2) Science, technology, research, and development efforts to facilitate the advancement and adoption of 5G technology and new uses of 5G systems, subsystems, and components, including—

(A) 5G testbeds for developing military and dual-use applications; and

(B) spectrum-sharing technologies and frameworks.

(3) Strengthening engagement and outreach with industry, academia, international partners, and other departments and agencies of the Federal Government on issues relating to 5G technology and the deployment of such technology, including

development of a common industrial base for secure microelectronics.

(4) Defense industrial base supply chain risk, management, and opportunities.

(5) Preserving the ability of the Joint Force to achieve objectives in a contested and congested spectrum environment.

(6) Strengthening the ability of the Joint Force to conduct full spectrum operations that enhance the military advantages of the United States.

(7) Securing the information technology and weapon systems of the Department against malicious activity.

(8) Advancing the deployment of secure 5G networks nationwide.

(9) Such other matters as the Secretary of Defense determines to be relevant.

(c) CONSULTATION.—In developing the strategy and implementation plan required under subsection (a), the Secretary of Defense shall consult with the following:

(1) The Chief Information Officer of the Department of Defense.

(2) The Under Secretary of Defense for Research and Engineering.

(3) The Under Secretary of Defense for Acquisition and Sustainment.

(4) The Under Secretary of Defense for Intelligence.

(5) Service Acquisition Executives of each military service.

(d) PERIODIC BRIEFINGS.—

(1) IN GENERAL.—Not later than March 15, 2020, and not less frequently than once every three months thereafter through March 15, 2022, the Secretary of Defense shall provide to the congressional defense committees a briefing on the development and implementation of the strategy required under subsection (a), including an explanation of how the Department of Defense—

(A) is using secure 5G wireless network technology;

(B) is reshaping the Department’s policy for producing and procuring secure microelectronics; and

(C) is working in the interagency and internationally to develop common policies and approaches.

(2) ELEMENTS.—Each briefing under paragraph (1) shall include information on—

(A) efforts to ensure a secure supply chain for 5G wireless network equipment and microelectronics;

(B) the continued availability of electromagnetic spectrum for warfighting needs;

(C) planned implementation of 5G wireless network infrastructure in warfighting networks, base infrastructure, defense-related manufacturing, and logistics;

(D) steps taken to work with allied and partner countries to protect critical networks and supply chains; and

(E) such other topics as the Secretary of Defense considers relevant.

Deadline.

10 USC 2223a  
note.

Deadline.  
Consultation.

**SEC. 255. DEPARTMENT-WIDE SOFTWARE SCIENCE AND TECHNOLOGY STRATEGY.**

(a) DESIGNATION OF SENIOR OFFICIAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense,



acting through the Under Secretary of Defense for Research and Engineering and in consultation with the Under Secretary of Defense for Acquisition and Sustainment and appropriate public and private sector organizations, shall designate a single official or existing entity within the Department of Defense as the official or entity (as the case may be) with principal responsibility for guiding the development of science and technology activities related to next generation software and software reliant systems for the Department, including—

(1) research and development activities on new technologies for the creation of highly secure, scalable, reliable, time-sensitive, and mission-critical software;

(2) research and development activities on new approaches and tools to software development and deployment, testing, integration, and next generation software management tools to support the rapid insertion of such software into defense systems;

(3) foundational scientific research activities to support advances in software;

(4) technical workforce and infrastructure to support defense science and technology and software needs and mission requirements;

(5) providing capabilities, including technologies, systems, and technical expertise to support improved acquisition of software reliant business and warfighting systems; and

(6) providing capabilities, including technologies, systems, and technical expertise to support defense operational missions which are reliant on software.

(b) DEVELOPMENT OF STRATEGY.—The official or entity designated under subsection (a) shall develop a Department-wide strategy for the research and development of next generation software and software reliant systems for the Department of Defense, including strategies for—

(1) types of software-related activities within the science and technology portfolio of the Department;

(2) investment in new approaches to software development and deployment, and next generation management tools;

(3) ongoing research and other support of academic, commercial, and development community efforts to innovate the software development, engineering, and testing process, automated testing, assurance and certification for safety and mission critical systems, large scale deployment, and sustainment;

(4) to the extent practicable, implementing or continuing the implementation of the recommendations set forth in—

(A) the final report of the Defense Innovation Board submitted to the congressional defense committees under section 872 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1497);

(B) the final report of the Defense Science Board Task Force on the Design and Acquisition of Software for Defense Systems described in section 868 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2223 note); and

(C) other relevant studies on software research, development, and acquisition activities of the Department of Defense.

(5) supporting the acquisition, technology development, testing, assurance, and certification and operational needs of the Department through the development of capabilities, including personnel and research and production infrastructure, and programs in—

(A) the science and technology reinvention laboratories (as designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note));

(B) the facilities of the Major Range and Test Facility Base (as defined in section 2358a(f)(3) of title 10, United States Code);

(C) the Defense Advanced Research Projects Agency; and

(D) universities, federally funded research and development centers, and service organizations with activities in software engineering; and

(6) the transition of relevant capabilities and technologies to relevant programs of the Department, including software-reliant cyber-physical systems, tactical systems, enterprise systems, and business systems.

Deadline.

(c) **SUBMITTAL TO CONGRESS.**—Not later than one year after the date of the enactment of this Act, the official or entity designated under subsection (a) shall submit to the congressional defense committees the strategy developed under subsection (b).

**SEC. 256. ARTIFICIAL INTELLIGENCE EDUCATION STRATEGY.**

(a) **STRATEGY REQUIRED.**—

(1) **IN GENERAL.**—The Secretary of Defense shall develop a strategy for educating servicemembers in relevant occupational fields on matters relating to artificial intelligence.

(2) **ELEMENTS.**—The strategy developed under subsection (a) shall include a curriculum designed to give servicemembers a basic knowledge of artificial intelligence. The curriculum shall include instruction in—

(A) artificial intelligence design;

(B) software coding;

(C) potential military applications for artificial intelligence;

(D) the impact of artificial intelligence on military strategy and doctrine;

(E) artificial intelligence decisionmaking via machine learning and neural networks;

(F) ethical issues relating to artificial intelligence;

(G) the potential biases of artificial intelligence;

(H) potential weakness in artificial intelligence technology;

(I) opportunities and risks; and

(J) any other matters the Secretary of Defense determines to be relevant.

(b) **IMPLEMENTATION PLAN.**—The Secretary of Defense shall develop a plan for implementing the strategy developed under subsection (a).

Deadline.

(c) **SUBMITTAL TO CONGRESS.**—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees—

(1) the strategy developed under subsection (a); and

- (2) the implementation plan developed under subsection (b).

**SEC. 257. CYBER SCIENCE AND TECHNOLOGY ACTIVITIES ROADMAP AND REPORTS.**

(a) ROADMAP FOR SCIENCE AND TECHNOLOGY ACTIVITIES TO SUPPORT DEVELOPMENT OF CYBER CAPABILITIES.—

(1) ROADMAP REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall develop a roadmap for science and technology activities of the Department of Defense to support development of cyber capabilities to meet Department needs and missions.

(2) GOAL OF CONSISTENCY.—The Secretary shall develop the roadmap required by paragraph (1) to ensure consistency with appropriate Federal interagency, industry, and academic activities.

(3) SCOPE.—The roadmap required by paragraph (1) shall—

(A) cover the development of capabilities that will likely see operational use within the next 25 years or earlier; and

(B) address cyber operations and cybersecurity.

(4) CONSULTATION.—The Secretary shall develop the roadmap required by paragraph (1) in consultation with the following:

(A) The Chief Information Officer of the Department.

(B) The secretaries and chiefs of the military departments.

(C) The Director of Operational Test and Evaluation.

(D) The Commander of the United States Cyber Command.

(E) The Director of the National Security Agency.

(F) The Director of the Defense Information Systems Agency.

(G) The Director of the Defense Advanced Research Projects Agency.

(H) The Director of the Defense Digital Service.

(I) Such interagency partners as the Secretary considers appropriate.

(5) FORM.—The Secretary shall develop the roadmap required by paragraph (1) in unclassified form, but may include a classified annex.

(6) PUBLICATION.—The Secretary shall make available to the public the unclassified form of the roadmap developed pursuant to paragraph (1).

Public  
information.

(b) ANNUAL REPORT ON CYBER SCIENCE AND TECHNOLOGY ACTIVITIES.—

(1) ANNUAL REPORTS REQUIRED.—In fiscal years 2021, 2022, and 2023, the Under Secretary of Defense for Research and Engineering shall submit to the congressional defense committees a report on the science and technology activities within the Department of Defense relating to cyber matters during the previous fiscal year, the current fiscal year, and the following fiscal year.

(2) CONTENTS.—Each report submitted pursuant to paragraph (1) shall include, for the period covered by the report, a description and listing of the science and technology activities

of the Department relating to cyber matters, including the following:

- List.
- (A) Extramural science and technology activities.
  - (B) Intramural science and technology activities.
  - (C) Major and minor military construction activities.
  - (D) Major prototyping and demonstration programs.
  - (E) A list of agreements and activities to transition capabilities to acquisition activities, including—
    - (i) national security systems;
    - (ii) business systems; and
    - (iii) enterprise and network systems.
  - (F) Efforts to enhance the national technical cybersecurity workforce, including specific programs to support education, training, internships, and hiring.
  - (G) Efforts to perform cooperative activities with international partners.
  - (H) Efforts under the Small Business Innovation Research and the Small Business Technology Transfer Program, including estimated amounts to be expected in the following fiscal year.
  - (I) Efforts to encourage partnerships between the Department of Defense and universities participating in the National Centers of Academic Excellence in Cyber Operations and Cyber Defense.
- (3) TIMING.—Each report submitted pursuant to paragraph (1) shall be submitted concurrently with the annual budget request of the President submitted pursuant to section 1105 of title 31, United States Code.
- (4) FORM.—The report submitted under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 258. REPORT ON B-52 COMMERCIAL ENGINE REPLACEMENT PROGRAM.**

- Strategies.
- (a) DOCUMENTATION REQUIRED.—The Secretary of the Air Force shall submit to the congressional defense committees a report on the B-52 commercial engine replacement program of the Air Force.
- (b) CONTENTS.—The report submitted under subsection (a) shall include the following:
- (1) The acquisition strategy of the Secretary for the program.
  - Estimates. (2) The cost and schedule estimates of the Secretary for the program.
  - (3) The key performance parameters or equivalent requirements document for the program.
  - (4) The test and evaluation strategy of the Secretary for the program.
  - (5) The logistics strategy of the Secretary for the program.
  - (6) The post-production fielding strategy of the Secretary for the program.
  - Assessment. (7) An assessment of the potential for the commercial engine replacement to achieve nuclear system certification.
- (c) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Air Force, not more than 75 percent may be obligated or expended until the date on which the Secretary of the Air Force

submits to the congressional defense committees the report required by subsection (a).

**SEC. 259. COMMERCIAL EDGE COMPUTING TECHNOLOGIES AND BEST PRACTICES FOR DEPARTMENT OF DEFENSE WARFIGHTING SYSTEMS.**

(a) **REPORT REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report on commercial edge computing technologies and best practices for Department of Defense warfighting systems.

(b) **CONTENTS.**—The report submitted under subsection (a) shall include the following: Plans.

(1) Identification of initial warfighting system programs of record that will benefit most from accelerated insertion of commercial edge computing technologies and best practices, resulting in significant near-term improvement in system performance and mission capability.

(2) The plan of the Department of Defense to provide additional funding for the systems identified in paragraph (1) to achieve fielding of accelerated commercial edge computing technologies before or during fiscal year 2021.

(3) The plan of the Department to identify, manage, and provide additional funding for commercial edge computing technologies more broadly over the next four fiscal years where appropriate for—

(A) command, control, communications, and intelligence systems;

(B) logistics systems; and

(C) other mission-critical systems.

(4) A detailed description of the policies, procedures, budgets, and accelerated acquisition and contracting mechanisms of the Department for near-term insertion of commercial edge computing technologies and best practices into military mission-critical systems.

**SEC. 260. BIENNIAL REPORT ON THE JOINT ARTIFICIAL INTELLIGENCE CENTER.**

(a) **REPORTS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act and biennially thereafter through the end of 2023, the Secretary of Defense shall submit to the congressional defense committees a report on the Joint Artificial Intelligence Center (referred to in this section as the “Center”).

(b) **ELEMENTS.**—Each report under subsection (a) shall include the following:

(1) Information relating to the mission and objectives of the Center.

(2) A description of the National Mission Initiatives, Component Mission Initiatives, and any other initiatives of the Center, including a description of—

(A) the activities carried out under the initiatives;

(B) any investments made or contracts entered into under the initiatives; and

(C) the progress of the initiatives.

(3) A description of how the Center has sought to leverage lessons learned, share best practices, avoid duplication of

efforts, and transition artificial intelligence research efforts into operational capabilities by—

(A) collaborating with other organizations and elements of the Department of Defense, including the Defense Agencies and the military departments; and

(B) deconflicting the activities of the Center with the activities of other organizations and elements of the Department.

(4) A description of any collaboration between—

(A) the Center and the private sector, national laboratories, and academia; and

(B) the Center and international allies and partners.

(5) The total number of military, contractor, and civilian personnel who are employed by the Center, assigned to the Center, and performing functions in support of the Center.

(6) A description of the organizational structure and staffing of the Center.

(7) A detailed description of the frameworks, metrics, and capabilities established to measure the effectiveness of the Center and the Center’s investments in the National Mission Initiatives and Component Mission Initiatives.

(8) A description of any new policies, standards, or guidance relating to artificial intelligence that have been issued by the Chief Information Officer of the Department.

(9) Identification of any ethical guidelines applicable to the use of artificial intelligence by the Department.

(10) A description of any steps taken by the Center to protect systems that use artificial intelligence from any attempts to misrepresent or alter information used or provided by artificial intelligence.

(c) **JOINT ARTIFICIAL INTELLIGENCE CENTER DEFINED.**—In this section, the term “Joint Artificial Intelligence Center” means the Joint Artificial Intelligence Center of the Department of Defense established pursuant to section 238 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2358 note).

**SEC. 261. QUARTERLY UPDATES ON THE OPTIONALLY MANNED FIGHTING VEHICLE PROGRAM.**

Effective date.  
Time period.  
Briefings.

(a) **IN GENERAL.**—Beginning not later than December 1, 2019, and on a quarterly basis thereafter through October 1, 2022, the Assistant Secretary shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on the progress of the Optionally Manned Fighting Vehicle program of the Army.

(b) **ELEMENTS.**—Each briefing under subsection (a) shall include, with respect to the Optionally Manned Fighting Vehicle program, the following elements:

Overview.

(1) An overview of funding for the program, including identification of—

(A) any obligations and expenditures that have been made under the program; and

(B) any obligations and expenditures that are planned for the program.

Overview.  
Assessment.

(2) An overview of the program schedule.

(3) An assessment of the status of the program with respect to—

- (A) the development and approval of technical requirements;
- (B) technological maturity;
- (C) testing;
- (D) delivery; and
- (E) program management.

(4) Any other matters that the Assistant Secretary considers relevant to a full understanding of the status and plans of the program.

(c) ASSISTANT SECRETARY DEFINED.—In this section, the term “Assistant Secretary” means the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (or the designee of the Assistant Secretary), in consultation with the Commander of the Army Futures Command (or the designee of the Commander).

**SEC. 262. NATIONAL STUDY ON DEFENSE RESEARCH AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY INSTITUTIONS.**

10 USC 2362  
note.

(a) STUDY REQUIRED.—The Secretary of Defense shall seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine (referred to in this section as the “National Academies”) under which the National Academies will conduct a study on the status of defense research at covered institutions and the methods and means necessary to advance research capacity at covered institutions to comprehensively address the national security and defense needs of the United States.

(b) DESIGNATION.—The study conducted under subsection (a) shall be known as the “National Study on Defense Research At Historically Black Colleges and Universities and Other Minority Institutions”.

(c) ELEMENTS.—The study conducted under subsection (a) shall include an examination of each of the following:

(1) The degree to which covered institutions are successful in competing for and executing Department of Defense contracts and grants for defense research.

(2) Best practices for advancing the capacity of covered institutions to compete for and conduct research programs related to national security and defense.

(3) The advancements and investments necessary to elevate covered institutions to R2 status or R1 status on the Carnegie Classification of Institutions of Higher Education, consistent with the criteria of the classification system.

(4) The facilities and infrastructure for defense-related research at covered institutions as compared to the facilities and infrastructure at institutions classified as R1 status on the Carnegie Classification of Institutions of Higher Education.

(5) Incentives to attract, recruit, and retain leading research faculty to covered institutions.

(6) Best practices of institutions classified as R1 status on the Carnegie Classification of Institutions of Higher Education, including best practices with respect to—

- (A) the establishment of a distinct legal entity to—
  - (i) enter into contracts or receive grants from the Department;
  - (ii) lay the groundwork for future research opportunities;
  - (iii) develop research proposals;

(iv) engage with defense research funding organizations; and

(v) execute the administration of grants; and

(B) determining the type of legal entity, if any, to establish for the purposes described in subparagraph (A).

(7) The ability of covered institutions to develop, protect, and commercialize intellectual property created through defense-related research.

(8) The total amount of defense research funding awarded to all institutions of higher education, including covered institutions, through contracts and grants for each of fiscal years 2010 through 2019 and, with respect to each such institution—

(A) whether the institution established a distinct legal entity to enter into contracts or receive grants from the Department and, if so, the type of legal entity that was established;

(B) the total value of contracts and grants awarded to the institution of higher education for each of fiscal years 2010 through 2019;

(C) the overhead rate of the institution of higher education for fiscal year 2019;

(D) the institution's classification on the Carnegie Classification of Institutions of Higher Education; and

(E) whether the institution qualifies as a covered institution.

Recommendations.

(9) Recommendations for strengthening and enhancing the programs executed under section 2362 of title 10, United States Code.

Recommendations.

(10) Recommendations to enhance the capacity of covered institutions to transition research products into defense acquisition programs or commercialization.

(11) Previous executive or legislative actions by the Federal Government to address imbalances in Federal research funding, including such programs as the Defense Established Program to Stimulate Competitive Research (commonly known as "DEPSCoR").

(12) The effectiveness of the Department in attracting and retaining students specializing in science, technology, engineering, and mathematics fields from covered institutions for the Department's programs on emerging capabilities and technologies.

Recommendations.

(13) Recommendations for the development of incentives to encourage research and educational collaborations between covered institutions and other institutions of higher education.

(14) Any other matters the Secretary of Defense determines to be relevant to advancing the defense research capacity of covered institutions.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the President and the appropriate congressional committees an initial report that includes—

(A) the findings of the study conducted under subsection (a); and

Recommendations.

(B) any recommendations that the National Academies may have for action by the executive branch and Congress to improve the participation of covered institutions in



Department of Defense research and any actions that may be carried out to expand the research capacity of such institutions.

(2) FINAL REPORT.—Not later than December 31, 2021, the Secretary of Defense shall submit to the President and the appropriate congressional committees a comprehensive report on the results of the study required under subsection (a).

(3) FORM OF REPORTS.—Each report submitted under this subsection shall be made publicly available.

Public information.

(e) IMPLEMENTATION REQUIRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than March 1, 2022, the Secretary of Defense shall commence implementation of each recommendation included in the final report submitted under subsection (d)(2).

Deadline.

(2) EXCEPTIONS.—

(A) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described paragraph (1) later than March 1, 2022, if—

(i) the Secretary submits to the congressional defense committees written notice of the intent of the Secretary to delay implementation of the recommendation; and

Notice.

(ii) includes, as part of such notice, a specific justification for the delay in implementing the recommendation.

(B) NONIMPLEMENTATION.—The Secretary of Defense may elect not to implement a recommendation described in paragraph (1), if—

(i) the Secretary submits to the congressional defense committees written notice of the intent of the Secretary not to implement the recommendation; and

Notice.

(ii) includes, as part of such notice—

(I) the reasons for the Secretary's decision not to implement the recommendation; and

(II) a summary of alternative actions the Secretary will carry out to address the purposes underlying the recommendation.

Summary.

(3) IMPLEMENTATION PLAN.—For each recommendation that the Secretary implements under this subsection, the Secretary shall submit to the congressional defense committees an implementation plan that includes—

(A) a summary of actions that have been, or will be, carried out to implement the recommendation; and

Summary.

(B) a schedule, with specific milestones, for completing the implementation of the recommendation.

(f) LIST OF COVERED INSTITUTIONS.—The Secretary of Defense, in consultation with the Secretary of Education and the Presidents of the National Academies, shall make available a list identifying each covered institution examined as part of the study under subsection (a). The list shall be made available on a publicly accessible website and shall be updated not less frequently than once annually until the date on which the final report is submitted under subsection (d)(2).

Consultation.  
Public information.  
Web posting.

(g) DEFINITIONS.—In this section:

(1) The term “appropriate congressional committees” means—

- (A) the congressional defense committees;
- (B) the Committee on Health, Education, Labor, and Pensions of the Senate; and
- (C) the Committee on Education and Labor of the House of Representatives.

(2) The term “covered institution” means—

(A) a part B institution (as that term is defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)); or

(B) any other institution of higher education (as that term is defined in section 101 of such Act (20 U.S.C. 1001)) at which not less than 50 percent of the total student enrollment consists of students from ethnic groups that are underrepresented in the fields of science and engineering.

**SEC. 263. STUDY ON NATIONAL SECURITY EMERGING BIOTECHNOLOGIES FOR THE DEPARTMENT OF DEFENSE.**

(a) STUDY REQUIRED.—

Deadline.

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall direct the Defense Science Board to carry out a study on emerging biotechnologies pertinent to national security.

(2) PARTICIPATION.—Participants in the study shall include the following:

(A) Such members of the Board as the Chairman of the Board considers appropriate for the study.

(B) Such additional temporary members or contracted support as the Secretary—

(i) selects from those recommended by the Chairman for purposes of the study; and

(ii) considers to have significant technical, policy, or military expertise.

Assessments.

(3) ELEMENTS.—The study conducted pursuant to paragraph (1) shall include the following:

Reviews.

(A) A review of the military understanding and relevancy of applications of emerging biotechnologies to national security requirements of the Department of Defense, including—

(i) a review of all research and development relating to emerging biotechnologies within the Department of Defense, including areas that demand further priority and investment;

(ii) a review of interagency cooperation and collaboration on research and development relating to emerging biotechnologies between—

(I) the Department;

(II) other departments and agencies in the Federal Government; and

(III) appropriate private sector entities that are involved in research and development relating to emerging biotechnologies;

(iii) an assessment of current biotechnology research in the commercial sector, institutions of higher education, the intelligence community, and

civilian agencies of the Federal Government relevant to critical Department of Defense applications of this research;

(iv) an assessment of the potential national security risks of emerging biotechnologies, including risks relating to foreign powers advancing their use of emerging biotechnologies for military applications and other purposes faster than the Department; and

(v) an assessment of the knowledge base of the Department with respect to emerging biotechnologies, including scientific expertise and infrastructure in the Department and the capacity of the Department to integrate emerging biotechnologies into its operational concepts, capabilities, and forces.

(B) An assessment of the technical basis within the Department used to inform the intelligence community of the Department’s collection and analysis needs relating to emerging biotechnologies.

(C) Development of a recommendation on a definition of emerging biotechnologies, as appropriate for the Department.

Recommendations.

(D) Development of such recommendations as the Board may have for legislative or administrative action relating to national security emerging biotechnologies for the Department.

Recommendations.

(4) ACCESS TO INFORMATION.—The Secretary shall provide the Board with timely access to appropriate information, data, resources, and analysis so that the Board may conduct a thorough and independent analysis as required under this section.

(5) REPORT.—(A) Not later than one year after the date on which the Secretary directs the Board to conduct the study pursuant to paragraph (1), the Board shall transmit to the Secretary a final report on the study.

(B) Not later than 30 days after the date on which the Secretary receives the final report under subparagraph (A), the Secretary shall submit to the congressional defense committees such report and such comments as the Secretary considers appropriate.

(b) BRIEFING REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall provide the congressional defense committees a briefing on potential national security risks of emerging biotechnologies, including risks relating to foreign powers advancing their use of emerging biotechnologies for military applications and other purposes faster than the Department.

Deadline.

**SEC. 264. INDEPENDENT STUDY ON OPTIMIZING RESOURCES ALLOCATED TO COMBATING TERRORISM TECHNICAL SUPPORT OFFICE.**

Reports.

(a) INDEPENDENT STUDY.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into a contract with a federally funded research and development center under which the center will conduct a study on the optimal use of resources allocated to the Combating Terrorism Technical Support Office.

Deadline.  
Contracts.

(b) ELEMENTS OF STUDY.—In carrying out the study referred to in subsection (a), the federally funded research and development

center with which the Secretary enters into a contract under such subsection shall—

Evaluation.

(1) evaluate the current mission and organization of the Combating Terrorism Technical Support Office and its relation to the objectives outlined in the National Defense Strategy;

Assessment.

(2) assess the extent to which the activities of the Combating Terrorism Technical Support Office are complementary to and coordinated with other relevant activities by other Department of Defense entities, including activities of the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, United States Special Operations Command, and the military departments; and

(3) identify opportunities to improve the efficiency and effectiveness of the Combating Terrorism Technical Support Office, including through increased coordination, realignment, or consolidation with other entities of the Department of Defense, if appropriate.

(c) **SUBMISSION TO DEPARTMENT OF DEFENSE.**—Not later than 180 days after the date of the enactment of this Act, the federally funded research and development center that conducts the study under subsection (a) shall submit to the Secretary of Defense a report on the results of the study in both classified and unclassified form.

Records.

(d) **SUBMISSION TO CONGRESS.**—Not later than 30 days after the date on which the Secretary of Defense receives the report under subsection (c), the Secretary shall submit to the congressional defense committees an unaltered copy of the report in both classified and unclassified form, and such comments as the Secretary may have with respect to the report.

**SEC. 265. INDEPENDENT ASSESSMENT OF ELECTRONIC WARFARE PLANS AND PROGRAMS.**

Deadline.

(a) **ASSESSMENT.**—Not later than 120 days after the date of the enactment of this Act and pursuant to the arrangement entered into under section 222, the Secretary of Defense shall seek to engage the private scientific advisory group known as “JASON” to carry out an independent assessment of electronic warfare plans and programs.

Recommendations.

(b) **ELEMENTS.**—In carrying out the assessment under subsection (a), JASON shall—

(1) assess the strategies, programs, order of battle, and doctrine of the Department of Defense related to the electronic warfare mission area and electromagnetic spectrum operations;

(2) assess the strategies, programs, order of battle, and doctrine of potential adversaries, such as China, Iran, and the Russian Federation, related to the such mission area and operations;

(3) develop recommendations for improvements to the strategies, programs, and doctrine of the Department of Defense in order to enable the United States to achieve and maintain superiority in the electromagnetic spectrum in future conflicts; and

(4) develop recommendations for the Secretary of Defense, Congress, and such other Federal entities as JASON considers appropriate, including recommendations for—

(A) closing technical, policy, or resource gaps;

(B) improving cooperation and appropriate integration within the Department of Defense entities;

(C) improving cooperation between the United States and other countries and international organizations as appropriate; and

(D) such other important matters identified by JASON that are directly relevant to the strategies of the Department of Defense described in paragraph (3).

(c) LIAISONS.—The Secretary of Defense shall appoint appropriate liaisons to JASON to support the timely conduct of the services covered by this section.

(d) MATERIALS.—The Secretary of Defense shall provide access to JASON to materials relevant to the services covered by this section, consistent with the protection of sources and methods and other critically sensitive information.

(e) CLEARANCES.—The Secretary of Defense shall ensure that appropriate members and staff of JASON have the necessary clearances, obtained in an expedited manner, to conduct the services covered by this section.

(f) REPORT.—Not later than October 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report on the results of the assessment carried out under subsection (a), including—

(1) the results of the assessment with respect to each element described in subsection (b);

(2) the recommendations developed by JASON pursuant to such subsection.

(g) RELATIONSHIP TO OTHER LAW.—The assessment required under subsection (a) is separate and independent from the assessment described in section 255 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1705) and shall be carried out without regard to any agreement entered into under that section or the results of any assessment conducted pursuant to such agreement.

**SEC. 266. TECHNICAL CORRECTION TO GLOBAL RESEARCH WATCH PROGRAM.**

Section 2365 of title 10, United States Code, is amended—

(1) in subsections (a) and (d)(2), by striking “Assistant Secretary of Defense for Research and Engineering” both places it appears and inserting “Under Secretary of Defense for Research and Engineering”;

(2) in subsections (d)(3) and (e), by striking “Assistant Secretary” both places it appears and inserting “Under Secretary of Defense for Research and Engineering”; and

(3) in subsection (d), by striking “Assistant Secretary” both places it appears and inserting “Under Secretary”.

## **TITLE III—OPERATION AND MAINTENANCE**

### Subtitle A—Authorization of Appropriations

Sec. 301. Authorization of appropriations.

### Subtitle B—Energy and Environment

Sec. 311. Timeline for Clearinghouse review of applications for energy projects that may have an adverse impact on military operations and readiness.

- Sec. 312. Authority to accept contributions of funds from applicants for energy projects for mitigation of impacts on military operations and readiness.
- Sec. 313. Use of proceeds from sale of recyclable materials.
- Sec. 314. Disposal of recyclable materials.
- Sec. 315. Department of Defense improvement of previously conveyed utility systems serving military installations.
- Sec. 316. Modification of Department of Defense environmental restoration authorities to include Federal Government facilities used by National Guard.
- Sec. 317. Use of operational energy cost savings of Department of Defense.
- Sec. 318. Sale of electricity from alternate energy and cogeneration production facilities.
- Sec. 319. Energy resilience programs and activities.
- Sec. 320. Technical and grammatical corrections and repeal of obsolete provisions relating to energy.
- Sec. 321. Transfer authority for funding of study and assessment on health implications of per- and polyfluoroalkyl substances contamination in drinking water by Agency for Toxic Substances and Disease Registry.
- Sec. 322. Replacement of fluorinated aqueous film-forming foam with fluorine-free fire-fighting agent.
- Sec. 323. Prohibition of uncontrolled release of fluorinated aqueous film-forming foam at military installations.
- Sec. 324. Prohibition on use of fluorinated aqueous film forming foam for training exercises.
- Sec. 325. Real-time sound-monitoring at Navy installations where tactical fighter aircraft operate.
- Sec. 326. Development of extreme weather vulnerability and risk assessment tool.
- Sec. 327. Removal of barriers that discourage investments to increase military installation resilience.
- Sec. 328. Budgeting of Department of Defense relating to extreme weather.
- Sec. 329. Prohibition on Perfluoroalkyl Substances and Polyfluoroalkyl Substances in Meals Ready-to-Eat Food Packaging.
- Sec. 330. Disposal of materials containing per- and polyfluoroalkyl substances or aqueous film-forming foam.
- Sec. 331. Agreements to share monitoring data relating to perfluoroalkyl and polyfluoroalkyl substances and other contaminants of concern.
- Sec. 332. Cooperative agreements with States to address contamination by perfluoroalkyl and polyfluoroalkyl substances.
- Sec. 333. Plan to phase out use of burn pits.
- Sec. 334. Information relating to locations of burn pit use.
- Sec. 335. Data quality review of radium testing conducted at certain locations of the Department of the Navy.
- Sec. 336. Reimbursement of Environmental Protection Agency for certain costs in connection with the Twin Cities Army Ammunition Plant, Minnesota.
- Sec. 337. Pilot program for availability of working-capital funds for increased combat capability through energy optimization.
- Sec. 338. Report on efforts to reduce high energy intensity at military installations.
- Subtitle C—Treatment of Contaminated Water Near Military Installations
- Sec. 341. Short title.
- Sec. 342. Definitions.
- Sec. 343. Provision of water uncontaminated with perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) for agricultural purposes.
- Sec. 344. Acquisition of real property by Air Force.
- Sec. 345. Remediation plan.
- Subtitle D—Logistics and Sustainment
- Sec. 351. Materiel readiness metrics and objectives.
- Sec. 352. Clarification of authority regarding use of working-capital funds for unspecified minor military construction projects related to revitalization and recapitalization of defense industrial base facilities.
- Sec. 353. Modification to limitation on length of overseas forward deployment of naval vessels.
- Sec. 354. Extension of temporary installation reutilization authority for arsenals, depots, and plants.
- Sec. 355. F–35 Joint Strike Fighter sustainment.
- Sec. 356. Report on strategic policy for prepositioned materiel and equipment.
- Sec. 357. Pilot program to train skilled technicians in critical shipbuilding skills.
- Sec. 358. Requirement for military department inter-service depot maintenance.
- Sec. 359. Strategy to improve infrastructure of certain depots of the Department of Defense.
- Subtitle E—Reports
- Sec. 361. Readiness reporting.

- Sec. 362. Technical correction to deadline for transition to Defense Readiness Reporting System Strategic.
- Sec. 363. Report on Navy ship depot maintenance budget.
- Sec. 364. Report on Runit Dome.
- Sec. 365. Prohibition on subjective upgrades by commanders of unit ratings in monthly readiness reporting on military units.
- Sec. 366. Requirement to include foreign language proficiency in readiness reporting systems of Department of Defense.

Subtitle F—Other Matters

- Sec. 371. Prevention of encroachment on military training routes and military operations areas.
- Sec. 372. Expansion and enhancement of authorities on transfer and adoption of military animals.
- Sec. 373. Extension of authority for Secretary of Defense to use Department of Defense reimbursement rate for transportation services provided to certain non-Department of Defense entities.
- Sec. 374. Extension of authority of Secretary of Transportation to issue non-premium aviation insurance.
- Sec. 375. Defense personal property program.
- Sec. 376. Public events about Red Hill Bulk Fuel Storage Facility.
- Sec. 377. Sense of Congress regarding Innovative Readiness Training program.
- Sec. 378. Detonation chambers for explosive ordnance disposal.

## Subtitle A—Authorization of Appropriations

### SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, as specified in the funding table in section 4301.

## Subtitle B—Energy and Environment

### SEC. 311. TIMELINE FOR CLEARINGHOUSE REVIEW OF APPLICATIONS FOR ENERGY PROJECTS THAT MAY HAVE AN ADVERSE IMPACT ON MILITARY OPERATIONS AND READINESS.

Section 183a(c)(1) of title 10, United States Code, is amended by striking “60 days” and inserting “75 days”.

### SEC. 312. AUTHORITY TO ACCEPT CONTRIBUTIONS OF FUNDS FROM APPLICANTS FOR ENERGY PROJECTS FOR MITIGATION OF IMPACTS ON MILITARY OPERATIONS AND READINESS.

Section 183a(f) of title 10, United States Code, is amended by striking “for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49” and inserting “for an energy project”.

### SEC. 313. USE OF PROCEEDS FROM SALE OF RECYCLABLE MATERIALS.

Section 2577(c) of title 10, United States Code, is amended by striking “\$2,000,000” and inserting “\$10,000,000”.

### SEC. 314. DISPOSAL OF RECYCLABLE MATERIALS.

Section 2577(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) In this section, the term ‘recyclable materials’ may include any quality recyclable material provided to the Department by a State or local government entity, if such material is authorized

Definition.

by the Office of the Secretary of Defense and identified in the regulations prescribed under paragraph (1).”.

**SEC. 315. DEPARTMENT OF DEFENSE IMPROVEMENT OF PREVIOUSLY CONVEYED UTILITY SYSTEMS SERVING MILITARY INSTALLATIONS.**

Section 2688 of title 10, United States Code, is amended—

(1) by redesignating subsection (k) as subsection (l); and

(2) by inserting after subsection (j) the following new subsection (k):

“(k) IMPROVEMENT OF CONVEYED UTILITY SYSTEMS.—In the case of a utility system that is conveyed under this section and that only provides utility services to a military installation, the Secretary concerned may use amounts authorized to be appropriated for military construction to improve the reliability, resilience, efficiency, physical security, or cybersecurity of the utility system.”.

**SEC. 316. MODIFICATION OF DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION AUTHORITIES TO INCLUDE FEDERAL GOVERNMENT FACILITIES USED BY NATIONAL GUARD.**

(a) IN GENERAL.—Section 2707 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) AUTHORITY FOR NATIONAL GUARD PROJECTS.—Notwithstanding subsection (a) of this section and section 2701(c)(1) of this title, the Secretary concerned may use funds described in subsection (c) to carry out an environmental restoration project at a facility in response to perfluorooctanoic acid or perfluorooctane sulfonate contamination under this chapter or CERCLA.”.

(b) DEFINITION OF FACILITY.—Section 2700(2) of such title is amended—

(1) by striking “The terms” and inserting “(A) The terms”;

and

(2) by adding at the end the following new subparagraph:

“(B) The term ‘facility’ includes real property that is owned by, leased to, or otherwise possessed by the United States at locations at which military activities are conducted under this title or title 32 (including real property owned or leased by the Federal Government that is licensed to and operated by a State for training for the National Guard).”.

(c) INCLUSION OF POLLUTANTS AND CONTAMINANTS IN ENVIRONMENTAL RESPONSE ACTIONS.—Section 2701(c) of such title is amended by inserting “or pollutants or contaminants” after “hazardous substances” each place it appears.

(d) SAVINGS CLAUSE.—Nothing in this section, or the amendments made by this section, shall affect any requirement or authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

**SEC. 317. USE OF OPERATIONAL ENERGY COST SAVINGS OF DEPARTMENT OF DEFENSE.**

Section 2912 of title 10, United States Code, is amended—

(1) in subsection (a), by striking “subsection (b)” and inserting “subsection (b) or (c), as the case may be,”;

(2) in subsection (b), in the matter preceding paragraph (1), by striking “The Secretary of Defense” and inserting “Except as provided in subsection (c) with respect to operational energy cost savings, the Secretary of Defense”;



- (3) by redesignating subsection (c) as subsection (d); and
- (4) by inserting after subsection (b) the following new subsection (c):

“(c) **USE OF OPERATIONAL ENERGY COST SAVINGS.**—The amount that remains available for obligation under subsection (a) that relates to operational energy cost savings realized by the Department shall be used for the implementation of additional operational energy resilience, efficiencies, mission assurance, energy conservation, or energy security within the department, agency, or instrumentality that realized that savings.”.

**SEC. 318. SALE OF ELECTRICITY FROM ALTERNATE ENERGY AND COGENERATION PRODUCTION FACILITIES.**

Section 2916(b)(3)(B) of title 10, United States Code, is amended—

- (1) by striking “shall be available” and all that follows and inserting “shall be provided directly to the commander of the military installation in which the geothermal energy resource is located to be used for—”; and

- (2) by adding at the end the following new clauses:

“(i) military construction projects described in paragraph (2) that benefit the military installation where the geothermal energy resource is located; or

“(ii) energy or water security projects that—

“(I) benefit the military installation where the geothermal energy resource is located;

“(II) the commander of the military installation determines are necessary; and

“(III) are directly coordinated with local area energy or groundwater governing authorities.”.

**SEC. 319. ENERGY RESILIENCE PROGRAMS AND ACTIVITIES.**

(a) **MODIFICATION OF ANNUAL ENERGY MANAGEMENT AND RESILIENCE REPORT.**—Section 2925(a) of title 10, United States Code, is amended—

- (1) in the subsection heading, by inserting “AND READINESS” after “MISSION ASSURANCE”;

(2) in the matter preceding paragraph (1), by inserting “The Secretary shall ensure that mission operators of critical facilities provide to personnel of military installations any information necessary for the completion of such report.” after “by the Secretary.”;

(3) in paragraph (4), in the matter preceding subparagraph (A), by striking “megawatts” and inserting “electric and thermal loads”; and

(4) in paragraph (5), by striking “megawatts” and inserting “electric and thermal loads”.

(b) **FUNDING FOR ENERGY PROGRAM OFFICES.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretaries of the military departments shall submit to the congressional defense committees a report stating whether the program offices specified in paragraph (2) are funded—

(A) at proper levels to ensure that the energy resilience requirements of the Department of Defense are met; and

(B) at levels that are not less than in any previous fiscal year.

Reports.

(2) PROGRAM OFFICES SPECIFIED.—The program offices specified in this paragraph are the following:

(A) The Power Reliability Enhancement Program of the Army.

(B) The Office of Energy Initiatives of the Army.

(C) The Office of Energy Assurance of the Air Force.

(D) The Resilient Energy Program Office of the Navy.

(3) FUNDING PLAN.—

(A) IN GENERAL.—The Secretaries of the military departments shall include in the report submitted under paragraph (1) a funding plan for the next five fiscal years beginning after the date of the enactment of this Act to ensure that funding levels are, at a minimum, maintained during that period.

(B) ELEMENTS.—The funding plan under subparagraph (A) shall include, for each fiscal year covered by the plan, an identification of the amounts to be used for the accomplishment of energy resilience goals and objectives.

(c) ESTABLISHMENT OF TARGETS FOR WATER USE.—The Secretary of Defense shall, where life-cycle cost-effective, improve water use efficiency and management by the Department of Defense, including storm water management, by—

(1) installing water meters and collecting and using water balance data of buildings and facilities to improve water conservation and management;

(2) reducing industrial, landscaping, and agricultural water consumption in gallons by two percent annually through fiscal year 2030 relative to a baseline of such consumption by the Department in fiscal year 2010; and

(3) installing appropriate sustainable infrastructure features on installations of the Department to help with storm water and wastewater management.

Time period.  
Effective date.

10 USC 2866  
note.

**SEC. 320. TECHNICAL AND GRAMMATICAL CORRECTIONS AND REPEAL OF OBSOLETE PROVISIONS RELATING TO ENERGY.**

(a) TECHNICAL AND GRAMMATICAL CORRECTIONS.—

(1) TECHNICAL CORRECTIONS.—Title 10, United States Code, is amended—

(A) in section 2913(c), by striking “government” and inserting “government or”; and

(B) in section 2926(d)(1), in the second sentence, by striking “Defense Agencies” and inserting “the Defense Agencies”.

(2) GRAMMATICAL CORRECTIONS.—Such title is further amended—

(A) in section 2922a(d), by striking “resilience are prioritized and included” and inserting “energy resilience are included as critical factors”; and

(B) in section 2925(a)(3), by striking “impacting energy” and all that follows through the period at the end and inserting “degrading energy resilience at military installations (excluding planned outages for maintenance reasons), whether caused by on- or off-installation disruptions, including the total number of outages and their locations, the duration of each outage, the financial effect of each outage, whether or not the mission was affected, the downtimes (in minutes or hours) the mission can afford

based on mission requirements and risk tolerances, the responsible authority managing the utility, and measures taken to mitigate the outage by the responsible authority.”.

(b) CLARIFICATION OF APPLICABILITY OF CONFLICTING AMENDMENTS MADE BY 2018 DEFENSE AUTHORIZATION ACT.—Section 2911(e) of such title is amended—

(1) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

“(1) Opportunities to reduce the current rate of consumption of energy, the future demand for energy, and the requirement for the use of energy.

“(2) Opportunities to enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that affect mission assurance on military installations.”; and

(2) by striking the second paragraph (13).

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of section 2926 of such title is amended to read as follows:

**“§ 2926. Operational energy”.**

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 173 of such title is amended by striking the item relating to section 2926 and inserting the following new item:

10 USC 2924  
prec.

“2926. Operational energy.”.

**SEC. 321. TRANSFER AUTHORITY FOR FUNDING OF STUDY AND ASSESSMENT ON HEALTH IMPLICATIONS OF PER- AND POLYFLUOROALKYL SUBSTANCES CONTAMINATION IN DRINKING WATER BY AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.**

Section 316(a)(2)(B)(ii) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1350), as amended by section 315(a) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is amended by striking “2019 and 2020” and inserting “2019, 2020, and 2021”.

132 Stat. 1713.

**SEC. 322. REPLACEMENT OF FLUORINATED AQUEOUS FILM-FORMING FOAM WITH FLUORINE-FREE FIRE-FIGHTING AGENT.**

10 USC 2661  
note prec.

(a) USE OF FLUORINE-FREE FOAM AT MILITARY INSTALLATIONS.—

(1) MILITARY SPECIFICATION.—Not later than January 31, 2023, the Secretary of the Navy shall publish a military specification for a fluorine-free fire-fighting agent for use at all military installations and ensure that such agent is available for use by not later than October 1, 2023.

Deadlines.  
Publication.

(2) REPORT TO CONGRESS.—Concurrent with publication of the military specification under paragraph (1), the Secretary of Defense shall submit to the congressional defense committees a report containing a detailed plan for implementing the transition to a fluorine-free fire-fighting agent by not later than October 1, 2023. The report shall include—

Implementation  
plan.

(A) a detailed description of the progress of the Department of Defense to identify a fluorine-free fire-fighting agent for use as a replacement fire-fighting agent at military installations;

	(B) a description of any technology and equipment required to implement the replacement fire-fighting agent;
	(C) funding requirements, by fiscal year, to implement the replacement fire-fighting agent, including funding for the procurement of a replacement fire-fighting agent, required equipment, and infrastructure improvements;
Timeline.	(D) a detailed timeline of remaining required actions to implement such replacement.
Expiration date.	(b) LIMITATION.—No amount authorized to be appropriated or otherwise made available for the Department of Defense may be obligated or expended after October 1, 2023, to procure fire-fighting foam that contains in excess of one part per billion of perfluoroalkyl substances and polyfluoroalkyl substances.
Expiration date.	(c) PROHIBITION ON USE.—Fluorinated aqueous film-forming foam may not be used at any military installation on or after the earlier of the following dates: (1) October 1, 2024. (2) The date on which the Secretary determines that compliance with the prohibition under this subsection is possible.
	(d) EXEMPTION FOR SHIPBOARD USE.—Subsections (b) and (c) shall not apply to firefighting foam for use solely onboard ocean-going vessels.
	(e) WAIVER.— (1) IN GENERAL.—Subject to the limitations under paragraph (2), the Secretary of Defense may waive the prohibition under subsection (c) with respect to the use of fluorinated aqueous film-forming foam, if, by not later than 60 days prior to issuing the waiver, the Secretary—
Deadline.	(1) IN GENERAL.—Subject to the limitations under paragraph (2), the Secretary of Defense may waive the prohibition under subsection (c) with respect to the use of fluorinated aqueous film-forming foam, if, by not later than 60 days prior to issuing the waiver, the Secretary—
Briefing.	(A) provides to the congressional defense committees a briefing on the basis for the waiver and the progress to develop and field a fluorine-free fire-fighting agent that meets the military specifications issued pursuant to subsection (a), which includes— (i) detailed data on the progress made to identify a replacement fluorine-free fire-fighting agent; (ii) a description of the range of technology and equipment-based solutions analyzed to implement replacement; (iii) a description of the funding, by fiscal year, applied towards research, development, test, and evaluation of replacement firefighting agents and equipment-based solutions; (iv) a description of any completed and projected infrastructure changes; (v) a description of acquisition actions made in support of developing and fielding the fluorine-free fire-fighting agent;
Timeline.	(vi) an updated timeline for the completion of the transition to use of the fluorine-free fire-fighting agent; and
List.	(vii) a list of the categories of installation infrastructure or specific mobile firefighting equipment sets that require the waiver along with the justification;
Certification.	(B) submits to the congressional defense committees certification in writing, that— (i) the waiver is necessary for either installation infrastructure, mobile firefighting equipment, or both;

(ii) the waiver is necessary for the protection of life and safety;

(iii) no agent or equipment solutions are available that meet the military specific issued pursuant to subsection (a);

(iv) the military specification issued pursuant to subsection (a) is still valid and does not require revision; and

(v) includes details of the measures in place to minimize the release of and exposure to fluorinated compounds in fluorinated aqueous film-forming foam; and

(C) provides for public notice of the waiver.

Public notice.

(2) LIMITATION.—The following limitations apply to a waiver issued under this subsection:

(A) Such a waiver shall apply for a period that does not exceed one year.

Applicability.  
Time period.

(B) The Secretary may extend such a waiver once for an additional period that does not exceed one year, if the requirements under paragraph (1) are met as of the date of the extension of the waiver.

Extension.  
Time period.

(C) The authority to grant a waiver under this subsection may not be delegated below the level of the Secretary of Defense.

(f) DEFINITIONS.—In this section:

(1) The term “perfluoroalkyl substances” means aliphatic substances for which all of the H atoms attached to C atoms in the nonfluorinated substance from which they are notionally derived have been replaced by F atoms, except those H atoms whose substitution would modify the nature of any functional groups present.

(2) The term “polyfluoroalkyl substances” means aliphatic substances for which all H atoms attached to at least one (but not all) C atoms have been replaced by F atoms, in such a manner that they contain the perfluoroalkyl moiety  $C_nF_{2n+1}$  (for example,  $C_8F_{17}CH_2CH_2OH$ ).

**SEC. 323. PROHIBITION OF UNCONTROLLED RELEASE OF FLUORINATED AQUEOUS FILM-FORMING FOAM AT MILITARY INSTALLATIONS.**

10 USC 2661  
note prec.

(a) PROHIBITION.—Except as provided by subsection (b), the Secretary of Defense shall prohibit the uncontrolled release of fluorinated aqueous film-forming foam (hereinafter in this section referred to as “AFFF”) at military installations.

(b) EXCEPTIONS.—Notwithstanding subsection (a), fluorinated AFFF may be released at military installations as follows:

(1) AFFF may be released for purposes of an emergency response.

(2) A non-emergency release of AFFF may be made for the purposes of testing of equipment or training of personnel, if complete containment, capture, and proper disposal mechanisms are in place to ensure no AFFF is released into the environment.

10 USC 2661  
note prec.

**SEC. 324. PROHIBITION ON USE OF FLUORINATED AQUEOUS FILM FORMING FOAM FOR TRAINING EXERCISES.**

The Secretary of Defense shall prohibit the use of fluorinated aqueous film forming foam for training exercises at military installations.

**SEC. 325. REAL-TIME SOUND-MONITORING AT NAVY INSTALLATIONS WHERE TACTICAL FIGHTER AIRCRAFT OPERATE.**

(a) MONITORING.—The Secretary of the Navy shall conduct real-time sound-monitoring at no fewer than two Navy installations and their associated outlying landing fields on the west coast of the United States where Navy combat coded F/A-18, E/A-18G, or F-35 aircraft are based and operate and noise contours have been developed through noise modeling. Sound monitoring under such study shall be conducted—

Time period.

(1) during times of high, medium, and low activity over the course of a 12-month period; and

(2) along and in the vicinity of flight paths used to approach and depart the selected installations and their outlying landing fields.

Deadline.

(b) PLAN FOR ADDITIONAL MONITORING.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to the congressional defense committees a plan for real-time sound monitoring described in subsection (a) in the vicinity of training areas predominantly overflown by tactical fighter aircraft from the selected installations and outlying landing fields, including training areas that consist of real property administered by the Federal Government (including Department of Defense, Department of Interior, and Department of Agriculture), State and local governments, and privately owned land with the permission of the owner.

(c) REPORT REQUIRED.—Not later than December 1, 2020, the Secretary of the Navy shall submit to the congressional defense committees a report on the monitoring required under subsection (a). Such report shall include—

(1) the results of such monitoring;

(2) a comparison of such monitoring and the noise contours previously developed with the analysis and modeling methods previously used;

(3) an overview of any changes to the analysis and modeling process that have been made or are being considered as a result of the findings of such monitoring; and

(4) any other matters that the Secretary determines appropriate.

Web posting.

(d) PUBLIC AVAILABILITY OF MONITORING RESULTS.—The Secretary shall make the results of the monitoring required under subsection (a) publicly available on a website of the Department of Defense.

**SEC. 326. DEVELOPMENT OF EXTREME WEATHER VULNERABILITY AND RISK ASSESSMENT TOOL.**

Determination.

(a) IN GENERAL.—The Secretary of Defense shall consult with the entities described in subsection (b) to determine whether an existing climate vulnerability and risk assessment tool is available or can be adapted to be used to quantify the risks associated with extreme weather events and the impact of such events on

networks, systems, installations, facilities, and other assets to inform mitigation planning and infrastructure development.

(b) **CONSULTATION.**—In determining the availability of an appropriate tool to use or adapt for use under subsection (a), the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Federal Emergency Management Agency, the Commander of the Army Corps of Engineers, the Administrator of the National Aeronautics and Space Administration, a federally funded research and development center, and the heads of such other relevant Federal agencies as the Secretary of Defense determines appropriate.

(c) **BEST AVAILABLE SCIENCE.**—Before choosing a tool for use or adaptation for use under subsection (a), the Secretary shall obtain from a federally funded research and development center with which the Secretary has consulted under subsection (b) a certification in writing that the tool relies on the best publicly available science for the prediction of extreme weather risk and effective mitigation of that risk.

(d) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report on the implementation of this section. Such report shall include—

(1) in the case that a tool has been chosen under subsection (a) before the date of the submittal of the report, a description of the tool and how such tool will be used by the Department; or

(2) in the case that the Secretary determines that no available tool meets the requirements of the Department as described in subsection (a) or is readily adaptable for use, a plan for the development of such a tool, including the estimated cost and timeframe for development of such a tool.

**SEC. 327. REMOVAL OF BARRIERS THAT DISCOURAGE INVESTMENTS TO INCREASE MILITARY INSTALLATION RESILIENCE.**

(a) **IN GENERAL.**—The Secretary of Defense shall—

(1) identify and seek to remove barriers that discourage investments to increase military installation resilience;

(2) reform policies and programs that unintentionally increased the vulnerability of systems to related extreme weather events; and

(3) develop, and update at least once every four years, an adaptation plan to assess how climate impacts affected the ability of the Department of Defense to accomplish its mission, and the short- and long-term actions the Department can take to ensure military installation resilience.

(b) **MILITARY INSTALLATION RESILIENCE.**—In this section, the term “military installation resilience” has the meaning given such term in section 101(e)(8) of title 10, United States Code.

**SEC. 328. BUDGETING OF DEPARTMENT OF DEFENSE RELATING TO EXTREME WEATHER.**

(a) **IN GENERAL.**—The Secretary of Defense shall include in the annual budget submission of the President under section 1105(a) of title 31, United States Code—

(1) a dedicated budget line item for adaptation to, and mitigation of, effects of extreme weather on military networks,

Certification.

Plan.  
Cost estimate.  
Timeframe.

10 USC 2864  
note.

Time period.  
Adaptation plan.  
Assessment.

Definition.

10 USC 221 note.

- systems, installations, facilities, and other assets and capabilities of the Department of Defense; and
- Estimate. (2) an estimate of the anticipated adverse impacts to the readiness of the Department and the financial costs to the Department during the year covered by the budget of the loss of, or damage to, military networks, systems, installations, facilities, and other assets and capabilities of the Department, including loss of or obstructed access to training ranges, as a result extreme weather events.
- (b) DISAGGREGATION OF IMPACTS AND COSTS.—The estimate under subsection (a)(2) shall set forth the adverse readiness impacts and financial costs under that subsection by military department, Defense Agency, and other component or element of the Department.
- (c) EXTREME WEATHER DEFINED.—In this section, the term “extreme weather” means recurrent flooding, drought, desertification, wildfires, and thawing permafrost.
- 10 USC 2701 note. **SEC. 329. PROHIBITION ON PERFLUOROALKYL SUBSTANCES AND POLYFLUOROALKYL SUBSTANCES IN MEALS READY-TO-EAT FOOD PACKAGING.**
- Deadline. (a) PROHIBITION.—Not later than October 1, 2021, the Director of the Defense Logistics Agency shall ensure that any food contact substances that are used to assemble and package meals ready-to-eat (MREs) procured by the Defense Logistics Agency do not contain any perfluoroalkyl substances or polyfluoroalkyl substances.
- (b) DEFINITIONS.—In this section:
- (1) PERFLUOROALKYL SUBSTANCE.—The term “perfluoroalkyl substance” means a man-made chemical of which all of the carbon atoms are fully fluorinated carbon atoms.
- (2) POLYFLUOROALKYL SUBSTANCE.—The term “polyfluoroalkyl substance” means a man-made chemical containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms.
- 10 USC 2701 note. **SEC. 330. DISPOSAL OF MATERIALS CONTAINING PER- AND POLYFLUOROALKYL SUBSTANCES OR AQUEOUS FILM-FORMING FOAM.**
- (a) IN GENERAL.—The Secretary of Defense shall ensure that when materials containing per- and polyfluoroalkyl substances (referred to in this section as “PFAS”) or aqueous film forming foam (referred to in this section as “AFFF”) are disposed—
- (1) all incineration is conducted at a temperature range adequate to break down PFAS chemicals while also ensuring the maximum degree of reduction in emission of PFAS, including elimination of such emissions where achievable;
- (2) all incineration is conducted in accordance with the requirements of the Clean Air Act (42 USC 7401 et seq.), including controlling hydrogen fluoride;
- (3) any materials containing PFAS that are designated for disposal are stored in accordance with the requirement under part 264 of title 40, Code of Federal Regulations; and
- (4) all incineration is conducted at a facility that has been permitted to receive waste regulated under subtitle C of the Solid Waste Disposal Act (42 USC 6921 et seq.).
- (b) SCOPE OF APPLICATION.—The requirements in subsection (a) only apply to all legacy AFFF formulations containing PFAS,



materials contaminated by AFFF release, and spent filters or other PFAS contaminated materials resulting from site remediation or water filtration that—

- (1) have been used by the Department of Defense or a military department; or
- (2) are being discarded for disposal by means of incineration by the Department of Defense or a military department; or
- (3) are being removed from sites or facilities owned or operated by the Department of Defense.

**SEC. 331. AGREEMENTS TO SHARE MONITORING DATA RELATING TO PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES AND OTHER CONTAMINANTS OF CONCERN.**

10 USC 2701  
note.

(a) **IN GENERAL.**—The Secretary of Defense shall seek to enter into agreements with municipalities or municipal drinking water utilities located adjacent to military installations under which both the Secretary and the municipalities and utilities would share monitoring data relating to perfluoroalkyl substances, polyfluoroalkyl substances, and other emerging contaminants of concern collected at the military installation.

(b) **PUBLICLY AVAILABLE WEBSITE.**—The Secretary of Defense shall maintain a publicly available website that provides a clearinghouse for information about the exposure of members of the Armed Forces, their families, and their communities to per- and polyfluoroalkyl substances. The information provided on the website shall include information on testing, clean-up, and recommended available treatment methodologies.

(c) **PUBLIC COMMUNICATION.**—An agreement under subsection (a) does not negate the responsibility of the Secretary to communicate with the public about drinking water contamination from perfluoroalkyl substances, polyfluoroalkyl substances, and other contaminants.

(d) **MILITARY INSTALLATION DEFINED.**—In this section, the term “military installation” has the meaning given that term in section 2801(c) of title 10, United States Code.

**SEC. 332. COOPERATIVE AGREEMENTS WITH STATES TO ADDRESS CONTAMINATION BY PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.**

10 USC 2701  
note.

(a) **COOPERATIVE AGREEMENTS.**—

(1) **IN GENERAL.**—Upon request from the Governor or chief executive of a State, the Secretary of Defense shall work expeditiously, pursuant to section 2701(d) of title 10, United States Code, to finalize a cooperative agreement, or amend an existing cooperative agreement to address testing, monitoring, removal, and remedial actions relating to the contamination or suspected contamination of drinking, surface, or ground water from PFAS originating from activities of the Department of Defense by providing the mechanism and funding for the expedited review and approval of documents of the Department related to PFAS investigations and remedial actions from an active or decommissioned military installation, including a facility of the National Guard.

(2) **MINIMUM STANDARDS.**—A cooperative agreement finalized or amended under paragraph (1) shall meet or exceed the most stringent of the following standards for PFAS in any environmental media:

(A) An enforceable State standard, in effect in that State, for drinking, surface, or ground water, as described in section 121(d)(2)(A)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)(2)(A)(ii)).

(B) An enforceable Federal standard for drinking, surface, or ground water, as described in section 121(d)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)(2)(A)(i)).

(C) A health advisory under section 1412(b)(1)(F) of the Safe Drinking Water Act (42 U.S.C. 300g–1(b)(1)(F)).

(3) OTHER AUTHORITY.—In addition to the requirements for a cooperative agreement under paragraph (1), when otherwise authorized to expend funds for the purpose of addressing ground or surface water contaminated by a perfluorinated compound, the Secretary of Defense may, to expend those funds, enter into a grant agreement, cooperative agreement, or contract with—

(A) the local water authority with jurisdiction over the contamination site, including—

(i) a public water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f)); and

(ii) a publicly owned treatment works (as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292)); or

(B) a State, local, or Tribal government.

Effective date.  
Deadline.

(b) REPORT.—Beginning on February 1, 2020, if a cooperative agreement is not finalized or amended under subsection (a) within one year after the request from the Governor or chief executive under that subsection, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees and Members of Congress a report—

(1) explaining why the agreement has not been finalized or amended, as the case may be; and

Timeline.

(2) setting forth a projected timeline for finalizing or amending the agreement.

(c) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES AND MEMBERS OF CONGRESS.—The term “appropriate committees and Members of Congress” means—

(A) the congressional defense committees;

(B) the Senators who represent a State impacted by PFAS contamination described in subsection (a)(1); and

(C) the Members of the House of Representatives who represent a district impacted by such contamination.

(2) FULLY FLUORINATED CARBON ATOM.—The term “fully fluorinated carbon atom” means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.

(3) PFAS.—The term “PFAS” means perfluoroalkyl and polyfluoroalkyl substances that are man-made chemicals with at least one fully fluorinated carbon atom.

(4) STATE.—The term “State” has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

**SEC. 333. PLAN TO PHASE OUT USE OF BURN PITS.**

Deadline.

Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a plan to phase out the use of the burn pits identified in the Department of Defense Open Burn Pit Report to Congress dated April 2019.

**SEC. 334. INFORMATION RELATING TO LOCATIONS OF BURN PIT USE.**

List.

The Secretary of Defense shall provide to the Secretary of Veterans Affairs and to Congress a list of all locations where open-air burn pits have been used by the Secretary of Defense, for the purposes of augmenting the research, healthcare delivery, disability compensation, and other activities of the Secretary of Veterans Affairs.

**SEC. 335. DATA QUALITY REVIEW OF RADIUM TESTING CONDUCTED AT CERTAIN LOCATIONS OF THE DEPARTMENT OF THE NAVY.**

(a) **REVIEW OF RADIUM TESTING.**—Except as provided in subsection (b), the Secretary of the Navy shall provide for an independent third-party data quality review of all radium testing completed by contractors of the Department of the Navy at a covered location.

(b) **EXCEPTION.**—In the case of a covered location for which an independent third-party data quality review of all radium testing completed by contractors of the Department has been conducted prior to the date of the enactment of this Act, the requirement under subsection (a) shall not apply if the Secretary of the Navy submits to the congressional defense committees a report containing—

Reports.

(1) a certification that such review has been conducted for such covered location; and

Certification.

(2) a description of the results of such review.

(c) **COVERED LOCATION DEFINED.**—In this section, the term “covered location” means any of the following:

(1) Naval Weapons Industrial Reserve Plant, Bethpage, New York.

(2) Hunter’s Point Naval Shipyard, San Francisco, California.

**SEC. 336. REIMBURSEMENT OF ENVIRONMENTAL PROTECTION AGENCY FOR CERTAIN COSTS IN CONNECTION WITH THE TWIN CITIES ARMY AMMUNITION PLANT, MINNESOTA.**

Time periods.

(a) **TRANSFER AMOUNT.**—Notwithstanding section 2215 of title 10, United States Code, the Secretary of Defense may transfer to the Administrator of the Environmental Protection Agency—

(1) in fiscal year 2020, not more than \$890,790; and

(2) in each of fiscal years 2021 through 2026, not more than \$150,000.

(b) **PURPOSE OF REIMBURSEMENT.**—The amount authorized to be transferred under subsection (a) is to reimburse the Environmental Protection Agency for costs the Agency has incurred and will incur relating to the response actions performed at the Twin Cities Army Ammunition Plant, Minnesota, through September 30, 2025.

(c) **INTERAGENCY AGREEMENT.**—The reimbursement described in subsection (b) is intended to satisfy certain terms of the inter-agency agreement entered into by the Department of the Army

and the Environmental Protection Agency for the Twin Cities Army Ammunition Plant that took effect in December 1987 and that provided for the recovery of expenses by the Agency from the Department of the Army.

10 USC 2911  
note.

**SEC. 337. PILOT PROGRAM FOR AVAILABILITY OF WORKING-CAPITAL FUNDS FOR INCREASED COMBAT CAPABILITY THROUGH ENERGY OPTIMIZATION.**

(a) IN GENERAL.—Notwithstanding section 2208 of title 10, United States Code, the Secretary of Defense and the military departments may use a working capital fund established pursuant to that section for expenses directly related to conducting a pilot program for energy optimization initiatives described in subsection (b).

(b) ENERGY OPTIMIZATION INITIATIVES.—Energy optimization initiatives covered by the pilot program include the research, development, procurement, installation, and sustainment of technologies or weapons system platforms, and the manpower required to do so, that would improve the efficiency and maintainability, extend the useful life, lower maintenance costs, or provide performance enhancement of the weapon system platform or major end item.

(c) LIMITATION ON CERTAIN PROJECTS.—Funds may not be used pursuant to subsection (a) for—

(1) any product improvement that significantly changes the performance envelope of an end item; or

(2) any single component with an estimated total cost in excess of \$10,000,000.

(d) LIMITATION IN FISCAL YEAR PENDING TIMELY REPORT.—If during any fiscal year the report required by paragraph (1) of subsection (e) is not submitted by the date specified in paragraph (2) of that subsection, funds may not be used pursuant to subsection (a) during the period—

(1) beginning on the date specified in such paragraph (2); and

(2) ending on the date of the submittal of the report.

(e) ANNUAL REPORT.—

(1) IN GENERAL.—The Secretary of Defense shall submit an annual report to the congressional defense committees on the use of the authority under subsection (a) during the preceding fiscal year.

(2) DEADLINE FOR SUBMITTAL.—The report required by paragraph (1) in a fiscal year shall be submitted not later than 60 days after the date of the submittal to Congress of the budget of the President for the succeeding fiscal year pursuant to section 1105 of title 31, United States Code.

(3) RECOMMENDATION.—In the case of the report required to be submitted under paragraph (1) during fiscal year 2020, the report shall include the recommendation of the Secretary of Defense and the military departments regarding whether the authority under subsection (a) should be made permanent.

(f) SUNSET.—The authority under subsection (a) shall expire on October 1, 2024.

**SEC. 338. REPORT ON EFFORTS TO REDUCE HIGH ENERGY INTENSITY AT MILITARY INSTALLATIONS.**

(a) REPORT.—

(1) **REPORT REQUIRED.**—Not later than September 1, 2020, the Under Secretary of Defense for Acquisition and Sustainment, in conjunction with the assistant secretaries responsible for installations and environment for the military departments and the Defense Logistics Agency, shall submit to the congressional defense committees a report detailing the efforts to achieve cost savings at military installations with high energy intensity.

(2) **ELEMENTS.**—The report required under paragraph (1) shall include the following elements: Assessments.

(A) A comprehensive, installation-specific assessment of feasible and mission-appropriate energy initiatives supporting energy production and consumption at military installations with high energy intensity.

(B) An assessment of current sources of energy in areas with high energy intensity and potential future sources that are technologically feasible, cost-effective, and mission-appropriate for military installations.

(C) A comprehensive implementation strategy to include required investment for feasible energy efficiency options determined to be the most beneficial and cost-effective, where appropriate, and consistent with priorities of the Department of Defense. Strategy.

(D) An explanation on how the military departments are working collaboratively in order to leverage lessons learned on potential energy efficiency solutions.

(E) An assessment of the extent to which activities administered under the Federal Energy Management Program of the Department of Energy could be used to assist with the implementation strategy under subparagraph (C).

(F) An assessment of State and local partnership opportunities that could achieve efficiency and cost savings, and any legislative authorities required to carry out such partnerships or agreements.

(3) **COORDINATION WITH STATE, LOCAL, AND OTHER ENTITIES.**—In preparing the report required under paragraph (1), the Under Secretary of Defense for Acquisition and Sustainment may work in conjunction and coordinate with the States containing areas of high energy intensity, local communities, and other Federal agencies.

(b) **DEFINITION.**—In this section, the term “high energy intensity” means costs for the provision of energy by kilowatt of electricity or British Thermal Unit of heat or steam for a military installation in the United States that is in the highest 20 percent of all military installations for a military department.

## **Subtitle C—Treatment of Contaminated Water Near Military Installations**

### **SEC. 341. SHORT TITLE.**

This subtitle may be cited as the “Prompt and Fast Action to Stop Damages Act of 2019”.

### **SEC. 342. DEFINITIONS.**

In this subtitle:

(1) **PFOA.**—The term “PFOA” means perfluorooctanoic acid.

Prompt and Fast Action to Stop Damages Act of 2019.

10 USC 2701 note.

10 USC 2701 note.

(2) PFOS.—The term “PFOS” means perfluorooctane sulfonate.

10 USC 2701  
note.

**SEC. 343. PROVISION OF WATER UNCONTAMINATED WITH PERFLUOROOCCTANOIC ACID (PFOA) AND PERFLUOROOCCTANE SULFONATE (PFOS) FOR AGRICULTURAL PURPOSES.**

(a) AUTHORITY.—

(1) IN GENERAL.—Using amounts authorized to be appropriated or otherwise made available for operation and maintenance for the military department concerned, or for operation and maintenance Defense-wide in the case of the Secretary of Defense, the Secretary concerned may provide water sources uncontaminated with perfluoroalkyl and polyfluoroalkyl substances, including PFOA and PFOS, or treatment of contaminated waters, for agricultural purposes used to produce products destined for human consumption in an area in which a water source has been determined pursuant to paragraph (2) to be contaminated with such compounds by reason of activities on a military installation under the jurisdiction of the Secretary concerned.

(2) APPLICABLE STANDARD.—For purposes of paragraph (1), an area is determined to be contaminated with PFOA or PFOS if—

(A) the level of contamination is above the Lifetime Health Advisory for contamination with such compounds issued by the Environmental Protection Agency and printed in the Federal Register on May 25, 2016; or

(B) on or after the date the Food and Drug Administration sets a standard for PFOA and PFOS in raw agricultural commodities and milk, the level of contamination is above such standard.

(b) SECRETARY CONCERNED DEFINED.—In this section, the term “Secretary concerned” means the following:

(1) The Secretary of the Army, with respect to the Army.

(2) The Secretary of the Navy, with respect to the Navy, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy).

(3) The Secretary of the Air Force, with respect to the Air Force.

(4) The Secretary of Defense, with respect to the Defense Agencies.

10 USC 2701  
note.

**SEC. 344. ACQUISITION OF REAL PROPERTY BY AIR FORCE.**

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Air Force may acquire one or more parcels of real property within the vicinity of an Air Force base that has shown signs of contamination from PFOA and PFOS due to activities on the base and which would extend the contiguous geographic footprint of the base and increase the force protection standoff near critical infrastructure and runways.

(2) IMPROVEMENTS AND PERSONAL PROPERTY.—The authority under paragraph (1) to acquire real property described in that paragraph shall include the authority to purchase improvements and personal property located on that real property.

(3) **RELOCATION EXPENSES.**—The authority under paragraph (1) to acquire real property described in that paragraph shall include the authority to provide Federal financial assistance for moving costs, relocation benefits, and other expenses incurred in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(b) **ENVIRONMENTAL ACTIVITIES.**—The Air Force shall conduct such activities at a parcel or parcels of real property acquired under subsection (a) as are necessary to remediate contamination from PFOA and PFOS related to activities at the Air Force base.

(c) **FUNDING.**—Funds for the land acquisitions authorized under subsection (a) shall be derived from amounts authorized to be appropriated for fiscal year 2020 for military construction or the unobligated balances of appropriations for military construction that are enacted after the date of the enactment of this Act.

(d) **RULE OF CONSTRUCTION.**—The authority under this section constitutes authority to carry out land acquisitions for purposes of section 2802 of title 10, United States Code.

**SEC. 345. REMEDIATION PLAN.**

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a remediation plan for cleanup of all water at or adjacent to a military installation that is contaminated with PFOA or PFOS.

(b) **STUDY.**—In preparing the remediation plan under subsection (a), the Secretary shall conduct a study on the contamination of water at military installations with PFOA or PFOS.

(c) **BUDGET AMOUNT.**—The Secretary shall ensure that each budget of the President submitted to Congress under section 1105(a) of title 31, United States Code, requests funding in amounts necessary to address remediation efforts under the remediation plan submitted under subsection (a).

10 USC 2701  
note.  
Deadline.

## Subtitle D—Logistics and Sustainment

**SEC. 351. MATERIEL READINESS METRICS AND OBJECTIVES.**

(a) **ANNUAL REPORT ON MAJOR WEAPONS SYSTEMS SUSTAINMENT.**—

(1) **IN GENERAL.**—Chapter 2 of title 10, United States Code, is amended by inserting after section 117 the following new section:

**“§ 118. Annual report on major weapons systems sustainment**

10 USC 118.

“Not later than five days after the date on which the Secretary of Defense submits to Congress the materials in support of the budget of the President for a fiscal year, the Secretary of Defense shall submit to the congressional defense committees an annual report on major weapons systems sustainment for the period covered by the future years defense program specified by section 221 of this title. Such report shall include—

“(1) an assessment of the materiel availability, materiel reliability, and mean down time metrics for each major weapons system;

Assessments.

“(2) a detailed explanation of any factors that could preclude the Department of Defense or any of the military departments from meeting applicable readiness goals or objectives; and

“(3) an assessment of the validity and effectiveness of the definitions used to determine defense readiness, including the terms ‘major weapons system’, ‘covered asset’, ‘total and required inventory’, ‘materiel and operational availability’, ‘materiel and operational capability’, ‘materiel and operational reliability’.”.

10 USC 111 prec.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 117 the following new item:

“118. Annual report on major weapons systems sustainment.”.

(b) ASSESSMENT OF MATERIEL READINESS AND WEAPONS SYSTEM SUSTAINMENT.—

Deadline.

(1) ASSESSMENT REQUIRED.—Not later than March 1, 2020, the Secretary of Defense shall complete a comprehensive assessment of the materiel readiness and weapons systems sustainment of the Department of Defense across the Department organic industrial base and industry partners.

(2) CONTENTS.—The assessment required by paragraph (1) shall include—

(A) an assessment of the overall readiness strategy of the Department of Defense and the capability of such strategy to measure, track, and assess the readiness of major weapons systems;

(B) an assessment of the use of objectives and metrics;

(C) a description of applicable reporting requirements;

and

(D) applicable definitions and common usage of relevant terms, including the terms “major weapons system”, “covered asset”, “total and required inventory”, “materiel and operational availability”, “materiel and operational capability”, “materiel and operational reliability”, and “maintenance costs”.

(3) SUBMISSION TO CONGRESS.—The Secretary shall provide to the congressional defense committees—

Briefing.

(A) a briefing on the assessment required by paragraph

Deadline.

(1) by not later than March 1, 2020; and

Reports.

(B) a final report on such assessment by not later than April 1, 2020.

**SEC. 352. CLARIFICATION OF AUTHORITY REGARDING USE OF WORKING-CAPITAL FUNDS FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS RELATED TO REVITALIZATION AND RECAPITALIZATION OF DEFENSE INDUSTRIAL BASE FACILITIES.**

Section 2208(u) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “carry out” and inserting “fund”;

(2) in paragraph (2)—

(A) by striking “Section 2805” and inserting “(A) Except as provided in subparagraph (B), section 2805”;

(B) by striking “carried out with” and inserting “funded using”; and



(C) by adding at the end the following new subparagraph:

“(B) For purposes of applying subparagraph (A), the dollar limitation specified in subsection (a)(2) of section 2805 of this title, subject to adjustment as provided in subsection (f) of such section, shall apply rather than the dollar limitation specified in subsection (c) of such section.”; and

(3) in paragraph (4), by striking “carry out” and inserting “fund”.

Applicability.

**SEC. 353. MODIFICATION TO LIMITATION ON LENGTH OF OVERSEAS FORWARD DEPLOYMENT OF NAVAL VESSELS.**

Section 323 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) **EXTENSION OF LIMITATION ON LENGTH OF OVERSEAS FORWARD DEPLOYMENT FOR U.S.S. SHILOH (CG–67).**—Notwithstanding subsection (b), the Secretary of the Navy shall ensure that the U.S.S. Shiloh (CG–67) is assigned a homeport in the United States by not later than September 30, 2023.”.

10 USC 8690 note.

Deadline.

**SEC. 354. EXTENSION OF TEMPORARY INSTALLATION REUTILIZATION AUTHORITY FOR ARSENALS, DEPOTS, AND PLANTS.**

Section 345(d) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2667 note) is amended by striking “September 30, 2020” and inserting “September 30, 2025”.

**SEC. 355. F–35 JOINT STRIKE FIGHTER SUSTAINMENT.**

(a) **LIMITATION ON USE OF FUNDS.**—Of the amounts authorized to be appropriated or otherwise made available in this Act for the Office of the Under Secretary of Defense for Acquisition and Sustainment for fiscal year 2020, not more than 75 percent may be obligated or expended until the date on which the Under Secretary submits the report required by subsection (b).

(b) **REPORT REQUIRED.**—The Under Secretary of Defense for Acquisition and Sustainment shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on steps being taken to improve the availability and accountability of F–35 parts within the supply chain. At a minimum, the report shall include a detailed plan for each of the following elements:

Plan.

(1) How the accountable property system of record will be updated with information from the prime contractors supplying such parts on required cost and related data with respect to the parts and how the F–35 Program Office will ensure such contractors are adhering to contractual requirements for the management, reporting, visibility, and accountability of all such parts supplied by the prime contractors.

(2) How the accountability property system of record will have interfaces that allow the F–35 Program Office and other authorized entities to have proper accountability of assets in accordance with applicable Department of Defense Instructions, Department of Defense Manuals, and other applicable regulations.

(3) How the F–35 Program Office, in coordination with the military departments, will ensure business rules for the prioritization of F–35 parts across all program participants are sufficient, effective, and responsive.

(4) Steps being taken to ensure parts within the base, afloat, and deployment spares packages are compatible for deploying F–35 aircraft and account for updated parts demand.

**SEC. 356. REPORT ON STRATEGIC POLICY FOR PREPOSITIONED MATERIEL AND EQUIPMENT.**

Coordination.

Not later than March 1, 2020, the Assistant Secretary of Defense for Sustainment, in coordination with the Joint Staff, shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation plan for prepositioned materiel and equipment required by section 321(b) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 730; 10 U.S.C. 2229 note). Such report shall include each of the following:

List.

(1) A comprehensive list of the prepositioned materiel and equipment programs of the Department of Defense.

(2) A detailed description of how the plan will be implemented.

(3) A description of the resources required to implement the plan, including the amount of funds and personnel.

(4) A description of how the plan will be reviewed and assessed to monitor progress.

Guidance.

(5) Guidance on applying a consistent definition of prepositioning across the Department, including the military departments, the combatant commands, and the Defense Agencies.

(6) A detailed description of how the Secretary will implement a joint oversight approach of the prepositioning programs of the military departments.

10 USC 8685  
note.

**SEC. 357. PILOT PROGRAM TO TRAIN SKILLED TECHNICIANS IN CRITICAL SHIPBUILDING SKILLS.**

(a) ESTABLISHMENT.—The Secretary of the Navy may carry out a pilot program to train individuals to become skilled technicians in critical shipbuilding skills such as welding, metrology, quality assurance, machining, and additive manufacturing.

(b) PARTNERSHIPS.—In carrying out the pilot program under this section, the Secretary may partner with existing Federal or State projects relating to investment and infrastructure in training and education or workforce development, such as the National Network for Manufacturing Innovation, the Industrial Base Analysis and Sustainment program of the Department of Defense, and the National Maritime Educational Council.

(c) TERMINATION.—The authority to carry out a pilot program under this section shall terminate on September 30, 2025.

Time periods.

(d) BRIEFINGS.—If the Secretary carries out a pilot program under this section, the Secretary shall provide briefings to the Committees on Armed Services of the Senate and the House of Representatives as follows:

(1) Not later than 30 days before beginning to implement the pilot program, the Secretary shall provide a briefing on the plan, cost estimate, and schedule for the pilot program.

(2) Not less frequently than annually during the period when the pilot program is carried out, the Secretary shall

provide briefings on the progress of the Secretary in carrying out the pilot program.

**SEC. 358. REQUIREMENT FOR MILITARY DEPARTMENT INTER-SERVICE DEPOT MAINTENANCE.** 10 USC 2460 note.

(a) **JOINT PROCESS FOR TECHNICAL COMPLIANCE AND QUALITY CONTROL.**—If the Secretary of a military department transfers any maintenance action on a platform to a depot under the jurisdiction of the Secretary of another military department, the two Secretaries shall develop and implement a process to ensure the technical compliance and quality control for the work performed.

(b) **REQUIREMENTS.**—A process developed under subsection (a) shall include the following requirements—

(1) The Secretary of the military department with jurisdiction over the depot to which the maintenance action is transferred shall—

(A) ensure that the technical specifications, requirements, and standards for work to be performed are provided to such action or depot; and

(B) implement procedures to ensure that completed work complies with such specifications, requirements and standards.

Procedures.

(2) The Secretary who transfers the maintenance activity or depot shall ensure that—

(A) the technical specifications and requirements are clearly understood; and

(B) the work performed is completed to the technical specifications, requirements, and standards prescribed under paragraph (1), and that the Secretary of the military department with jurisdiction over the depot is informed of any shortcoming or discrepancy.

(c) **REPORTS.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report containing a certification that sufficient policy and procedures are in place to ensure quality control when the depot or maintenance activities of one military department support another. The report shall include a description of known shortfalls in existing policies and procedures and actions the Department of Defense is taking to address such shortfalls.

Certification.

**SEC. 359. STRATEGY TO IMPROVE INFRASTRUCTURE OF CERTAIN DEPOTS OF THE DEPARTMENT OF DEFENSE.** 10 USC 2476 note.

(a) **STRATEGY REQUIRED.**—Not later than October 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a comprehensive strategy for improving the depot infrastructure of the military departments with the objective of ensuring that all covered depots have the capacity and capability to support the readiness and material availability goals of current and future weapon systems of the Department of Defense.

Deadline.

(b) **ELEMENTS.**—The strategy under subsection (a) shall include the following:

(1) A comprehensive review of the conditions and performance at each covered depot, including the following:

Reviews.

(A) An assessment of the current status of the following elements:

Assessment.

(i) Cost and schedule performance of the depot.

(ii) Material availability of weapon systems supported at the depot and the impact of the performance of the depot on that availability.

(iii) Work in progress and non-operational items awaiting depot maintenance.

(iv) The condition of the depot.

(v) The backlog of restoration and modernization projects at the depot.

(vi) The condition of equipment at the depot.

(vii) the vulnerability of the depot to adverse environmental conditions and, if necessary, the investment required to withstand those conditions.

(B) An identification of analytically based goals relating to the elements identified in subparagraph (A).

Analysis.  
Assessments.

(2) A business-case analysis that assesses investment alternatives comparing cost, performance, risk, and readiness outcomes and recommends an optimal investment approach across the Department of Defense to ensure covered depots efficiently and effectively meet the readiness goals of the Department, including an assessment of the following alternatives:

(A) The minimum investment necessary to meet investment requirements under section 2476 of title 10, United States Code.

(B) The investment necessary to ensure the current inventory of facilities at covered depots can meet the mission-capable, readiness, and contingency goals of the Secretary of Defense.

(C) The investment necessary to execute the depot infrastructure optimization plans of each military department.

(D) Any other strategies for investment in covered depots, as identified by the Secretary.

Plan.

(3) A plan to improve conditions and performance of covered depots that identifies the following:

(A) The approach of the Secretary of Defense for achieving the goals outlined in paragraph (1)(B).

(B) The resources and investments required to implement the plan.

(C) The activities and milestones required to implement the plan.

Assessments.

(D) A results-oriented approach to assess—

(i) the progress of each military department in achieving such goals; and

(ii) the progress of the Department in implementing the plan.

(E) Organizational roles and responsibilities for implementing the plan.

Review.  
Coordination.

(F) A process for conducting regular management review and coordination of the progress of each military department in implementing the plan and achieving such goals.

Time period.

(G) The extent to which the Secretary has addressed recommendations made by the Comptroller General of the United States relating to depot operations during the five-year period preceding the date of submittal of the strategy under this section.

(H) Risks to implementing the plan and mitigation strategies to address those risks.

(c) ANNUAL REPORT ON PROGRESS.—As part of the annual budget submission of the President under section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report describing the progress made in—

- (1) implementing the strategy under subsection (a); and
- (2) achieving the goals outlined in subsection (b)(1)(B).

(d) COMPTROLLER GENERAL REPORTS.—

(1) ASSESSMENT OF STRATEGY.—Not later than January 1, 2021, the Comptroller General of the United States shall submit to the congressional defense committees a report assessing the extent to which the strategy under subsection (a) meets the requirements of this section.

(2) ASSESSMENT OF IMPLEMENTATION.—Not later than April 1, 2022, the Comptroller General shall submit to the congressional defense committees a report setting forth an assessment of the extent to which the strategy under subsection (a) has been effectively implemented by each military department and the Secretary of Defense.

(e) COVERED DEPOT DEFINED.—In this section, the term “covered depot” has the meaning given that term in section 2476(e) of title 10, United States Code.

## Subtitle E—Reports

### SEC. 361. READINESS REPORTING.

(a) READINESS REPORTING SYSTEM.—Section 117 of title 10, United States Code, is amended—

- (1) by striking subsections (d) through (g); and
- (2) by redesignating subsection (h) as subsection (d).

(b) QUARTERLY REPORTS.—Section 482 of title 10, United States Code, is amended—

(1) in the section heading, by striking “**Quarterly reports: personnel and unit readiness**” and inserting “**Readiness reports**”;

(2) in subsection (a)—

(A) In the subsection heading, by striking “**QUARTERLY REPORTS REQUIRED**” and inserting “**REPORTS AND BRIEFINGS**”;

(B) In the first sentence—

(i) by striking “Not later” and inserting “(1) Not later”; and

(ii) by striking “each calendar-year quarter” and inserting “the second and fourth quarter of each calendar year”;

(C) by striking the second and third sentences and inserting “The Secretary of Defense shall submit each such report in writing and shall also submit a copy of each such report to the Chairman of the Joint Chiefs of Staff.”; and

(D) by adding at the end the following new paragraphs:

“(2) Not later than 30 days after the end of the first and third quarter of each calendar year, the Secretary of Defense shall

Records.

Deadline.  
Briefing.

provide to Congress a briefing regarding the military readiness of the active and reserve components.

“(3) Each report under this subsection shall contain the elements required by subsection (b) for the quarter covered by the report, and each briefing shall address any changes to the elements described in subsection (b) since the submittal of the most recently submitted report.”;

(3) by striking subsection (b) and inserting the following:

“(b) REQUIRED ELEMENTS.—The elements described in this subsection are each of the following:

“(1) A description of each readiness problem or deficiency that affects the ground, sea, air, space, cyber, or special operations forces, and any other area determined appropriate by the Secretary of Defense.

“(2) The key contributing factors, indicators, and other relevant information related to each identified problem or deficiency.

Strategy. “(3) The short-term mitigation strategy the Department will employ to address each readiness problem or deficiency until a resolution is in place, as well as the timeline, cost, and any legislative remedies required to support the resolution.

Summary. “(4) A summary of combat readiness ratings for the key force elements assessed, including specific information on personnel, supply, equipment, and training problems or deficiencies that affect the combat readiness ratings for each force element.

Summary. “(5) A summary of each upgrade or downgrade of the combat readiness of a unit that was issued by the commander of the unit, together with the rationale of the commander for the issuance of such upgrade or downgrade.

Summary. “(6) A summary of the readiness of supporting capabilities, including infrastructure, prepositioned equipment and supplies, and mobility assets, and other supporting logistics capabilities.

Summary. “(7) A summary of the readiness of the combat support and related agencies, any readiness problem or deficiency affecting any mission essential tasks of any such agency, and actions recommended to address any such problem or deficiency.

List. “(8) A list of all Class A, Class B, and Class C mishaps that occurred in operations related to combat support and training events involving aviation, ground, or naval platforms, weapons, space, or Government vehicles, as defined by Department of Defense Instruction 6055.07, or a successor instruction.

“(9) Information on the extent to which units of the armed forces have removed serviceable parts, supplies, or equipment from one vehicle, vessel, or aircraft in order to render a different vehicle, vessel, or aircraft operational.

“(10) Such other information as determined necessary or appropriate by the Secretary of Defense.”;

(4) by striking subsections (d) through (h) and subsection (j);

(5) by redesignating subsection (i) as subsection (e); and

(6) by inserting after subsection (c) the following new subsections (d):

“(d) SEMI-ANNUAL JOINT FORCE READINESS REVIEW.—(1) Not later than 30 days after the last day of the first and third quarter of each calendar year, the Chairman of the Joint Chiefs of Staff shall submit to Congress a written report on the capability of

the armed forces, the combat support and related agencies, operational contract support, and the geographic and functional combatant commands to execute their wartime missions based upon their posture and readiness as of the time the review is conducted.

“(2) The Chairman shall produce the report required under this subsection using information derived from the quarterly reports required by subsection (a).

“(3) Each report required by this subsection shall include an assessment by each commander of a geographic or functional combatant command of the readiness of the command to conduct operations in a multidomain battle that integrates ground, sea, air, space, cyber, and special operations forces.

“(4) The Chairman shall submit to the Secretary of Defense a copy of each report under this subsection.”

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 23 of such title is amended by striking the item relating to section 482 and inserting the following new item:

“482. Readiness reports.”.

**SEC. 362. TECHNICAL CORRECTION TO DEADLINE FOR TRANSITION TO DEFENSE READINESS REPORTING SYSTEM STRATEGIC.**

Section 358(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by striking “October 1, 2019” and inserting “October 1, 2020”.

**SEC. 363. REPORT ON NAVY SHIP DEPOT MAINTENANCE BUDGET.**

(a) IN GENERAL.—Not later than March 1 of each of 2020, 2021, and 2022, the Secretary of the Navy shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the Operation and Maintenance, Ship Depot Maintenance budget sub-activity group.

(b) ELEMENTS.—The report required under subsection (a) shall include each of the following elements:

(1) A breakdown of funding, categorized by class of ship, requested for ship and submarine maintenance.

(2) A description of how the requested funding, categorized by class of ship, compares to the identified ship maintenance requirement.

(3) The amount of funds appropriated for each class of ship for the preceding fiscal year.

(4) The amount of funds obligated and expended for each class of ship for each of the three preceding fiscal years.

(5) The cost, categorized by class of ship, of unplanned growth work for each of the three preceding fiscal years.

**SEC. 364. REPORT ON RUNIT DOME.**

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the status of the Runit Dome in the Marshal Islands.

(b) MATTERS FOR INCLUSION.—The report required by subsection (a) shall include each of the following:

(1) A detailed plan to repair the dome to ensure that it does not have any harmful effects to the local population,

Assessment.

Records.

10 USC 480 prec.

10 USC 117 note.

Assessments.

Plan.

environment, or wildlife, including the projected costs of implementing such plan.

(2) The effects on the environment that the dome has currently and is projected to have in 5 years, 10 years, and 20 years.

(3) An assessment of the current condition of the outer constructs of the dome.

(4) An assessment of the current and long-term safety to local humans posed by the site.

(5) An assessment of how rising sea levels might affect the dome.

Summary.

(6) A summary of interactions between the Government of the United States and the government of the Marshall Islands about the dome.

Public information.

(c) FORM OF REPORT.—The report required by subsection (a) shall be submitted in unclassified form and made publicly available.

10 USC 482 note.

**SEC. 365. PROHIBITION ON SUBJECTIVE UPGRADES BY COMMANDERS OF UNIT RATINGS IN MONTHLY READINESS REPORTING ON MILITARY UNITS.**

(a) IN GENERAL.—The Chairman of the Joint Chiefs of Staff shall modify Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3401.02B, on Force Readiness Reporting, to prohibit the commander of a military unit who is responsible for monthly reporting of the readiness of the unit under the instruction from making any upgrade of the overall rating of the unit (commonly referred to as the “C-rating”) for such reporting purposes based in whole or in part on subjective factors.

(b) WAIVER.—

(1) IN GENERAL.—The modification required by subsection (a) shall authorize an officer in a general or flag officer grade in the chain of command of a commander described in that subsection to waive the prohibition described in that subsection in connection with readiness reporting on the unit concerned if the officer considers the waiver appropriate in the circumstances.

(2) REPORTING ON WAIVERS.—Each report on personnel and unit readiness submitted to Congress for a calendar year quarter pursuant to section 482 of title 10, United States Code, shall include information on each waiver, if any, issued pursuant to paragraph (1) during such calendar year quarter.

10 USC 117 note.

**SEC. 366. REQUIREMENT TO INCLUDE FOREIGN LANGUAGE PROFICIENCY IN READINESS REPORTING SYSTEMS OF DEPARTMENT OF DEFENSE.**

Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of each military department shall include in the Global Readiness and Force Management Enterprise, for the appropriate billets with relevant foreign language requirements, measures of foreign language proficiency as a mandatory element of unit readiness reporting, to include the Defense Readiness Reporting Systems-Strategic (DRRS-S) and all other subordinate systems that report readiness data.



## Subtitle F—Other Matters

### SEC. 371. PREVENTION OF ENCROACHMENT ON MILITARY TRAINING ROUTES AND MILITARY OPERATIONS AREAS.

Section 183a of title 10, United States Code, is amended—  
(1) in subsection (c)(6), in the second sentence—

(A) by striking “radar or airport surveillance radar operated” and inserting “radar, airport surveillance radar, or wide area surveillance over-the-horizon radar operated”; and

(B) by inserting “Any setback for a project pursuant to the previous sentence shall not be more than what is determined to be necessary by a technical analysis conducted by the Lincoln Laboratory at the Massachusetts Institute of Technology or any successor entity.” after “mitigation options.”;

(2) in subsection (d)—

(A) in paragraph (2)(E), by striking “to a Deputy Secretary of Defense, an Under Secretary of Defense, or a Principal Deputy Under Secretary of Defense” and inserting “to the Deputy Secretary of Defense, an Under Secretary of Defense, or a Deputy Under Secretary of Defense”;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following new paragraph (3):

“(3) The governor of a State may recommend to the Secretary of Defense additional geographical areas of concern within that State. Any such recommendation shall be submitted for notice and comment pursuant to paragraph (2)(C).”;

Recommendations.

(3) in subsection (e)(3), by striking “an under secretary of defense, or a deputy under secretary of defense” and inserting “an Under Secretary of Defense, or a Deputy Under Secretary of Defense”;

(4) in subsection (f), in the first sentence, by striking “from an applicant for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49” and inserting “from an entity requesting a review by the Clearinghouse under this section”; and

(5) in subsection (h)—

(A) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (9), respectively;

(B) by inserting after paragraph (2) the following new paragraph (3):

“(3) The term ‘governor’, with respect to a State, means the chief executive officer of the State.”;

Definition.

(C) in paragraph (7), as redesignated by subparagraph (A), by striking “by the Federal Aviation Administration” and inserting “by the Administrator of the Federal Aviation Administration”; and

(D) by inserting after paragraph (7), as redesignated by subparagraph (A), the following new paragraph:

“(8) The term ‘State’ means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa.”.

Definition.

**SEC. 372. EXPANSION AND ENHANCEMENT OF AUTHORITIES ON TRANSFER AND ADOPTION OF MILITARY ANIMALS.**

(a) **TRANSFER AND ADOPTION GENERALLY.**—Section 2583 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) in the subsection heading, by inserting “TRANSFER OR” before “ADOPTION”; and

(B) by striking “adoption” each place it appears and inserting “transfer or adoption”;

(2) in subsection (b)—

(A) in the subsection heading, by inserting “TRANSFER OR” before “ADOPTION”; and

(B) in the first sentence, by striking “adoption” and inserting “transfer or adoption”; and

(C) in the second sentence, striking “adoptability” and inserting “transferability or adoptability”;

(3) in subsection (c)(1)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting “transfer or” before “adoption”; and

(ii) by inserting “, by” after “recommended pri-

ority”;

(B) in subparagraphs (A) and (B), by inserting “adop-

tion” before “by”;

(C) in subparagraph (B), by inserting “or organizations” after “persons”; and

(D) in subparagraph (C), by striking “by” and inserting “transfer to”; and

(4) in subsection (e)—

(A) in the subsection heading, by inserting “OR ADOPTED” after “TRANSFERRED”;

(B) in paragraphs (1) and (2), by striking “transferred” each place it appears and inserting “transferred or adopted”; and

(C) in paragraph (2), by striking “transfer” each place it appears and inserting “transfer or adoption”.

(b) **VETERINARY SCREENING AND CARE FOR MILITARY WORKING DOGS TO BE RETIRED.**—Such section is further amended—

(1) by redesignating subsections (f), (g), and (h) as subsections (g), (h), and (i), respectively; and

(2) by inserting after subsection (e) the following new subsection (f):

“(f) **VETERINARY SCREENING AND CARE FOR MILITARY WORKING DOGS TO BE RETIRED.**—(1)(A) If the Secretary of the military department concerned determines that a military working dog should be retired, such Secretary shall transport the dog to the Veterinary Treatment Facility at Lackland Air Force Base, Texas.

“(B) In the case of a contract working dog to be retired, transportation required by subparagraph (A) is satisfied by the transfer of the dog to the 341st Training Squadron at the end of the dog’s service life as required by section 2410r of this title and assignment of the dog to the Veterinary Treatment Facility referred to in that subparagraph.

“(2)(A) The Secretary of Defense shall ensure that each dog transported as described in paragraph (1) to the Veterinary Treatment Facility referred to in that paragraph is provided with a full veterinary screening, and necessary veterinary care (including

surgery for any mental, dental, or stress-related illness), before transportation of the dog in accordance with subsection (g).

“(B) For purposes of this paragraph, stress-related illness includes illness in connection with post-traumatic stress, anxiety that manifests in a physical ailment, obsessive compulsive behavior, and any other stress-related ailment.

“(3) Transportation is not required under paragraph (1), and screening and care is not required under paragraph (2), for a military working dog located outside the United States if the Secretary of the military department concerned determines that transportation of the dog to the United States would not be in the best interests of the dog for medical reasons.”.

(c) COORDINATION OF SCREENING AND CARE REQUIREMENTS WITH TRANSPORTATION REQUIREMENTS.—Subsection (g) of such section, as redesignated by subsection (b)(1) of this section, is amended to read as follows:

“(g) TRANSPORTATION OF RETIRING MILITARY WORKING DOGS.—Upon completion of veterinary screening and care for a military working dog to be retired pursuant to subsection (f), the Secretary of the military department concerned shall—

“(1) if the dog was at a location outside the United States immediately prior to transportation for such screening and care and a United States citizen or member of the armed forces living abroad agrees to adopt the dog, transport the dog to such location for adoption; or

“(2) for any other dog, transport the dog—

“(A) to the 341st Training Squadron;

“(B) to another location within the United States for transfer or adoption under this section.”.

(d) PRESERVATION OF POLICY ON TRANSFER OF MILITARY WORKING DOGS TO LAW ENFORCEMENT AGENCIES.—Subsection (h) of such section, as so redesignated, is amended in paragraph (3) by striking “adoption of military working dogs” and all that follows through the period at the end and inserting “transfer of military working dogs to law enforcement agencies before the end of the dogs’ useful working lives.”.

(e) CLARIFICATION OF HORSES TREATABLE AS MILITARY ANIMALS.—Subsection (i) of such section, as so redesignated, is amended by striking paragraph (2) and inserting the following new paragraph (2):

“(2) An equid (horse, mule, or donkey) owned by the Department of Defense.”.

(f) CONTRACT TERM FOR CONTRACT WORKING DOGS.—Section 2410r(a) of title 10, United States Code, is amended—

(1) by inserting “, and shall contain a contract term,” after “shall require”;

(2) by inserting “and assigned for veterinary screening and care in accordance with section 2583 of this title” after “341st Training Squadron”; and

(3) by striking “section 2583 of this title” and inserting “such section”.

**SEC. 373. EXTENSION OF AUTHORITY FOR SECRETARY OF DEFENSE TO USE DEPARTMENT OF DEFENSE REIMBURSEMENT RATE FOR TRANSPORTATION SERVICES PROVIDED TO CERTAIN NON-DEPARTMENT OF DEFENSE ENTITIES.**

Section 2642(b) of title 10, United States Code, is amended by striking “October 1, 2019” and inserting “October 1, 2024”.

**SEC. 374. EXTENSION OF AUTHORITY OF SECRETARY OF TRANSPORTATION TO ISSUE NON-PREMIUM AVIATION INSURANCE.**

Section 44310(b) of title 49, United States Code, is amended by striking “December 31, 2019” and inserting “September 30, 2023”.

**SEC. 375. DEFENSE PERSONAL PROPERTY PROGRAM.**

**(a) REPORT ON PERSONAL PROPERTY PROGRAM IMPROVEMENT ACTION PLAN.—**

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Defense for Personnel and Readiness shall jointly submit to the congressional defense committees a report on implementation of the Personal Property Program Improvement Action Plan that was developed by the Personnel Relocation/Household Goods Movement Cross-Functional Team.

(2) **CONTENTS OF REPORT.**—The report required under paragraph (1) shall include updated information on the efforts of the Department of Defense to—

(A) integrate permanent-change-of-station orders with transportation systems;

(B) reduce the number of report dates during peak moving season;

(C) synchronize the communication of information about orders to all parties involved, including industry;

(D) improve lead time for permanent-change-of-station orders;

(E) meet quality assurance inspection standards;

(F) improve the claims review process; and

(G) incorporate predictive analytics to anticipate potentially problematic shipments.

Deadline. (3) **BRIEFING.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment and the Assistant Secretary of Defense for Personnel and Readiness shall jointly provide to the congressional defense committees a briefing on the report required under this subsection.

Deadline. (b) **BUSINESS CASE ANALYSIS.**—Not later than 30 days after the date of the enactment of this Act, the Commander of United States Transportation Command shall submit to the congressional defense committees a business case analysis for the proposed award of a global household goods contract for the defense personal property program.

Analyses. (c) **GAO REPORT.**—Not later than 30 days after the date on which the Commander of United States Transportation Command submits the business case analysis required by subsection (b), the Comptroller General of the United States shall submit to the congressional defense committees a report on a comprehensive study conducted by the Comptroller General that includes—

(1) an analysis of the effects that the outsourcing of the management and oversight of the movement of household goods to a private entity or entities would have on members of the Armed Forces and their families;

(2) a comprehensive cost-benefit analysis; and

(3) recommendations for changes to the strategy of the Department of Defense for the defense personal property program.

Recommendations.

(d) **LIMITATION.**—None of the funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2020 may be used to enter into a global household goods contract until April 1, 2020.

Effective date.

(e) **DEFINITIONS.**—In this section:

(1) The term “global household goods contract” means the solicitation managed by United States Transportation Command to engage a private entity to manage the defense personal property program.

(2) The term “defense personal property program” means the Department of Defense program used to manage the shipment of the baggage and household effects of members of the Armed Forces under section 476 of title 37, United States Code.

**SEC. 376. PUBLIC EVENTS ABOUT RED HILL BULK FUEL STORAGE FACILITY.**

(a) **REQUIREMENT.**—At least once every calendar quarter, the Secretary of the Navy, or the designee of the Secretary, shall hold an event that is open to the public at which the Secretary shall provide up-to-date information about the Red Hill Bulk Fuel Storage Facility.

Time period.

(b) **TERMINATION.**—The requirement to hold events under subsection (a) shall terminate on the earlier of the following dates:

(1) September 30, 2025.

(2) The date on which the Red Hill Bulk Fuel Storage Facility ceases operation.

**SEC. 377. SENSE OF CONGRESS REGARDING INNOVATIVE READINESS TRAINING PROGRAM.**

It is the sense of Congress that—

(1) the Innovative Readiness Training program is an effective training program for members of the Armed Forces and is highly beneficial to civilian-military relationships with local American communities;

(2) due to the geographic complexities and realities of non-contiguous States and territories, Innovative Readiness Training has lent greater benefit to such States and territories while providing unique and realistic training opportunities and deployment readiness for members of the Armed Forces;

(3) the Department of Defense should pursue continued Innovative Readiness Training opportunities, and, where applicable, strongly encourage the use of Innovative Readiness Training in non-contiguous States and territories; and

(4) in considering whether to recommend a project, the Secretary should consider the benefits of the project to the economy of a region damaged by natural disasters.

**SEC. 378. DETONATION CHAMBERS FOR EXPLOSIVE ORDNANCE DISPOSAL.**

Determination.

(a) **IN GENERAL.**—The Secretary of the Navy shall purchase and operate a portable closed detonation chamber and water jet cutting system to be deployed at a former naval bombardment area located outside the continental United States that is part of an active remediation program using amounts made available for environmental restoration, Navy. Upon a determination by the Secretary of the Navy that the chamber has completed the mission of destroying appropriately sized munitions at such former naval bombardment area, the Secretary may deploy the chamber to another location.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated for fiscal year 2020 \$10,000,000 to carry out subsection (a).

## **TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS**

### Subtitle A—Active Forces

Sec. 401. End strengths for active forces.

Sec. 402. Revisions in permanent active duty end strength minimum levels.

### Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.

Sec. 412. End strengths for Reserves on active duty in support of the reserves.

Sec. 413. End strengths for military technicians (dual status).

Sec. 414. Maximum number of reserve personnel authorized to be on active duty for operational support.

Sec. 415. Authorized strengths for Marine Corps Reserves on active duty.

Sec. 416. Modification of authorized strength of Air Force Reserve serving on full-time reserve component duty for administration of the reserves or the National Guard.

### Subtitle C—Authorization of Appropriations

Sec. 421. Military personnel.

## **Subtitle A—Active Forces**

**SEC. 401. END STRENGTHS FOR ACTIVE FORCES.**

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2020, as follows:

(1) The Army, 480,000.

(2) The Navy, 340,500.

(3) The Marine Corps, 186,200.

(4) The Air Force, 332,800.

**SEC. 402. REVISIONS IN PERMANENT ACTIVE DUTY END STRENGTH MINIMUM LEVELS.**

Section 691(b) of title 10, United States Code, is amended by striking paragraphs (1) through (4) and inserting the following new paragraphs:

“(1) For the Army, 480,000.

“(2) For the Navy, 340,500.

“(3) For the Marine Corps, 186,200.

“(4) For the Air Force, 332,800.”.

## Subtitle B—Reserve Forces

### SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2020, as follows:

- (1) The Army National Guard of the United States, 336,000.
- (2) The Army Reserve, 189,500.
- (3) The Navy Reserve, 59,000.
- (4) The Marine Corps Reserve, 38,500.
- (5) The Air National Guard of the United States, 107,700.
- (6) The Air Force Reserve, 70,100.
- (7) The Coast Guard Reserve, 7,000.

(b) END STRENGTH REDUCTIONS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

- (1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and
- (2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

(c) END STRENGTH INCREASES.—Whenever units or individual members of the Selected Reserve of any reserve component are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized strengths of such units and by the total number of such individual members.

### SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2020, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

- (1) The Army National Guard of the United States, 30,595.
- (2) The Army Reserve, 16,511.
- (3) The Navy Reserve, 10,155.
- (4) The Marine Corps Reserve, 2,386.
- (5) The Air National Guard of the United States, 22,637.
- (6) The Air Force Reserve, 4,431.

### SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

(a) IN GENERAL.—The minimum number of military technicians (dual status) as of the last day of fiscal year 2020 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

- (1) For the Army National Guard of the United States, 22,294.
- (2) For the Army Reserve, 6,492.

(3) For the Air National Guard of the United States, 13,569.

(4) For the Air Force Reserve, 8,938.

(b) LIMITATION.—Under no circumstances may a military technician (dual status) employed under the authority of this section be coerced by a State into accepting an offer of realignment or conversion to any other military status, including as a member of the Active, Guard, and Reserve program of a reserve component. If a military technician (dual status) declines to participate in such realignment or conversion, no further action will be taken against the individual or the individual's position.

(c) ADJUSTMENT OF AUTHORIZED STRENGTH.—

(1) IN GENERAL.—If, at the end of fiscal year 2019, the Air National Guard of the United States does not meet its full-time support realignment goals for such fiscal year (as presented in the justification materials of the Department of Defense in support of the budget of the President for such fiscal year under section 1105 of title 31, United States Code), the authorized number of military technicians (dual status) of the Air National Guard of the United States under subsection (a)(3) shall be increased by the number equal to the difference between—

(A) 3,190, which is the number of military technicians (dual status) positions in the Air National Guard of the United States sought to be converted to the Active, Guard, and Reserve program of the Air National Guard during fiscal year 2019; and

(B) the number of realigned positions achieved in the Air National Guard by the end of fiscal year 2019.

(2) LIMITATION.—The increase under paragraph (1) in the authorized number of military technician (dual status) positions described in that paragraph may not exceed 2,292.

(3) DECREASE IN AUTHORIZED NUMBER OF ANGUS RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.—In the event of an adjustment to the authorized number military technicians (dual status) of the Air National Guard of the United States under this subsection, the number of members of the Air National Guard of the United States authorized by section 412(5) to be on active duty as of September 30, 2020, shall be decreased by the number equal to the number of such adjustment.

Deadline.

(d) CERTIFICATION.—Not later than January 1, 2020, the Chief of the National Guard Bureau shall certify to the Committees on Armed Services of the Senate and House of Representatives the number of positions realigned from a military technician (dual status) position to a position in the Active, Guard, and Reserve program of a reserve component in fiscal year 2019.

(e) DEFINITIONS.—In subsections (b), (c), and (d):

(1) The term “realigned position” means any military technician (dual status) position which has been converted or realigned to a position in an Active, Guard, and Reserve program of a reserve component under the full time support rebalancing plan of the Armed Force concerned, regardless of whether such position is encumbered.

(2) The term “Active, Guard, and Reserve program”, in the case of a reserve component, means the program of the reserve component under which Reserves serve on full-time active duty or full-time duty, in the case of members of the



National Guard, for the purpose of organizing, administering, recruiting, instructing, or training such reserve component.

**SEC. 414. MAXIMUM NUMBER OF RESERVE PERSONNEL AUTHORIZED TO BE ON ACTIVE DUTY FOR OPERATIONAL SUPPORT.**

During fiscal year 2020, the maximum number of members of the reserve components of the Armed Forces who may be serving at any time on full-time operational support duty under section 115(b) of title 10, United States Code, is the following:

- (1) The Army National Guard of the United States, 17,000.
- (2) The Army Reserve, 13,000.
- (3) The Navy Reserve, 6,200.
- (4) The Marine Corps Reserve, 3,000.
- (5) The Air National Guard of the United States, 16,000.
- (6) The Air Force Reserve, 14,000.

**SEC. 415. AUTHORIZED STRENGTHS FOR MARINE CORPS RESERVES ON ACTIVE DUTY.**

(a) OFFICERS.—Section 12011(a)(1) of title 10, United States Code, is amended by striking those parts of the table pertaining to the Marine Corps Reserve and inserting the following:

“Marine Corps Reserve:

1,000 .....	99	63	20
1,200 .....	103	67	21
1,300 .....	107	70	22
1,400 .....	111	73	23
1,500 .....	114	76	24
1,600 .....	117	79	25
1,700 .....	120	82	26
1,800 .....	123	85	27
1,900 .....	126	88	28
2,000 .....	129	91	29
2,100 .....	132	94	30
2,200 .....	134	97	31
2,300 .....	136	100	32
2,400 .....	143	105	34
2,500 .....	149	109	35
2,600 .....	155	113	36
2,700 .....	161	118	37
2,800 .....	167	122	39
2,900 .....	173	126	41
3,000 .....	179	130	42”.

(c) SENIOR ENLISTED MEMBERS.—Section 12012(a) of title 10, United States Code, is amended by striking those parts of the table pertaining to the Marine Corps Reserve and inserting the following:

“Marine Corps Reserve:

1,100 .....	50	11
1,200 .....	55	12
1,300 .....	60	13
1,400 .....	65	14

1,500 .....	70	15
1,600 .....	75	16
1,700 .....	80	17
1,800 .....	85	18
1,900 .....	89	19
2,000 .....	93	20
2,100 .....	96	21
2,200 .....	99	22
2,300 .....	101	23
2,400 .....	106	24
2,500 .....	112	25
2,600 .....	116	26
2,700 .....	121	27
2,800 .....	125	28
2,900 .....	130	29
3,000 .....	134	30”.

**SEC. 416. MODIFICATION OF AUTHORIZED STRENGTH OF AIR FORCE RESERVE SERVING ON FULL-TIME RESERVE COMPONENT DUTY FOR ADMINISTRATION OF THE RESERVES OR THE NATIONAL GUARD.**

(a) IN GENERAL.—The table in section 12011(a)(1) of title 10, United States Code, is amended by striking the matter relating to the Air Force Reserve and inserting the following new matter:

“Air Force Reserve

1,000	166	170	100
1,500	245	251	143
2,000	322	330	182
2,500	396	406	216
3,000	467	479	246
3,500	536	550	271
4,000	602	618	292
4,500	665	683	308
5,000	726	746	320
5,500	784	806	325
6,000	840	864	327
7,000	962	990	347
8,000	1,087	1,110	356
10,000	1,322	1,362	395”.

10 USC 12011  
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2019, and shall apply with respect to fiscal years beginning on or after that date.

## Subtitle C—Authorization of Appropriations

### SEC. 421. MILITARY PERSONNEL.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for military personnel, as specified in the funding table in section 4401.

(b) CONSTRUCTION OF AUTHORIZATION.—The authorization of appropriations in subsection (a) supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2020.

## TITLE V—MILITARY PERSONNEL POLICY

### Subtitle A—Officer Personnel Policy

- Sec. 501. Maker of original appointments in a regular or reserve component of commissioned officers previously subject to original appointment in other type of component.
- Sec. 502. Furnishing of adverse information on officers to promotion selection boards.
- Sec. 503. Limitation on number of officers recommendable for promotion by promotion selection boards.
- Sec. 504. Expansion of authority for continuation on active duty of officers in certain military specialties and career tracks.
- Sec. 505. Management policies for joint qualified officers.
- Sec. 506. Modification of authorities on management of deployments of members of the Armed Forces and related unit operating and personnel tempo matters.
- Sec. 507. Personnel tempo of the Armed Forces and the United States Special Operations Command during periods of inapplicability of high-deployment limitations.
- Sec. 508. Permanent authority to defer past age 64 the retirement of chaplains in general and flag officer grades.
- Sec. 509. Higher grade in retirement for officers following reopening of determination or certification of retired grade.
- Sec. 510. Authority of promotion boards to recommend that officers of particular merit be placed higher on promotion list.
- Sec. 510A. Availability on the internet of certain information about officers serving in general or flag officer grades.
- Sec. 510B. Functional badge or insignia upon commission for chaplains.

### Subtitle B—Reserve Component Management

- Sec. 511. Modification of grade level threshold for Junior Reserve Officers' Training Corps.
- Sec. 512. Inclusion of STEM in courses of instruction for the Junior Reserve Officers' Training Corps.
- Sec. 513. Inclusion of homeschooled students in Junior Reserve Officers' Training Corps units.
- Sec. 514. Clarification of eligibility to serve as Commander, Marine Forces Reserve.
- Sec. 515. Extension and periodic evaluation of suicide prevention and resilience program for the reserve components.
- Sec. 516. Authority to defer mandatory separation at age 68 of officers in medical specialties in the reserve components.
- Sec. 517. Modernization of inspection authorities applicable to the National Guard.
- Sec. 518. Consultation with Chief of the National Guard Bureau in the appointment or designation of National Guard property and fiscal officers.
- Sec. 519. Coast Guard Junior Reserve Officers' Training Corps.
- Sec. 520. Repeal of requirement for review of certain Army Reserve officer unit vacancy promotions by commanders of associated active duty units.
- Sec. 520A. Report on methods to enhance domestic response to large scale, complex and catastrophic disasters.

- Sec. 520B. Report and briefing on the Senior Reserve Officers' Training Corps.
- Sec. 520C. Sense of Congress on increase in number of Junior Reserve Officers' Training Corps units.

Subtitle C—General Service Authorities and Correction of Military Records

- Sec. 521. Advice and counsel of trauma experts in review by boards for correction of military records and discharge review boards of certain claims.
- Sec. 522. Reduction in required number of members of discharge review boards.
- Sec. 523. Establishment of process to review a request for upgrade of discharge or dismissal.
- Sec. 524. Prohibition on reduction in the number of personnel assigned to duty with a service review agency.
- Sec. 525. Training of members of boards for correction of military records and discharge review boards on sexual trauma, intimate partner violence, spousal abuse, and related matters.
- Sec. 526. Time requirements for certification of honorable service.
- Sec. 527. Correction of certain discharge characterizations.
- Sec. 528. Development of guidelines for use of unofficial sources of information to determine eligibility of members and former members of the Armed Forces for decorations when the service records are incomplete because of damage to the official record.
- Sec. 529. Strategic plan for diversity and inclusion.
- Sec. 530. Study regarding screening individuals who seek to enlist in the Armed Forces.
- Sec. 530A. Feasibility study regarding notification to Secretary of Homeland Security of honorable discharges of non-citizens.
- Sec. 530B. Sense of Congress regarding accession physicals.

Subtitle D—Military Justice

- Sec. 531. Expansion of pre-referral matters reviewable by military judges and military magistrates in the interest of efficiency in military justice.
- Sec. 532. Command influence.
- Sec. 533. Statute of limitations for certain offenses.
- Sec. 534. Public access to dockets, filings, and court records of courts-martial or other records of trial of the military justice system.
- Sec. 535. Extension of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.
- Sec. 536. Authority for return of personal property to victims of sexual assault who file a Restricted Report before conclusion of related proceedings.
- Sec. 537. Guidelines on sentences for offenses committed under the Uniform Code of Military Justice.
- Sec. 538. Notification of significant events and documentation of preference for prosecution jurisdiction for victims of sexual assault.
- Sec. 539. Increase in number of digital forensic examiners for certain military criminal investigative organizations.
- Sec. 540. Increase in investigative personnel and Victim Witness Assistance Program liaisons.
- Sec. 540A. Training for sexual assault initial disposition authorities on exercise of disposition authority for sexual assault and collateral offenses.
- Sec. 540B. Training for commanders in the Armed Forces on their role in all stages of military justice in connection with sexual assault.
- Sec. 540C. Timely disposition of nonprosecutable sex-related offenses.
- Sec. 540D. Department of Defense-wide policy and military department-specific programs on reinvigoration of the prevention of sexual assault involving members of the Armed Forces.
- Sec. 540E. Recommendations on separate punitive article in the Uniform Code of Military Justice on sexual harassment.
- Sec. 540F. Report on military justice system involving alternative authority for determining whether to prefer or refer charges for felony offenses under the Uniform Code of Military Justice.
- Sec. 540G. Report on standardization among the military departments in collection and presentation of information on matters within the military justice system.
- Sec. 540H. Report on expansion of Air Force safe to report policy across the Armed Forces.
- Sec. 540I. Assessment of racial, ethnic, and gender disparities in the military justice system.
- Sec. 540J. Pilot programs on defense investigators in the military justice system.
- Sec. 540K. Report on preservation of recourse to restricted report on sexual assault for victims of sexual assault following certain victim or third-party communications.

- Sec. 540L. Report on establishment of guardian ad litem program for certain military dependents who are a victim or witness of an offense under the Uniform Code of Military Justice involving abuse or exploitation.
- Sec. 540M. Comptroller General of the United States report on implementation by the Armed Forces of recent statutory requirements on sexual assault prevention and response in the military.
- Sec. 540N. Sense of Congress on the Port Chicago 50.

#### Subtitle E—Other Legal Matters

- Sec. 541. Improvement of certain Special Victims' Counsel authorities.
- Sec. 542. Availability of Special Victims' Counsel at military installations.
- Sec. 543. Notification of issuance of military protective order to civilian law enforcement.
- Sec. 544. Copyright protection for civilian faculty of certain accredited institutions.
- Sec. 545. Termination of leases of premises and motor vehicles of servicemembers who incur catastrophic injury or illness or die while in military service.
- Sec. 546. Military orders required for termination of leases pursuant to the Servicemembers Civil Relief Act.
- Sec. 547. Preservation of right to bring class action under Servicemembers Civil Relief Act.
- Sec. 548. Legal counsel for victims of alleged domestic violence offenses.
- Sec. 549. Notice to victims of alleged sexual assault of pendency of further administrative action following a determination not to refer to trial by court-martial.
- Sec. 550. Treatment of information in Catch a Serial Offender Program for certain purposes.
- Sec. 550A. Policies and procedures on registration at military installations of civilian protective orders applicable to members of the Armed Forces assigned to such installations and certain other individuals.
- Sec. 550B. Defense Advisory Committee for the Prevention of Sexual Misconduct.
- Sec. 550C. Training for Special Victims' Counsel on civilian criminal justice matters in the States of the military installations to which assigned.
- Sec. 550D. Enhancing the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.
- Sec. 550E. Feasibility study on establishment of database of military protective orders.
- Sec. 550F. GAO review of USERRA and SCRA.

#### Subtitle F—Member Education

- Sec. 551. Authority for detail of certain enlisted members of the Armed Forces as students at law schools.
- Sec. 552. Inclusion of Coast Guard in Department of Defense STARBASE Program.
- Sec. 553. Degree granting authority for United States Army Armament Graduate School; limitation on establishment of certain educational institutions.
- Sec. 554. Prohibition on off-duty employment for cadets and midshipmen completing obligated service after graduation.
- Sec. 555. Consideration of request for transfer of a cadet or midshipman at a military service academy who is the victim of a sexual assault or related offense.
- Sec. 556. Redesignation of the Commandant of the United States Air Force Institute of Technology as the Director and Chancellor of such Institute.
- Sec. 557. Eligibility of additional enlisted members for associate degree programs of the Community College of the Air Force.
- Sec. 558. Speech disorders of cadets and midshipmen.
- Sec. 559. Requirement to continue provision of tuition assistance for members of the Armed Forces.
- Sec. 560. Information on institutions of higher education participating in the Department of Defense Tuition Assistance Program.
- Sec. 560A. Inclusion of information on free credit monitoring in annual financial literacy briefing.
- Sec. 560B. Programs to facilitate the award of private pilot's certificates.

#### Subtitle G—Member Training and Transition

- Sec. 561. Requirement to provide information regarding benefits claims to members during TAP counseling.
- Sec. 562. Participation of other Federal agencies in the SkillBridge apprenticeship and internship program for members of the Armed Forces.
- Sec. 563. First modification of elements of report on the improved Transition Assistance Program.
- Sec. 564. Second modification of elements of report on the improved Transition Assistance Program.

- Sec. 565. Prohibition on gender-segregated training at Marine Corps Recruit Depots.
- Sec. 566. Assessment of deaths of recruits under the jurisdiction of the Secretaries of the military departments.
- Sec. 567. Review of Department of Defense training programs regarding disinformation campaigns.
- Sec. 568. Command matters in connection with transition assistance programs.
- Sec. 569. Machine readability and electronic transferability of Certificate of Release or Discharge from Active Duty (DD Form 214).
- Sec. 570. Records of service for Reserves.
- Sec. 570A. Limitations and requirements in connection with separations for members of the Armed Forces who suffer from mental health conditions in connection with a sex-related, intimate partner violence-related, or spousal-abuse offense.
- Sec. 570B. Prohibition on involuntary separation of certain members of the Armed Forces; consideration of military service in removal determinations.
- Sec. 570C. Inclusion of question regarding immigration status on preseparation counseling checklist (DD Form 2648).
- Sec. 570D. Counseling for members of the Armed Forces who are not citizens of the United States on naturalization in the United States.
- Sec. 570E. Pilot program on information sharing between Department of Defense and designated relatives and friends of members of the Armed Forces regarding the experiences and challenges of military service.
- Sec. 570F. Connections of members retiring or separating from the Armed Forces with community-based organizations and related entities.
- Sec. 570G. Pilot program regarding online application for the Transition Assistance Program.

#### Subtitle H—Military Family Readiness and Dependents' Education

- Sec. 571. Authorizing members to take leave for a birth or adoption in more than one increment.
- Sec. 572. Deferred deployment for members who give birth.
- Sec. 573. Authority of the Secretary concerned to transport remains of a covered decedent to no more than two places selected by the person designated to direct disposition of the remains.
- Sec. 574. Military funeral honors matters.
- Sec. 575. Improvement of occupational license portability for relocated spouses of members of the uniformed services.
- Sec. 576. Continued eligibility for education and training opportunities for spouses of promoted members.
- Sec. 577. Modification to authority to reimburse for State licensure and certification costs of a spouse of a servicemember arising from relocation.
- Sec. 578. Clarification regarding eligibility to transfer entitlement under Post-9/11 Educational Assistance Program.
- Sec. 579. Annual State report card.
- Sec. 580. Improvements to child care for members of the Armed Forces.
- Sec. 580A. Transportation of remains of casualties; travel expenses for next of kin.
- Sec. 580B. Meetings of officials of the Department of Defense with representative groups of survivors of deceased members of the Armed Forces.
- Sec. 580C. Information and opportunities for registration for voting and absentee ballot requests for members of the Armed Forces undergoing deployment overseas.
- Sec. 580D. Study on two-way military ballot barcode tracking.
- Sec. 580E. Assistance to schools with military dependent students.
- Sec. 580F. First expansion of the My Career Advancement Account program for military spouses.
- Sec. 580G. Second expansion of the My Career Advancement Account program for military spouses.
- Sec. 580H. Report on training and support available to military spouses.
- Sec. 580I. Rikatak Guest Student Program at United States Army Garrison – Kwajalein Atoll.

#### Subtitle I—Decorations and Awards

- Sec. 581. Modification of authorities on eligibility for and replacement of gold star lapel buttons.
- Sec. 582. Standardization of honorable service requirement for award of military decorations.
- Sec. 583. Authorization for award of the Medal of Honor to John J. Duffy for acts of valor in Vietnam.
- Sec. 584. Review of World War I valor medals.

#### Subtitle J—Miscellaneous Reports and Other Matters

- Sec. 591. Clarification of the term “assault” for purposes of Workplace and Gender Relations Surveys.

- Sec. 592. Inclusion of certain veterans on temporary disability or permanent disabled retirement lists in military adaptive sports programs.
- Sec. 593. Questions in surveys regarding extremist activity in the workplace.
- Sec. 594. Study on best practices for providing financial literacy education for separating members of the Armed Forces.
- Sec. 595. Report on oversight of authorized strengths of certain grades of commissioned regular and reserve officers of the Armed Forces.
- Sec. 596. Report on certain waivers.
- Sec. 597. Notifications on manning of afloat naval forces.
- Sec. 598. Report regarding use of aerial systems of the Department of Defense to support agencies of States, Territories, and the Federal Government.
- Sec. 599. Information for members of the Armed Forces on availability of services of the Department of Veterans Affairs relating to sexual trauma.
- Sec. 599A. Authority to issue an honorary promotion to Colonel Charles E. McGee, United States Air Force (ret.), to the grade of brigadier general.
- Sec. 599B. Authority to issue an honorary and posthumous promotion to Lieutenant Colonel Richard Cole, United States Air Force (ret.), to the grade of colonel.
- Sec. 599C. Sense of Congress on the honorable and distinguished service of General Joseph F. Dunford, United States Marine Corps, to the United States.

## Subtitle A—Officer Personnel Policy

### SEC. 501. MAKER OF ORIGINAL APPOINTMENTS IN A REGULAR OR RESERVE COMPONENT OF COMMISSIONED OFFICERS PREVIOUSLY SUBJECT TO ORIGINAL APPOINTMENT IN OTHER TYPE OF COMPONENT.

(a) MAKER OF REGULAR APPOINTMENTS IN TRANSFER FROM RESERVE ACTIVE-STATUS LIST TO ACTIVE-DUTY LIST.—Section 531(c) of title 10, United States Code, is amended by striking “the Secretary concerned” and inserting “the Secretary of Defense”.

(b) MAKER OF RESERVE APPOINTMENTS IN TRANSFER FROM ACTIVE-DUTY LIST TO RESERVE ACTIVE-STATUS LIST.—Section 12203(b) of such title is amended by striking “the Secretary concerned” and inserting “the Secretary of Defense”.

(c) REPORT.—Not later than April 1, 2020, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the following:

(1) The average number per fiscal year, during fiscal years 2010 through 2019, of transfers of appointment from regular officer to reserve officer in the Armed Forces, set forth by each of transfers requiring and transfers not requiring appointment by and with the advice and consent of the Senate.

(2) The average amount of time required per fiscal year, during such fiscal years, for completion of a transfer of appointment from regular officer to reserve officer in situations not requiring appointment by and with the advice and consent of the Senate.

(3) An assessment of the number of officers who experience a break-in-service due to delays in transfer of appointment from regular officer to reserve officer as a result of the requirement for appointment by and with the advice and consent of the Senate.

Assessment.

(4) An assessment of the feasibility and advisability of each of the following:

Assessment.

(A) Appointment of regular officers as both a regular officer and a reserve officer immediately upon commissioning.

(B) Consolidation of the provisions of title 10, United States Code, relating to appointment as a regular or reserve

Recommendations.

officer in a manner designed to facilitate and improve officer retention.

(5) Such other recommendations for legislative or administrative action as the Secretary considers appropriate to improve the rapid transfer of appointment of an officer from regular status to reserve status.

**SEC. 502. FURNISHING OF ADVERSE INFORMATION ON OFFICERS TO PROMOTION SELECTION BOARDS.**

(a) EXPANSION OF GRADES OF OFFICERS FOR WHICH INFORMATION IS FURNISHED.—Section 615(a)(3) of title 10, United States Code, is amended—

(1) by inserting “(A)” after “(3)”;

(2) in subparagraph (A), as designated by paragraph (1), by striking “a grade above colonel or, in the case of the Navy, captain” and inserting “a grade specified in subparagraph (B)”;

(3) by adding at the end the following new subparagraph: “(B) A grade specified in this subparagraph is as follows:

“(i) In the case of a regular officer, a grade above captain or, in the case of the Navy, lieutenant.

“(ii) In the case of a reserve officer, a grade above lieutenant colonel or, in the case of the Navy, commander.”.

(b) FURNISHING AT EVERY PHASE OF CONSIDERATION.—Such section is further amended by adding at the end the following new subparagraph:

“(C) The standards and procedures referred to in subparagraph (A) shall require the furnishing to the selection board, and to each individual member of the board, the information described in that subparagraph with regard to an officer in a grade specified in subparagraph (B) at each stage or phase of the selection board, concurrent with the screening, rating, assessment, evaluation, discussion, or other consideration by the board or member of the official military personnel file of the officer, or of the officer.”.

10 USC 615 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply with respect to the proceedings of promotion selection boards convened under section 611(a) of title 10, United States Code, after that date.

**SEC. 503. LIMITATION ON NUMBER OF OFFICERS RECOMMENDABLE FOR PROMOTION BY PROMOTION SELECTION BOARDS.**

(a) IN GENERAL.—Section 616 of title 10, United States Code is amended—

(1) by redesignating subsections (d), (e), (f), and (g) as subsections (e), (f), (g), and (h), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) The number of officers recommended for promotion by a selection board convened under section 611(a) of this title may not exceed the number equal to 95 percent of the number of officers included in the promotion zone established under section 623 of this title for consideration by the board.”.

10 USC 616 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply with respect to consideration by promotion selection boards convened under section 611(a) of title 10, United States



Code, of promotion zones that are established under section 623 of that title on or after that date.

**SEC. 504. EXPANSION OF AUTHORITY FOR CONTINUATION ON ACTIVE DUTY OF OFFICERS IN CERTAIN MILITARY SPECIALTIES AND CAREER TRACKS.**

Section 637a(a) of title 10, United States Code, is amended by inserting “separation or” after “provided for the”.

**SEC. 505. MANAGEMENT POLICIES FOR JOINT QUALIFIED OFFICERS.**

Section 661(d)(3)(B) of title 10, United States Code, is amended in the third sentence by inserting “or a designee of the Chairman who is an officer of the armed forces in grade O–9 or higher” before the period.

**SEC. 506. MODIFICATION OF AUTHORITIES ON MANAGEMENT OF DEPLOYMENTS OF MEMBERS OF THE ARMED FORCES AND RELATED UNIT OPERATING AND PERSONNEL TEMPO MATTERS.**

(a) **LIMITATION ON SCOPE OF DELEGATIONS OF APPROVAL OF EXCEPTIONS TO DEPLOYMENT THRESHOLDS.**—Paragraph (3) of section 991(a) of title 10, United States Code, is amended by striking “be delegated to—” and all that follows and inserting “be delegated to a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.”.

(b) **SEPARATE POLICIES ON DWELL TIME FOR REGULAR AND RESERVE MEMBERS.**—Paragraph (4) of such section is amended—

(1) by striking “addresses the amount” and inserting “addresses each of the following:

“(A) The amount.”;

(2) in subparagraph (A), as designated by paragraph (1), by inserting “regular” before “member”; and

(3) by adding at the end the following new subparagraph:

“(B) The amount of dwell time a reserve member of the armed forces remains at the member’s permanent duty station after completing a deployment of 30 days or more in length.”.

**SEC. 507. PERSONNEL TEMPO OF THE ARMED FORCES AND THE UNITED STATES SPECIAL OPERATIONS COMMAND DURING PERIODS OF INAPPLICABILITY OF HIGH-DEPLOYMENT LIMITATIONS.**

(a) **IN GENERAL.**—Section 991(d) of title 10, United States Code, is amended—

(1) by inserting “(1)” before “The Secretary”; and

(2) by adding at the end the following new paragraph:

“(2)(A) Whenever a waiver is in effect under paragraph (1), the member or group of members covered by the waiver shall be subject to specific and measurable deployment thresholds established and maintained for purposes of this subsection.

“(B) Thresholds under this paragraph may be applicable—

“(i) uniformly, Department of Defense-wide; or

“(ii) separately, with respect to each armed force or the United States Special Operations Command.

“(C) If thresholds under this paragraph are applicable Department-wide, such thresholds shall be established and maintained by the Under Secretary of Defense for Personnel and Readiness. If such thresholds are applicable only to one armed force or the Under States Special Operations Command, such thresholds shall

be established and maintained respectively by the Secretary of the Army, the Secretary of the Navy (other than with respect to the Marine Corps), the Secretary of the Air Force, the Commandant of the Marine Corps (with respect to the Marine Corps), and the Commander of the United States Special Operations Command, as applicable.

“(D) In undertaking recordkeeping for purposes of subsection (c), the Under Secretary shall, in conjunction with the officials and officers referred to in subparagraph (C), collect complete and reliable personnel tempo data of members described in subparagraph (A) in order to ensure that the Department, the armed forces, and the United States Special Operations Command fully and completely monitor personnel tempo under any waiver authorized under paragraph (1) and the effect of such waiver on the armed forces.”.

10 USC 991 note.

(b) **DEADLINE FOR IMPLEMENTATION.**—Paragraph (2) of section 991(d) of title 10, United States Code, as added by subsection (a), shall be fully implemented by not later than March 1, 2020.

**SEC. 508. PERMANENT AUTHORITY TO DEFER PAST AGE 64 THE RETIREMENT OF CHAPLAINS IN GENERAL AND FLAG OFFICER GRADES.**

Section 1253(c) of title 10, United States Code, is amended by striking paragraph (3).

**SEC. 509. HIGHER GRADE IN RETIREMENT FOR OFFICERS FOLLOWING REOPENING OF DETERMINATION OR CERTIFICATION OF RETIRED GRADE.**

(a) **ADVICE AND CONSENT OF SENATE REQUIRED FOR HIGHER GRADE.**—Section 1370(f) of title 10, United States Code, is amended—

- (1) by redesignating paragraph (5) as paragraph (6); and
- (2) by inserting after paragraph (4) the following new paragraph (5):

“(5) If the retired grade of an officer is proposed to be increased through the reopening of the determination or certification of officer’s retired grade, the increase in the retired grade shall be made by the Secretary of Defense, by and with the advice and consent of the Senate.”.

(b) **RECALCULATION OF RETIRED PAY.**—Paragraph (6) of such section, as redesignated by subsection (a)(1), is amended—

- (1) by inserting “or increased” after “reduced”;
- (2) by inserting “as a result of the reduction or increase” after “any modification of the retired pay of the officer”;
- (3) by inserting “or increase” after “the reduction”; and
- (4) by adding at the end the following new sentence: “An officer whose retired grade is increased as described in the preceding sentence shall not be entitled to an increase in retired pay for any period before the effective date of the increase.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply to an increase in the retired grade of an officer that occurs through a reopening of the determination or certification of the officer’s retired grade on or after that date, regardless of when the officer retired.

Applicability.  
10 USC 1370  
note.

**SEC. 510. AUTHORITY OF PROMOTION BOARDS TO RECOMMEND THAT OFFICERS OF PARTICULAR MERIT BE PLACED HIGHER ON PROMOTION LIST.**

(a) IN GENERAL.—Section 14108 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f) HIGHER PLACEMENT OF OFFICERS OF PARTICULAR MERIT ON PROMOTION LIST.—(1) In selecting officers to be recommended for promotion, a promotion board may, when authorized by the Secretary concerned, recommend that officers of particular merit, from among those officers selected for promotion, be placed higher on the promotion list established by the Secretary under section 14308(a) of this title.

“(2) A promotion board may make a recommendation under paragraph (1) only if an officer receives the recommendation of—

“(A) a majority of the members of the promotion board;

or

“(B) an alternative requirement established by the Secretary concerned and furnished to the promotion board as part of the guidelines under section 14107 of this title.

“(3) For officers who receive recommendations under paragraph (1), the board shall recommend the order in which those officers should be placed on the promotion list.”

(b) REPORTS REGARDING RECOMMENDATIONS THAT OFFICERS OF PARTICULAR MERIT BE PLACED HIGHER ON PROMOTION LIST.—Section 14109 of such title is amended by adding at the end the following new subsection:

“(d) REPORT OF OFFICERS RECOMMENDED FOR HIGHER PLACEMENT ON PROMOTION LIST.—A promotion board convened under section 14101(a) of this title shall, when authorized under section 14108(f) of this title, include in its report to the Secretary concerned—

“(1) the names of those officers the promotion board recommends be placed higher on the promotion list; and

“(2) the order in which the promotion board recommends those officers should be placed on the promotion list.”

(c) OFFICERS OF PARTICULAR MERIT APPEARING HIGHER ON PROMOTION LIST.—Section 14308(a) of such title is amended in the first sentence by inserting “or based on particular merit, as determined by the promotion board” before the period.

**SEC. 510A. AVAILABILITY ON THE INTERNET OF CERTAIN INFORMATION ABOUT OFFICERS SERVING IN GENERAL OR FLAG OFFICER GRADES.**

10 USC 525 note.

(a) AVAILABILITY REQUIRED.—

(1) IN GENERAL.—The Secretary of each military department shall make available on an internet website of such department available to the public information specified in paragraph (2) on each officer in a general or flag officer grade under the jurisdiction of such Secretary, including any such officer on the reserve active-status list.

(2) INFORMATION.—The information on an officer specified by this paragraph to be made available pursuant to paragraph (1) is the information as follows:

(A) The officer’s name.

(B) The officer’s current grade, duty position, command or organization, and location of assignment.

Summary list.

(C) A summary list of the officer’s past duty assignments while serving in a general or flag officer grade.

(b) **ADDITIONAL PUBLIC NOTICE ON CERTAIN OFFICERS.**—Whenever an officer in a grade of O–7 or above is assigned to a new billet or reassigned from a current billet, the Secretary of the military department having jurisdiction of such officer shall make available on an internet website of such department available to the public a notice of such assignment or reassignment.

(c) **LIMITATION ON WITHHOLDING OF CERTAIN INFORMATION OR NOTICE.**—

(1) **LIMITATION.**—The Secretary of a military department may not withhold the information or notice specified in subsections (a) and (b) from public availability pursuant to subsection (a), unless and until the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives in writing of the information or notice that will be so withheld, together with justification for withholding the information or notice from public availability.

(2) **LIMITED DURATION OF WITHHOLDING.**—The Secretary concerned may withhold from the public under paragraph (1) information or notice on an officer only on the basis of individual risk or national security, and may continue to withhold such information or notice only for so long as the basis for withholding remains in force.

10 USC 771 note  
prec.

**SEC. 510B. FUNCTIONAL BADGE OR INSIGNIA UPON COMMISSION FOR CHAPLAINS.**

A military chaplain shall receive a functional badge or insignia upon commission.

## **Subtitle B—Reserve Component Management**

**SEC. 511. MODIFICATION OF GRADE LEVEL THRESHOLD FOR JUNIOR RESERVE OFFICERS’ TRAINING CORPS.**

Section 2031(b)(1) of title 10, United States Code, is amended by striking “above the 8th grade” each place it appears and inserting “above the 7th grade and physically co-located with the 9th grade participating unit”.

**SEC. 512. INCLUSION OF STEM IN COURSES OF INSTRUCTION FOR THE JUNIOR RESERVE OFFICERS’ TRAINING CORPS.**

(a) **IN GENERAL.**—Section 2031(b)(3) of title 10, United States Code, is amended by inserting “and which may include instruction or activities in the fields of science, technology, engineering, and mathematics” after “duration”.

10 USC 2031  
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect 180 days after the date of the enactment of this Act.

**SEC. 513. INCLUSION OF HOMESCHOOLED STUDENTS IN JUNIOR RESERVE OFFICERS’ TRAINING CORPS UNITS.**

Section 2031 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(g)(1) Each public secondary educational institution that maintains a unit under this section shall permit membership in the

unit to homeschooled students residing in the area served by the institution who are qualified for membership in the unit (but for lack of enrollment in the institution).

“(2) A student who is a member of a unit pursuant to this subsection shall count toward the satisfaction by the institution concerned of the requirement in subsection (b)(1) relating to the minimum number of student members in the unit necessary for the continuing maintenance of the unit.”.

**SEC. 514. CLARIFICATION OF ELIGIBILITY TO SERVE AS COMMANDER, MARINE FORCES RESERVE.**

(a) **IN GENERAL.**—Section 8084(b)(1) of title 10, United States Code, is amended by striking “general officers of the Marine Corps (as defined in section 8001(2))” and inserting “general officers of the Marine Corps Reserve”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date that is one year after the date of the enactment of this Act and shall apply to appointments made after such date.

10 USC 8084  
note.

**SEC. 515. EXTENSION AND PERIODIC EVALUATION OF SUICIDE PREVENTION AND RESILIENCE PROGRAM FOR THE RESERVE COMPONENTS.**

Section 10219 of title 10, United States Code, is amended—

- (1) by redesignating subsection (g) as subsection (h);
- (2) in subsection (h), as redesignated by paragraph (1), by striking “2020” and inserting “2025”; and
- (3) by inserting after subsection (f) the following new subsection (g):

“(g) **TRIENNIAL EVALUATION.**—The Secretary shall evaluate the program every third year beginning in 2022 until the program terminates to determine whether the program effectively—

- “(1) provides training and assistance under subsections (b), (c), and (d); and
- “(2) implements subsection (e).”.

Effective date.

**SEC. 516. AUTHORITY TO DEFER MANDATORY SEPARATION AT AGE 68 OF OFFICERS IN MEDICAL SPECIALTIES IN THE RESERVE COMPONENTS.**

Section 14703(b) of title 10, United States Code, is amended—

- (1) by striking “An” and inserting “(1) Subject to paragraph (2), an”; and
- (2) by adding at the end the following new paragraph (2):

“(2) The Secretary concerned may, with the consent of the officer, retain in an active status an officer in a medical specialty described in subsection (a) beyond the date described in paragraph (1) of this subsection if the Secretary concerned determines that such retention is necessary to the military department concerned. Each such retention shall be made on a case-by-case basis and for such period as the Secretary concerned determines appropriate.”.

Determinations.

**SEC. 517. MODERNIZATION OF INSPECTION AUTHORITIES APPLICABLE TO THE NATIONAL GUARD.**

(a) **MODERNIZATION OF INSPECTION AUTHORITIES OF SECRETARIES OF THE ARMY AND AIR FORCE.**—Subsection (a) of section 105 of title 32, United States Code, is amended—

- (1) in the matter preceding paragraph (1)—

(A) by striking “by him, the Secretary of the Army shall have” and inserting “by such Secretary, the Secretary of the Army and the Secretary of the Air Force shall each have”;

(B) by striking “, if necessary,”; and

(C) by striking “the Regular Army” and inserting “the Regular Army or the Regular Air Force”;

(2) by striking “Army National Guard” each place it appears and inserting “Army National Guard or Air National Guard”; and

(3) by striking the flush matter following paragraph (7).

(b) INSPECTION AUTHORITY OF CHIEF OF THE NATIONAL GUARD BUREAU ON BEHALF OF SECRETARIES.—Such section is further amended by adding at the end the following new subsection:

“(c) The Chief of the National Guard Bureau may have an inspection described in subsection (a) made by inspectors general, or by commissioned officers of the Army National Guard of the United States or the Air National Guard of the United States detailed for that purpose, on behalf of the Secretary of the Army or the Secretary of the Air Force. Any such inspection may be made only with the approval of the Secretary of the Army or the Secretary of the Air Force, as applicable.”

**SEC. 518. CONSULTATION WITH CHIEF OF THE NATIONAL GUARD BUREAU IN THE APPOINTMENT OR DESIGNATION OF NATIONAL GUARD PROPERTY AND FISCAL OFFICERS.**

Section 708(a) of title 32, United States Code, is amended in the first sentence by inserting “, in consultation with the Chief of the National Guard Bureau,” after “shall”.

**SEC. 519. COAST GUARD JUNIOR RESERVE OFFICERS’ TRAINING CORPS.**

(a) IN GENERAL.—Chapter 3 of title 14, United States Code, is amended by adding at the end the following new section:

14 USC 320.

**“§ 320. Coast Guard Junior Reserve Officers’ Training Corps**

“(a) ESTABLISHMENT.—The Secretary of the department in which the Coast Guard is operating may establish and maintain a Junior Reserve Officers’ Training Corps, organized into units, at public and private secondary educational institutions.

“(b) APPLICABILITY.—Except as provided in subsection (c), the provisions of chapter 102 of title 10 shall apply to a Junior Reserve Officers’ Training Corps established and maintained under this section in the same manner that such provisions apply to the Junior Reserve Officers’ Training Corps of each military department. For purposes of the application of such provisions to this section—

“(1) any reference in such provisions to a ‘military department’ shall be treated as a reference to the department in which the Coast Guard is operating; and

“(2) any reference in such provisions to a ‘Secretary of a military department’, a ‘Secretary concerned’, or the ‘Secretary of Defense’ shall be treated as a reference to the Secretary of the department in which the Coast Guard is operating.

“(c) EXCEPTION.—The requirements of chapter 102 of title 10 shall not apply to a unit of the Junior Reserve Officers’ Training Corps established by the Secretary of the department in which the Coast Guard is operating before the date of the enactment

of this section unless the Secretary determines it is appropriate to apply such requirements to such unit.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

14 USC 301 prec.

“320. Coast Guard Junior Reserve Officers’ Training Corps.”

**SEC. 520. REPEAL OF REQUIREMENT FOR REVIEW OF CERTAIN ARMY RESERVE OFFICER UNIT VACANCY PROMOTIONS BY COMMANDERS OF ASSOCIATED ACTIVE DUTY UNITS.**

Section 1113 of the Army National Guard Combat Readiness Reform Act of 1992 (Public Law 102–484; 10 U.S.C. 10105 note) is repealed.

**SEC. 520A. REPORT ON METHODS TO ENHANCE DOMESTIC RESPONSE TO LARGE SCALE, COMPLEX AND CATASTROPHIC DISASTERS.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation and coordination with the Federal Emergency Management Agency, the National Security Council, the Council of Governors, and the National Governors Association, shall submit to the congressional defense committees, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the plan of the Department to establish policy and processes to implement the authority under section 502 of title 32, United States Code. The report shall include a detailed examination of the policy framework consistent with existing authorities, identify major statutory or policy impediments to implementation, and make recommendations for legislation as appropriate.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the current policy and processes whereby governors can request activation of the National Guard under title 32, United States Code, as part of the response to large scale, complex, catastrophic disasters that are supported by the Federal Government and, if no formal process exists in policy, the Secretary of Defense shall provide a timeline and plan to establish such a policy, including consultation with the Council of Governors and the National Governors Association;

Timeline.  
Plan.  
Consultation.

(2) the Secretary of Defense’s assessment, informed by consultation with the Federal Emergency Management Agency, the National Security Council, the Council of Governors, and the National Governors Association, regarding the sufficiency of current authorities for the reimbursement of National Guard and Reserve manpower during large scale, complex, catastrophic disasters under title 10 and title 32, United States Code, and specifically whether reimbursement authorities are sufficient to ensure that military training and readiness are not degraded to fund disaster response, or whether invoking such reimbursement authorities degrades the effectiveness of the Disaster Relief Fund;

(3) the Department of Defense’s plan to ensure there is parallel and consistent policy in the application of the authorities granted under section 12304a of title 10, United States

Recommendations.

Code, and section 502(f) of title 32, United States Code, including—

- Recommendations.
- (A) a description of the disparities between benefits and protections under Federal law versus State active duty;
  - (B) recommended solutions to achieve parity at the Federal level; and
  - (C) recommended changes at the State level, if appropriate; and
  - (4) the Department of Defense’s plan to ensure there is parity of benefits and protections for military members employed as part of the response to large scale, complex, catastrophic disasters under title 32 or title 10, United States Code, and recommendations for addressing any shortfalls.

**SEC. 520B. REPORT AND BRIEFING ON THE SENIOR RESERVE OFFICERS’ TRAINING CORPS.**

Assessments.

(a) REPORT ON VARIOUS EXPANSIONS OF THE CORPS.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the following:

(1) An assessment of the feasibility and advisability of distance learning programs for the Senior Reserve Officers’ Training Corps for students at educational institutions who reside outside the viable range for a cross-town program.

(2) An assessment of the feasibility and advisability of expanding the eligibility of institutions authorized to maintain a unit of the Senior Reserve Officers’ Training Corps to include community colleges.

Deadline.

(b) BRIEFING ON LONG-TERM EFFECTS ON THE CORPS OF THE OPERATION OF CERTAIN RECENT PROHIBITIONS.—

(1) BRIEFING REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall brief the congressional defense committees on the effects of the prohibitions in section 8032 of the Department of Defense Appropriations Act, 2019 (division A of Public Law 115–245) on the long-term viability of the Senior Reserve Officers’ Training Corps.

Assessments.

(2) ELEMENTS.—The matters addressed by the briefing under paragraph (1) shall include an assessment of the effects of the prohibitions described in paragraph (1) on the following:

(A) Readiness.

(B) The efficient manning and administration of Senior Reserve Officers’ Training Corps units.

(C) The ability of the Armed Forces to commission on a yearly basis the number and quality of new officers they need and that are representative of the nation as a whole.

(D) The availability of Senior Reserve Officers’ Training Corps scholarships in rural areas.

(E) Whether the Senior Reserve Officers’ Training Corps program produces officers representative of the demographic and geographic diversity of the United States, especially with respect to urban areas, and whether restrictions on establishing or disestablishing units of the Corps affects the diversity of the officer corps of the Armed Forces.



**SEC. 520C. SENSE OF CONGRESS ON INCREASE IN NUMBER OF JUNIOR RESERVE OFFICERS' TRAINING CORPS UNITS.**

It is the sense of Congress that the Junior Reserve Officers' Training Corps was supported in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) and should be increased in fiscal year 2020 to include not fewer than 3,700 units nationwide.

## **Subtitle C—General Service Authorities and Correction of Military Records**

**SEC. 521. ADVICE AND COUNSEL OF TRAUMA EXPERTS IN REVIEW BY BOARDS FOR CORRECTION OF MILITARY RECORDS AND DISCHARGE REVIEW BOARDS OF CERTAIN CLAIMS.**

(a) **BOARDS FOR CORRECTION OF MILITARY RECORDS.**—Section 1552(g) of title 10, United States Code, is amended—

(1) by inserting “(1)” after “(g)”; and

(2) by adding at the end the following new paragraph:

“(2) If a board established under subsection (a)(1) is reviewing a claim described in subsection (h), the board shall seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with post-traumatic stress disorder or traumatic brain injury or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

“(3) If a board established under subsection (a)(1) is reviewing a claim in which sexual trauma, intimate partner violence, or spousal abuse is claimed, the board shall seek advice and counsel in the review from an expert in trauma specific to sexual assault, intimate partner violence, or spousal abuse, as applicable.”.

(b) **DISCHARGE REVIEW BOARDS.**—Section 1553(d)(1) of such title is amended—

(1) by inserting “(A)” after “(1)”; and

(2) by adding at the end the following new subparagraph:

“(B) In the case of a former member described in paragraph (3)(B) who claims that the former member's post-traumatic stress disorder or traumatic brain injury as described in that paragraph is based in whole or in part on sexual trauma, intimate partner violence, or spousal abuse, a board established under this section to review the former member's discharge or dismissal shall seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with post-traumatic stress disorder or traumatic brain injury or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.”.

**SEC. 522. REDUCTION IN REQUIRED NUMBER OF MEMBERS OF DISCHARGE REVIEW BOARDS.**

Section 1553(a) of title 10, United States Code, is amended by striking “five” and inserting “not fewer than three”.

**SECTION 523. ESTABLISHMENT OF PROCESS TO REVIEW A REQUEST FOR UPGRADE OF DISCHARGE OR DISMISSAL.**

(a) ESTABLISHMENT.—Chapter 79 of title 10, United States Code, is amended by inserting after section 1553 the following new section 1553a:

10 USC 1553a. **“§ 1553a. Review of a request for upgrade of discharge or dismissal**

“(a) ESTABLISHMENT.—The Secretary of Defense shall establish a process by which to conduct a final review of a request for an upgrade in the characterization of a discharge or dismissal.

“(b) CONSIDERATION; RECOMMENDATION.—(1) Upon the request of a petitioner, the Secretary of Defense shall review the findings and decisions of the boards established under sections 1552 and 1553 of this title regarding the final review of a request for an upgrade in the characterization of a discharge or dismissal.

“(2) The Secretary of Defense may recommend that the Secretary of the military department concerned upgrade the characterization of the discharge or dismissal of the petitioner if the Secretary of Defense determines that such recommendation is appropriate after review under paragraph (1).

“(c) DEFINITIONS.—In this section:

“(1) The term ‘final review of a request for an upgrade in the characterization of a discharge or dismissal’ means a request by a petitioner for an upgrade to the characterization of a discharge or dismissal—

“(A) that was not granted under sections 1552 and 1553 of this title; and

“(B) regarding which the Secretary of Defense determines the petitioner has exhausted all remedies available to the petitioner under sections 1552 and 1553 of this title.

“(2) The term ‘petitioner’ means a member or former member of the armed forces (or if the member or former member is dead, the surviving spouse, next of kin, or legal representative of the member or former member) whose request for an upgrade to the characterization of a discharge or dismissal was not granted under sections 1552 and 1553 of this title.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

10 USC 1551  
prec.

(1) TABLE OF SECTIONS.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1553 the following new item:

“1553a. Review of a request for upgrade of discharge or dismissal.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 1552(a)(4) of such title is amended to read as follows:

“(4)(A) Subject to subparagraph (B), a correction under this section is final and conclusive on all officers of the United States except when procured by fraud.

“(B) If a board established under this section does not grant a request for an upgrade to the characterization of a discharge or dismissal, that declination may be considered under section 1553a of this title.”.

(B) Section 1553(b) of such title is amended—

(i) by inserting “(1)” before “A board”; and

(ii) by adding at the end the following new paragraph:

“(2) If a board established under this section does not grant a request for an upgrade to the characterization of a discharge or dismissal, that declination may be considered under section 1552 or section 1553a of this title, as applicable.”.

(c) DEADLINE.—The Secretary of Defense shall implement section 1553a of such title, as added by subsection (a), not later than January 1, 2021.

10 USC 1553a note.

(d) RESOURCES.—In establishing and implementing the process under such section 1553a, the Secretary of Defense shall, to the maximum extent practicable, use existing organizations, boards, processes, and personnel of the Department of Defense.

10 USC 1553a note.

(e) REPORTING.—

10 USC 1553a note.

(1) REPORT.—Not later than January 1, 2022, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding the process established under such section 1553a. The report shall include, with respect to considerations under such process since implementation, the following:

(A) The number of requests considered.

(B) The number of upgrades to the characterization of a discharge or dismissal granted pursuant to such process, including the most common reasons for such upgrades.

(C) The number of upgrades to the characterization of a discharge or dismissal declined pursuant to such process, including the most common reasons for such declinations.

(2) ONLINE PUBLICATION.—On October 1, 2022, and annually thereafter, the Secretary shall publish the information described in paragraph (1) with regards to the immediately preceding fiscal year on a website of the Department of Defense that is accessible by the public.

Public information.

**SEC. 524. PROHIBITION ON REDUCTION IN THE NUMBER OF PERSONNEL ASSIGNED TO DUTY WITH A SERVICE REVIEW AGENCY.**

(a) PROHIBITION.—Section 1559(a) of title 10, United States Code, is amended—

(1) by striking “December 31, 2019” and inserting “December 31, 2025”;

(2) by striking “that agency until—” and inserting “that agency.”; and

(3) by striking subsections (1) and (2).

(b) REPORT.—

Plans.

(1) REPORT REQUIRED.—Not later than 180 days after the enactment of this Act, the Secretary of each military department shall submit a report to the Committees on Armed Services of the Senate and House of Representatives that details a plan to—

(A) reduce the backlog of applications before the service review agency of the military department concerned; and

(B) maintain the resources required to meet the timeliness standards for disposition of applications before the Corrections Boards under section 1557 of title 10, United States Code, not later than October 1, 2021.

Deadline.

(2) **ELEMENTS.**—Each report under this subsection shall include the following:

(A) A description of the current backlog of applications before the service review agency of the military department concerned.

(B) The number of personnel required to meet the deadline described in paragraph (1)(B).

(C) The plan of the Secretary concerned to modernize the application and review system of the service review agency of the military department concerned.

**SEC. 525. TRAINING OF MEMBERS OF BOARDS FOR CORRECTION OF MILITARY RECORDS AND DISCHARGE REVIEW BOARDS ON SEXUAL TRAUMA, INTIMATE PARTNER VIOLENCE, SPOUSAL ABUSE, AND RELATED MATTERS.**

10 USC 1552  
note.

(a) **BOARDS FOR CORRECTION OF MILITARY RECORDS.**—The curriculum of training for members of boards for the correction of military records under section 534(c) of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. 1552 note) shall include training on each of the following:

(1) Sexual trauma.

(2) Intimate partner violence.

(3) Spousal abuse.

(4) The various responses of individuals to trauma.

10 USC 1553  
note.

(b) **DISCHARGE REVIEW BOARDS.**—

(1) **IN GENERAL.**—Each Secretary concerned shall develop and provide training for members of discharge review boards under section 1553 of title 10, United States Code, that are under the jurisdiction of such Secretary on each of the following:

(A) Sexual trauma.

(B) Intimate partner violence.

(C) Spousal abuse.

(D) The various responses of individuals to trauma.

(2) **UNIFORMITY OF TRAINING.**—The Secretary of Defense and the Secretary of Homeland Security shall jointly ensure that the training developed and provided pursuant to this subsection is, to the extent practicable, uniform.

(3) **SECRETARY CONCERNED DEFINED.**—In this subsection, the term “Secretary concerned” has the meaning given that term in section 101(a)(9) of title 10, United States Code.

10 USC 1781  
note.

**SEC. 526. TIME REQUIREMENTS FOR CERTIFICATION OF HONORABLE SERVICE.**

Regulations.

The Secretary of Defense shall publish regulations for submission and processing of a completed United States Citizenship and Immigration Services Form N–426, by a member of the Armed Forces. Such regulations shall designate the appropriate level for the certifying officer as well as establish time requirements for the form to be returned to the member of the Armed Forces.

10 USC 1552  
note.

**SEC. 527. CORRECTION OF CERTAIN DISCHARGE CHARACTERIZATIONS.**

(a) **IN GENERAL.**—In accordance with this section, and in a manner that is consistent across the military departments to the greatest extent practicable, the appropriate board shall, at the request of a covered member or the authorized representative of a covered member—

(1) review the discharge characterization of that covered member; and

(2) change the discharge characterization of that covered member to honorable if the appropriate board determines such change to be appropriate after review under paragraph (1).

(b) APPEAL.—A covered member or the authorized representative of that covered member may seek review of a decision by the appropriate board not to change the discharge characterization of that covered member. Such review may be made pursuant to section 1552 of title 10, United States Code, section 1553 of such title, or any other process established by the Secretary of Defense for such purpose.

(c) CHANGE OF RECORDS.—For each covered member whose discharge characterization is changed under subsection (a) or (b), the Secretary of the military department concerned shall issue to the covered member or the authorized representative of the covered member a corrected Certificate of Release or Discharge from Active Duty (DD Form 214), or other like form regularly used by an Armed Force that—

(1) reflects the upgraded discharge characterization of the covered member; and

(2) does not reflect the sexual orientation of the covered member or the original stated reason for the discharge or dismissal of that covered member.

(d) DEFINITIONS.—In this section:

(1) The term “appropriate board” means a board for the correction of military or naval records under section 1552 of title 10, United States Code, or a discharge review board under section 1553 of such title, as the case may be.

(2) The term “authorized representative” means an heir or legal representative of a covered member.

(3) The term “covered member” means any former member of the Armed Forces who was discharged from the Armed Forces because of the sexual orientation of that member.

(4) The term “discharge characterization” means the characterization assigned to the service of a covered member on the discharge or dismissal of that covered member from service in the Armed Forces.

**SEC. 528. DEVELOPMENT OF GUIDELINES FOR USE OF UNOFFICIAL SOURCES OF INFORMATION TO DETERMINE ELIGIBILITY OF MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES FOR DECORATIONS WHEN THE SERVICE RECORDS ARE INCOMPLETE BECAUSE OF DAMAGE TO THE OFFICIAL RECORD.**

10 USC 1121  
note prec.

(a) GUIDELINES REQUIRED.—The Secretary of Defense shall develop guidelines regarding the use by the Secretaries of the military departments of unofficial sources of information, including eyewitness statements, to determine the eligibility of a member or former member of the Armed Forces for decorations when the service records of the member are incomplete because of damage to the records as a result of the 1973 fire at the National Personnel Records Center in St. Louis, Missouri, or any subsequent incident while the records were in the possession of the Department of Defense.

(b) **TIME FOR COMPLETION.**—The Secretary of Defense shall complete development of the guidelines not later than one year after the date of the enactment of this Act.

10 USC 656 note.

**SEC. 529. STRATEGIC PLAN FOR DIVERSITY AND INCLUSION.**

(a) **PLAN REQUIRED.**—The Secretary of Defense shall design and implement a five-year strategic plan for diversity and inclusion in the Department of Defense.

(b) **ELEMENTS.**—The strategic plan under this section—

(1) shall incorporate existing efforts to promote diversity and inclusion within the Department; and

(2) may not conflict with the objectives of the 2018 National Military Strategy.

(c) **DEADLINE.**—The Secretary shall implement the strategic plan under this section not later than one year after the date of the enactment of this Act.

**SEC. 530. STUDY REGARDING SCREENING INDIVIDUALS WHO SEEK TO ENLIST IN THE ARMED FORCES.**

(a) **STUDY.**—The Secretary of Defense shall study the feasibility of, in background investigations and security and suitability screenings of individuals who seek to enlist in the Armed Forces—

(1) screening for extremist and gang-related activity; and

(2) using the following resources of the Federal Bureau of Investigation:

(A) The Tattoo and Graffiti Identification Program.

(B) The National Gang Intelligence Center.

(b) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit an unclassified report in writing to the Committees on Armed Services of the Senate and House of Representatives containing conclusions of the Secretary regarding the study under subsection (a).

**SEC. 530A. FEASIBILITY STUDY REGARDING NOTIFICATION TO SECRETARY OF HOMELAND SECURITY OF HONORABLE DISCHARGES OF NON-CITIZENS.**

Consultation.  
Records.

(a) **STUDY REQUIRED.**—The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall study the feasibility of providing the Secretary of Homeland Security with a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214) or National Guard Report of Separation and Record of Service (NGB-22) for each individual who is not a citizen of the United States who is honorably discharged from the Armed Forces so the Secretary of Homeland Security may note such discharge in an I-213 Record of Deportable/Inadmissible Alien for that individual.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the committees on Armed Services of the Senate and House of Representatives a report regarding the results of the study under this section.

**SEC. 530B. SENSE OF CONGRESS REGARDING ACCESSION PHYSICALS.**

It is the sense of Congress that the Secretary of Defense should explore alternatives to centralized accession physicals at Military Entrance Processing Stations, including conducting physicals through community health care providers, in order to reduce

transportation costs, increase efficiency in processing times, and free recruiters to focus on the core of the recruiting mission.

## Subtitle D—Military Justice

### SEC. 531. EXPANSION OF PRE-REFERRAL MATTERS REVIEWABLE BY MILITARY JUDGES AND MILITARY MAGISTRATES IN THE INTEREST OF EFFICIENCY IN MILITARY JUSTICE.

(a) IN GENERAL.—Subsection (a) of section 830a of title 10, United States Code (article 30a of the Uniform Code of Military Justice), is amended by striking paragraphs (1) and (2) and inserting the following new paragraphs:

“(1) The President shall prescribe regulations for matters relating to proceedings conducted before referral of charges and specifications to court-martial for trial, including the following:

President.  
Regulations.

“(A) Pre-referral investigative subpoenas.

“(B) Pre-referral warrants or orders for electronic communications.

“(C) Pre-referral matters referred by an appellate court.

“(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

“(E) Pre-referral matters relating to the following:

“(i) Pre-trial confinement of an accused.

“(ii) The mental capacity or mental responsibility of an accused.

“(iii) A request for an individual military counsel.

“(2) In addition to the matters specified in paragraph (1), the regulations prescribed under that paragraph shall—

“(A) set forth the matters that a military judge may rule upon in such proceedings;

“(B) include procedures for the review of such rulings;

Procedures.

“(C) include appropriate limitations to ensure that proceedings under this section extend only to matters that would be subject to consideration by a military judge in a general or special court-martial; and

“(D) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.”.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of such section is amended to read as follows:

#### “§ 830a. Art 30a. Proceedings conducted before referral”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter VI of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by striking the item relating to section 830a (article 30a) and inserting the following new item:

10 USC 830 prec.

“830a. 30a. Proceedings conducted before referral.”.

### SEC. 532. COMMAND INFLUENCE.

(a) IN GENERAL.—Section 837 of title 10, United States Code (article 37 of the Uniform Code of Military Justice), is amended—

(1) by striking “**Unlawfully influencing action of court**” and inserting “**Command influence**”;

(2) by amending subsection (a) to read as follows:

“(a)(1) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding.

“(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

“(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President.

“(4) Conduct that does not constitute a violation of paragraphs (1) through (3) may include, for example—

“(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing persons on the substantive and procedural aspects of courts-martial;

“(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding or sentence, or do not relate to a particular accused; or

“(C) statements and instructions given in open court by the military judge or counsel.

“(5)(A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

“(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

“(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

“(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.”;

(3) in subsection (b)—

(A) by striking “advanced, in grade” and inserting “advanced in grade”; and

(B) by striking “accused before a court-martial” and inserting “person in a court-martial proceeding”; and

(4) by adding at the end the following new subsections:

“(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.

“(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority



or officer to dispose of offenses in individual cases, types of cases, or generally.

“(2) Except as provided in paragraph (1) or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning subchapter VII of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by striking the item relating to section 837 (article 37) and inserting the following new item:

10 USC 836 prec.

“837. Art. 37. Command influence.”

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply with respect to violations of section 837 of title 10, United States Code (article 37 of the Uniform Code of Military Justice), committed on or after such date.

10 USC 837 note.

**SEC. 533. STATUTE OF LIMITATIONS FOR CERTAIN OFFENSES.**

(a) IN GENERAL.—Section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a), by inserting “maiming of a child, kidnapping of a child,” after “sexual assault of a child,”; and

(2) in subsection (b)(2)(B)—

(A) by striking clauses (ii) and (iv); and

(B) by redesignating clause (iii) as clause (ii).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply with respect to the prosecution of offenses committed before, on, or after the date of the enactment of this Act if the applicable limitation period has not yet expired.

10 USC 843 note.

**SEC. 534. PUBLIC ACCESS TO DOCKETS, FILINGS, AND COURT RECORDS OF COURTS-MARTIAL OR OTHER RECORDS OF TRIAL OF THE MILITARY JUSTICE SYSTEM.**

(a) IN GENERAL.—Section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), is amended—

(1) by striking “The Secretary of Defense” and inserting “(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Homeland Security,”;

(2) in subsection (a), as designated by paragraph (1)—

(A) in the matter preceding paragraph (1), by inserting “(including with respect to the Coast Guard)” after “military justice system”; and

(B) in paragraph (4), by inserting “public” before “access to docket information”; and

(3) by adding at the end the following new subsections:

“(b) PROTECTION OF CERTAIN PERSONALLY IDENTIFIABLE INFORMATION.—Records of trial, docket information, filings, and other records made publicly accessible in accordance with the uniform standards and criteria for conduct established by the Secretary under subsection (a) shall restrict access to personally identifiable information of minors and victims of crime (including victims of sexual assault and domestic violence), as practicable to the extent

such information is restricted in electronic filing systems of Federal and State courts.

“(c) INAPPLICABILITY TO CERTAIN DOCKETS AND RECORDS.—Nothing in this section shall be construed to provide public access to docket information, filings, or records that are classified, subject to a judicial protective order, or ordered sealed.”

Applicability.  
Consultation.  
10 USC 940a  
note.

(b) EXISTING STANDARDS AND CRITERIA.—The Secretary of Homeland Security shall apply to the Coast Guard the standards and criteria for conduct established by the Secretary of Defense under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as in effect on the day before the date of the enactment of this Act, until such time as the Secretary of Defense, in consultation with the Secretary of Homeland Security, prescribes revised standards and criteria for conduct under such section that implement the amendments made by subsection (a) of this section.

**SEC. 535. EXTENSION OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.**

Section 546(f)(1) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended by striking “five” and inserting “10”.

**SEC. 536. AUTHORITY FOR RETURN OF PERSONAL PROPERTY TO VICTIMS OF SEXUAL ASSAULT WHO FILE A RESTRICTED REPORT BEFORE CONCLUSION OF RELATED PROCEEDINGS.**

Section 586 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 1561 note) is amended—

(1) by redesignating subsection (f) as subsection (e);

(2) in subsection (e), as so redesignated, in the subsection heading, by inserting “IN UNRESTRICTED REPORTING CASES” after “PROCEEDINGS”; and

(3) by adding at the end the following new subsection:

Procedures.

“(f) RETURN OF PERSONAL PROPERTY IN RESTRICTED REPORTING CASES.—(1) The Secretary of Defense shall prescribe procedures under which a victim who files a restricted report on an incident of sexual assault may request, at any time, the return of any personal property of the victim obtained as part of the sexual assault forensic examination.

“(2) The procedures shall ensure that—

Confidential  
information.

“(A) a request of a victim under paragraph (1) may be made on a confidential basis and without affecting the restricted nature of the restricted report; and

“(B) at the time of the filing of the restricted report, a Sexual Assault Response Coordinator or Sexual Assault Prevention and Response Victim Advocate—

“(i) informs the victim that the victim may request the return of personal property as described in paragraph (1); and

“(ii) advises the victim that such a request for the return of personal property may negatively impact a subsequent case adjudication, if the victim later decides to convert the restricted report to an unrestricted report.

“(3) Except with respect to personal property returned to a victim under this subsection, nothing in this subsection shall affect

the requirement to retain a sexual assault forensic examination (SAFE) kit for the period specified in subsection (c)(4)(A).”.

**SEC. 537. GUIDELINES ON SENTENCES FOR OFFENSES COMMITTED UNDER THE UNIFORM CODE OF MILITARY JUSTICE.**

Deadlines.  
10 USC 856 note.

(a) **DEVELOPMENT OF GUIDELINES.**—Not later than the date specified in subsection (d), the Secretary of Defense shall develop nonbinding guidelines on sentences for offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). The guidelines shall provide the sentencing authority with a suggested range of punishments, including suggested ranges of confinement, that will generally be appropriate for a violation of each offense under such chapter.

(b) **SENTENCING DATA.**—In developing the guidelines for sentences under subsection (a), the Secretary of Defense shall take into account the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of title 10, United States Code (article 146(f)(2) of the Uniform Code of Military Justice).

(c) **SUBMITTAL TO CONGRESS.**—Not later than the date specified in subsection (d), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

(1) the guidelines for sentences developed under subsection (a); and

(2) an assessment of the feasibility and advisability of implementing such guidelines in panel sentencing cases.

Assessment.

(d) **DATE SPECIFIED.**—The date specified in this subsection is the date that is not later than one year after the date on the which the first report of the Military Justice Review Panel is submitted to the Committees on Armed Services of the Senate and the House of Representatives pursuant to section 946(f)(5) of title 10, United States Code (article 146(f)(5) of the Uniform Code of Military Justice).

**SEC. 538. NOTIFICATION OF SIGNIFICANT EVENTS AND DOCUMENTATION OF PREFERENCE FOR PROSECUTION JURISDICTION FOR VICTIMS OF SEXUAL ASSAULT.**

10 USC 1044e  
note.

(a) **NOTIFICATION TO VICTIMS OF EVENTS IN MILITARY JUSTICE PROCESS.**—

(1) **NOTIFICATION REQUIRED.**—A member of the Armed Forces who is the victim of an alleged sexual assault by another member of the Armed Forces shall receive notification of each significant event in the military justice process that relates to the investigation, prosecution, and confinement of such other member for such assault.

(2) **DOCUMENTATION.**—Appropriate documentation of each notification made pursuant to paragraph (1) shall be created and maintained in an appropriate system of records of the military department concerned.

(b) **DOCUMENTATION OF VICTIM’S PREFERENCE FOR PROSECUTION JURISDICTION.**—In the case of a member of the Armed Forces who is the victim of an alleged sexual assault committed by another member of the Armed Forces who is subject to prosecution for such offense both by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and by a civilian court under Federal or State law, appropriate documentation of the preference, if any, of such victim for prosecution of such offense by court-martial or by a civilian court as provided

for by Rule for Courts-Martial 306(e) (as set forth in the Manual for Courts-Martial, 2019 edition, or any successor rule), shall be created and maintained in an appropriate system of records of the military department concerned.

Deadline.

(c) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations implementing this section.

10 USC 1561  
note prec.

**SEC. 539. INCREASE IN NUMBER OF DIGITAL FORENSIC EXAMINERS FOR CERTAIN MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.**

(a) IN GENERAL.—Each Secretary of a military department shall take appropriate actions to increase the number of digital forensic examiners in each military criminal investigative organization specified in subsection (b) under the jurisdiction of such Secretary by not fewer than 10 from the authorized number of such examiners for such organization as of September 30, 2019.

(b) MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.—The military criminal investigative organizations specified in this subsection are the following:

- (1) The Army Criminal Investigation Command.
- (2) The Naval Criminal Investigative Service.
- (3) The Air Force Office of Special Investigations.

(c) FUNDING.—Funds for additional digital forensic examiners as required by subsection (a) for fiscal year 2020, including for compensation, initial training, and equipment, shall be derived from amounts authorized to be appropriated for that fiscal year for the Armed Force concerned for operation and maintenance.

Deadlines.  
10 USC 1561  
note prec.

**SEC. 540. INCREASE IN INVESTIGATIVE PERSONNEL AND VICTIM WITNESS ASSISTANCE PROGRAM LIAISONS.**

(a) MILITARY CRIMINAL INVESTIGATIVE SERVICES.—Not later than one year after the date of the enactment of this Act, the Secretary of each military department shall increase the number of personnel assigned to the military criminal investigative services of the department with the goal of ensuring, to the extent practicable, that the investigation of any sex-related offense is completed not later than six months after the date on which the investigation is initiated. An investigation shall be considered completed for purposes of the preceding sentence when the active phase of the investigation is sufficiently complete to enable the appropriate authority to reach a decision with respect to the disposition of charges for the sex-related offense.

(b) VICTIM WITNESS ASSISTANCE PROGRAM LIAISONS.—Not later than one year after the date of the enactment of this Act, the Secretary of each military department shall increase the number of personnel serving as Victim Witness Assistance Program liaisons to address personnel shortages in the Victim Witness Assistance Program.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**SEC. 540A. TRAINING FOR SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITIES ON EXERCISE OF DISPOSITION AUTHORITY FOR SEXUAL ASSAULT AND COLLATERAL OFFENSES.** 10 USC 822 note.

(a) **IN GENERAL.**—The training for sexual assault initial disposition authorities on the exercise of disposition authority under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), shall include comprehensive training on the exercise of disposition authority with respect to cases for which disposition authority is withheld to such authorities pursuant to the memorandum described in subsection (b) for the purpose of promoting confidence and trust in the military justice process with respect to such cases.

(b) **MEMORANDUM DESCRIBED.**—The memorandum described in this subsection is the memorandum of the Secretary of Defense titled “Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases” and dated April 20, 2012, or any successor memorandum.

**SEC. 540B. TRAINING FOR COMMANDERS IN THE ARMED FORCES ON THEIR ROLE IN ALL STAGES OF MILITARY JUSTICE IN CONNECTION WITH SEXUAL ASSAULT.** 10 USC 1561 note.

(a) **IN GENERAL.**—The training provided commanders in the Armed Forces shall include comprehensive training on the role of commanders in all stages of military justice in connection with sexual assaults by members of the Armed Forces.

(b) **ELEMENTS TO BE COVERED.**—The training provided pursuant to subsection (a) shall include training on the following:

(1) The role of commanders in each stage of the military justice process in connection with sexual assault committed by a member of the Armed Forces, including investigation and prosecution.

(2) The role of commanders in assuring that victims of sexual assault described in paragraph (1) are informed of, and have the opportunity to obtain, assistance available for victims of sexual assault by law.

(3) The role of commanders in assuring that victims of sexual assault described in paragraph (1) are afforded the rights and protections available to victims by law.

(4) The role of commanders in preventing retaliation against victims, their family members, witnesses, first responders, and bystanders for their their complaints, statements, testimony, and status in connection with sexual assault described in paragraph (1), including the role of commanders in ensuring that subordinates in the command are aware of their responsibilities in preventing such retaliation.

(5) The role of commanders in establishing and maintaining a healthy command climate in connection with reporting on sexual assault described in paragraph (1), and in the response of the commander, subordinates in the command, and other personnel in the command to such sexual assault, such reporting, and the military justice process in connection with such sexual assault.

(6) Any other matters on the role of commanders in connection with sexual assault described in paragraph (1) that the Secretary of Defense considers appropriate for purposes of this section.

(c) **INCORPORATION OF BEST PRACTICES.**—

(1) **IN GENERAL.**—The training provided pursuant to subsection (a) shall incorporate best practices on all matters covered by the training.

(2) **IDENTIFICATION OF BEST PRACTICES.**—The Secretaries of the military departments shall, acting through the training and doctrine commands of the Armed Forces, undertake from time to time surveys and other reviews of the matters covered by the training provided pursuant to subsection (a) in order to identify and incorporate into such training the most current practicable best practices on such matters.

(d) **UNIFORMITY.**—The Secretary of Defense shall ensure that the training provided pursuant to subsection (a) is, to the extent practicable, uniform across the Armed Forces.

10 USC 830 note.

**SEC. 540C. TIMELY DISPOSITION OF NONPROSECUTABLE SEX-RELATED OFFENSES.**

Deadline.

(a) **POLICY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop and implement a policy to ensure the timely disposition of non-prosecutable sex-related offenses.

(b) **NONPROSECUTABLE SEX-RELATED OFFENSE DEFINED.**—In this section, the term “nonprosecutable sex-related offense” means an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) that a court-martial convening authority has declined to refer for trial by a general or special court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), due to a determination that there is insufficient evidence to support prosecution of the sex-related offense.

Deadlines.  
10 USC 1561  
note.

**SEC. 540D. DEPARTMENT OF DEFENSE-WIDE POLICY AND MILITARY DEPARTMENT-SPECIFIC PROGRAMS ON REINVIGORATION OF THE PREVENTION OF SEXUAL ASSAULT INVOLVING MEMBERS OF THE ARMED FORCES.**

(a) **POLICY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop and issue a comprehensive policy for the Department of Defense to reinvigorate the prevention of sexual assault involving members of the Armed Forces.

(b) **POLICY ELEMENTS.**—

(1) **IN GENERAL.**—The policy required by subsection (a) shall include the following:

(A) Education and training for members of the Armed Forces on the prevention of sexual assault.

(B) Elements for programs designed to encourage and promote healthy relationships among members of the Armed Forces.

(C) Elements for programs designed to empower and enhance the role of non-commissioned officers in the prevention of sexual assault.

(D) Elements for programs to foster social courage among members of the Armed Forces to encourage and promote intervention in situations in order to prevent sexual assault.

(E) Processes and mechanisms designed to address behaviors among members of the Armed Forces that are included in the continuum of harm that frequently results in sexual assault.

(F) Elements for programs designed to address alcohol abuse, including binge drinking, among members of the Armed Forces.

(G) Such other elements, processes, mechanisms, and other matters as the Secretary of Defense considers appropriate.

(2) CONTINUUM OF HARM RESULTING IN SEXUAL ASSAULT.—

For purposes of paragraph (1)(E), the continuum of harm that frequently results in sexual assault includes hazing, sexual harassment, and related behaviors (including language choices, off-hand statements, jokes, and unconscious attitudes or biases) that create a permissive climate for sexual assault.

(c) PROGRAMS REQUIRED.—Not later than 180 days after the issuance of the policy required by subsection (a), each Secretary of a military department shall develop and implement for each Armed Force under the jurisdiction of such Secretary a program to reinvigorate the prevention of sexual assaults involving members of the Armed Forces. Each program shall include the elements, processes, mechanisms, and other matters developed by the Secretary of Defense pursuant to subsection (a) tailored to the requirements and circumstances of the Armed Force or Armed Forces concerned.

**SEC. 540E. RECOMMENDATIONS ON SEPARATE PUNITIVE ARTICLE IN THE UNIFORM CODE OF MILITARY JUSTICE ON SEXUAL HARASSMENT.**

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing such recommendations as the Secretary considers appropriate with respect to the establishment of a separate punitive article in chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), on sexual harassment. Reports.

**SEC. 540F. REPORT ON MILITARY JUSTICE SYSTEM INVOLVING ALTERNATIVE AUTHORITY FOR DETERMINING WHETHER TO PREFER OR REFER CHARGES FOR FELONY OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE.**

(a) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 300 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of a study, conducted for purposes of the report, on the feasibility and advisability of an alternative military justice system in which determinations as to whether to prefer or refer charges for trial by court-martial for any offense specified in paragraph (2) is made by a judge advocate in grade O–6 or higher who has significant experience in criminal litigation and is outside of the chain of command of the member subject to the charges rather than by a commanding officer of the member who is in the chain of command of the member. Study.

(2) SPECIFIED OFFENSE.—An offense specified in this paragraph is any offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), for which the maximum punishment authorized includes confinement for more than one year.

- Analyses. (b) ELEMENTS.—The study required for purposes of the report under subsection (a) shall address the following:
- (1) Relevant procedural, legal, and policy implications and considerations of the alternative military justice system described in subsection (a).
  - (2) An analysis of the following in connection with the implementation and maintenance of the alternative military justice system:
    - (A) Legal personnel requirements.
    - (B) Changes in force structure.
    - (C) Amendments to law.
    - (D) Impacts on the timeliness and efficiency of legal processes and court-martial adjudications.
    - (E) Potential legal challenges to the system.
    - (F) Potential changes in prosecution and conviction rates.
    - (G) Potential impacts on the preservation of good order and discipline, including the ability of a commander to carry out nonjudicial punishment and other administrative actions.
    - (H) Such other considerations as the Secretary considers appropriate.
  - (3) A comparative analysis of the military justice systems of relevant foreign allies with the current military justice system of the United States and the alternative military justice system, including whether or not approaches of the military justice systems of such allies to determinations described in subsection (a) are appropriate for the military justice system of the United States.
- Assessment. (4) An assessment of the feasibility and advisability of conducting a pilot program to assess the feasibility and advisability of the alternative military justice system, and, if the pilot program is determined to be feasible and advisable—
- (A) an analysis of potential legal issues in connection with the pilot program, including potential issues for appeals; and
  - (B) recommendations on the following:
    - (i) The populations to be subject to the pilot program.
    - (ii) The duration of the pilot program.
    - (iii) Metrics to measure the effectiveness of the pilot program.
    - (iv) The resources to be used to conduct the pilot program.
- SEC. 540G. REPORT ON STANDARDIZATION AMONG THE MILITARY DEPARTMENTS IN COLLECTION AND PRESENTATION OF INFORMATION ON MATTERS WITHIN THE MILITARY JUSTICE SYSTEM.**
- Consultation. Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the following:
- Plan. (1) A plan for actions to provide for standardization, to the extent practicable, among the military departments in the collection and presentation of information on matters within



their military justice systems, including information collected and maintained for purposes of section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), and such other information as the Secretary considers appropriate.

(2) An assessment of the feasibility and advisability of establishing and maintaining a single, Department of Defense-wide data management system for the standardized collection and presentation of information described in paragraph (1). Assessment.

**SEC. 540H. REPORT ON EXPANSION OF AIR FORCE SAFE TO REPORT POLICY ACROSS THE ARMED FORCES.**

(a) **REPORT.**—Not late than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment of the feasibility and advisability of expanding the applicability of the safe to report policy described in subsection (b) so that the policy applies across the Armed Forces. Consultation.  
Assessment.

(b) **SAFE TO REPORT POLICY.**—The safe to report policy described in this subsection is the policy, currently applicable in the Air Force alone, under which a member of the Armed Forces who is the victim of an alleged sexual assault committed by another member of the Armed Forces, but who may have committed minor collateral misconduct at or about the time of such alleged sexual assault, or whose minor collateral misconduct at or about such time is discovered only as a result of the investigation into such alleged sexual assault, may report such alleged sexual assault to proper authorities without fear or receipt of discipline in connection with such minor collateral misconduct.

**SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.** 10 USC 810 note.

(a) **IN GENERAL.**—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.

(b) **SECRETARY OF DEFENSE AND RELATED ACTIVITIES.**—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act: Deadlines.

(1) For each court-martial conducted by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—

(A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;

(B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.

(2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that— Consultation.  
Guidance.

- Criteria. (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and (B) describes how such a review should be conducted.
- Consultation. (3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—
- Evaluation. (A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities identified in the military justice system; (B) take steps to address the causes of any such disparities, as appropriate.
- Reviews. Assessments. (c) DAC–IPAD ACTIVITIES.—
- (1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC–IPAD:
- (A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.
- (B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
- (C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
- (2) INFORMATION FROM FEDERAL AGENCIES.—
- (A) IN GENERAL.—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigation files, charge sheets, records of trial, and personnel records.
- Records. (B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.
- (3) REPORT.—Not later than one year after the date of the enactment of this Act, the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.
- Recommendations. (4) DEFINITIONS.—In this subsection:

(A) The term “independent committee DAC-IPAD” means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374), commonly known as the “DAC-IPAD”.

(B) The term “case” means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouse or intimate partner for which an investigation has been opened by a criminal investigative organization.

(C) The term “completed”, with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

(D) The term “contact sexual assault offense” means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

(E) The term “penetrative sexual assault offense” means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

**SEC. 540J. PILOT PROGRAMS ON DEFENSE INVESTIGATORS IN THE MILITARY JUSTICE SYSTEM.** 10 USC 810 note.

(a) IN GENERAL.—Each Secretary of a military department shall carry out a pilot program on defense investigators within the military justice system under the jurisdiction of such Secretary in order to do the following:

(1) Determine whether the presence of defense investigators within such military justice system will— Determination.

(A) make such military justice system more effective in providing an effective defense for the accused; and

(B) make such military justice system more fair and efficient.

(2) Otherwise assess the feasibility and advisability of defense investigators as an element of such military justice system. Assessment.

(b) ELEMENTS.—

(1) INTERVIEW OF VICTIM.—A defense investigator may question a victim under a pilot program only upon a request made through the Special Victims’ Counsel or other counsel if the victim does not have such counsel.

(2) UNIFORMITY ACROSS MILITARY JUSTICE SYSTEMS.—The Secretary of Defense shall ensure that the personnel and activities of defense investigators under the pilot programs are, to the extent practicable, uniform across the military justice systems of the military departments.

(c) REPORT.—

(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Consultation.

Senate and the House of Representatives a report on the pilot programs under subsection (a).

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) A description of each pilot program, including the personnel and activities of defense investigators under such pilot program.

Assessment.

(B) An assessment of the feasibility and advisability of establishing and maintaining defense investigators as an element of the military justice systems of the military departments.

Recommendations.

(C) If the assessment under subparagraph (B) is that the establishment and maintenance of defense investigators as an element of the military justice systems of the military departments is feasible and advisable, such recommendations for legislative and administrative action as the Secretary of Defense considers appropriate to establish and maintain defense investigators as an element of the military justice systems.

(D) Any other matters the Secretary of Defense considers appropriate.

**SEC. 540K. REPORT ON PRESERVATION OF RECOURSE TO RESTRICTED REPORT ON SEXUAL ASSAULT FOR VICTIMS OF SEXUAL ASSAULT FOLLOWING CERTAIN VICTIM OR THIRD-PARTY COMMUNICATIONS.**

Recommendations.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report making findings and recommendations on the feasibility and advisability of a policy for the Department of Defense that would permit a victim of a sexual assault, that is or may be investigated as a result of a communication described in subsection (b), which victim is a member of the Armed Forces or an adult dependent of a member of the Armed Forces, to have the reporting on the sexual assault be treated as a restricted report without regard to the party initiating or receiving such communication.

(b) COMMUNICATIONS.—A communication described in this subsection is a communication reporting a sexual assault as follows:

(1) By the victim to a member of the Armed Forces, whether a commissioned officer or a noncommissioned officer, in the chain of command of the victim or the victim's military sponsor.

(2) By the victim to military law enforcement personnel or personnel of a military criminal investigative organization (MCIO).

(3) By any individual other than victim.

(c) SCOPE OF FINDINGS AND RECOMMENDATIONS.—The report required by subsection (a) may include recommendations for new provisions of statute or regulations, or modification of current statute or regulations, that may be required to put into effect the findings and recommendations described in subsection (a).

(d) CONSULTATION.—In preparing the report required by subsection (a), the Secretary shall consult with the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) under section 546 of

the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note).

**SEC. 540L. REPORT ON ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM FOR CERTAIN MILITARY DEPENDENTS WHO ARE A VICTIM OR WITNESS OF AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE INVOLVING ABUSE OR EXPLOITATION.**

(a) **REPORT REQUIRED.**—

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment of the feasibility and advisability of establishing a guardian ad litem program for military dependents described in paragraph (2) who are a victim or witness of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that involves an element of abuse or exploitation in order to protect the best interests of such dependents in a court-martial of such offense.

Assessment.

(2) **COVERED DEPENDENTS.**—The military dependents described in this paragraph are as follows:

(A) Military dependents under 12 years of age.

(B) Military dependents who lack mental or other capacity.

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following:

(1) An assessment of the feasibility and advisability of establishing a guardian ad litem program as described in subsection (a).

Assessment.

(2) If establishment of the guardian ad litem program is considered feasible and advisable, the following:

(A) A description of administrative requirements in connection with the program, including the following:

(i) Any memoranda of understanding between the Department of Defense and State and local authorities required for purposes of the program.

Memoranda.

(ii) The personnel, funding, and other resources required for purposes of the program.

(B) Best practices for the program (as determined in consultation with appropriate civilian experts on child advocacy).

(C) Such recommendations for legislative and administration action to implement the program as the Secretary considers appropriate.

Recommendations.

**SEC. 540M. COMPTROLLER GENERAL OF THE UNITED STATES REPORT ON IMPLEMENTATION BY THE ARMED FORCES OF RECENT STATUTORY REQUIREMENTS ON SEXUAL ASSAULT PREVENTION AND RESPONSE IN THE MILITARY.**

(a) **REPORT REQUIRED.**—The Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report, in writing, on a study, conducted by the Comptroller General for purposes of the report, on the implementation by the Armed Forces of statutory requirements on sexual assault prevention and response in the military in the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) and each succeeding national

Study.

defense authorization Act through the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232).

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

List.

(1) A list and citation of each statutory requirement (whether codified or uncodified) on sexual assault prevention and response in the military in each national defense authorization Act specified in paragraph (1), including—

(A) whether such statutory requirement is still in force; and

(B) if such statutory requirement is no longer in force, the date of the repeal or expiration of such requirement.

Assessments.

(2) For each statutory requirement listed pursuant to paragraph (1), the following:

(A) An assessment of the extent to which such requirement was implemented, or is currently being implemented, as applicable, by each Armed Force to which such requirement applied or applies.

(B) A description and assessment of the actions taken by each of the Department of Defense, the military department concerned, and the Armed Force concerned to assess and determine the effectiveness of actions taken pursuant to such requirement in meeting its intended objective.

(3) Any other matters in connection with the statutory requirements specified in subsection (a), and the implementation of such requirements by the Armed Forces, that the Comptroller General considers appropriate.

Deadline. Recommendations.

(c) BRIEFINGS.—Not later than May 1, 2020, the Comptroller General shall provide to the committees referred to in subsection (a) one or more briefings on the status of the study required by subsection (a), including any preliminary findings and recommendations of the Comptroller General as a result of the study as of the date of such briefing.

**SEC. 540N. SENSE OF CONGRESS ON THE PORT CHICAGO 50.**

It is the sense of Congress that—

(1) the American people should recognize the role of racial bias during the era in which the prosecution and convictions of the Port Chicago 50 took place for mutiny following the deadliest home-front disaster in World War II, in which 320 were killed on July 17, 1944, during a munitions explosion; and

(2) in light of the well-documented challenges associated with uniformed service by African Americans during this era, the Secretary of the Navy should, as appropriate, recommend executive action in favor of the 49 remaining Sailors with general court-martial convictions and the 207 remaining Sailors with summary court-martial convictions.

**Subtitle E—Other Legal Matters**

**SEC. 541. IMPROVEMENT OF CERTAIN SPECIAL VICTIMS’ COUNSEL AUTHORITIES.**

(a) ENHANCEMENT OF LEGAL CONSULTATION AND ASSISTANCE IN CONNECTION WITH POTENTIAL VICTIM BENEFITS.—Paragraph

(8)(D) of subsection (b) of section 1044e of title 10, United States Code, is amended by striking “and other” and inserting “, section 1408(h) of this title, and other”.

(b) EXPANSION OF LEGAL ASSISTANCE AUTHORIZED TO INCLUDE CONSULTATION AND ASSISTANCE FOR RETALIATION.—Subsection (b) of such section is amended further—

(1) by redesignating paragraph (10) as paragraph (11); and

(2) by inserting after paragraph (9) the following new paragraph (10):

“(10) Legal consultation and assistance in connection with an incident of retaliation, whether such incident occurs before, during, or after the conclusion of any criminal proceedings, including—

“(A) in understanding the rights and protections afforded to victims of retaliation;

“(B) in the filing of complaints; and

“(C) in any resulting military justice proceedings.”.

(c) STAFFING CASELOAD LEVELS.—Such section is further amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) STAFFING CASELOAD LEVELS.—Commencing not later than four years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary concerned shall ensure that the number of Special Victims’ Counsel serving in each military department (and with respect to the Coast Guard) is sufficient to ensure that the average caseload of a Special Victims’ Counsel does not exceed, to the extent practicable, 25 cases any given time.”.

Deadline.

**SEC. 542. AVAILABILITY OF SPECIAL VICTIMS’ COUNSEL AT MILITARY INSTALLATIONS.**

(a) DEADLINE FOR AVAILABILITY.—Section 1044e(f) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4)(A) Subject to subparagraph (B), if a Special Victims’ Counsel is not available at a military installation for access by a member of the armed forces who requests access to a Special Victims’ Counsel, a Special Victims’ Counsel shall be made available at such installation for access by such member by not later than 72 hours after such request.

“(B) If the Secretary concerned determines that, due to exigent circumstances related to military activities, a Special Victims’ Counsel cannot be made available to a member of the armed forces within the time period required by subparagraph (A), the Secretary concerned shall ensure that a Special Victims’ Counsel is made available to such member as soon as is practical under such circumstances.”.

(b) REPORT ON CIVILIAN SUPPORT OF SVCs.—Not later than 180 days after the date of the enactment of this Act, each Secretary of a military department shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the assessment of such Secretary of the feasibility and advisability of establishing and maintaining for each Special

Assessment.

Victims’ Counsel under the jurisdiction of such Secretary one or more civilian positions for the purpose of—

- (1) providing support to such Special Victims’ Counsel; and
- (2) ensuring continuity and the preservation of institutional knowledge in transitions between the service of individuals as such Special Victims’ Counsel.

**SEC. 543. NOTIFICATION OF ISSUANCE OF MILITARY PROTECTIVE ORDER TO CIVILIAN LAW ENFORCEMENT.**

(a) NOTIFICATION OF ISSUANCE.—Section 1567a of title 10, United States Code, is amended—

Deadline.

(1) in subsection (a), by striking “and any individual involved in the order does not reside on a military installation at any time during the duration of the military protective order, the commander of the military installation shall notify” and inserting “, the commander of the unit to which the member is assigned shall, not later than seven days after the date of the issuance of the order, notify”;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b);

Deadlines.

“(b) NOTIFICATION IN EVENT OF TRANSFER.—In the event that a member of the armed forces against whom a military protective order is issued is transferred to another unit—

“(1) not later than the date of the transfer, the commander of the unit from which the member is transferred shall notify the commander of the unit to which the member is transferred of—

“(A) the issuance of the protective order; and

“(B) the individuals involved in the order; and

“(2) not later than seven days after receiving the notice under paragraph (1), the commander of the unit to which the member is transferred shall provide notice of the order to the appropriate civilian authorities in accordance with subsection (a).”; and

(4) in subsection (c), as so redesignated, by striking “commander of the military installation” and inserting “commander of the unit to which the member is assigned”.

(b) ANNUAL REPORT REQUIRED.—Not later than March 1, 2021, and each year thereafter through 2025, the Secretary of Defense shall submit to the congressional defense committees a report that identifies—

(1) the number of military protective orders issued in the calendar year preceding the year in which the report is submitted; and

(2) the number of such orders that were reported to appropriate civilian authorities in accordance with section 1567a(a) of title 10, United States Code, in such preceding year.

**SEC. 544. COPYRIGHT PROTECTION FOR CIVILIAN FACULTY OF CERTAIN ACCREDITED INSTITUTIONS.**

Section 105 of title 17, United States Code, is amended—

(1) by inserting “(a) In general.—” before “Copyright”; and

(2) by adding at the end the following:

“(b) COPYRIGHT PROTECTION OF CERTAIN OF WORKS.—Subject to subsection (c), the covered author of a covered work owns the copyright to that covered work.



“(c) USE BY FEDERAL GOVERNMENT.—The Secretary of Defense may direct the covered author of a covered work to provide the Federal Government with an irrevocable, royalty-free, world-wide, nonexclusive license to reproduce, distribute, perform, or display such covered work for purposes of the United States Government.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘covered author’ means a civilian member of the faculty of a covered institution.

“(2) The term ‘covered institution’ means the following:

“(A) National Defense University.

“(B) United States Military Academy.

“(C) Army War College.

“(D) United States Army Command and General Staff College.

“(E) United States Naval Academy.

“(F) Naval War College.

“(G) Naval Post Graduate School.

“(H) Marine Corps University.

“(I) United States Air Force Academy.

“(J) Air University.

“(K) Defense Language Institute.

“(L) United States Coast Guard Academy.

“(3) The term ‘covered work’ means a literary work produced by a covered author in the course of employment at a covered institution for publication by a scholarly press or journal.”.

**SEC. 545. TERMINATION OF LEASES OF PREMISES AND MOTOR VEHICLES OF SERVICEMEMBERS WHO INCUR CATASTROPHIC INJURY OR ILLNESS OR DIE WHILE IN MILITARY SERVICE.**

(a) CATASTROPHIC INJURIES AND ILLNESSES.—Subsection (a) of section 305 of the Servicemembers Civil Relief Act (50 U.S.C. 3955), as amended by section 301 of the Veterans Benefits and Transition Act of 2018 (Public Law 115–407), is further amended by adding at the end the following new paragraph:

“(4) CATASTROPHIC INJURY OR ILLNESS OF LESSEE.—The spouse of the lessee on a lease described in subsection (b) may terminate the lease during the one-year period beginning on the date on which the lessee incurs a catastrophic injury or illness (as that term is defined in section 439(g) of title 37, United States Code), if the lessee incurs the catastrophic injury or illness during a period of military service or while performing full-time National Guard duty, active Guard and Reserve duty, or inactive-duty training (as such terms are defined in section 101(d) of title 10, United States Code).”.

Time period.

(b) DEATHS.—Paragraph (3) of such subsection is amended by striking “in subsection (b)(1)” and inserting “in subsection (b)”.

**SEC. 546. MILITARY ORDERS REQUIRED FOR TERMINATION OF LEASES PURSUANT TO THE SERVICEMEMBERS CIVIL RELIEF ACT.**

Section 305(i) of the Servicemembers Civil Relief Act (50 U.S.C. 3955) is amended—

(1) in paragraph (1), by inserting “(including orders for separation or retirement)” after “official military orders”; and

(2) by adding at the end the following new paragraph:

Definition.

“(3) PERMANENT CHANGE OF STATION.—The term ‘permanent change of station’ includes separation or retirement from military service.”

**SEC. 547. PRESERVATION OF RIGHT TO BRING CLASS ACTION UNDER SERVICEMEMBERS CIVIL RELIEF ACT.**

(a) IN GENERAL.—Section 802(a) of the Servicemembers Civil Relief Act (50 U.S.C. 4042(a)) is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) in paragraph (2), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(3) be a representative party on behalf of members of a class or be a member of a class, in accordance with the Federal Rules of Civil Procedure, notwithstanding any previous agreement to the contrary.”

50 USC 4042  
note.

(b) CONSTRUCTION.—The amendments made by subsection (a) shall not be construed to imply that a person aggrieved by a violation of such Act did not have a right to bring a civil action as a representative party on behalf of members of a class or be a member of a class in a civil action before the date of the enactment of this Act.

10 USC 1044  
note.

**SEC. 548. LEGAL COUNSEL FOR VICTIMS OF ALLEGED DOMESTIC VIOLENCE OFFENSES.**

Deadline.

(a) IN GENERAL.—Not later than December 1, 2020, the Secretary of Defense shall carry out a program to provide legal counsel (referred to in this section as “Counsel”) to victims of alleged domestic violence offenses who are otherwise eligible for military legal assistance under section 1044 of title 10, United States Code.

(b) FORM OF IMPLEMENTATION.—The program required under subsection (a) may be carried out as part of another program of the Department of Defense or through the establishment of a separate program.

(c) TRAINING AND TERMS.—The Secretary of Defense shall ensure that Counsel—

(1) receive specialized training in legal issues commonly associated with alleged domestic violence offenses; and

(2) to the extent practicable, serve as Counsel for a period of not less than 2 years.

(d) ATTORNEY-CLIENT RELATIONSHIP.—The relationship between a Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(e) PARALEGAL SUPPORT.—The Secretary of Defense shall ensure that sufficient trained paralegal support is provided to Counsel under the program.

(f) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the program under subsection (a).

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

Assessment.

(A) A description and assessment of the manner in which the Department of Defense will implement the program required under subsection (a).

(B) An explanation of whether the program will be carried out as part of another program of the Department or through the establishment of a separate program.

(C) A comprehensive description of the additional personnel, resources, and training that will be required to implement the program, including identification of the specific number of additional billets that will be needed to staff the program.

(D) Recommendations for any modifications to law that may be necessary to effectively and efficiently implement the program.

Recommendations.

(g) **ALLEGED DOMESTIC VIOLENCE OFFENSE DEFINED.**—In this section, the term “alleged domestic violence offense” means any allegation of—

10 USC 1044 note.

(1) a violation of section 928(b), 928b(1), 928b(5), or 930 of title 10, United States Code (article 128(b), 128b(1), 128b(5), or 130 of the Uniform Code of Military Justice), when committed against a spouse, intimate partner, or immediate family member;

(2) a violation of any other provision of subchapter X of chapter 47 of such title (the Uniform Code of Military Justice), when committed against a spouse, intimate partner, or immediate family member; or

(3) an attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).

**SEC. 549. NOTICE TO VICTIMS OF ALLEGED SEXUAL ASSAULT OF PENDING OF FURTHER ADMINISTRATIVE ACTION FOLLOWING A DETERMINATION NOT TO REFER TO TRIAL BY COURT-MARTIAL.**

10 USC 806b note.

Under regulations prescribed by the Secretary of Defense, upon a determination not to refer a case of alleged sexual assault for trial by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), the commander making such determination shall periodically notify the victim of the status of a final determination on further action on such case, whether non-judicial punishment under section 815 of such title (article 15 of the Uniform Code of Military Justice), other administrative action, or no further action. Such notifications shall continue not less frequently than monthly until such final determination.

Time period.

**SEC. 550. TREATMENT OF INFORMATION IN CATCH A SERIAL OFFENDER PROGRAM FOR CERTAIN PURPOSES.**

5 USC 552 note.

(a) **TREATMENT UNDER FOIA.**—Victim disclosures under the Catch a Serial Offender Program shall be withheld from public disclosure under paragraph (b)(3) of section 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act”).

(b) **PRESERVATION OF RESTRICTED REPORT.**—The transmittal or receipt in connection with the Catch a Serial Offender Program of a report on a sexual assault that is treated as a restricted report shall not operate to terminate its treatment or status as a restricted report.

10 USC 1561a  
note.

**SEC. 550A. POLICIES AND PROCEDURES ON REGISTRATION AT MILITARY INSTALLATIONS OF CIVILIAN PROTECTIVE ORDERS APPLICABLE TO MEMBERS OF THE ARMED FORCES ASSIGNED TO SUCH INSTALLATIONS AND CERTAIN OTHER INDIVIDUALS.**

Deadline.  
Consultation.

(a) **POLICIES AND PROCEDURES REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish policies and procedures for the registration at military installations of any civilian protective orders described in subsection (b), including the duties and responsibilities of commanders of installations in the registration process.

(b) **CIVILIAN PROTECTIVE ORDERS.**—A civilian protective order described in this subsection is any civilian protective order as follows:

(1) A civilian protective order against a member of the Armed Forces assigned to the installation concerned.

(2) A civilian protective order against a civilian employee employed at the installation concerned.

(3) A civilian protective order against the civilian spouse or intimate partner of a member of the Armed Forces on active duty and assigned to the installation concerned, or of a civilian employee described in paragraph (2), which order provides for the protection of such member or employee.

(c) **PARTICULAR ELEMENTS.**—The policies and procedures required by subsection (a) shall include the following:

(1) A requirement for notice between and among the commander, military law enforcement elements, and military criminal investigative elements of an installation when a member of the Armed Forces assigned to such installation, a civilian employee employed at such installation, a civilian spouse or intimate partner of a member assigned to such installation, or a civilian spouse or intimate partner of a civilian employee employed at such installation becomes subject to a civilian protective order.

(2) A statement of policy that failure to register a civilian protective order may not be a justification for the lack of enforcement of such order by military law enforcement and other applicable personnel who have knowledge of such order.

(d) **LETTER.**—As soon as practicable after establishing the policies and procedures required by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a letter that includes the following:

(1) A detailed description of the policies and procedures.

(2) A certification by the Secretary that the policies and procedures have been implemented on each military installation.

Certification.

10 USC 1561  
note.

**SEC. 550B. DEFENSE ADVISORY COMMITTEE FOR THE PREVENTION OF SEXUAL MISCONDUCT.**

(a) **ESTABLISHMENT REQUIRED.**—

(1) **IN GENERAL.**—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee for the Prevention of Sexual Misconduct” (in this section referred to as the “Advisory Committee”).

(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than one year after the date of the enactment of this Act.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Advisory Committee shall consist of not more than 20 members, appointed by the Secretary from among individuals who have an expertise appropriate for the work of the Advisory Committee, including at least one individual with each expertise as follows:

Appointments.

(A) Expertise in the prevention of sexual assault and behaviors on the sexual assault continuum of harm.

(B) Expertise in adverse behaviors, including the prevention of suicide and the prevention of substance abuse.

(C) Expertise in the change of culture of large organizations.

(D) Expertise in implementation science.

(2) BACKGROUND OF INDIVIDUALS.—Individuals appointed to the Advisory Committee may include individuals with expertise in sexual assault prevention efforts of institutions of higher education, public health officials, and such other individuals as the Secretary considers appropriate.

(3) PROHIBITION ON MEMBERSHIP OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY.—A member of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary on the following:

(A) The prevention of sexual assault (including rape, forcible sodomy, other sexual assault, and other sexual misconduct (including behaviors on the sexual assault continuum of harm)) involving members of the Armed Forces.

(B) The policies, programs, and practices of each military department, each Armed Force, and each military service academy for the prevention of sexual assault as described in subparagraph (A).

(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, the following:

Reviews.

(A) Closed cases involving allegations of sexual assault described in paragraph (1).

(B) Efforts of institutions of higher education to prevent sexual assault among students.

(C) Any other information or matters that the Advisory Committee or the Secretary considers appropriate.

(3) COORDINATION OF EFFORTS.—In addition to the reviews required by paragraph (2), for purposes of providing advice to the Secretary the Advisory Committee shall also consult and coordinate with the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) on matters of joint interest to the two Advisory Committees.

(d) ANNUAL REPORT.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary and the Committees on Armed Services of the Senate and the House of Representatives a report on the activities of the Advisory Committee pursuant to this section during the preceding year.

Definitions.

(e) SEXUAL ASSAULT CONTINUUM OF HARM.—In this section, the term “sexual assault continuum of harm” includes—

(1) inappropriate actions (such as sexist jokes), sexual harassment, gender discrimination, hazing, cyber bullying, or other behavior that contributes to a culture that is tolerant of, or increases risk for, sexual assault; and

(2) maltreatment or ostracism of a victim for a report of sexual misconduct.

(f) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall notify the Committees on the Armed Services of the Senate and House of Representatives.

Notification.

10 USC 1044e  
note.

**SEC. 550C. TRAINING FOR SPECIAL VICTIMS’ COUNSEL ON CIVILIAN CRIMINAL JUSTICE MATTERS IN THE STATES OF THE MILITARY INSTALLATIONS TO WHICH ASSIGNED.**

(a) TRAINING.—

(1) IN GENERAL.—Except as provided in subsection (c), upon the assignment of a Special Victims’ Counsel (including a Victim Legal Counsel of the Navy) to a military installation in the United States, such Counsel shall be provided appropriate training on the law and policies of the State or States in which such military installation is located with respect to the criminal justice matters specified in paragraph (2). The purpose of the training is to assist such Counsel in providing victims of alleged sex-related offenses with information necessary to make an informed decision regarding preference as to the jurisdiction (whether court-martial or State court) in which such offenses will be prosecuted.

(2) CRIMINAL JUSTICE MATTERS.—The criminal justice matters specified in this paragraph, with respect to a State, are the following:

(A) Victim rights.

(B) Prosecution of criminal offenses.

(C) Sentencing for conviction of criminal offenses.

(D) Protective orders.

(b) ALLEGED SEX-RELATED OFFENSE DEFINED.—In this section, the term “alleged sex-related offense” means any allegation of—

(1) a violation of section 920, 920b, 920c, or 930 of title 10, United States Code (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

(c) EXCEPTION.—The requirements of this section do not apply to a Special Victims’ Counsel of the Coast Guard.

**SEC. 550D. ENHANCING THE CAPABILITY OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS TO PREVENT AND COMBAT CHILD SEXUAL EXPLOITATION.**

10 USC 1561  
note prec.

(a) IN GENERAL.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish and carry out an initiative to enhance the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.

Deadline.

(b) ACTIVITIES.—In establishing and carrying out the initiative under subsection (a), the Secretary of Defense may—

(1) work with internal and external functional experts to train the personnel of military criminal investigative organizations across the Department regarding—

(A) technologies, tools, and techniques, including digital forensics, to enhance the investigation of child sexual exploitation; and

(B) evidence-based forensic interviewing of child victims, and the referral of child victims for trauma-informed mental and medical health care, and other treatment and support services;

(2) to the extent authorized by law, collaborate with Federal, State, local, and other civilian law enforcement agencies on issues relating to child sexual exploitation, including by—

(A) participating in task forces established by such agencies for the purpose of preventing and combating child sexual exploitation;

(B) establishing cooperative agreements to facilitate co-training and collaboration with such agencies; and

(C) ensuring that streamlined processes for the referral of child sexual exploitation cases to other agencies and jurisdictions, as appropriate, are fully operational;

(3) as appropriate, assist in educating the military community on the prevention and response to child sexual exploitation; and

(4) carry out such other activities as the Secretary determines to be relevant.

**SEC. 550E. FEASIBILITY STUDY ON ESTABLISHMENT OF DATABASE OF MILITARY PROTECTIVE ORDERS.**

(a) STUDY.—The Secretary of Defense shall conduct a study on the feasibility of establishing a database of military protective orders issued by military commanders against individuals suspected of having committed an offense of domestic violence under section 928b of title 10, United States Code (article 128b of the Uniform Code of Military Justice). The study shall include an examination of each of the following:

(1) The feasibility of creating a database to record, track, and report such military protective orders to the National Instant Criminal Background Check System.

(2) The feasibility of establishing a process by which a military judge or magistrate may issue a protective order

against an individual suspected of having committed such an offense.

(3) How the database and process described in paragraphs (1) and (2), respectively, may differ from analogous civilian databases and processes, including with regard to due process and other procedural protections.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the results of the study conducted under subsection (a).

**SEC. 550F. GAO REVIEW OF USERRA AND SCRA.**

(a) REPORT REQUIRED.—Not later than January 31, 2021, the Comptroller General of the United States shall conduct a review and submit a report to the Committees on Armed Services of the Senate and House of Representatives regarding what the Comptroller General determines are the effects of the common commercial and governmental practices of including a mandatory arbitration clause in employment and consumer agreements, on the ability of servicemembers to assert claims under and secure redress for violations of—

(1) chapter 43 of title 38, United States Code (commonly referred to as the “Uniformed Services Employment and Re-employments Rights Act of 1994” and referred to in this section as “USERRA”); and

(2) the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq. (referred to in this section as “SCRA”)).

(b) ELEMENTS.—The report under this section shall include the following:

(1) Each process by which a servicemember may assert a claim under USERRA or SCRA, including—

(A) administrative assistance;

(B) support, and dispute resolution processes provided by Federal and State agencies;

(C) arbitration; and

(D) litigation.

(2) With regards to each process identified under paragraph (1), an evaluation of—

(A) the flexibility the process affords to the servicemember and other parties to the process;

(B) the burden on the servicemember and other parties to the process;

(C) the financial cost of the process to the servicemember and the other parties;

(D) the speed of each process, including the rate at which each claim pursued under such process is resolved;

(E) the confidentiality of each process; and

(F) the effects of the process.

(3) Based on data regarding the results of past actions to enforce servicemember rights and benefits under USERRA and SCRA, including data of the Departments of Defense and Labor regarding dispute resolution under USERRA and data of the Department of Justice regarding litigation under SCRA—

(A) an analysis of the extent to which each of the processes identified in paragraph (1) has been employed to address claims under USERRA or SCRA and

Evaluations.

Data.

Analysis.



(B) the extent to which each such process achieved a final disposition favorable to the servicemember.

(4) An assessment of general societal trends in the use of mandatory arbitration clauses in employment and consumer agreements, including any trend in a specific industry or employment sector that relies on mandatory arbitration in such contracts and agreements. Assessment.

(5) An assessment and explanation of any effect—

Assessment.

(A) of the use of mandatory arbitration clauses in employment or consumer agreements on military readiness and deployability.

(B) of USERRA or SCRA on the willingness of employers to employ, and consumer service businesses to provide services to servicemembers and their families.

## Subtitle F—Member Education

### SEC. 551. AUTHORITY FOR DETAIL OF CERTAIN ENLISTED MEMBERS OF THE ARMED FORCES AS STUDENTS AT LAW SCHOOLS.

(a) IN GENERAL.—Section 2004 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “and enlisted members” after “commissioned officers”;

(B) by striking “bachelor of laws or”; and

(C) by inserting “and enlisted members” after “twenty-five officers”;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting “or enlisted member” after “officer”;

(B) by striking paragraph (1) and inserting the following new paragraph (1):

“(1) either—

Time periods.

“(A) have served on active duty for a period of not less than two years nor more than six years and be an officer in the pay grade O–3 or below as of the time the training is to begin; or

“(B) have served on active duty for a period of not less than four years nor more than eight years and be an enlisted member in the pay grade E–5, E–6, or E–7 as of the time the training is to begin;”;

(C) by redesignating paragraph (2) as paragraph (3);

(D) by inserting after paragraph (1), as amended by subparagraph (B), the following new paragraph (2):

“(2) in the case of an enlisted member, meet all requirements for acceptance of a commission as a commissioned officer in the armed forces; and”; and

(E) in subparagraph (B) of paragraph (3), as redesignated by subparagraph (C) of this paragraph, by striking “or law specialist”;

(3) in subsection (c)—

(A) in the first sentence, by inserting “and enlisted members” after “Officers”; and

(B) in the second sentence, by inserting “or enlisted member” after “officer” each place it appears;

(4) in subsection (d), by inserting “and enlistment members” after “officers”;

(5) in subsection (e), by inserting “or enlistment member” after “officer”; and

(6) in subsection (f), by inserting “or enlisted member” after “officer”.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of such section is amended to read as follows:

**“§ 2004. Detail as students at law schools; commissioned officers; certain enlisted members”.**

10 USC 2001  
prec.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 101 of such title is amended by striking the item relating to section 2004 and inserting the following new item:

“2004. Detail as students at law schools; commissioned officers; certain enlisted members.”.

**SEC. 552. INCLUSION OF COAST GUARD IN DEPARTMENT OF DEFENSE STARBASE PROGRAM.**

Section 2193b of title 10, United States Code, is amended—

(1) in subsection (a), by inserting “and the Secretary of the Department in which the Coast Guard is operating” after “military departments”; and

(2) in subsection (f), by striking “and the Secretaries of the military departments” and inserting “, the Secretaries of the military departments, and the Secretary of the Department in which the Coast Guard is operating”.

**SEC. 553. DEGREE GRANTING AUTHORITY FOR UNITED STATES ARMY ARMAMENT GRADUATE SCHOOL; LIMITATION ON ESTABLISHMENT OF CERTAIN EDUCATIONAL INSTITUTIONS.**

(a) DEGREE GRANTING AUTHORITY FOR UNITED STATES ARMY ARMAMENT GRADUATE SCHOOL.—

(1) IN GENERAL.—Chapter 751 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 7422.

**“§ 7422. Degree granting authority for United States Army Armament Graduate School**

“(a) AUTHORITY.—Under regulations prescribed by the Secretary of the Army, the Chancellor of the United States Army Armament Graduate School may, upon the recommendation of the faculty and provost of the school, confer appropriate degrees upon graduates who meet the degree requirements.

“(b) LIMITATION.—A degree may not be conferred under this section unless—

Recommendations.

“(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

“(2) the United States Army Armament Graduate School is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

“(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

“(A) a copy of the self-assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education’s National Advisory Committee on Institutional Quality and Integrity; and

Records.

“(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

Recommendations.

“(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

Reports.  
Recommendations.

“(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the United States Army Armament Graduate School to award any new or existing degree.”

Reports.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

10 USC 7401  
prec.

“7422. Degree granting authority for United States Army Armament Graduate School.”

(b) LIMITATION.—

(1) IN GENERAL.—Chapter 101 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2017. Limitation on establishment of postsecondary educational institutions pending notice to Congress**

10 USC 2017.

“(a) LIMITATION.—The Secretary of Defense may not establish a postsecondary educational institution within the Department of Defense until a period of one year has elapsed following the date on which the Secretary notifies the congressional defense committees of the intent of the Secretary to establish the institution.

Time period.

“(b) POSTSECONDARY EDUCATIONAL INSTITUTION DEFINED.—In this section, the term ‘postsecondary educational institution’ means a school or other educational institution that is intended to provide students with a course of instruction that is comparable, in length and academic rigor, to a course of instruction for which an associate’s, bachelor’s, or graduate degree may be awarded.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

10 USC 2001  
prec.

“2017. Limitation on establishment of postsecondary educational institutions pending notice to Congress.”

(3) APPLICABILITY.—Section 2017 of title 10, United States Code, as added by paragraph (1), shall apply with respect

10 USC 2017  
note.

to postsecondary educational institutions intended to be established by the Secretary of Defense on or after the date of the enactment of this Act.

**SEC. 554. PROHIBITION ON OFF-DUTY EMPLOYMENT FOR CADETS AND MIDSHIPMEN COMPLETING OBLIGATED SERVICE AFTER GRADUATION.**

(a) **MILITARY ACADEMY.**—Section 7448(a)(5)(A) of title 10, United States Code, is amended by inserting “or seek or accept approval for off-duty employment while completing the cadet’s commissioned service obligation” before “to obtain employment”.

(b) **NAVAL ACADEMY.**—Section 8459(a)(5)(A) of title 10, United States Code, is amended by inserting “or seek or accept approval for off-duty employment while completing the midshipman’s commissioned service obligation” before “to obtain employment”.

(c) **AIR FORCE ACADEMY.**—Section 9448(a)(5)(A) of title 10, United States Code, is amended by inserting “or seek or accept approval for off-duty employment while completing the cadet’s commissioned service obligation” before “to obtain employment”.

**SEC. 555. CONSIDERATION OF REQUEST FOR TRANSFER OF A CADET OR MIDSHIPMAN AT A MILITARY SERVICE ACADEMY WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.**

(a) **UNITED STATES MILITARY ACADEMY.**—Section 7461 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) **CONSIDERATION OF REQUEST FOR TRANSFER OF A CADET WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.**—(1) The Secretary of the Army shall provide for timely consideration of and action on a request submitted by a cadet appointed to the United States Military Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

Regulations.  
Guidelines.

“(2) The Secretary of the Army shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

“(A) provide that the Superintendent of the United States Military Academy shall ensure that any cadet who has been appointed to the United States Military Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a cadet is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

Coordination.

“(B) direct the Superintendent of the United States Military Academy, in coordination with the Superintendent of the military service academy to which the cadet requests to transfer—

Deadline.

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the cadet;

“(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

“(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the cadet to the military service academy concerned as expeditiously as possible; and

“(C) direct the Superintendent of the United States Military Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers’ Training Corps program at the institution of higher education to which the cadet requests to transfer—

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the cadet;

“(ii) subject to the cadet’s acceptance for admission to the institution of higher education to which the cadet wishes to transfer, to approve such request for transfer unless there are exceptional circumstances that require denial of the application; and

“(iii) to take all necessary and appropriate action to effectuate the cadet’s enrollment in the institution of higher education to which the cadet wishes to transfer and to process the cadet for participation in the relevant Senior Reserve Officers’ Training Corps program as expeditiously as possible.

“(3) If the Superintendent of the United States Military Academy denies a request for transfer under this subsection, the cadet may request review of the denial by the Secretary of the Army, who shall take action on such request not later than 72 hours after receipt of the formal request for review.

“(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

“(5) A cadet who transfers under this subsection may retain the cadet’s appointment to the United States Military Academy or may be appointed to the military service academy to which the cadet transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.”.

(b) UNITED STATES NAVAL ACADEMY.—Section 8480 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A MIDSHIPMAN WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—(1) The Secretary of the Navy shall provide for timely consideration of and action on a request submitted by a midshipman appointed to the United States Naval Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

“(2) The Secretary of the Navy shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

“(A) provide that the Superintendent of the United States Naval Academy shall ensure that any midshipman who has been appointed to the United States Naval Academy and who

Coordination.

Deadline.

Deadline.

Records.  
Confidential  
information.

Regulations.  
Guidelines.

- is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a midshipman is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;
- Coordination. “(B) direct the Superintendent of the United States Naval Academy, in coordination with the Superintendent of the military service academy to which the midshipman requests to transfer—
- Deadline. “(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the midshipman;
- “(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and
- “(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the midshipman to the military service academy concerned as expeditiously as possible;
- Coordination. “(C) direct the Superintendent of the United States Naval Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers’ Training Corps program at the institution of higher education to which the midshipman requests to transfer—
- Deadline. “(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the midshipman;
- “(ii) subject to the midshipman’s acceptance for admission to the institution of higher education to which the midshipman wishes to transfer, to approve such request for transfer unless there are exceptional circumstances that require denial of the application; and
- “(iii) to take all necessary and appropriate action to effectuate the midshipman’s enrollment in the institution of higher education to which the midshipman wishes to transfer and to process the midshipman for participation in the relevant Senior Reserve Officers’ Training Corps program as expeditiously as possible.
- Deadline. “(3) If the Superintendent of the United States Naval Academy denies a request for transfer under this subsection, the midshipman may request review of the denial by the Secretary of the Navy, who shall take action on such request not later than 72 hours after receipt of the formal request for review.
- Records.  
Confidential  
information. “(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.
- “(5) A midshipman who transfers under this subsection may retain the midshipman’s appointment to the United States Naval Academy or may be appointed to the military service academy to which the midshipman transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.”
- (c) UNITED STATES AIR FORCE ACADEMY.—Section 9461 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A CADET WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—

(1) The Secretary of the Air Force shall provide for timely consideration of and action on a request submitted by a cadet appointed to the United States Air Force Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

“(2) The Secretary of the Air Force shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

Regulations.  
Guidelines.

“(A) provide that the Superintendent of the United States Air Force Academy shall ensure that any cadet who has been appointed to the United States Air Force Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a cadet is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

“(B) direct the Superintendent of the United States Air Force Academy, in coordination with the Superintendent of the military service academy to which the cadet requests to transfer—

Coordination.

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the cadet;

Deadline.

“(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

“(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the cadet to the military service academy concerned as expeditiously as possible; and

“(C) direct the Superintendent of the United States Air Force Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers’ Training Corps program at the institution of higher education to which the cadet requests to transfer—

Coordination.

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the cadet;

Deadline.

“(ii) subject to the cadet’s acceptance for admission to the institution of higher education to which the cadet wishes to transfer, to approve such request for transfer unless there are exceptional circumstances that require denial of the application; and

“(iii) to take all necessary and appropriate action to effectuate the cadet’s enrollment in the institution of higher education to which the cadet wishes to transfer and to process the cadet for participation in the relevant Senior Reserve Officers’ Training Corps program as expeditiously as possible.

“(3) If the Superintendent of the United States Air Force Academy denies a request for transfer under this subsection, the

Deadline.

cadet may request review of the denial by the Secretary of the Air Force, who shall take action on such request not later than 72 hours after receipt of the formal request for review.

Records.  
Confidential  
information.

“(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

“(5) A cadet who transfers under this subsection may retain the cadet’s appointment to the United States Air Force Academy or may be appointed to the military service academy to which the cadet transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.”.

**SEC. 556. REDESIGNATION OF THE COMMANDANT OF THE UNITED STATES AIR FORCE INSTITUTE OF TECHNOLOGY AS THE DIRECTOR AND CHANCELLOR OF SUCH INSTITUTE.**

(a) REDESIGNATION.—Section 9414b(a) of title 10, United States Code, is amended—

(1) in the subsection heading, by striking “COMMANDANT” and inserting “DIRECTOR AND CHANCELLOR”;

(2) by striking “Commandant” each place it appears and inserting “Director and Chancellor”; and

(3) in the heading of paragraph (3), by striking “COMMANDANT” and inserting “DIRECTOR AND CHANCELLOR”.

(b) CONFORMING AMENDMENTS.—Section 9414(f) of such title is amended by striking “Commandant” both places it appears and inserting “Director and Chancellor”.

10 USC 9414b  
note.

(c) REFERENCES.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the Commandant of the United States Air Force Institute of Technology shall be deemed to be a reference to the Director and Chancellor of the United States Air Force Institute of Technology.

**SEC. 557. ELIGIBILITY OF ADDITIONAL ENLISTED MEMBERS FOR ASSOCIATE DEGREE PROGRAMS OF THE COMMUNITY COLLEGE OF THE AIR FORCE.**

Section 9415(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) Enlisted members of the armed forces other than the Air Force who are participating in Community College of the Air Force affiliated joint-service training and education courses.”.

10 USC 7431  
note.

**SEC. 558. SPEECH DISORDERS OF CADETS AND MIDSHIPMEN.**

(a) TESTING.—The Superintendent of a military service academy shall provide testing for speech disorders to incoming cadets or midshipmen under the jurisdiction of that Superintendent.

(b) NO EFFECT ON ADMISSION.—The testing under subsection (a) may not have any effect on admission to a military service academy.

(c) RESULTS.—The Superintendent shall provide each cadet or midshipman under the jurisdiction of that Superintendent the result of the testing under subsection (a) and a list of warfare unrestricted line officer positions and occupation specialities that require successful performance on the speech test.

(d) THERAPY.—The Superintendent shall furnish speech therapy to a cadet or midshipman under the jurisdiction of that Superintendent at the election of the cadet or midshipman.



(e) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretaries of the military departments shall submit to the Committees on Armed Services of the Senate and the House of Representatives a joint report that includes the following:

(1) The number of cadets or midshipmen with an identified speech disorder in each military service academy.

(2) A list of the health care and administrative resources related to speech disorders available to cadets and midshipmen described in paragraph (1).

(3) A list of positions and specialties described in subsection (c) pursued by the cadets and midshipmen described in paragraph (1) at the time of graduation.

Lists.

**SEC. 559. REQUIREMENT TO CONTINUE PROVISION OF TUITION ASSISTANCE FOR MEMBERS OF THE ARMED FORCES.**

The Secretary of each military department shall carry out tuition assistance programs for members of an Armed Force under the jurisdiction of that Secretary during fiscal year 2020 using an amount not less than the sum of any amounts appropriated for tuition assistance for members of that Armed Force for fiscal year 2020.

**SEC. 560. INFORMATION ON INSTITUTIONS OF HIGHER EDUCATION PARTICIPATING IN THE DEPARTMENT OF DEFENSE TUITION ASSISTANCE PROGRAM.**

10 USC 2007 note.

(a) **LIST OF PARTICIPATING INSTITUTIONS.**—The Secretary of Defense shall make available, on a publicly accessible website of the Department of Defense, a list that identifies—

Public information. Web posting.

(1) each institution of higher education that receives funds under the Department of Defense Tuition Assistance Program; and

(2) the amount of such funds received by the institution.

(b) **ANNUAL UPDATES.**—The Secretary of Defense shall update the list described in subsection (a) not less frequently than once annually.

**SEC. 560A. INCLUSION OF INFORMATION ON FREE CREDIT MONITORING IN ANNUAL FINANCIAL LITERACY BRIEFING.**

10 USC 992 note.

The Secretary of each military department shall ensure that the annual financial literacy education briefing provided to members of the Armed Forces includes information on the availability of free credit monitoring services pursuant to section 605A(k) of the Fair Credit Reporting Act (15 U.S.C. 1681c–1(k)).

**SEC. 560B. PROGRAMS TO FACILITATE THE AWARD OF PRIVATE PILOT'S CERTIFICATES.**

10 USC 2015 note.

(a) **PROGRAMS AUTHORIZED.**—Each Secretary of a military department may carry out a program under which qualified participants may obtain a private pilot's certificate through an institution of higher education with an accredited aviation program that is approved by such Secretary pursuant to subsection (c).

(b) **PARTICIPANT QUALIFICATIONS AND TYPES OF ASSISTANCE.**—

(1) **IN GENERAL.**—In carrying out a program under subsection (a), the Secretary of a military department shall prescribe—

(A) the standards to be met for participation in the program; and

(B) the types of assistance, if any, to be provided to individuals who participate in the program.

(2) UNIFORMITY ACROSS MILITARY DEPARTMENTS.—To the extent practicable, the standards and types of assistance prescribed under paragraph (1) shall be uniform across the military departments.

(c) APPROVED INSTITUTIONS OF HIGHER EDUCATION.—

List.

(1) IN GENERAL.—In carrying out a program under subsection (a), the Secretary of a military department shall maintain a list of institutions of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) through which an individual participating in the program may obtain a private pilot’s certificate.

Requirement.

(2) QUALIFICATIONS AND STANDARDS.—Any institution of higher education included on a list under paragraph (1), and any course of instruction toward obtaining a private pilot’s certificate offered by such institution, shall meet such qualifications and standards as the Secretary shall prescribe for purposes of the program. Such qualifications and standards shall include a requirement that any institution included on the list award, to individual participating in the program, academic credit at such institution for any portion of course work completed on the ground school course of instruction of such institution in connection with obtaining a private pilot’s certificate, regardless of whether the participant fully completed the ground school course of instruction.

(d) ANNUAL REPORTS ON PROGRAMS.—

(1) IN GENERAL.—Not later than February 28, 2021, and each year thereafter, each Secretary of a military department shall submit to Congress a report on the program, if any, carried out by such Secretary under subsection (a) during the preceding calendar year.

(2) ELEMENTS.—Each report under paragraph (1) shall include, for the program and year covered by such report, the following:

(A) The total number of participants in the program.

(B) The number of private pilot’s certificates awarded to participants in the program.

(C) The number of participants in the program who fully completed a ground school course of instruction in connection with obtaining a private pilot’s certificate.

## **Subtitle G—Member Training and Transition**

### **SEC. 561. REQUIREMENT TO PROVIDE INFORMATION REGARDING BENEFITS CLAIMS TO MEMBERS DURING TAP COUNSELING.**

Section 1142(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(19) Information regarding how to file claims for benefits available to the member under laws administered by the Secretaries of Defense and Veterans Affairs.”.

**SEC. 562. PARTICIPATION OF OTHER FEDERAL AGENCIES IN THE SKILLBRIDGE APPRENTICESHIP AND INTERNSHIP PROGRAM FOR MEMBERS OF THE ARMED FORCES.**

Section 1143(e) of title 10, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph (3):

“(3) Any program under this subsection may be carried out at, through, or in consultation with such other departments or agencies of the Federal Government as the Secretary of the military department concerned considers appropriate.”.

**SEC. 563. FIRST MODIFICATION OF ELEMENTS OF REPORT ON THE IMPROVED TRANSITION ASSISTANCE PROGRAM.**

Evaluations.

Section 552(b)(4) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by adding at the end the following:

132 Stat. 1772.

“(E) The evaluation of the Secretary regarding the effectiveness of the Transition Assistance Program for all members of the Armed Forces.

“(F) The evaluation of the Secretary regarding the effectiveness of the Transition Assistance Program specifically for female members of the Armed Forces.”.

**SEC. 564. SECOND MODIFICATION OF ELEMENTS OF REPORT ON THE IMPROVED TRANSITION ASSISTANCE PROGRAM.**

Section 552(b)(4) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), as amended by section 563 of this Act, is further amended—

(1) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively;

(2) by inserting before subparagraph (B), as redesignated by paragraph (1), the following new subparagraph (A):

“(A) The total number of members eligible to attend Transition Assistance Program counseling.”; and

(3) by adding at the end the following new subparagraphs:

“(H) The number of members who participated in programs under section 1143(e) of title 10, United States Code (commonly referred to as ‘Job Training, Employment Skills, Apprenticeships and Internships (JTEST-AI)’ or ‘Skill Bridge’).

“(I) Such other information as is required to provide Congress with a comprehensive description of the participation of the members in the Transition Assistance Program and programs described in subparagraph (H).”.

**SEC. 565. PROHIBITION ON GENDER-SEGREGATED TRAINING AT MARINE CORPS RECRUIT DEPOTS.**

10 USC 8431  
note prec.

(a) PARRIS ISLAND.—

(1) PROHIBITION.—Subject to paragraph (2), training at the Marine Corps Recruit Depot, Parris Island, South Carolina, may not be segregated based on gender.

(2) DEADLINE.—The Commandant of the Marine Corps shall carry out this subsection not later than five years after the date of the enactment of this Act.

(b) SAN DIEGO.—

(1) PROHIBITION.—Subject to paragraph (2), training at the Marine Corps Recruit Depot, San Diego, California, may not be segregated based on gender.

(2) DEADLINE.—The Commandant of the Marine Corps shall carry out this subsection not later than eight years after the date of the enactment of this Act.

**SEC. 566. ASSESSMENT OF DEATHS OF RECRUITS UNDER THE JURISDICTION OF THE SECRETARIES OF THE MILITARY DEPARTMENTS.**

(a) ASSESSMENT.—The Inspector General of the Department of Defense shall conduct an assessment of the deaths of recruits at facilities under the jurisdiction of the Secretaries of the military departments, and the effectiveness of the current medical protocols on the training bases.

(b) REPORT.—Not later than September 30, 2020, the Inspector General shall submit to the Committees on Armed Services of the Senate and the House of Representative a report containing the results of the assessment conducted under subsection (a). The report shall include the following:

Time period.

(1) The number of recruits who died during basic training in the five years preceding the date of the report.

(2) The causes of deaths described in paragraph (1).

(3) The types of medical treatment that was provided to recruits described in paragraph (1).

(4) Whether any of the deaths identified under paragraph (1) were found to be a result of medical negligence.

(5) A description of medical capabilities and personnel available to the recruits at each facility.

(6) A description of medical resources accessible to the recruits at the company level at each facility.

(7) A description of 24-hour medical resources available to recruits at each facility.

Evaluation.

(8) An evaluation of the guidelines and resources in place to monitor sick recruits.

Evaluation.

(9) An evaluation of how supervisors evaluate and determine whether a sick recruit should continue training or further seek medical assistance.

Evaluation.

(10) An evaluation of how the Secretaries of the military departments can increase visibility of the comprehensive medical status of a sick recruit to instructors and supervisors in order to provide better situational awareness of the such medical status.

Evaluation.

(11) An evaluation of how to improve medical care for recruits.

**SEC. 567. REVIEW OF DEPARTMENT OF DEFENSE TRAINING PROGRAMS REGARDING DISINFORMATION CAMPAIGNS.**

Deadline.

(a) REVIEW.—Not later than 120 days after the enactment of this Act, the Secretary of Defense shall conduct a review of existing programs, tools, and resources of the Department of Defense for training members of the Armed Forces and employees of the Department regarding the threat of disinformation campaigns specifically targeted at such individuals and the families of such individuals.

(b) REPORT REQUIRED.—Not later than 270 days after the enactment of this Act, the Secretary of Defense shall submit a report

to the congressional defense committees regarding the programs, tools, and resources identified under subsection (a).

**SEC. 568. COMMAND MATTERS IN CONNECTION WITH TRANSITION ASSISTANCE PROGRAMS.** 10 USC 1144 note.

The training provided a commander of a military installation in connection with the commencement of assignment to the installation shall include a module on the covered transition assistance programs available for members of the Armed Forces assigned to the installation.

**SEC. 569. MACHINE READABILITY AND ELECTRONIC TRANSFERABILITY OF CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214).** 10 USC 1168 note.

(a) **MODIFICATION REQUIRED.**—The Secretary of Defense shall modify the Certificate of Release or Discharge from Active Duty (DD Form 214) to—

(1) be machine readable and electronically transferable; and

(2) include a specific block explicitly identified as the location in which a member of the Armed Forces may provide one or more email addresses by which the member may be contacted after discharge or release from active duty.

(b) **DEADLINE FOR MODIFICATION.**—The Secretary of Defense shall release a revised Certificate of Release or Discharge from Active Duty (DD Form 214), modified pursuant to subsection (a), not later than four years after the date of the enactment of this Act.

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit a report to Congress regarding the following:

(1) What systems of the Department of Defense require an individual to manually enter information from DD Form 214.

(2) What activities of the Department of Defense require a veteran or former member of the Armed Forces to provide a physical copy of DD Form 214.

(3) The order of priority for modernizing items identified under paragraphs (1) and (2) as determined by the Secretary.

(4) The estimated cost, as determined by the Secretary, to automate items identified under paragraphs (1) and (2).

**SEC. 570. RECORDS OF SERVICE FOR RESERVES.**

(a) **ESTABLISHMENT.**—Not later than September 30, 2020, the Secretary of Defense shall establish and implement a standard record of service for members of the reserve components of the Armed Forces, similar to DD Form 214, that summarizes the record of service of each such member, including dates of active duty service.

(b) **COORDINATION.**—In carrying out this section, the Secretary of Defense shall coordinate with the Secretary of Veterans Affairs to ensure that the record established under this section is acceptable as proof of service for former members of the reserve components of the Armed Forces who are eligible for benefits under laws administered by the Secretary of Veterans Affairs to receive such benefits.

Determinations.

Cost estimate.  
10 USC 10204 note.  
Deadline.

10 USC 1161  
note prec.

**SEC. 570A. LIMITATIONS AND REQUIREMENTS IN CONNECTION WITH SEPARATIONS FOR MEMBERS OF THE ARMED FORCES WHO SUFFER FROM MENTAL HEALTH CONDITIONS IN CONNECTION WITH A SEX-RELATED, INTIMATE PARTNER VIOLENCE-RELATED, OR SPOUSAL-ABUSE OFFENSE.**

(a) **CONFIRMATION OF DIAGNOSIS OF CONDITION REQUIRED BEFORE SEPARATION.**—Before a member of the Armed Forces who was the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Armed Forces (whether or not such offense was committed by another member of the Armed Forces), and who has a mental health condition not amounting to a physical disability, is separated, discharged, or released from the Armed Forces based solely on such condition, the diagnosis of such condition must be—

(1) corroborated by a competent mental health care professional at the peer level or a higher level of the health care professional making the diagnosis; and

(2) endorsed by the Surgeon General of the military department concerned.

(b) **NARRATIVE REASON FOR SEPARATION IF MENTAL HEALTH CONDITION PRESENT.**—If the narrative reason for separation, discharge, or release from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release shall be a condition, not a disability, or Secretarial authority.

(c) **DEFINITIONS.**—In this section:

(1) The term “intimate partner violence-related offense” means the following:

(A) An offense under section 928 or 930 of title 10, United States Code (article 128 or 130 of the Uniform Code of Military Justice).

(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

(2) The term “sex-related offense” means the following:

(A) An offense under section 920 or 920b of title 10, United States Code (article 120 or 120b of the Uniform Code of Military Justice).

(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

(3) The term “spousal-abuse offense” means the following:

(A) An offense under section 928 of title 10, United States Code (article 128 of the Uniform Code of Military Justice).

(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

(d) **EFFECTIVE DATE.**—This section shall take effect 180 days after the date of the enactment of this Act, and shall apply with respect to separations, discharges, and releases from the Armed Forces that occur on or after that effective date.

10 USC 1161  
note prec.

**SEC. 570B. PROHIBITION ON INVOLUNTARY SEPARATION OF CERTAIN MEMBERS OF THE ARMED FORCES; CONSIDERATION OF MILITARY SERVICE IN REMOVAL DETERMINATIONS.**

(a) **PROHIBITION ON INVOLUNTARY SEPARATION.**—

(1) **IN GENERAL.**—No member of the Armed Forces may be involuntarily separated from the Armed Forces solely because that member is a covered member.

(2) **COVERED MEMBER DEFINED.**—In this subsection, the term “covered member” means a member of the Armed Forces who—

(A) possesses a current and valid employment authorization document that was issued pursuant to the memorandum of the Secretary of Homeland Security dated June 15, 2012, and entitled “Exercising Prosecutorial Discretion with Respect to Individuals who Came to the United States as Children”; or

(B) is currently in a temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a).

(b) **CONSIDERATION OF MILITARY SERVICE IN REMOVAL DETERMINATIONS.**— 8 USC 1229 note.

(1) **IN GENERAL.**—With regards to an individual, an immigration officer shall take into consideration evidence of military service by that individual in determining whether—

(A) to issue to that individual a notice to appear in removal proceedings, an administrative order of removal, or a reinstatement of a final removal order; and

(B) to execute a final order of removal regarding that individual.

(2) **DEFINITIONS.**—In this subsection:

(A) The term “evidence of service” means evidence that an individual served as a member of the Armed Forces, and the characterization of each period of service of that individual in the Armed Forces.

(B) The term “immigration officer” has the meaning given that term in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

**SEC. 570C. INCLUSION OF QUESTION REGARDING IMMIGRATION STATUS ON PRESEPARATION COUNSELING CHECKLIST (DD FORM 2648).** Deadline. 10 USC 1142 note.

Not later than September 30, 2020, the Secretary of Defense shall modify the preseparation counseling checklist for active component, active guard reserve, active reserve, full time support, and reserve program administrator service members (DD Form 2648) to include a specific block wherein a member of the Armed Forces may indicate that the member would like to receive information regarding the immigration status of that member and expedited naturalization.

**SEC. 570D. COUNSELING FOR MEMBERS OF THE ARMED FORCES WHO ARE NOT CITIZENS OF THE UNITED STATES ON NATURALIZATION IN THE UNITED STATES.** 10 USC 1781 note.

(a) **IN GENERAL.**—The Secretary concerned shall furnish to covered individuals under the jurisdiction of that Secretary counseling regarding how to apply for naturalization in the United States.

(b) **DEFINITIONS.**—In this section:

(1) The term “covered individual” means a member of the Armed Forces who is not a citizen of the United States.

(2) The term “Secretary concerned” has the meaning given that term in section 101(a)(9) of title 10, United States Code.

10 USC 1781  
note.

**SEC. 570E. PILOT PROGRAM ON INFORMATION SHARING BETWEEN DEPARTMENT OF DEFENSE AND DESIGNATED RELATIVES AND FRIENDS OF MEMBERS OF THE ARMED FORCES REGARDING THE EXPERIENCES AND CHALLENGES OF MILITARY SERVICE.**

(a) **PILOT PROGRAM REQUIRED.**—

Deadline.

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into an agreement with the American Red Cross to carry out a pilot program under which the American Red Cross—

(A) encourages a member of the Armed Forces, upon the enlistment or appointment of such member, to designate up to 10 persons to whom information regarding the military service of such member shall be disseminated using contact information obtained under paragraph (6); and

Deadline.

(B) provides such persons, within 30 days after the date on which such persons are designated under subparagraph (A), the option to elect to receive such information regarding military service.

(2) **DISSEMINATION.**—The Secretary shall disseminate information described in paragraph (1)(A) under the pilot program on a regular basis.

(3) **TYPES OF INFORMATION.**—The types of information to be disseminated under the pilot program to persons who elect to receive such information shall include information regarding—

(A) aspects of daily life and routine experienced by members of the Armed Forces;

(B) the challenges and stresses of military service, particularly during and after deployment as part of a contingency operation;

(C) the services available to members of the Armed Forces and the dependents of such members to cope with the experiences and challenges of military service;

(D) benefits administered by the Department of Defense for members of the Armed Forces and the dependents of such members;

(E) a toll-free telephone number through which such persons who elect to receive information under the pilot program may request information regarding the program; and

(F) such other information as the Secretary determines to be appropriate.

(4) **PRIVACY OF INFORMATION.**—In carrying out the pilot program, the Secretary may not disseminate information under paragraph (3) in violation of laws and regulations pertaining to the privacy of members of the Armed Forces, including requirements pursuant to—

(A) section 552a of title 5, United States Code; and

(B) the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(5) **NOTICE AND MODIFICATIONS.**—In carrying out the pilot program, the Secretary shall, with respect to a member of the Armed Forces—



(A) ensure that such member is notified of the ability to modify designations made by such member under paragraph (1)(A); and

(B) upon the request of a member, authorize such member to modify such designations at any time.

(6) CONTACT INFORMATION.—In making a designation under the pilot program, a member of the Armed Forces shall provide necessary contact information, specifically including an email address, to facilitate the dissemination of information regarding the military service of the member.

(7) OPT-IN AND OPT-OUT OF PROGRAM.—

(A) OPT-IN BY MEMBERS.—A member may participate in the pilot program only if the member voluntarily elects to participate in the program. A member seeking to make such an election shall make such election in a manner, and by including such information, as the Secretary and the Red Cross shall jointly specify for purposes of the pilot program.

(B) OPT-IN BY DESIGNATED RECIPIENTS.—A person designated pursuant to paragraph (1)(A) may receive information under the pilot program only if the person makes the election described in paragraph (1)(B).

(C) OPT-OUT.—In carrying out the pilot program, the Secretary shall, with respect to a person who has elected to receive information under such pilot program, cease disseminating such information to that person upon request of such person.

(b) SURVEY AND REPORT ON PILOT PROGRAM.—

(1) SURVEY.—Not later than two years after the date on which the pilot program commences, the Secretary, in consultation with the American Red Cross, shall administer a survey to persons who elected to receive information under the pilot program for the purpose of receiving feedback regarding the quality of information disseminated under this section, including whether such information appropriately reflects the military career progression of members of the Armed Forces.

Deadline.  
Consultation.

(2) REPORT.—Not later than three years after the date on which the pilot program commences, the Secretary shall submit to the congressional defense committees a final report on the pilot program which includes—

(A) the results of the survey administered under paragraph (1);

(B) a determination as to whether the pilot program should be made permanent; and

Determination.

(C) recommendations as to modifications necessary to improve the program if made permanent.

Recommendations.

(c) TERMINATION OF PILOT PROGRAM.—The pilot program shall terminate upon submission of the report required by subsection (b)(2).

**SEC. 570F. CONNECTIONS OF MEMBERS RETIRING OR SEPARATING FROM THE ARMED FORCES WITH COMMUNITY-BASED ORGANIZATIONS AND RELATED ENTITIES.**

10 USC 1142  
note.

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly seek to enter into memoranda of understanding or other agreements with State veterans agencies under which information from Department of Defense Form DD—

Memorandums.

2648 on individuals undergoing retirement, discharge, or release from the Armed Forces is transmitted to one or more State veterans agencies, as elected by such individuals, to provide or connect veterans to benefits or services as follows:

- (1) Assistance in preparation of resumes.
- (2) Training for employment interviews.
- (3) Employment recruitment training.
- (4) Other services leading directly to a successful transition from military life to civilian life.
- (5) Healthcare, including care for mental health.
- (6) Transportation or transportation-related services.
- (7) Housing.
- (8) Such other benefits or services as the Secretaries jointly consider appropriate for purposes of this section.

(b) INFORMATION TRANSMITTED.—The information transmitted on individuals as described in subsection (a) shall be such information on Form DD–2648 as the Secretaries jointly consider appropriate to facilitate community-based organizations and related entities in providing or connecting such individuals to benefits and services as described in subsection (a).

(c) MODIFICATION OF FORM DD–2648.—The Secretary of Defense shall make such modifications to Form DD–2648 as the Secretary considers appropriate to allow an individual filling out the form to indicate an email address at which the individual may be contacted to receive or be connected to benefits or services described in subsection (a).

(d) VOLUNTARY PARTICIPATION.—Information on an individual may be transmitted to and through a State veterans agency as described in subsection (a) only with the consent of the individual. In giving such consent, an individual shall specify the following:

- (1) The State veterans agency or agencies elected by the individual to transmit such information as described in subsection (a).
- (2) The benefits and services for which contact information shall be so transmitted.
- (3) Such other information on the individual as the individual considers appropriate in connection with the transmittal.

10 USC 1144  
note.

**SEC. 570G. PILOT PROGRAM REGARDING ONLINE APPLICATION FOR THE TRANSITION ASSISTANCE PROGRAM.**

(a) ESTABLISHMENT.—The Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Labor may jointly carry out a pilot program that creates a one-stop source for online applications for the purposes of assisting members of the Armed Forces and Veterans participating in the Transition Assistance Program (in this section referred to as “TAP”).

(b) DATA SOURCES.—If the Secretaries carry out the pilot program, any online application developed under such program shall, in part, aggregate existing data from government resources and the private sector under one uniform resource locator for the purpose of assisting members of the Armed Forces and veterans participating in TAP.

(c) AVAILABILITY; ACCESSIBILITY.—Any online application developed under a pilot program shall, to the extent feasible be—

- (1) widely available as a mobile application; and
- (2) easily accessible by veterans, members of the Armed Forces, and employers.

## (d) ASSESSMENTS.—

Deadlines.

(1) INTERIM ASSESSMENTS.—Not later than the dates that are one and two years after the date of the commencement of any pilot program under this section, the Secretaries shall jointly assess the pilot program.

(2) FINAL ASSESSMENT.—Not later than the date that is three years after the date of the commencement of any pilot program under this section, the Secretaries shall jointly carry out a final assessment of the pilot program.

(3) PURPOSE.—The general objective of each assessment under this subsection shall be to determine if the online application under the pilot program helps participants in TAP to accomplish the goals of TAP, accounting for the individual profiles of participants, including military experience and geographic location.

(e) BRIEFING.—If the Secretaries carry out the pilot program, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and House of Representatives a briefing on findings regarding the pilot program, including any recommendations for legislation.

## (f) DEFINITIONS.—In this section:

(1) The term “mobile application” means a software program that runs on the operating system of a mobile device.

(2) The term “mobile device” means a smartphone, tablet computer, or similar portable computing device that transmits data over a wireless connection.

## Subtitle H—Military Family Readiness and Dependents’ Education

### SEC. 571. AUTHORIZING MEMBERS TO TAKE LEAVE FOR A BIRTH OR ADOPTION IN MORE THAN ONE INCREMENT.

Paragraph (5) of section 701(i) of title 10, United States Code, is amended—

(1) by striking “only in one increment” and inserting “in more than one increment”; and

(2) by inserting “in accordance with regulations prescribed by the Secretary concerned” before the period.

### SEC. 572. DEFERRED DEPLOYMENT FOR MEMBERS WHO GIVE BIRTH.

Section 701 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(1) A member of the armed forces who gives birth while on active duty may be deployed during the period of 12 months beginning on the date of such birth only with the approval of a health care provider employed at a military medical treatment facility and—

Time period.

“(1) at the election of such member; or

“(2) in the interest of national security, as determined by the Secretary of Defense.”.

**SEC. 573. AUTHORITY OF THE SECRETARY CONCERNED TO TRANSPORT REMAINS OF A COVERED DECEDENT TO NO MORE THAN TWO PLACES SELECTED BY THE PERSON DESIGNATED TO DIRECT DISPOSITION OF THE REMAINS.**

(a) **AUTHORITY.**—Section 1482(a)(8) of title 10, United States Code, is amended to read as follows:

“(8)(A) Transportation of the remains, and travel and transportation allowances as specified in regulations prescribed under section 464 of title 37 for an escort of one person, to the place, subject to subparagraph (B), selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized.

“(B) The person designated to direct disposition of the remains may select two places under subparagraph (A) if the second place is a national cemetery. If that person selects two places, the Secretary concerned may pay for transportation to the second place only by means of reimbursement under subsection (b).

“(C) When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.”.

10 USC 1482  
note.

(b) **MILITARY ESCORT AND HONOR GUARD ONLY TO FIRST LOCATION.**—Section 562(b) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note) is amended by adding at the end the following: “If the person designated to direct disposition of the remains selects two places under such section, the term means only the first of those two places.”.

**SEC. 574. MILITARY FUNERAL HONORS MATTERS.**

(a) **FULL MILITARY HONORS CEREMONY FOR CERTAIN VETERANS.**—Section 1491(b) of title 10, United States Code, is amended by adding at the end the following:

Determination.

“(3) The Secretary concerned shall provide full military honors (as determined by the Secretary concerned) for the funeral of a veteran who—

“(A) is first interred or first inurned in Arlington National Cemetery on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020;

“(B) was awarded the medal of honor or the prisoner-of-war medal; and

“(C) is not entitled to full military honors by the grade of that veteran.”.

10 USC 1491  
note.

(b) **FULL MILITARY FUNERAL HONORS FOR VETERANS AT MILITARY INSTALLATIONS.**—

(1) **INSTALLATION PLANS FOR HONORS REQUIRED.**—The commander of each military installation at or through which a funeral honors detail for a veteran is provided pursuant to section 1491 of title 10, United States Code (as amended by subsection (a)), shall maintain and carry out a plan for the

provision, upon request, of full military funeral honors at funerals of veterans for whom a funeral honors detail is authorized in that section.

(2) **ELEMENTS.**—Each plan of an installation under paragraph (1) shall include the following:

(A) Mechanisms to ensure compliance with the requirements applicable to the composition of funeral honors details in section 1491(b) of title 10, United States Code (as so amended).

(B) Mechanisms to ensure compliance with the requirements for ceremonies for funerals in section 1491(c) of such title.

(C) In addition to the ceremonies required pursuant to subparagraph (B), the provision of a gun salute, if otherwise authorized, for each funeral by appropriate personnel, including personnel of the installation, members of the reserve components of the Armed Forces residing in the vicinity of the installation who are ordered to funeral honors duty, or members of veterans organizations or other organizations referred to in section 1491(b)(2) of such title.

(D) Mechanisms for the provision of support authorized by section 1491(d) of such title.

(E) Such other mechanisms and activities as the Secretary concerned considers appropriate in order to assure that full military funeral honors are provided upon request at funerals of veterans.

(3) **DEFINITIONS.**—In this subsection:

(A) The term “Secretary concerned” has the meaning given that term in section 101(a)(9) of title 10, United States Code.

(B) The term “veteran” has the meaning given that term in section 1491(h) of title 10, United States Code.

**SEC. 575. IMPROVEMENT OF OCCUPATIONAL LICENSE PORTABILITY FOR RELOCATED SPOUSES OF MEMBERS OF THE UNIFORMED SERVICES.**

Section 1784 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(h) **IMPROVEMENT OF OCCUPATIONAL LICENSE PORTABILITY THROUGH INTERSTATE COMPACTS.**—

“(1) **IN GENERAL.**—The Secretary of Defense shall seek to enter into a cooperative agreement with the Council of State Governments to assist with funding of the development of interstate compacts on licensed occupations in order to alleviate the burden associated with relicensing in such an occupation by spouse of a members of the armed forces in connection with a permanent change of duty station of members to another State.

Contracts.

“(2) **LIMITATION ON ASSISTANCE PER COMPACT.**—The amount provided under paragraph (1) as assistance for the development of any particular interstate compact may not exceed \$1,000,000.

“(3) **LIMITATION ON TOTAL AMOUNT OF ASSISTANCE.**—The total amount of assistance provided under paragraph (1) in any fiscal year may not exceed \$4,000,000.

“(4) **ANNUAL REPORT.**—Not later than February 28 each year, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a

report on interstate compacts described in paragraph (1) developed through assistance provided under that paragraph. Each report shall set forth the following:

“(A) Any interstate compact developed during the preceding calendar year, including the occupational licenses covered by such compact and the States agreeing to enter into such compact.

“(B) Any interstate compact developed during a prior calendar year into which one or more additional States agreed to enter during the preceding calendar year.

“(5) EXPIRATION.—The authority to enter into a cooperative agreement under paragraph (1), and to provide assistance described in that paragraph pursuant to such cooperative agreement, expire on September 30, 2024.”.

**SEC. 576. CONTINUED ELIGIBILITY FOR EDUCATION AND TRAINING OPPORTUNITIES FOR SPOUSES OF PROMOTED MEMBERS.**

Section 1784a(b) of title 10, United States Code, is amended—

(1) by inserting “(1)” before “Assistance”; and

(2) by adding at the end the following new paragraph:

“(2) A spouse who is eligible for a program under this section and begins a course of education or training for a degree, license, or credential described in subsection (a) may not become ineligible to complete such course of education or training solely because the member to whom the spouse is married is promoted to a higher grade.”.

**SEC. 577. MODIFICATION TO AUTHORITY TO REIMBURSE FOR STATE LICENSURE AND CERTIFICATION COSTS OF A SPOUSE OF A SERVICEMEMBER ARISING FROM RELOCATION.**

Section 476(p) of title 37, United States Code, is amended—

(1) in paragraph (1), by striking “armed forces” and inserting “uniformed services”;

(2) in paragraph (2), by striking “\$500” and inserting “\$1,000”;

(3) in paragraph (3)—

(A) in subparagraph (A), by striking “and”;

(B) in subparagraph (B), by striking the period and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(C) an analysis of whether the maximum reimbursement amount under paragraph (2) is sufficient to cover the average costs of relicensing described in paragraph (1).”; and

(4) in paragraph (4), by striking “December 31, 2022” and inserting “December 31, 2024”.

Analysis.

**SEC. 578. CLARIFICATION REGARDING ELIGIBILITY TO TRANSFER ENTITLEMENT UNDER POST-9/11 EDUCATIONAL ASSISTANCE PROGRAM.**

Section 3319(j) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(3) The Secretary of Defense may not prescribe any regulation that would provide for a limitation on eligibility to transfer unused education benefits to family members based on a maximum number of years of service in the Armed Forces.”.

**SEC. 579. ANNUAL STATE REPORT CARD.**

Section 1111(h)(1)(C)(ii) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(h)(1)(C)(ii)) is amended by striking “on active duty (as defined in section 101(d)(5) of such title)”.

**SEC. 580. IMPROVEMENTS TO CHILD CARE FOR MEMBERS OF THE ARMED FORCES.**

(a) **CLARIFYING TECHNICAL AMENDMENT TO DIRECT HIRE AUTHORITY OF THE DEPARTMENT OF DEFENSE FOR CHILD CARE SERVICES PROVIDERS FOR DEPARTMENT CHILD DEVELOPMENT CENTERS.**—Section 559(e) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 1792 note) is amended by inserting “(including family childcare coordinator services and school age childcare coordinator services)” after “childcare services”.

(b) **ASSESSMENT OF FINANCIAL ASSISTANCE PROVIDED TO CIVILIAN CHILD CARE PROVIDERS.**—

(1) **ASSESSMENT.**—The Secretary of Defense shall assess the maximum amount of financial assistance provided to eligible civilian providers of child care services or youth program services that furnish such service for members of the armed forces and employees of the United States under section 1798 of title 10, United States Code. Such assessment shall include the following:

(A) The determination of the Secretary whether the maximum allowable financial assistance should be standardized across the Armed Forces.

Determination.

(B) Whether the maximum allowable amount adequately accounts for high-cost duty stations.

(2) **REPORT.**—Not later than June 1, 2020, the Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives regarding the results of the assessment under paragraph (1) and any actions taken by the Secretary to remedy identified shortfalls in assistance described in that paragraph.

(c) **REDUCTION IN WAIT LISTS FOR CHILD CARE AT MILITARY INSTALLATIONS.**—

10 USC 1791 note.

(1) **REMEDIATION ACTION.**—The Secretary of Defense shall take steps the Secretary determines necessary to reduce the waiting lists for child care at military installations to ensure that members of the Armed Forces have meaningful access to child care during tours of duty.

(2) **REPORT.**—Not later than June 1, 2020, the Secretary of Defense shall provide a report to the Committees on Armed Forces of the Senate and the House of Representative regarding—

(A) action taken under paragraph (1); and

(B) any additional resources (including additional funding for and child care facilities and workers) the Secretary determines necessary to increase access described in paragraph (1).

(d) **GAO REVIEW.**—The Comptroller General of the United States shall conduct a review of the assessments, actions, and determinations of the Secretary under subsections (b)(1) and (c). Not later than December 1, 2020, the Comptroller General shall submit to the Committees on Armed Services of the Senate and

Deadline.

the House of Representatives a report regarding the review performed under this subsection.

(e) **ASSESSMENT OF ACCESSIBILITY OF WEBSITES OF THE DEPARTMENT OF DEFENSE RELATED TO CHILD CARE AND SPOUSAL EMPLOYMENT.**—

(1) **ASSESSMENT.**—The Secretary of Defense shall review the functions and accessibility of websites of the Department of Defense designed for members of the Armed Forces and the families of such members to access information and services offered by the Department regarding child care, spousal employment, and other family matters.

(2) **REPORT.**—Not later than March 1, 2020, the Secretary of Defense shall provide a briefing to the Committees on Armed Services of the Senate and the House of Representatives regarding the results of the assessment under paragraph (1) and actions taken to enhance accessibility of the websites.

Deadline.  
10 USC 1792  
note.

(f) **PORTABILITY OF BACKGROUND INVESTIGATIONS FOR CHILD CARE PROVIDERS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall ensure that the background investigation and training certification for a child care provider employed by the Department of Defense in a facility of the Department may be transferred to another facility of the Department, without regard to which Secretary of a military department has jurisdiction over either such facility.

**SEC. 580A. TRANSPORTATION OF REMAINS OF CASUALTIES; TRAVEL EXPENSES FOR NEXT OF KIN.**

(a) **TRANSPORTATION FOR REMAINS OF A MEMBER WHO DIES NOT IN A THEATER OF COMBAT OPERATIONS.**—Section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), as amended by section 573 of this Act, is further amended—

(1) in the heading, by striking “**DYING IN A THEATER OF COMBAT OPERATIONS**”; and

(2) in subsection (a), by striking “in a combat theater of operations” and inserting “outside of the United States”.

10 USC 1482  
note.

(b) **TRANSPORTATION FOR FAMILY.**—The Secretary of Defense shall extend travel privileges via Invitational Travel Authorization to family members of members of the Armed Forces who die outside of the United States and whose remains are returned to the United States through the mortuary facility at Dover Air Force Base, Delaware.

10 USC 1475  
note prec.

**SEC. 580B. MEETINGS OF OFFICIALS OF THE DEPARTMENT OF DEFENSE WITH REPRESENTATIVE GROUPS OF SURVIVORS OF DECEASED MEMBERS OF THE ARMED FORCES.**

(a) **CHIEFS OF THE ARMED FORCES.**—The Secretary of Defense shall direct the chiefs of the Armed Forces to meet periodically with representative groups of survivors of deceased members of the Armed Forces to receive feedback from those survivors regarding issues affecting such survivors. The Chief of the National Guard Bureau shall meet with representative groups of survivors of deceased members of the Air National Guard and the Army National Guard.

(b) **UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS.**—The Under Secretary of Defense for Personnel and Readiness shall meet periodically with representative groups of survivors of deceased members of the Armed Forces to discuss policies of the



Department of Defense regarding military casualties and Gold Star families.

(c) BRIEFING.—Not later than April 1, 2020, the Under Secretary of Defense for Personnel and Readiness shall brief the Committee on Armed Services of the House of Representatives regarding policies established and the results of the meetings under subsection (b). Deadline.

**SEC. 580C. INFORMATION AND OPPORTUNITIES FOR REGISTRATION FOR VOTING AND ABSENTEE BALLOT REQUESTS FOR MEMBERS OF THE ARMED FORCES UNDERGOING DEPLOYMENT OVERSEAS.** 10 USC 1566 note.

(a) IN GENERAL.—Not later than 45 days prior to a general election for Federal office, a member of the Armed Forces shall, upon request, be provided with the following: Deadline.

(1) A Federal write-in absentee ballot prescribed pursuant to section 103 of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20303), together with instructions on the appropriate use of the ballot with respect to the State in which the member is registered to vote.

(2) In the case of a member intending to vote in a State that does not accept the Federal write-in absentee ballot as a simultaneous application and acceptable ballot for Federal elections, instructions on, and an opportunity to fill out, the official post card form for absentee voter registration application and absentee ballot application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20301(b)(2)).

(b) PERSONNEL RESPONSIBLE OF DISCHARGE.—Ballots and instructions pursuant to paragraph (1) of subsection (a), and briefings and forms pursuant to paragraph (2) of such subsection, shall be provided by Voting Assistance Officers or such other personnel as the Secretary of the military department concerned shall designate.

**SEC. 580D. STUDY ON TWO-WAY MILITARY BALLOT BARCODE TRACKING.**

(a) STUDY.—The Director of the Federal Voting Assistance Program of the Department of Defense shall conduct a study on the feasibility of a pilot program providing full ballot tracking of overseas military absentee ballots through the mail stream in a manner that is similar to the 2016 Military Ballot Tracking Pilot Program conducted by the Federal Voting Assistance Program.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to Congress a report on the results of the study conducted under subsection (a). The report shall include—

(1) an estimate of the costs and requirements needed to conduct the pilot program described in subsection (a); Cost estimate.

(2) a description of the organizations that would provide substantial support for the pilot program;

(3) a time line for the phased implementation of the pilot program to all military personnel actively serving overseas; Timeline.

(4) a method to determine under the pilot program if a ballot was counted, and a way to provide such information to the member of the Armed Forces casting the vote; and

(5) a description of the efforts being undertaken to ensure a reliable and secure military ballot tracking system.

**SEC. 580E. ASSISTANCE TO SCHOOLS WITH MILITARY DEPENDENT STUDENTS.****(a) IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.—**

(1) **IN GENERAL.**—Of the amount authorized to be appropriated for fiscal year 2020 by section 301 and available for operation and maintenance for Defense-wide activities as specified in the funding table in section 4301, \$10,000,000 shall be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 20 U.S.C. 7703a).

(2) **USE OF CERTAIN AMOUNT.**—Of the amount available under paragraph (1) for payments as described in that paragraph, \$5,000,000 shall be available for such payments to local educational agencies determined by the Secretary of Defense, in the discretion of the Secretary, to have higher concentrations of military children with severe disabilities.

**(b) ASSISTANCE TO SCHOOLS WITH SIGNIFICANT NUMBERS OF MILITARY DEPENDENT STUDENTS.**—Of the amount authorized to be appropriated for fiscal year 2020 by section 301 and available for operation and maintenance for Defense-wide activities as specified in the funding table in section 4301, \$40,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (a) of section 572 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 20 U.S.C. 7703b).

**(c) LOCAL EDUCATIONAL AGENCY DEFINED.**—In this section, the term “local educational agency” has the meaning given that term in section 7013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

10 USC 1784a  
note.

**SEC. 580F. FIRST EXPANSION OF THE MY CAREER ADVANCEMENT ACCOUNT PROGRAM FOR MILITARY SPOUSES.**

The Secretary of Defense shall modify the My Career Advancement Account program of the Department of Defense to ensure that military spouses participating in the program may receive financial assistance for the pursuit of a license, certification, or Associate’s degree in any career field or occupation.

14 USC 2904  
note.

**SEC. 580G. SECOND EXPANSION OF THE MY CAREER ADVANCEMENT ACCOUNT PROGRAM FOR MILITARY SPOUSES.**

The spouse of a member of the Coast Guard may participate in the My Career Advancement Account program of the Department of Defense if the Coast Guard reimburses the Department of Defense.

**SEC. 580H. REPORT ON TRAINING AND SUPPORT AVAILABLE TO MILITARY SPOUSES.**

**(a) REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Personnel and Readiness shall submit to the committees on Armed Services of the Senate and the House of Representatives a report that includes a description of the following:

(1) Financial literacy programs currently designed specifically for military spouses.

(2) Efforts to evaluate the effectiveness of financial literacy programs.

(b) **PUBLIC AVAILABILITY.**—The report submitted under subsection (a) shall be made available on a publicly accessible website of the Department of Defense.

**SEC. 580I. RI’KATAK GUEST STUDENT PROGRAM AT UNITED STATES ARMY GARRISON – KWAJALEIN ATOLL.**

(a) **PROGRAM AUTHORIZED.**—The Secretary of the Army may conduct an assistance program to educate up to five local national students per grade, per academic year, on a space-available basis at the contractor-operated schools on United States Army Garrison–Kwajalein Atoll. The program shall be known as the “Ri’katak Guest Student Program”.

(b) **STUDENT ASSISTANCE.**—Assistance that may be provided to students participating in the program carried out pursuant to subsection (a) includes the following:

- (1) Classroom instruction.
- (2) Extracurricular activities.
- (3) Student meals.
- (4) Transportation.

## Subtitle I—Decorations and Awards

**SEC. 581. MODIFICATION OF AUTHORITIES ON ELIGIBILITY FOR AND REPLACEMENT OF GOLD STAR LAPEL BUTTONS.**

(a) **EXPANSION OF AUTHORITY TO DETERMINE NEXT OF KIN FOR ISSUANCE.**—Section 1126 of title 10, United States Code, is amended—

(1) in subsection (a), by striking “widows, parents, and” in the matter preceding paragraph (1);

(2) in subsection (b), by striking “the widow and to each parent and” and inserting “each”; and

(3) in subsection (d)—

(A) by striking paragraphs (1), (2), (3), and (4) and inserting the following new paragraph (1):

“(1) The term ‘next of kin’ means individuals standing in such relationship to members of the armed forces described in subsection (a) as the Secretaries concerned shall jointly specify in regulations for purposes of this section.”; and

(B) by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (2), (3), (4), and (5), respectively.

Definition.

(b) **REPLACEMENT.**—Subsection (c) of such section is amended by striking “and payment” and all that follows and inserting “and without cost.”.

**SEC. 582. STANDARDIZATION OF HONORABLE SERVICE REQUIREMENT FOR AWARD OF MILITARY DECORATIONS.**

(a) **HONORABLE SERVICE REQUIREMENT.**—

(1) **IN GENERAL.**—Chapter 57 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 1136. Honorable service requirement for award of military decorations**

10 USC 1136.

“No military decoration, including a medal, cross, or bar, or an associated emblem or insignia, may be awarded or presented to any person, or to a representative of the person, if the service

of the person after the person distinguished himself or herself has not been honorable.”.

10 USC 1121  
prec.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 57 of such title is amended by adding at the end the following:

“1136. Honorable service requirement for award of military decorations.”.

(b) CONFORMING AMENDMENTS.—Title 10, United States Code, is further amended as follows:

(1) In section 7274—

(A) in subsection (b), in the matter preceding paragraph (1), by striking “subsection (d)” and inserting “subsection (c)”;

(B) by striking subsection (c); and

(C) by redesignating subsection (d) as subsection (c).

(2)(A) Section 8299 is repealed.

Repeal.  
10 USC 8291  
prec.

(B) The table of sections at the beginning of chapter 837 is amended by striking the item relating to section 8299.

(3) In section 9274—

(A) in subsection (b), in the matter preceding paragraph (1), by striking “subsection (d)” and inserting “subsection (c)”;

(B) by striking subsection (c); and

(C) by redesignating subsection (d) as subsection (c).

(4) In section 9279, by striking subsection (c).

**SEC. 583. AUTHORIZATION FOR AWARD OF THE MEDAL OF HONOR TO JOHN J. DUFFY FOR ACTS OF VALOR IN VIETNAM.**

(a) WAIVER OF TIME LIMITATIONS.—Notwithstanding the time limitations specified in section 7274 of title 10, United States Code, or any other time limitation with respect to the awarding of certain medals to persons who served in the Armed Forces, the President may award the Medal of Honor under section 7271 of such title to John J. Duffy for the acts of valor in Vietnam described in subsection (b).

(b) ACTS OF VALOR DESCRIBED.—The acts of valor referred to in subsection (a) are the actions of John J. Duffy on April 14 and 15, 1972, in Vietnam for which he was previously awarded the Distinguished-Service Cross.

10 USC 7271  
note.

**SEC. 584. REVIEW OF WORLD WAR I VALOR MEDALS.**

(a) REVIEW REQUIRED.—Each Secretary concerned shall review the service records of World War I veterans described in subsection (b) under the jurisdiction of such Secretary in order to determine whether any such veteran should be awarded the Medal of Honor for valor during World War I.

(b) COVERED WORLD WAR I VETERANS.—The World War I veterans whose service records may be reviewed under subsection (a) are the following:

(1) African American war veterans, Asian American war veterans, Hispanic American war veterans, Jewish American war veterans, and Native American war veterans who were awarded the Distinguished Service Cross or the Navy Cross for an action that occurred between April 6, 1917, and November 11, 1918.

(2) African American war veterans, Asian American war veterans, Hispanic American war veterans, Jewish American war veterans, and Native American war veterans who were

awarded the Croix de Guerre with Palm (that is, awarded at the Army level or above) by the Government of France for an action that occurred between April 6, 1917, and November 11, 1918.

(3) African American war veterans, Asian American war veterans, Hispanic American war veterans, Jewish American war veterans, and Native American war veterans who were recommended for a Medal of Honor for actions that occurred from April 6, 1917, to November 11, 1918, if the Department of Defense possesses or receives records relating to such recommendation.

(c) RECOMMENDATION BASED ON REVIEW.—If a Secretary concerned determines, based upon the review under subsection (a), that the award of the Medal of Honor to a covered World War I veteran is warranted, such Secretary shall submit to the President a recommendation that the President award the Medal of Honor to that veteran.

(d) AUTHORITY TO AWARD MEDAL OF HONOR.—The Medal of Honor may be awarded to a World War I veteran in accordance with a recommendation of a Secretary concerned under subsection (c).

(e) WAIVER OF TIME LIMITATIONS.—An award of the Medal of Honor may be made under subsection (d) without regard to—

(1) section 7274 or 8298 of title 10, United States Code, as applicable; and

(2) any regulation or other administrative restriction on—

(A) the time for awarding the Medal of Honor; or

(B) the awarding of the Medal of Honor for service for which a Distinguished Service Cross or Navy Cross has been awarded.

(f) DEADLINE.—The review under subsection (a) shall terminate not later than five years after the date of the enactment of this Act.

(g) DEFINITIONS.—

(1) IN GENERAL.—In this section:

(A) AFRICAN AMERICAN WAR VETERAN.—The term “African American war veteran” means any person who served in the United States Armed Forces between April 6, 1917, and November 11, 1918, and who identified himself as of African descent on his military personnel records.

(B) ASIAN AMERICAN WAR VETERAN.—The term “Asian American war veteran” means any person who served in the United States Armed Forces between April 6, 1917, and November 11, 1918, and who identified himself racially, nationally, or ethnically as originating from a country in Asia on his military personnel records.

(C) HISPANIC AMERICAN WAR VETERAN.—The term “Hispanic American war veteran” means any person who served in the United States Armed Forces between April 6, 1917, and November 11, 1918, and who identified himself racially, nationally, or ethnically as originating from a country where Spanish is an official language on his military personnel records.

(D) JEWISH AMERICAN WAR VETERAN.—The term “Jewish American war veteran” mean any person who served in the United States Armed Forces between April

6, 1917, and November 11, 1918, and who identified himself as Jewish on his military personnel records.

(E) NATIVE AMERICAN WAR VETERAN.—The term “Native American war veteran” means any person who served in the United States Armed Forces between April 6, 1917, and November 11, 1918, and who identified himself as a member of a federally recognized tribe within the modern territory of the United States on his military personnel records.

(F) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(i) the Secretary of the Army, in the case of members of the Armed Forces who served in the Army between April 6, 1917, and November 11, 1918; and

(ii) the Secretary of the Navy, in the case of members of the Armed Forces who served in the Navy or the Marine Corps between April 6, 1917, and November 11, 1918.

(2) APPLICATION OF DEFINITIONS OF ORIGIN.—If the military personnel records of a person do not reflect the person’s membership in one of the groups identified in subparagraphs (B) through (F) of paragraph (1) but historical evidence exists that demonstrates the person’s Jewish faith held at the time of service, or that the person identified himself as of African, Asian, Hispanic, or Native American descent, the person may be treated as being a member of the applicable group by the Secretary concerned for purposes of this section.

## **Subtitle J—Miscellaneous Reports and Other Matters**

### **SEC. 591. CLARIFICATION OF THE TERM “ASSAULT” FOR PURPOSES OF WORKPLACE AND GENDER RELATIONS SURVEYS.**

(a) SURVEYS OF MEMBERS OF THE ARMED FORCES.—Section 481 of title 10, United States Code, is amended by inserting “(including unwanted sexual contact)” after “assault” each place it appears.

(b) SURVEYS OF CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.—Section 481a of title 10, United States Code, is amended by inserting “(including unwanted sexual contact)” after “assault” each place it appears.

10 USC 481 note.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply with respect to surveys under sections 481 and 481a of title 10, United States Code, that are initiated after such date.

### **SEC. 592. INCLUSION OF CERTAIN VETERANS ON TEMPORARY DISABILITY OR PERMANENT DISABLED RETIREMENT LISTS IN MILITARY ADAPTIVE SPORTS PROGRAMS.**

(a) INCLUSION OF CERTAIN VETERANS.—Subsection (a)(1) of section 2564a of title 10, United States Code, is amended by striking “for members of the armed forces who” and all that follows through the period at the end and inserting the following: “for—

“(A) any member of the armed forces who is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

“(B) any veteran (as defined in section 101 of title 38), during the one-year period following the veteran’s date of separation, who—

“(i) is on the Temporary Disability Retirement List or Permanently Disabled Retirement List;

“(ii) is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

“(iii) was enrolled in the program authorized under this section prior to the veteran’s date of separation.”.

(b) CONFORMING AMENDMENT.—Subsection (b) of such section is amended by inserting “and veterans” after “members”.

(c) CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of such section is amended to read as follows:

**“§ 2564a. Provision of assistance for adaptive sports programs: members of the armed forces; certain veterans”.**

10 USC 2564a.

(2) TABLE OF SECTION.—The table of sections at the beginning of chapter 152 of such title is amended by striking the item relating to section 2564a and inserting the following new item:

10 USC 2551 prec.

“2564a. Provision of assistance for adaptive sports programs: members of the armed forces; certain veterans.”.

**SEC. 593. QUESTIONS IN SURVEYS REGARDING EXTREMIST ACTIVITY IN THE WORKPLACE.**

10 USC 480 note prec.

The Secretary of Defense shall include in appropriate surveys administered by the Department of Defense questions regarding whether respondents have ever—

(1) experienced or witnessed extremist activity in the workplace; or

(2) reported such activity.

**SEC. 594. STUDY ON BEST PRACTICES FOR PROVIDING FINANCIAL LITERACY EDUCATION FOR SEPARATING MEMBERS OF THE ARMED FORCES.**

(a) STUDY REQUIRED.—The Secretary of Defense, and with respect to members of the Coast Guard, in coordination with the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Navy, shall conduct a study on the best practices to provide financial literacy education for separating members of the Armed Forces.

Coordination.

(b) ELEMENTS.—The study required by subsection (a) shall include—

(1) an examination, recommendations, and reporting on best practices for providing financial literacy education to separating members of the Armed Forces; and

(2) detailed current financial literacy programs for separating members of the Armed Forces.

Recommendations.

(c) CONSULTATION.—In conducting the study required by subsection (a), the Secretaries shall consult with the Financial Literacy and Education Commission of the Department of the Treasury.

(d) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the committees on Armed Services of the Senate and the House of Representatives a report on the study under subsection (a).

(e) FINANCIAL LITERACY DEFINED.—In this section, the term “financial literacy” means education regarding personal finance including the insurance, credit, loan, banking, career training and education benefits available to veterans.

**SEC. 595. REPORT ON OVERSIGHT OF AUTHORIZED STRENGTHS OF CERTAIN GRADES OF COMMISSIONED REGULAR AND RESERVE OFFICERS OF THE ARMED FORCES.**

(a) REPORT REQUIRED.—Not later than April 1, 2020, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on oversight of the authorized strengths of commissioned regular officers of the Armed Forces and commissioned reserve officers of the Armed Forces in the grades as follows:

(1) The grades of major, lieutenant colonel, and colonel in the Army, the Air Force, and the Marine Corps.

(2) The grades of lieutenant commander, commander, and captain in the Navy.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) Such recommendations as the Secretary considers appropriate on mechanisms to improve Department of Defense oversight, and oversight by Congress, of the authorized strengths of commissioned officers in the grades specified in subsection (a), including the following:

(A) An analysis of the history of each military department in complying with the authorized strengths and strengths in grade specified in sections 523 and 12005 of title 10, United States Code, including a description of—

(i) the number of officers in each grade and Armed Force concerned as of the end of each fiscal year between fiscal year 2010 and fiscal year 2019; and

(ii) the number of officers authorized for such grade and Armed Force as of the end of such fiscal year under the applicable section.

(B) An assessment of the feasibility and advisability of submitting to Congress each year a request for an authorization for officers serving in the grades currently covered by the tables in section 523 of title 10, United States Code.

(C) An assessment of the feasibility and advisability of submitting to Congress each year a proposal for legislation to update the tables in such section.

(D) An assessment of the advisability of converting the authorization for end strengths for regular officers in the grades specified in subsection (a) to a percentage-based approach like that currently utilized for reserve officers in section 12005 of title 10, United States Code.

Recommendations.  
Assessments.

Analysis.



(2) Such other recommendations as the Secretary considers appropriate to improve the effectiveness of the oversight by Congress of the number of commissioned regular and reserve officers of the Armed Forces in the grades specified in subsection (a).

**SEC. 596. REPORT ON CERTAIN WAIVERS.**

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, and annually thereafter during the two subsequent calendar years, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report identifying, with respect to the reporting period for such report, and disaggregated by Armed Force, the following:

(1) **ACCESSION AND COMMISSION.**—

(A) The number of individuals who were processed by a Secretary of a military department for a medical accession or commissioning qualification determination on or after April 12, 2019.

Effective date.

(B) Of the individuals described in subparagraph (A), the number of such individuals who were found medically disqualified pursuant to the standards established in DTM–19–004 regarding enlistment in or commission as an officer of an Armed Force under the jurisdiction of the Secretary of a military department.

(C) Of the individuals described in subparagraph (A), the number of such individuals—

(i) described in section I.b.(1), 1.b(2), 1.b(3), or II.b.(1) of attachment 3 to DTM–19–004; and

(ii) who did not require a waiver or exception to standards described in subparagraph (B).

(D) Of the individuals described in subparagraph (C), the number of such individuals who enlisted or were commissioned.

(E) Of the individuals described in subparagraph (B), the number of such individuals who were considered for a waiver or exception to standards described in subparagraph (B).

(F) Of the individuals described in subparagraph (E), the number of such individuals who were denied such a waiver or exception.

(G) Of the individuals described in subparagraph (E), the number of such individuals who received such a waiver or exception.

(H) Of the individuals described in subparagraph (G), the number of such individuals who enlisted or were commissioned.

(2) **RETENTION.**—

(A) The number of members of each Armed Force under the jurisdiction of the Secretary of a military department who received a diagnosis of gender dysphoria on or after April 12, 2019.

Effective date.

(B) Of the members described in subparagraph (A), the number of members who were—

(i) referred to the Disability Evaluation System;

or

(ii) subject to processing for administrative separation based on conditions and circumstances not constituting a physical disability that interfered with assignment to or performance of duty.

(C) Of the members described in subparagraph (A), the number of members who were subsequently considered for a waiver or exception to standards established in DTM–19–004 to permit those members to serve in other than the biological sex of each such member.

(D) Of the members described in subparagraph (C), the number of members who were granted such a waiver or exception.

(E) Of the members described in subparagraph (C), the number of members who were denied such a waiver or exception.

(F) Of the members described in subparagraph (E), the number of members who were discharged because of such denial, aggregated by characterization of discharge.

(b) PROTECTION OF CERTAIN INFORMATION.—No report submitted under this section may contain any personally identifiable information or protected health information of any individual.

(c) DEFINITIONS.—In this section:

(1) The term “DTM–19–004” means the memorandum—

(A) issued by the Office of the Deputy Secretary of Defense;

(B) dated March 12, 2019; and

(C) with the subject heading “Directive-type Memorandum (DTM)–19–004–Military Service by Transgender Persons and Persons with Gender Dysphoria”.

(2) The terms “exempt individuals” and “nonexempt individuals” have the meanings given those terms in attachment 3 to DTM–19–004.

(3) The term “reporting period” means, with respect to a report submitted under subsection (a), the calendar year most recently completed before the date on which such report is to be submitted.

#### SEC. 597. NOTIFICATIONS ON MANNING OF AFLOAT NAVAL FORCES.

(a) IN GENERAL.—The Secretary of the Navy shall notify the congressional defense committees, in writing, not later than 30 days after the end of each fiscal year quarter, of each covered ship (if any) that met either condition as follows:

(1) The manning fit for such ship was less than 87 percent for more than 14 days during such fiscal year quarter.

(2) The manning fill for such ship was less than 90 percent for more than 14 days during such fiscal year quarter.

(b) ELEMENTS.—The notification required by subsection (a) shall include, with respect to a covered ship, the following:

(1) The name and hull number of the ship.

(2) The homeport location of the ship.

(3) The current manning fit and fill of the ship.

(4) If the lowest level of manning fit or manning fill for the ship occurred during the fiscal year quarter concerned, the level concerned and the date on which such level occurred.

(5) If the lowest level of manning fit or manning fill for the ship is projected to occur after the fiscal year quarter

Deadline.  
Time periods.  
10 USC 8013  
note.

10 USC 8013  
note.

concerned, the projected level and the date on which such level is projected to occur.

(6) If not achieved as of the date of the notification the projected date on which the Navy will achieve a manning fit and fill at least 87 percent and 90 percent, respectively, for the ship.

(7) If not achieved as of the date of the notification, the projected date on which the Navy will achieve a manning fit and fill of at least 92 percent and 95 percent, respectively, for the ship.

(8) A description of the reasons the Navy has not achieved, or will not achieve, as applicable, manning fit and fill of at least 87 percent and 90 percent, respectively, for the ship, including a detailed description of the specific ratings or skillset areas that must be manned to achieve those percentages.

(9) A description of corrective actions the Navy is taking to improve manning fit or manning fill on the ship.

(c) SPECIAL RULE.—For purposes of determining whether a percentage of manning fit or manning fill has been achieved, a sailor in a more senior paygrade may count as filling the billet of a more junior paygrade, but a sailor in a more junior paygrade may not count as filling the billet of a more senior paygrade.

10 USC 8013  
note.

(d) DEFINITIONS.—In this section:

10 USC 8013  
note.

(1) MANNING FIT.—The term “manning fit”, in the case of a ship, means the skills (rating), specialty skills (Navy Enlisted Classifications), and experience (paygrade) for the ship when compared with the ship manpower document requirement and billets authorized for such skills and experience.

(2) MANNING FILL.—The term “manning fill”, in the case of a ship, means the total number of military personnel assigned to the ship by rating when compared with the ship manpower document requirement and billets authorized for the ship by rating.

(3) COVERED SHIP.—The term “covered ship” means a commissioned battle force ship that is included in the battle force count of the Naval Vessel Register.

(e) SUNSET.—The requirement to submit notifications under subsection (a) with respect to fiscal year quarters shall cease beginning with fiscal year quarters in fiscal year 2025.

10 USC 8013  
note.

(f) REPEAL OF SUPERSEDED REQUIREMENTS.—Section 525 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1757; 10 U.S.C. 8013 note) is repealed.

**SEC. 598. REPORT REGARDING USE OF AERIAL SYSTEMS OF THE DEPARTMENT OF DEFENSE TO SUPPORT AGENCIES OF STATES, TERRITORIES, AND THE FEDERAL GOVERNMENT.**

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Chief of the National Guard Bureau, shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report regarding the requirements, policies, and procedures governing the use of manned and unmanned aerial systems of the Department of Defense to support State and Federal agencies.

Consultation.

(b) ELEMENTS.—The report under subsection (a) shall include the following:

- (1) A description of requirements for providing support to State and Federal agencies that the Secretary considers appropriate for planning, programming and budgeting resources.
- (2) A description of manned and unmanned aerial systems that the Secretary regularly provides to support State and Federal agencies, including examples of support provided, and length of time to approve requests.
- List. (3) A list of requests for such aerial systems from State and Federal agencies during fiscal year 2019 that the Secretary denied and the reason each such request was disapproved.
- Overview. Procedures. (4) An overview of current policies and procedures governing the use of such aerial systems by States and Federal agencies, including—
- (A) procedures a State or Federal agency must follow to obtain use of such aerial systems for natural disasters and search and rescue operations;
- (B) the typical amount of time needed to process such requests, and whether such procedures can be streamlined; and
- (C) to what extent different policies and procedures apply to unmanned aerial systems versus manned aerial systems.
- (5) A description of the different categories of unmanned aerial systems of the Department of Defense, how such categories are managed, and whether the criteria for such categories affect the ability of the Secretary to use unmanned aerial systems to support State or Federal agencies.
- (6) An explanation of any restrictions on the use of such unmanned aerial systems under—
- (A) the “Guidance for the Domestic Use of Unmanned Aircraft Systems in U.S. National Airspace”, dated August 18, 2018;
- (B) Department of Defense Instruction 3025.18 “Defense Support to Civil Authorities”; and
- (C) other relevant guidance of the Department of Defense.
- (7) Whether restrictions described in paragraph (6) apply differently to regular members of the Armed Forces serving on active duty and to members of the National Guard.
- (8) Whether members of the National Guard may operate the different categories of such unmanned aerial systems when operating under section 502(f) of title 32, United States Code.
- Analysis. (9) An analysis of how the Secretary may improve access to and knowledge of States and Federal agencies regarding the availability of such unmanned aerial systems and related request procedures.
- (10) Whether—
- (A) the Secretary has been unable to provide an unmanned aerial system to support to a State agency at the request of such State agency; and
- (B) the Secretary has plans to make more unmanned aerial systems available to fulfil such requests.
- (11) Any other matters the Secretary determines appropriate.
- (c) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) **STATE DEFINED.**—In this section, the term “State” has the meaning given that term in section 901 of title 32, United States Code.

**SEC. 599. INFORMATION FOR MEMBERS OF THE ARMED FORCES ON AVAILABILITY OF SERVICES OF THE DEPARTMENT OF VETERANS AFFAIRS RELATING TO SEXUAL TRAUMA.**

10 USC 1565b  
note.

(a) **IN GENERAL.**—The Secretary of Defense shall inform members of the Armed Forces, using mechanisms available to the Secretary, of the eligibility of such members for services of the Department of Veterans Affairs relating to sexual trauma.

(b) **INFORMATION FROM SEXUAL ASSAULT RESPONSE COORDINATORS.**—The Secretary of Defense shall ensure—

(1) that Sexual Assault Response Coordinators and uniformed victims advocates of the Department of Defense advise members of the Armed Forces who report instances of sexual trauma regarding the eligibility of such members for services at the Department of Veterans Affairs; and

(2) that such information is included in mandatory training materials.

(c) **SEXUAL TRAUMA DEFINED.**—In this section, the term “sexual trauma” means psychological trauma described in section 1720D(a)(1) of title 38, United States Code.

**SEC. 599A. AUTHORITY TO ISSUE AN HONORARY PROMOTION TO COLONEL CHARLES E. MCGEE, UNITED STATES AIR FORCE (RET.), TO THE GRADE OF BRIGADIER GENERAL.**

(a) **IN GENERAL.**—Pursuant to section 1563 of title 10, United States Code, the President may issue to Colonel Charles E. McGee, United States Air Force (retired), a distinguished Tuskegee Airman, an honorary promotion to the grade of brigadier general.

(b) **ADDITIONAL BENEFITS NOT TO ACCRUE.**—The advancement of Charles E. McGee on the retired list of the Air Force under subsection (a) shall not affect the retired pay or other benefits from the United States to which Charles E. McGee is entitled based upon his military service, or affect any benefits to which any other person is or may become entitled based on such military service.

**SEC. 599B. AUTHORITY TO ISSUE AN HONORARY AND POSTHUMOUS PROMOTION TO LIEUTENANT COLONEL RICHARD COLE, UNITED STATES AIR FORCE (RET.), TO THE GRADE OF COLONEL.**

(a) **IN GENERAL.**—Pursuant to section 1563 of title 10, United States Code, the President may issue to Lieutenant Colonel Richard E. Cole, United States Air Force (retired), an honorary and posthumous promotion to the grade of colonel.

(b) **ADDITIONAL BENEFITS NOT TO ACCRUE.**—The advancement of Richard E. Cole on the retired list of the Air Force under subsection (a) shall not affect the retired pay or other benefits from the United States to which Richard E. Cole would have been entitled based upon his military service, or affect any benefits to which any other person is or may become entitled based on such military service.

**SEC. 599C. SENSE OF CONGRESS ON THE HONORABLE AND DISTINGUISHED SERVICE OF GENERAL JOSEPH F. DUNFORD, UNITED STATES MARINE CORPS, TO THE UNITED STATES.**

It is the sense of Congress that—

(1) the United States deeply appreciates the decades of honorable service of General Joseph F. Dunford, United States Marine Corps; and

(2) the indispensable leadership of General Dunford and his dedication to the men and women of the Armed Forces demonstrates the finest example of service to the United States.

## **TITLE VI—MILITARY COMPENSATION**

### Subtitle A—Pay and Allowances

- Sec. 601. Clarification of continuation of pays during hospitalization and rehabilitation resulting from wounds, injury, or illness incurred while on duty in a hostile fire area or exposed to an event of hostile fire or other hostile action.
- Sec. 602. Continued entitlements while a member of the Armed Forces participates in a career intermission program.
- Sec. 603. Exemption from repayment of voluntary separation pay.
- Sec. 604. Consideration of service on active duty to reduce age of eligibility for retired pay for non-regular service.
- Sec. 605. Temporary adjustment of rates of basic allowance for housing following determination that local civilian housing costs significantly differ from such rates.
- Sec. 606. Reinvestment of travel refunds by the Department of Defense.
- Sec. 607. Addition of partial dislocation allowance to allowable travel and transportation expenses for servicemembers.
- Sec. 608. Reductions on account of earnings from work performed while entitled to an annuity supplement.
- Sec. 609. Increase in basic pay.

### Subtitle B—Bonuses and Special Incentive Pays

- Sec. 611. One-year extension of certain expiring bonus and special pay authorities.

### Subtitle C—Family and Survivor Benefits

- Sec. 621. Expansion of eligibility for exceptional transitional compensation for dependents to dependents of current members.
- Sec. 622. Phase-out of reduction of Survivor Benefit Plan survivor annuities by amount of dependency and indemnity compensation.
- Sec. 623. Death gratuity for ROTC graduates.
- Sec. 624. Expansion of authority to provide financial assistance to civilian providers of child care services or youth program services who provide such services to survivors of members of the Armed Forces who die in combat in the line of duty.
- Sec. 625. Casualty assistance for survivors of deceased ROTC graduates.

### Subtitle D—Defense Resale Matters

- Sec. 631. Defense resale system matters.
- Sec. 632. Procurement by commissary stores of certain locally sourced products.
- Sec. 633. GAO review of defense resale optimization study.

### Subtitle E—Morale, Welfare, and Recreation Privileges

- Sec. 641. Extension of certain morale, welfare, and recreation privileges to Foreign Service officers on mandatory home leave.
- Sec. 642. Extension of pilot program on a Government lodging program.

### Subtitle F—Reports and Other Matters

- Sec. 651. Annual reports on approval of employment or compensation of retired general or flag officers by foreign governments for emoluments clause purposes.
- Sec. 652. Report regarding transition from overseas housing allowance to basic allowance for housing for servicemembers in the territories.
- Sec. 653. Report on extension to members of the reserve components of the Armed Forces of special and incentive pays for members of the Armed Forces not currently payable to members of the reserve components.

- Sec. 654. Study regarding recoupment of separation pay, special separation benefits, and voluntary separation incentive payments from members of the Armed Forces and veterans who receive disability compensation under laws administered by the Secretary of Veterans Affairs.
- Sec. 655. Report on implementation of contributions to the Department of Defense Military Retirement Fund based on pay costs per Armed Force rather than on Armed Forces-wide basis.
- Sec. 656. Report on food insecurity among members of the Armed Forces and their dependents.

## Subtitle A—Pay and Allowances

### SEC. 601. CLARIFICATION OF CONTINUATION OF PAYS DURING HOSPITALIZATION AND REHABILITATION RESULTING FROM WOUNDS, INJURY, OR ILLNESS INCURRED WHILE ON DUTY IN A HOSTILE FIRE AREA OR EXPOSED TO AN EVENT OF HOSTILE FIRE OR OTHER HOSTILE ACTION.

Section 372(b)(1) of title 37, United States Code, is amended to read as follows:

“(1) The date on which the member is returned for assignment to other than a medical or patient unit for duty; however, in the case of a member under the jurisdiction of a Secretary of a military department, the date on which the member is determined fit for duty.”.

### SEC. 602. CONTINUED ENTITLEMENTS WHILE A MEMBER OF THE ARMED FORCES PARTICIPATES IN A CAREER INTERMISSION PROGRAM.

Section 710(h) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “; and” and inserting a semicolon;

(2) in paragraph (2), by striking the period and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(3) the entitlement of the member and of the survivors of the member to all death benefits under the provisions of chapter 75 of this title;

“(4) the provision of all travel and transportation allowances for the survivors of deceased members to attend burial ceremonies under section 481f of title 37; and

“(5) the eligibility of the member for general benefits as provided in part II of title 38.”.

### SEC. 603. EXEMPTION FROM REPAYMENT OF VOLUNTARY SEPARATION PAY.

Section 1175a(j) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “paragraphs (2) and (3)” and inserting “paragraphs (2), (3), and (4)”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

“(4) This subsection shall not apply to a member who—

“(A) is involuntarily recalled to active duty or full-time National Guard duty; and

“(B) in the course of such duty, incurs a service-connected disability rated as total under section 1155 of title 38.”.

**SEC. 604. CONSIDERATION OF SERVICE ON ACTIVE DUTY TO REDUCE AGE OF ELIGIBILITY FOR RETIRED PAY FOR NON-REGULAR SERVICE.**

Section 12731(f)(2)(B)(i) of title 10, United States Code, is amended by striking “under a provision of law referred to in section 101(a)(13)(B) or under section 12301(d)” and inserting “under section 12301(d) or 12304b of this title, or under a provision of law referred to in section 101(a)(13)(B)”.

**SEC. 605. TEMPORARY ADJUSTMENT OF RATES OF BASIC ALLOWANCE FOR HOUSING FOLLOWING DETERMINATION THAT LOCAL CIVILIAN HOUSING COSTS SIGNIFICANTLY DIFFER FROM SUCH RATES.**

Section 403(b) of title 37, United States Code, is amended by adding at the end the following new paragraph:

Determination.

“(8)(A) The Secretary of Defense may prescribe a temporary adjustment in the current rates of basic allowance for housing for a military housing area or a portion thereof (in this paragraph, ‘BAH rates’) if the Secretary determines that the actual costs of adequate housing for civilians in that military housing area or portion thereof differs from the current BAH rates by more than 20 percent.

“(B) Any temporary adjustment in BAH rates under this paragraph shall remain in effect only until the effective date of the first adjustment of BAH rates for the affected military housing area that occurs after the date of the adjustment under this paragraph.

Termination date.

“(C) This paragraph shall cease to be effective on September 30, 2022.”.

**SEC. 606. REINVESTMENT OF TRAVEL REFUNDS BY THE DEPARTMENT OF DEFENSE.**

(a) REFUNDS FOR OFFICIAL TRAVEL.—Subchapter I of chapter 8 of title 37, United States Code, is amended by adding at the end the following new section:

37 USC 456.

**“§ 456. Managed travel program refunds**

“(a) CREDIT OF REFUNDS.—The Secretary of Defense may credit refunds attributable to Department of Defense managed travel programs as a direct result of official travel to such operation and maintenance or research, development, test, and evaluation accounts of the Department as designated by the Secretary that are available for obligation for the fiscal year in which the refund or amount is collected.

“(b) USE OF REFUNDS.—Refunds credited under subsection (a) may only be used for official travel or operations and efficiency improvements for improved financial management of official travel.

“(c) DEFINITIONS.—In this section:

“(1) MANAGED TRAVEL PROGRAM.—The term ‘managed travel program’ includes air, rental car, train, bus, dining, lodging, and travel management, but does not include rebates or refunds attributable to the use of the Government travel card, the Government Purchase Card, or Government travel arranged by Government Contracted Travel Management Centers.



“(2) REFUND.—The term ‘refund’ includes miscellaneous receipts credited to the Department identified as a refund, rebate, repayment, or other similar amounts collected.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 8 of such title is amended by inserting after the item relating to section 455 the following new item: 37 USC 451 prec.

“456. Managed travel program refunds.”

(c) CLARIFICATION ON RETENTION OF TRAVEL PROMOTIONAL ITEMS.—Section 1116(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 5 U.S.C. 5702 note) is amended—

(1) by striking “DEFINITION.—In this section, the term” and inserting the following: “DEFINITIONS.—In this section:

“(1) The term”; and

(2) by adding at the end the following new paragraph:

“(2) The term ‘general public’ includes the Federal Government or an agency.”

**SEC. 607. ADDITION OF PARTIAL DISLOCATION ALLOWANCE TO ALLOWABLE TRAVEL AND TRANSPORTATION EXPENSES FOR SERVICEMEMBERS.**

(a) CURRENT AUTHORITY.—Section 477(f)(1) of title 37, United States Code, is amended by striking “family”.

(b) FUTURE AUTHORITY.—Section 452(c) of title 37, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph (3):

“(3) A partial dislocation allowance paid to a member ordered to occupy or vacate housing provided by the United States.”

**SEC. 608. REDUCTIONS ON ACCOUNT OF EARNINGS FROM WORK PERFORMED WHILE ENTITLED TO AN ANNUITY SUPPLEMENT.**

Section 8421a(c) of title 5, United States Code, is amended—

(1) by striking “full-time as an air traffic control instructor” and inserting “as an air traffic control instructor, or supervisor thereof;” and

(2) by inserting “or supervisor” after “an instructor”.

**SEC. 609. INCREASE IN BASIC PAY.**

Effective on January 1, 2020, the rates of monthly basic pay for members of the uniformed services are increased by 3.1 percent.

Effective date.  
37 USC 1009  
note.

## **Subtitle B—Bonuses and Special Incentive Pays**

**SEC. 611. ONE-YEAR EXTENSION OF CERTAIN EXPIRING BONUS AND SPECIAL PAY AUTHORITIES.**

(a) AUTHORITIES RELATING TO RESERVE FORCES.—Section 910(g) of title 37, United States Code, relating to income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service, is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

(b) TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS.—The following sections of title 10, United States Code, are amended by striking “December 31, 2019” and inserting “December 31, 2020”:

(1) Section 2130a(a)(1), relating to nurse officer candidate accession program.

(2) Section 16302(d), relating to repayment of education loans for certain health professionals who serve in the Selected Reserve.

(c) AUTHORITIES RELATING TO NUCLEAR OFFICERS.—Section 333(i) of title 37, United States Code, is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

(d) AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.—The following sections of title 37, United States Code, are amended by striking “December 31, 2019” and inserting “December 31, 2020”:

(1) Section 331(h), relating to general bonus authority for enlisted members.

(2) Section 332(g), relating to general bonus authority for officers.

(3) Section 334(i), relating to special aviation incentive pay and bonus authorities for officers.

(4) Section 335(k), relating to special bonus and incentive pay authorities for officers in health professions.

(5) Section 336(g), relating to contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers’ Training Corps.

(6) Section 351(h), relating to hazardous duty pay.

(7) Section 352(g), relating to assignment pay or special duty pay.

(8) Section 353(i), relating to skill incentive pay or proficiency bonus.

(9) Section 355(h), relating to retention incentives for members qualified in critical military skills or assigned to high priority units.

(e) AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING.—Section 403(b)(7)(E) of title 37, United States Code, is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

## Subtitle C—Family and Survivor Benefits

### SEC. 621. EXPANSION OF ELIGIBILITY FOR EXCEPTIONAL TRANSITIONAL COMPENSATION FOR DEPENDENTS TO DEPENDENTS OF CURRENT MEMBERS.

Section 1059(m) of title 10, United States Code, is amended—

(1) in the subsection heading, by inserting “MEMBERS OR” after “DEPENDENTS OF”;

(2) by inserting “member or” before “former member” each place it appears;

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following new paragraph (3):

“(3) For purposes of the provision of benefits under this section pursuant to this subsection, a member shall be considered separated from active duty upon the earliest of—

“(A) the date an administrative separation is initiated by a commander of the member;

“(B) the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

“(C) the date the member’s term of service expires.”.

**SEC. 622. PHASE-OUT OF REDUCTION OF SURVIVOR BENEFIT PLAN SURVIVOR ANNUITIES BY AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.**

(a) PHASE-OUT.—Subchapter II of chapter 73 of title 10, United States Code, is amended as follows:

(1) IN GENERAL.—In section 1450(c)(1)—

(A) by striking “that the annuity otherwise payable under this section would exceed that compensation.” and inserting “calculated as follows.”; and

(B) by adding at the end the following:

“(A) During the period beginning on January 1, 2020, and ending on December 31, 2020, the amount that the annuity otherwise payable under this section would exceed such dependency and indemnity compensation.

“(B) During the period beginning on January 1, 2021, and ending on December 31, 2021, the amount that the annuity otherwise payable under this section would exceed two-thirds of such dependency and indemnity compensation.

“(C) During the period beginning on January 1, 2022, and ending on December 31, 2022, the amount that the annuity otherwise payable under this section would exceed one-third of such dependency and indemnity compensation.

“(D) On and after January 1, 2023, the full amount of the annuity under this section.”

(2) CONFORMING AMENDMENT.—In section 1451(c)(2), by inserting “a portion (calculated under section 1450(c) of this title) of” before “the amount”.

(b) PROHIBITION ON RETROACTIVE BENEFITS.—No benefits may be paid to any person for any period before the effective date provided under subsection (f) by reason of the amendments made by subsection (a).

(c) PROHIBITION ON RECOUPMENT OF CERTAIN AMOUNTS PREVIOUSLY REFUNDED TO SBP RECIPIENTS.—A surviving spouse who is or has been in receipt of an annuity under the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, that is in effect before the effective date provided under subsection (f) and that is adjusted by reason of the amendments made by subsection (a) and who has received a refund of retired pay under section 1450(e) of title 10, United States Code, shall not be required to repay such refund to the United States.

(d) REPEAL OF AUTHORITY FOR OPTIONAL ANNUITY FOR DEPENDENT CHILDREN.—Section 1448(d)(2) of such title is amended—

(1) by striking “DEPENDENT CHILDREN.—” and all that follows through “In the case of a member described in paragraph (1),” and inserting “DEPENDENT CHILDREN.—In the case of a member described in paragraph (1),”; and

(2) by striking subparagraph (B).

Time periods.

Effective date.

10 USC 1450 note.

10 USC 1450 note.

10 USC 1448  
note.

(e) **RESTORATION OF ELIGIBILITY FOR PREVIOUSLY ELIGIBLE SPOUSES.**—The Secretary of the military department concerned shall restore annuity eligibility to any eligible surviving spouse who, in consultation with the Secretary, previously elected to transfer payment of such annuity to a surviving child or children under the provisions of section 1448(d)(2)(B) of title 10, United States Code, as in effect on the day before the effective date provided under subsection (f). Such eligibility shall be restored whether or not payment to such child or children subsequently was terminated due to loss of dependent status or death. For the purposes of this subsection, an eligible spouse includes a spouse who was previously eligible for payment of such annuity and is not remarried, or remarried after having attained age 55, or whose second or subsequent marriage has been terminated by death, divorce or annulment.

10 USC 1448  
note.

(f) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect on the first day of the first month that begins after the date of the enactment of this Act, except subsections (d) and (e) of this section and the amendments made thereby shall take effect on January 1, 2023.

**SEC. 623. DEATH GRATUITY FOR ROTC GRADUATES.**

(a) **IN GENERAL.**—Section 1475(a)(4) of title 10, United States Code, is amended by adding “; or a graduate of a reserve officers’ training corps who has received a commission but has yet to receive a first duty assignment; or” at the end.

10 USC 1475  
note.

(b) **EFFECTIVE DATE.**—The amendment under subsection (a) applies to deaths that occur on or after the date of the enactment of this Act.

**SEC. 624. EXPANSION OF AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE TO CIVILIAN PROVIDERS OF CHILD CARE SERVICES OR YOUTH PROGRAM SERVICES WHO PROVIDE SUCH SERVICES TO SURVIVORS OF MEMBERS OF THE ARMED FORCES WHO DIE IN COMBAT IN THE LINE OF DUTY.**

Section 1798(a) of title 10, United States Code, is amended by inserting “, survivors of members of the armed forces who die in combat-related incidents in the line of duty,” after “armed forces”.

**SEC. 625. CASUALTY ASSISTANCE FOR SURVIVORS OF DECEASED ROTC GRADUATES.**

Section 633 of the National Defense Authorization Act for Fiscal Year 2014 (10 U.S.C. 1475 note) is amended by adding at the end the following new subsection:

“(c) **ROTC GRADUATES.**—

“(1) **TREATED AS MEMBERS.**—For purposes of this section, a graduate of a reserve officers’ training corps who receives a commission and who dies before receiving a first duty assignment shall be treated as a member of the Armed Forces who dies while on active duty.

“(2) **EFFECTIVE DATE.**—This subsection applies to deaths on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.”

## Subtitle D—Defense Resale Matters

### SEC. 631. DEFENSE RESALE SYSTEM MATTERS.

(a) IN GENERAL.—The Under Secretary of Defense for Personnel and Readiness shall, in coordination with the Chief Management Officer of the Department of Defense, maintain oversight of business transformation efforts of the defense commissary system and the exchange stores system in order to ensure the following:

Coordination.  
10 USC 2481  
note.

(1) Development of an intercomponent business strategy that maximizes efficiencies and results in a viable defense resale system in the future.

(2) Preservation of patron savings and satisfaction from and in the defense commissary system and exchange stores system.

(3) Sustainment of financial support of the defense commissary and exchange systems for morale, welfare, and recreation (MWR) services of the Armed Forces.

(b) EXECUTIVE RESALE BOARD ADVICE ON OPERATIONS OF SYSTEMS.—The Executive Resale Board of the Department of Defense shall advise the Under Secretary on the implementation of sustainable, complementary operations of the defense commissary system and the exchange stores system.

10 USC 2481  
note.

(c) INFORMATION TECHNOLOGY MODERNIZATION.—The Secretary of Defense shall, acting through the Under Secretary and with advice from the Executive Resale Board, require the Defense Commissary Agency and the Military Exchange Service to do as follows:

10 USC 2481  
note.

(1) Field new technologies and best business practices for information technology for the defense resale system.

(2) Implement cutting-edge marketing opportunities across the defense resale system.

(d) INCLUSION OF ADVERTISING IN OPERATING EXPENSES OF COMMISSARY STORES.—Section 2483(b) of title 10, United States Code, is amended by adding at the end the following paragraph:

“(7) Advertising of commissary sales on materials available within commissary stores and at other on-base locations.”.

### SEC. 632. PROCUREMENT BY COMMISSARY STORES OF CERTAIN LOCALLY SOURCED PRODUCTS.

10 USC 2484  
note.

The Secretary of Defense shall ensure that the dairy products and fruits and vegetables procured for commissary stores under the defense commissary system are, to the extent practicable and while maintaining mandated patron savings, locally sourced in order to ensure the availability of the freshest possible dairy products and fruits and vegetables for patrons of the stores.

### SEC. 633. GAO REVIEW OF DEFENSE RESALE OPTIMIZATION STUDY.

(a) REVIEW.—The Comptroller General of the United States shall conduct a review of the business case analysis performed as part of the defense resale optimization study conducted by the Reform Management Group, titled “Study to Determine the Feasibility of Consolidation of the Defense Resale Entities” and dated December 4, 2018.

(b) REPORTS REQUIRED; ELEMENTS.—Not later than March 1, 2020, and June 1, 2020, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report and a final report, respectively,

- Evaluations. regarding the review performed under this section. Each report shall include evaluations of the following:
- (1) The descriptions and justifications for the assumptions, analytical choices and data used by the Reform Management Group to calculate:
    - (A) Pricing.
    - (B) Sales assumptions.
    - (C) Accuracy of methods employed to measure patron savings levels.
  - (2) The timetable for consolidation of military exchanges and commissaries.
  - (3) The recommendations for consolidation developed as part of the business case analysis, including the overall cost of consolidation.
  - (4) The budget and oversight implications of merging non-appropriated funds and appropriated funds to implement the recommended reforms.
  - (5) The extent to which the Reform Management Group coordinated with the Secretaries of the military departments and the chiefs of the Armed Forces in preparing the study.
  - (6) The extent to which the Reform Management Group addressed concerns of the Secretaries of the military departments and the chiefs of the Armed Forces in the study.
  - (7) If the recommendations in the business case analysis were implemented—
    - (A) the ability of military exchanges and commissaries to provide earnings to support on-base morale, welfare, and recreation programs; and
    - (B) the financial viability of the military exchanges and commissaries.
- Notification. (c) DELAY ON CONSOLIDATION.—The Secretary of Defense may not take any action to consolidate military exchanges and commissaries until the Committees on Armed Services of the Senate and the House of Representatives notify the Secretary in writing of receipt and acceptance of the findings of the Comptroller General in the reports required under this section.

## Subtitle E—Morale, Welfare, and Recreation Privileges

### SEC. 641. EXTENSION OF CERTAIN MORALE, WELFARE, AND RECREATION PRIVILEGES TO FOREIGN SERVICE OFFICERS ON MANDATORY HOME LEAVE.

(a) IN GENERAL.—Section 1065 of title 10, United States Code, as added by section 621 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is amended—

(1) in the heading, by striking “**veterans and caregivers for veterans**” and inserting “**veterans, caregivers for veterans, and Foreign Service officers**”;

(2) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(3) by inserting after subsection (e) the following new subsection (f):

“(f) ELIGIBILITY OF FOREIGN SERVICE OFFICERS ON MANDATORY HOME LEAVE.—A Foreign Service officer on mandatory home leave

may be permitted to use military lodging referred to in subsection (h).”; and

(4) in subsection (h), as redesignated by paragraph (2), by adding at the end the following new paragraphs: Definitions.

“(5) The term ‘Foreign Service officer’ has the meaning given that term in section 103 of the Foreign Service Act of 1980 (22 U.S.C. 3903).

“(6) The term ‘mandatory home leave’ means leave under section 903 of the Foreign Service Act of 1980 (22 U.S.C. 4083).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2020, as if originally incorporated in section 621 of Public Law 115–232. 10 USC 1065 note.

**SEC. 642. EXTENSION OF PILOT PROGRAM ON A GOVERNMENT LODGING PROGRAM.**

Section 914(b) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (5 U.S.C. 5911 note) is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

## Subtitle F—Reports and Other Matters

**SEC. 651. ANNUAL REPORTS ON APPROVAL OF EMPLOYMENT OR COMPENSATION OF RETIRED GENERAL OR FLAG OFFICERS BY FOREIGN GOVERNMENTS FOR EMOLUMENTS CLAUSE PURPOSES.**

(a) ANNUAL REPORTS.—Section 908 of title 37, United States Code is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) ANNUAL REPORTS ON APPROVALS FOR RETIRED GENERAL AND FLAG OFFICERS.—Not later than January 31 each year, the Secretaries of the military departments, after consulting with the Secretary of State, shall jointly submit to the Committees on Armed Services of the Senate and House of Representatives a report on each approval under subsection (b) for employment or compensation described in subsection (a) for a retired member of the armed forces in general or flag officer grade that was issued during the preceding year.”. Consultation.

(b) SCOPE OF FIRST REPORT.—The first report submitted pursuant to subsection (c) of section 908 of title 37, United States Code (as amended by subsection (a) of this section), after the date of the enactment of this Act shall cover the five-year period ending with the year before the year in which such report is submitted. Time period. 37 USC 908 note.

**SEC. 652. REPORT REGARDING TRANSITION FROM OVERSEAS HOUSING ALLOWANCE TO BASIC ALLOWANCE FOR HOUSING FOR SERVICEMEMBERS IN THE TERRITORIES.**

Not later than February 1, 2020, the Secretary of Defense shall submit a report to the congressional defense committees regarding the recommendation of the Secretary whether members of the uniformed services located in the territories of the United States and who receive the overseas housing allowance should instead receive the basic allowance for housing to ensure the most

appropriate housing compensation for such members and their families.

**SEC. 653. REPORT ON EXTENSION TO MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF SPECIAL AND INCENTIVE PAYS FOR MEMBERS OF THE ARMED FORCES NOT CURRENTLY PAYABLE TO MEMBERS OF THE RESERVE COMPONENTS.**

(a) **REPORT REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the results of a study, conducted by the Secretary for purposes of the report, on the feasibility and advisability of paying eligible members of the reserve components of the Armed Forces any special or incentive pay for members of the Armed Forces that is not currently payable to members of the reserve components.

(b) **ELEMENTS.**—The report required by subsection (a) shall set forth the following:

Cost estimate.

(1) An estimate of the yearly cost of paying members of the reserve components risk pay and flight pay under sections 334, 334a, and 351 of title 37, United States Code, at the same rate as members on active duty, regardless of the number of periods of instruction or appropriate duty participated in, so long as there is at least one such period of instruction or appropriate duty in the month.

(2) A statement of the number of members of the reserve components who qualify or potentially qualify for hazardous duty incentive pay based on current professions or required duties, broken out by hazardous duty categories set forth in section 351 of title 37, United States Code.

Determination.  
Recommendations.

(3) If the Secretary determines that payment to eligible members of the reserve components of any special or incentive pay for members of the Armed Forces that is not currently payable to members of the reserve components is feasible and advisable, such recommendations as the Secretary considers appropriate for legislative or administrative action to authorize such payment.

**SEC. 654. STUDY REGARDING RECOUPMENT OF SEPARATION PAY, SPECIAL SEPARATION BENEFITS, AND VOLUNTARY SEPARATION INCENTIVE PAYMENTS FROM MEMBERS OF THE ARMED FORCES AND VETERANS WHO RECEIVE DISABILITY COMPENSATION UNDER LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.**

Consultation.

(a) **STUDY.**—The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall conduct a study to determine, with regards to members of the Armed Forces and veterans whose separation pay, special separation benefits, and voluntary separation incentive payments either Secretary recoups because such members and veterans subsequently receive disability compensation under laws administered by the Secretary of Veterans Affairs—

(1) how many such members and veterans are affected by such recoupment; and

(2) the aggregated amount of additional money such members and veterans would receive but for such recoupment.

(b) **REPORT REQUIRED.**—Not later than September 30, 2020, the Secretary of Defense shall submit to the Committees on Armed



Services and Veterans' Affairs of the Senate and House of Representatives a report regarding the results of the study under subsection (a).

**SEC. 655. REPORT ON IMPLEMENTATION OF CONTRIBUTIONS TO THE DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND BASED ON PAY COSTS PER ARMED FORCE RATHER THAN ON ARMED FORCES-WIDE BASIS.**

(a) **REPORT REQUIRED.**—

(1) **IN GENERAL.**—Not later than April 1, 2020, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the congressional defense committees a report setting forth a plan for the implementation of the amendments described in paragraph (2) as if such amendments would apply with respect to determinations of contributions to the Department of Defense Military Retirement Fund under chapter 74 of title 10, United States Code, and payments into the Fund, beginning with fiscal year 2025.

Consultation.

(2) **COVERED AMENDMENTS.**—The amendments described in this paragraph are the amendments proposed to be made by section 631 of S.1790 of the 116th Congress, as reported to the Senate by the Committee on Armed Services of the Senate on June 11, 2019.

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following:

(1) A plan to implement the amendments described in paragraph (2) of subsection (a) in the manner described in paragraph (1) of that subsection.

Plan.

(2) A timeline for actions required to implement such amendments in that manner.

Timeline.

(3) An assessment of the impact of the implementation of such amendments in that manner on each of the following:

Assessment.

(A) The budgeting of the military departments.

(B) The efforts of the Department of Defense to achieve audits of its financial statements.

(C) Decisions on military manning of the Armed Forces.

(D) The cost and complexity of tracking contributions to the Department of Defense Military Retirement Fund.

**SEC. 656. REPORT ON FOOD INSECURITY AMONG MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS.**

(a) **REPORT REQUIRED.**—Not later than May 1, 2020, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on food insecurity among members of the Armed Forces and their dependents.

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following:

Assessments.

(1) An assessment of the current extent of food insecurity among members of the Armed Forces and their dependents, including a description and analysis of the following:

(A) Use of food assistance by members and their dependents, as revealed in data of the Department of Defense and other data available to the Department.

(B) Use of free and reduced price school meals by dependents.

(C) Use of food banks or similar assistance by members and their dependents.

(2) A description and assessment of the barriers, if any, to qualification for or access to adequate food assistance of any type by members of the Armed Forces and their dependents.

(3) A description of the number of members of the Armed Forces overseas who enrolled in the Family Supplemental Subsistence Allowance (FSSA) program under section 402a of title 37, United States Code, during the five-fiscal year period ending with fiscal year 2019, and of the cost to the Department of such enrollment during each fiscal year concerned.

(4) An assessment of the effectiveness of the Family Supplemental Subsistence Allowance program for members of the Armed Forces overseas.

(5) A description and assessment of the participation of members of the Armed Forces in the Supplemental Nutrition Assistance Program (SNAP), including with respect to the following:

(A) Coordination between the Department of Defense and the Department of Agriculture for purposes of determining the numbers of members currently participating in the program.

(B) Career stigma for members resulting from participation in the program.

(C) Adverse consequences for member personal financial management resulting from participation in the program.

(D) Other support available to and used by members to meet basic needs requirements.

(6) An assessment of food insecurity among members of the Armed Forces who reside in on-post housing (and thus do not receive basic allowance for housing (BAH)) and their dependents, including eligibility of such members for and participation of such members in the Supplemental Nutrition Assistance Program.

(7) An assessment of the feasibility and advisability of a basic needs allowance for low-income members of the Armed Forces (including an allowance calculated both with and without basic allowance for housing included in the determination of member gross household income), including with respect to the following:

(A) The maximum member gross household income for eligibility for the allowance.

(B) The number of members who would be eligible for the allowance.

(C) The optimal average annual amount of the allowance.

(D) The total annual cost of paying the allowance.

(E) Whether particular geographic locations would include large number of members eligible for the allowance.

(F) The effects of payment of the allowance on recruitment and retention of members, and on member morale and conduct.

(8) Any other recommendations for policies, programs, and activities to address food insecurity among members of the Armed Forces and their dependents that the Secretary considers appropriate.

Recommendations.

## TITLE VII—HEALTH CARE PROVISIONS

### Subtitle A—TRICARE and Other Health Care Benefits

- Sec. 701. Modification of eligibility for TRICARE Reserve Select for certain members of the Selected Reserve.
- Sec. 702. TRICARE payment options for retirees and their dependents.
- Sec. 703. Lead level screening and testing for children.
- Sec. 704. Exposure to open burn pits and toxic airborne chemicals or other airborne contaminants as part of periodic health assessments and other physical examinations.
- Sec. 705. Enhancement of recordkeeping with respect to exposure by members of the Armed Forces to certain occupational and environmental hazards while deployed overseas.
- Sec. 706. Modifications to post-deployment mental health assessments for members of the Armed Forces deployed in support of a contingency operation.
- Sec. 707. Provision of blood testing for firefighters of Department of Defense to determine exposure to perfluoroalkyl and polyfluoroalkyl substances.

### Subtitle B—Health Care Administration

- Sec. 711. Modification of organization of military health system.
- Sec. 712. Support by military health system of medical requirements of combatant commands.
- Sec. 713. Requirements for certain prescription drug labels.
- Sec. 714. Officers authorized to command Army dental units.
- Sec. 715. Improvements to interagency program office of the Department of Defense and the Department of Veterans Affairs.
- Sec. 716. Expansion of strategy to improve acquisition of managed care support contracts under TRICARE program.
- Sec. 717. Inclusion of blast exposure history in medical records of members of the Armed Forces.
- Sec. 718. Comprehensive policy for provision of mental health care to members of the Armed Forces.
- Sec. 719. Limitation on the realignment or reduction of military medical Manning end strength.
- Sec. 720. Strategy to recruit and retain mental health providers.
- Sec. 721. Development of partnerships to improve combat casualty care for personnel of the Armed Forces.
- Sec. 722. Modification to referrals for mental health services.

### Subtitle C—Reports and Other Matters

- Sec. 731. Authorization of claims by members of the uniformed services against the United States for personal injury or death caused by medical malpractice.
- Sec. 732. Extension and clarification of authority for Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund.
- Sec. 733. Appointment of non-ex officio members of the Henry M. Jackson Foundation for the Advancement of Military Medicine.
- Sec. 734. Establishment of Academic Health System in National Capital Region.
- Sec. 735. Provision of veterinary services by veterinary professionals of the Department of Defense in emergencies.
- Sec. 736. Three-year extension of authority to continue the DOD-VA Health Care Sharing Incentive Fund.
- Sec. 737. Preservation of resources of the Army Medical Research and Materiel Command and continuation as Center of Excellence.
- Sec. 738. Encouragement of participation in Women's Health Transition Training pilot program.
- Sec. 739. National Guard suicide prevention pilot program.
- Sec. 740. Pilot Program on civilian and military partnerships to enhance interoperability and medical surge capability and capacity of National Disaster Medical System.
- Sec. 741. Reports on suicide among members of the Armed Forces and suicide prevention programs and activities of the Department of Defense.
- Sec. 742. Modification of requirements for longitudinal medical study on blast pressure exposure of members of the Armed Forces and collection of exposure information.
- Sec. 743. Study and plan on the use of military-civilian integrated health delivery systems.
- Sec. 744. Study on case management in the military health system.
- Sec. 745. Report on Global Health Security Strategy and the National Biodefense Security.

- Sec. 746. Study on establishment of wounded warrior service dog program.
- Sec. 747. GAO report on Department of Defense quality assurance program and impacts of medical malpractice actions.
- Sec. 748. Reports on Millennium Cohort Study relating to women members of the Armed Forces.
- Sec. 749. Study on effects of sleep deprivation on readiness of members of the Armed Forces.
- Sec. 750. Study and report on traumatic brain injury mitigation efforts.

## **Subtitle A—TRICARE and Other Health Care Benefits**

### **SEC. 701. MODIFICATION OF ELIGIBILITY FOR TRICARE RESERVE SELECT FOR CERTAIN MEMBERS OF THE SELECTED RESERVE.**

Section 1076d(a)(2) of title 10, United States Code, is amended by striking “Paragraph (1) does not apply” and inserting “During the period preceding January 1, 2030, paragraph (1) does not apply”.

### **SEC. 702. TRICARE PAYMENT OPTIONS FOR RETIREES AND THEIR DEPENDENTS.**

(a) IN GENERAL.—Section 1099 of title 10, United States Code, is amended—

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting after subsection (c) the following new subsection (d):

“(d) PAYMENT OPTIONS.—(1) A member or former member of the uniformed services, or a dependent thereof, eligible for medical care and dental care under section 1074(b) or 1076 of this title shall pay a premium for coverage under this chapter.

“(2) To the maximum extent practicable, a premium owed by a member, former member, or dependent under paragraph (1) shall be withheld from the retired, retainer, or equivalent pay of the member, former member, or dependent. In all other cases, a premium shall be paid in a frequency and method determined by the Secretary.”.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CONFORMING AMENDMENTS.—Section 1097a of title 10, United States Code, is amended—

- (A) by striking subsection (c); and
- (B) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(2) HEADING AMENDMENTS.—

(A) AUTOMATIC ENROLLMENTS.—The heading for section 1097a of such title is amended to read as follows:

#### **“§ 1097a. TRICARE Prime: automatic enrollments”.**

(B) ENROLLMENT SYSTEM AND PAYMENT OPTIONS.—The heading for section 1099 of such title is amended to read as follows:

#### **“§ 1099. Health care enrollment system and payment options”.**

(3) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 55 of such title is amended—

(A) by striking the item relating to section 1097a and inserting the following new item:

“1097a. TRICARE Prime: automatic enrollments.”; and

(B) by striking the item relating to section 1099 and inserting the following new item:

“1099. Health care enrollment system and payment options.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to health care coverage beginning on or after January 1, 2021.

10 USC 1097a  
note.

**SEC. 703. LEAD LEVEL SCREENING AND TESTING FOR CHILDREN.**

10 USC 1077  
note.

(a) **COMPREHENSIVE SCREENING, TESTING, AND REPORTING GUIDELINES.**—

(1) **IN GENERAL.**—The Secretary of Defense shall establish clinical practice guidelines for health care providers employed by the Department of Defense on screening, testing, and reporting of blood lead levels in children.

(2) **USE OF CDC RECOMMENDATIONS.**—Guidelines established under paragraph (1) shall reflect recommendations made by the Centers for Disease Control and Prevention with respect to the screening, testing, and reporting of blood lead levels in children.

(3) **DISSEMINATION OF GUIDELINES.**—Not later than one year after the date of the enactment of this Act, the Secretary shall disseminate the clinical practice guidelines established under paragraph (1) to health care providers of the Department of Defense.

Deadline.

(b) **CARE PROVIDED IN ACCORDANCE WITH CDC GUIDANCE.**—The Secretary shall ensure that any care provided by the Department of Defense to a child for an elevated blood lead level shall be carried out in accordance with applicable guidance issued by the Centers for Disease Control and Prevention.

(c) **SHARING OF RESULTS OF TESTING.**—

(1) **IN GENERAL.**—With respect to a child who receives from the Department of Defense a test for an elevated blood lead level—

(A) the Secretary shall provide the results of the test to the parent or guardian of the child; and

(B) notwithstanding any requirements for the confidentiality of health information under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), if the results of the test show an abnormal blood lead level or elevated blood lead level, the Secretary shall provide those results and the address at which the child resides to—

(i) the relevant health department of the State in which the child resides if the child resides in the United States; or

(ii) if the child resides outside the United States—  
(I) the Centers for Disease Control and Prevention;

(II) the appropriate authority of the country in which the child resides; and

(III) the primary provider of health care for the child for follow-up.

(2) STATE DEFINED.—In this subsection, the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(d) REPORT.—Not later than January 1, 2021, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing, with respect to the period beginning on the date of the enactment of this Act and ending on the date of the report, the following:

(1) The number of children who were tested by the Department of Defense for the level of lead in the blood of the child, and of such number, the number who were found to have an elevated blood lead level.

(2) The number of children who were screened by the Department of Defense for an elevated risk of lead exposure.

(e) COMPTROLLER GENERAL REPORT.—Not later than January 1, 2022, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the effectiveness of screening and testing for lead exposure and elevated blood lead levels under chapter 55 of title 10, United States Code.

(f) DEFINITIONS.—In this section, the terms “abnormal blood lead level” and “elevated blood lead level” have the meanings given those terms by the Centers for Disease Control and Prevention.

10 USC 1074f  
note.

**SEC. 704. EXPOSURE TO OPEN BURN PITS AND TOXIC AIRBORNE CHEMICALS OR OTHER AIRBORNE CONTAMINANTS AS PART OF PERIODIC HEALTH ASSESSMENTS AND OTHER PHYSICAL EXAMINATIONS.**

(a) PERIODIC HEALTH ASSESSMENT.—The Secretary of Defense shall ensure that any periodic health assessment provided to members of the Armed Forces includes an evaluation of whether the member has been—

(1) based or stationed at a location where an open burn pit was used; or

(2) exposed to toxic airborne chemicals or other airborne contaminants, including any information recorded as part of the Airborne Hazards and Open Burn Pit Registry.

(b) SEPARATION HISTORY AND PHYSICAL EXAMINATIONS.—Section 1145(a)(5) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

“(C) The Secretary concerned shall ensure that each physical examination of a member under subparagraph (A) includes an assessment of whether the member was—

“(i) based or stationed at a location where an open burn pit, as defined in subsection (c) of section 201 of the Dignified Burial and Other Veterans’ Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note), was used; or

“(ii) exposed to toxic airborne chemicals or other airborne contaminants, including any information recorded as part of the registry established by the Secretary of Veterans Affairs under such section 201.”

(c) DEPLOYMENT ASSESSMENTS.—Section 1074f(b)(2) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

“(D) An assessment of whether the member was—

“(i) based or stationed at a location where an open burn pit, as defined in subsection (c) of section 201 of the Dignified Burial and Other Veterans’ Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note), was used; or

“(ii) exposed to toxic airborne chemicals or other airborne contaminants, including any information recorded as part of the registry established by the Secretary of Veterans Affairs under such section 201.”.

(d) SHARING OF INFORMATION.—

(1) DOD–VA.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly enter into a memorandum of understanding providing for the sharing by the Department of Defense with the Department of Veterans Affairs of the results of covered evaluations regarding the exposure by a member of the Armed Forces to toxic airborne chemicals or other airborne contaminants.

Memorandums.

(2) REGISTRY.—If a covered evaluation of a member of the Armed Forces establishes that the member was based or stationed at a location where an open burn pit was used or that the member was exposed to toxic airborne chemicals or other airborne contaminants, the member shall be enrolled in the Airborne Hazards and Open Burn Pit Registry unless the member elects to not so enroll.

(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to preclude eligibility for benefits under the laws administered by the Secretary of Veterans Affairs by reason of the open burn pit exposure history of a veteran not being recorded in a covered evaluation.

(f) DEFINITIONS.—In this section:

(1) The term “Airborne Hazards and Open Burn Pit Registry” means the registry established by the Secretary of Veterans Affairs under section 201 of the Dignified Burial and Other Veterans’ Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).

(2) The term “covered evaluation” means—

(A) a periodic health assessment conducted in accordance with subsection (a);

(B) a separation history and physical examination conducted under section 1145(a)(5) of title 10, United States Code, as amended by this section; and

(C) a deployment assessment conducted under section 1074f(b)(2) of such title, as amended by this section.

(3) The term “open burn pit” has the meaning given that term in section 201(c) of the Dignified Burial and Other Veterans’ Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).

**SEC. 705. ENHANCEMENT OF RECORDKEEPING WITH RESPECT TO EXPOSURE BY MEMBERS OF THE ARMED FORCES TO CERTAIN OCCUPATIONAL AND ENVIRONMENTAL HAZARDS WHILE DEPLOYED OVERSEAS.**

(a) INCLUSION IN MEDICAL TRACKING SYSTEM OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH RISKS IN DEPLOYMENT AREA.—

(1) ELEMENTS OF MEDICAL TRACKING SYSTEM.—Subsection (b)(1)(A) of section 1074f of title 10, United States Code, is amended—

(A) in clause (ii), by striking “and” at the end;

(B) in clause (iii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new clause:  
“(iv) accurately record any exposure to occupational and environmental health risks during the course of their deployment.”.

(2) RECORDKEEPING.—Subsection (c) of such section is amended by inserting after “deployment area” the following: “(including the results of any assessment performed by the Secretary of occupational and environmental health risks for such area)”.

(b) POSTDEPLOYMENT MEDICAL EXAMINATION AND REASSESSMENTS.—Section 1074f of title 10, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

“(g) ADDITIONAL REQUIREMENTS FOR POSTDEPLOYMENT MEDICAL EXAMINATIONS AND HEALTH REASSESSMENTS.—(1) The Secretary of Defense shall standardize and make available to a provider that conducts a postdeployment medical examination or reassessment under the system described in subsection (a) questions relating to occupational and environmental health exposure.

“(2) The Secretary, to the extent practicable, shall ensure that the medical record of a member includes information on the external cause relating to a diagnosis of the member, including by associating an external cause code (as issued under the International Statistical Classification of Diseases and Related Health Problems, 10th Revision (or any successor revision)).”.

38 USC 527 note.

(c) ACCESS TO INFORMATION IN BURN PIT REGISTRY.—

(1) IN GENERAL.—The Secretary of Defense shall ensure that all medical personnel of the Department of Defense have access to the information contained in the burn pit registry.

(2) BURN PIT REGISTRY DEFINED.—In this subsection, the term “burn pit registry” means the registry established under section 201 of the Dignified Burial and Other Veterans’ Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).

**SEC. 706. MODIFICATIONS TO POST-DEPLOYMENT MENTAL HEALTH ASSESSMENTS FOR MEMBERS OF THE ARMED FORCES DEPLOYED IN SUPPORT OF A CONTINGENCY OPERATION.**

Time periods.

(a) REQUIRED ASSESSMENTS.—Section 1074m(a)(1) of title 10, United States Code, is amended by striking subparagraphs (C) and (D) and inserting the following new subparagraphs:

“(C) Subject to paragraph (3) and subsection (d), once during the period beginning on the date of redeployment from the contingency operation and ending on the date that is 21 days after the date on which the post-deployment leave of the member terminates.

“(D) Subject to subsection (d), not less than once annually—

“(i) beginning 21 days after the date on which the post-deployment leave of the member terminates;  
or



“(ii) if the assessment required by subparagraph (C) is performed during the period specified in paragraph (3), beginning 180 days after the date of redeployment from the contingency operation.”.

(b) EXCEPTIONS.—Section 1074m(a) of such title, as amended by subsection (a), is further amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) A mental health assessment is not required for a member of the armed forces under subparagraphs (C) and (D) of paragraph (1) (including an assessment performed pursuant to paragraph (3)) if the Secretary determines that providing such assessment to the member during the time periods under such subparagraphs would remove the member from forward deployment or put members or operational objectives at risk.

“(3) A mental health assessment required under subparagraph (C) of paragraph (1) may be provided during the period beginning 90 days after the date of redeployment from the contingency operation and ending 180 days after such redeployment date if the Secretary determines that—

“(A) an insufficient number of personnel are available to perform the assessment during the time period under such subparagraph; or

“(B) an administrative processing issue exists upon the return of the member to the home unit or duty station that would prohibit the effective performance of the assessment during such time period.”.

(c) ELIMINATION OF SUNSET FOR ASSESSMENTS DURING DEPLOYMENT.—Section 1074m(a)(1)(B) of such title is amended by striking “Until January 1, 2019, once” and inserting “Once”.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to a date of redeployment that is on or after January 1, 2020.

10 USC 1074m  
note.

**SEC. 707. PROVISION OF BLOOD TESTING FOR FIREFIGHTERS OF DEPARTMENT OF DEFENSE TO DETERMINE EXPOSURE TO PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.**

10 USC 1074m  
note.

(a) IN GENERAL.—Beginning on October 1, 2020, the Secretary of Defense shall provide blood testing to determine and document potential exposure to perfluoroalkyl and polyfluoroalkyl substances (commonly known as “PFAS”) for each firefighter of the Department of Defense during the annual physical exam conducted by the Department for each such firefighter.

Effective date.

(b) FIREFIGHTER DEFINED.—In this section, the term “firefighter” means someone whose primary job or military occupational specialty is being a firefighter.

## Subtitle B—Health Care Administration

**SEC. 711. MODIFICATION OF ORGANIZATION OF MILITARY HEALTH SYSTEM.**

(a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES.—Subsection (a) of section 1073c of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (A), (B), (C), (D), (E), and (F) as subparagraphs (C), (D), (E), (G), (H), and (I), respectively;

(B) by inserting before subparagraph (C), as redesignated by subparagraph (A) of this paragraph, the following new subparagraphs:

“(A) provision and delivery of health care within each such facility;

“(B) management of privileging, scope of practice, and quality of health care provided within each such facility;”;

(C) by inserting after subparagraph (E), as so redesignated, the following new subparagraph:

“(F) supply and equipment;”;

(2) in paragraph (2)—

(A) by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (E), (F), (H), and (I), respectively;

(B) by inserting after subparagraph (C) the following new subparagraph (D):

“(D) to identify the capacity of each military medical treatment facility to support clinical readiness standards of health care providers established by the Secretary of a military department or the Assistant Secretary of Defense for Health Affairs;” and

(C) by striking subparagraph (F), as redesignated by subparagraph (A) of this paragraph, and inserting the following new subparagraphs:

“(F) to determine, in coordination with each Secretary of a military department, manning, including joint manning, assigned to military medical treatment facilities and intermediary organizations;

“(G) to select, after considering nominations from the Secretaries of the military departments, commanders or directors of military medical treatment facilities;”;

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) by inserting “on behalf of the military departments,” before “ensuring”; and

(ii) by striking “and civilian employees”; and

(B) in subparagraph (B), by inserting “on behalf of the Defense Health Agency,” before “furnishing”.

(b) DHA ASSISTANT DIRECTOR.—Subsection (b)(2) of such section is amended by striking “equivalent education and experience” and all that follows and inserting “the education and experience to perform the responsibilities of the position.”.

(c) DHA DEPUTY ASSISTANT DIRECTORS.—Subsection (c) of such section is amended—

(1) in paragraph (2)(B), by striking “across the military health system” and inserting “at military medical treatment facilities”; and

(2) in paragraph (4)(B), by inserting “at military medical treatment facilities” before the period at the end.

(d) TREATMENT OF DEPARTMENT OF DEFENSE FOR PURPOSES OF PERSONNEL ASSIGNMENT.—Such section is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection (f):

Determination.  
Coordination.

“(f) TREATMENT OF DEPARTMENT OF DEFENSE FOR PURPOSES OF PERSONNEL ASSIGNMENT.—In implementing this section—

“(1) the Department of Defense shall be considered a single agency for purposes of civilian personnel assignment under title 5; and

“(2) the Secretary of Defense may reassign any employee of a component of the Department of Defense or a military department in a position in the civil service (as defined in section 2101 of title 5) to any other component of the Department of Defense or military department.”.

(e) MILITARY MEDICAL TREATMENT FACILITY.—Subsection (g) of such section, as redesignated by subsection (d)(1), is amended by adding at the end the following new paragraph:

“(3) The term ‘military medical treatment facility’ means—

Definition.

“(A) any fixed facility of the Department of Defense that is outside of a deployed environment and used primarily for health care; and

“(B) any other location used for purposes of providing health care services as designated by the Secretary of Defense.”.

(f) TECHNICAL AMENDMENTS.—Subsection (a) of such section is amended—

(1) in paragraph (1), by striking “paragraph (4)” and inserting “paragraph (5)”;

(2) by redesignating paragraph (5) as paragraph (6);

(3) by redesignating the first paragraph (4) as paragraph (5); and

(4) by moving the second paragraph (4) so as to appear before paragraph (5), as redesignated by paragraph (3) of this subsection.

**SEC. 712. SUPPORT BY MILITARY HEALTH SYSTEM OF MEDICAL REQUIREMENTS OF COMBATANT COMMANDS.**

(a) IN GENERAL.—Section 712 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

(1) in subsection (a), by amending paragraph (1) to read as follows:

10 USC 1073c  
note.

“(1) IN GENERAL.—The Secretary of Defense shall, acting through the Secretaries of the military departments, the Defense Health Agency, and the Joint Staff, implement an organizational framework of the military health system that effectively and efficiently implements chapter 55 of title 10, United States Code, to maximize the readiness of the medical force, promote interoperability, and integrate medical capabilities of the Armed Forces in order to enhance joint military medical operations in support of requirements of the combatant commands.”;

(2) in subsection (e), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by moving such paragraphs so as to appear at the end of subsection (d);

(3) by striking subsection (e), as amended by paragraph (2) of this subsection;

(4) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively;

(5) by inserting after subsection (a) the following new subsection (b):

“(b) ADDITIONAL DUTIES OF SURGEONS GENERAL OF THE ARMED FORCES.—The Surgeons General of the Armed Forces shall have the following duties:

“(1) To ensure the readiness for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.

“(2) To meet medical readiness standards, subject to standards and metrics established by the Assistant Secretary of Defense for Health Affairs.

“(3) With respect to uniformed medical and dental personnel of the military department concerned—

“(A) to assign such personnel—

“(i) primarily to military medical treatment facilities, under the operational control of the commander or director of the facility; or

“(ii) secondarily to partnerships with civilian or other medical facilities for training activities specific to such military department; and

“(B) to maintain readiness of such personnel for operational deployment.

“(4) To provide logistical support for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.

“(5) To oversee mobilization and demobilization in connection with the operational deployment of medical and dental personnel of the Armed Force or Armed Forces concerned.

“(6) To develop operational medical capabilities required to support the warfighter, and to develop policy relating to such capabilities.

“(7) To provide health professionals to serve in leadership positions across the military healthcare system.

“(8) To deliver operational clinical services under the operational control of the combatant commands—

“(A) on ships and planes; and

“(B) on installations outside of military medical treatment facilities.

“(9) To manage privileging, scope of practice, and quality of health care in the settings described in paragraph (8).”;

(6) in subsection (c), as redesignated by paragraph (4) of this subsection—

(A) in the subsection heading, by inserting “AGENCY” before “REGIONS”; and

(B) in paragraph (1)—

(i) in the paragraph heading, by inserting “AGENCY” before “REGIONS”; and

(ii) by striking “defense health” and inserting “Defense Health Agency”;

(7) in subsection (d), as redesignated by paragraph (4) of this subsection—

(A) in the subsection heading, by inserting “AGENCY” before “REGIONS”;

(B) in the matter preceding paragraph (1), by striking “defense health” and inserting “Defense Health Agency”; and

(C) in paragraph (3), by striking “subsection (b)” and inserting “subsection (c)”; and

(8) in subsection (e), as redesignated by paragraph (4) of this subsection—

(A) in paragraph (2)—

(i) by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—The Secretaries of the military departments shall coordinate with the Chairman of the Joint Chiefs of Staff to direct resources allocated to the military departments to support requirements related to readiness and operational medicine support that are established by the combatant commands and validated by the Joint Staff.”; and

Coordination.

(ii) in subparagraph (B), in the matter preceding clause (i), by striking “Based on” and all that follows through “shall—” and inserting “The Director of the Defense Health Agency, in coordination with the Assistant Secretary of Defense for Health Affairs, shall—”;

(B) in paragraph (3), as moved and redesignated by paragraph (2) of this subsection, in the second sentence—

(i) by inserting “primarily” before “through”; and

(ii) by inserting “, in coordination with the Secretaries of the military departments,” after “the Defense Health Agency”; and

(C) by adding at the end the following:

“(5) MANPOWER.—

“(A) ADMINISTRATIVE CONTROL OF MILITARY PERSONNEL.—Each Secretary of a military department shall exercise administrative control of members of the Armed Forces assigned to military medical treatment facilities, including personnel assignment and issuance of military orders.

“(B) OVERSIGHT OF CERTAIN PERSONNEL BY THE DIRECTOR OF THE DEFENSE HEALTH AGENCY.—In situations in which members of the Armed Forces provide health care services at a military medical treatment facility, the Director of the Defense Health Agency shall maintain operational control over such members and oversight for the provision of care delivered by such members through policies, procedures, and privileging responsibilities of the military medical treatment facility.”.

(b) CONFORMING AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading for section 712 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended to read as follows:

10 USC 1073c  
note.

**“SEC. 712. SUPPORT BY MILITARY HEALTHCARE SYSTEM OF MEDICAL REQUIREMENTS OF COMBATANT COMMANDS.”.**

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by striking the item relating to section 712 and inserting the following new item:

“Sec. 712. Support by military healthcare system of medical requirements of combatant commands.”.

**SEC. 713. REQUIREMENTS FOR CERTAIN PRESCRIPTION DRUG LABELS.**

(a) REQUIREMENT.—Section 1074g of title 10, United States Code, is amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by inserting after subsection (g) the following new subsection (h):

“(h) LABELING.—The Secretary of Defense shall ensure that drugs made available through the facilities of the armed forces under the jurisdiction of the Secretary include labels and other labeling that are in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).”.

(b) CONFORMING AMENDMENT.—Subsection (b)(1) of such section is amended by striking “under subsection (h)” and inserting “under subsection (j)”.

(c) IMPLEMENTATION.—Beginning not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall implement subsection (h) of section 1074g of title 10, United States Code, as added by subsection (a).

Deadline.  
10 USC 1074g  
note.

**SEC. 714. OFFICERS AUTHORIZED TO COMMAND ARMY DENTAL UNITS.**

Section 7081(d) of title 10, United States Code, is amended by striking “Dental Corps Officer” and inserting “commissioned officer of the Army Medical Department”.

**SEC. 715. IMPROVEMENTS TO INTERAGENCY PROGRAM OFFICE OF THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) LEADERSHIP.—Subsection (c) of section 1635 of the Wounded Warrior Act (title XVI of Public Law 110–181; 10 U.S.C. 1071 note) is amended to read as follows:

“(c) LEADERSHIP.—

“(1) DIRECTOR.—The Director of the Office shall be the head of the Office.

“(2) DEPUTY DIRECTOR.—The Deputy Director of the Office shall be the deputy head of the Office and shall assist the Director in carrying out the duties of the Director.

“(3) REPORTING.—The Director shall report directly to the Deputy Secretary of Defense and the Deputy Secretary of Veterans Affairs.

“(4) APPOINTMENTS.—

“(A) DIRECTOR.—The Director shall be appointed by the Secretary of Defense, with the concurrence of the Secretary of Veterans Affairs, for a fixed term of four years. For the subsequent term, the Secretary of Veterans Affairs, with the concurrence of the Secretary of Defense, shall appoint the Director for a fixed term of four years, and thereafter, the appointment of the Director for a fixed term of four years shall alternate between the Secretaries.

“(B) DEPUTY DIRECTOR.—The Deputy Director shall be appointed by the Secretary of Veterans Affairs, with the concurrence of the Secretary of Defense, for a fixed term of four years. For the subsequent term, the Secretary of Defense, with the concurrence of the Secretary of Veterans Affairs, shall appoint the Deputy Director for a fixed term of four years, and thereafter, the appointment of the Deputy Director for a fixed term of four years shall alternate between the Secretaries.

“(C) MINIMUM QUALIFICATIONS.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop qualification requirements for the Director and the Deputy Director. Such requirements shall ensure that, at a minimum, the Director and Deputy Director, individually or together, meet the following qualifications:

“(i) Significant experience at a senior management level fielding enterprise-wide technology in a health care setting, or business systems in the public or private sector.

“(ii) Credentials for enterprise-wide program management.

“(iii) Significant experience leading implementation of complex organizational change by integrating the input of experts from various disciplines, such as clinical, business, management, informatics, and technology.

“(5) SUCCESSION.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop a leadership succession process for the Office.

“(6) ADDITIONAL GUIDANCE.—The Department of Veterans Affairs-Department of Defense Joint Executive Committee may provide guidance in the discharge of the functions of the Office under this section.

“(7) INFORMATION TO CONGRESS.—Upon request by any of the appropriate committees of Congress, the Director and the Deputy Director shall testify before such committee, or provide a briefing or otherwise provide requested information to such committee, regarding the discharge of the functions of the Office under this section.”

Testimony.  
Briefing.

(b) AUTHORITY.—Paragraph (1) of subsection (b) of such section is amended by adding at the end the following new sentence: “The Office shall carry out decision making authority delegated to the Office by the Secretary of Defense and the Secretary of Veterans Affairs with respect to the definition, coordination, and management of functional, technical, and programmatic activities that are jointly used, carried out, and shared by the Departments.”

(c) PURPOSES.—Paragraph (2) of subsection (b) of such section is amended by adding at the end the following new subparagraphs:

“(C) To develop and implement a comprehensive interoperability strategy, which shall include—

Strategy.

“(i) the Electronic Health Record Modernization Program of the Department of Veterans Affairs; and

“(ii) the Healthcare Management System Modernization Program of the Department of Defense.

“(D) To pursue the highest level of interoperability for the delivery of health care by the Department of Defense and the Department of Veterans Affairs.

“(E) To accelerate the exchange of health care information between the Departments, and advances in the health information technology marketplace, in order to support the delivery of health care by the Departments.

“(F) To collect the operational and strategic requirements of the Departments relating to the strategy under subsection (a) and communicate such requirements and activities to the Office of the National Coordinator for Health Information Technology of the Department of Health and Human Services for the purpose of implementing title IV of the 21st Century Cures Act (division A of Public Law 114–255), and the amendments made by that title, and other objectives of the Office of the National Coordinator for Health Information Technology.

“(G) To plan for and effectuate the broadest possible implementation of standards, specifically with respect to the Fast Healthcare Interoperability Resources standard or successor standard, the evolution of such standards, and the obsolescence of such standards.

“(H) To actively engage with national and international health standards setting organizations, including by taking membership in such organizations, to ensure that standards established by such organizations meet the needs of the Departments pursuant to the strategy under subsection (a), and oversee and approve adoption of and mapping to such standards by the Departments.

“(I) To express the content and format of health data of the Departments using a common language to improve the exchange of data between the Departments and with the private sector, and to ensure that clinicians of the Departments have access to integrated, computable, comprehensive health records of patients.

“(J) To inform the Chief Information Officer of the Department of Defense and the Chief Information Officer of the Department of Veterans Affairs of any activities of the Office affecting or relevant to cybersecurity.

“(K) To establish an environment that will enable and encourage the adoption by the Departments of innovative technologies for health care delivery.

“(L) To leverage data integration to advance health research and develop an evidence base for the health care programs of the Departments.

“(M) To prioritize the use of open systems architecture by the Departments.

“(N) To ensure ownership and control by patients of personal health information and data in a manner consistent with applicable law.

“(O) To prevent contractors of the Departments or other non-departmental entities from owning or having exclusive control over patient health data, for the purposes of protecting patient privacy and enhancing opportunities for innovation.

“(P) To implement a single lifetime longitudinal personal health record between the Department of Defense and the Department of Veterans Affairs.

“(Q) To attain interoperability capabilities—



“(i) sufficient to enable the provision of seamless health care by health care facilities and providers of the Departments, as well as private sector facilities and providers contracted by the Departments; and

“(ii) that are more adaptable and far reaching than those achievable through bidirectional information exchange between electronic health records of the exchange of read-only data alone.

“(R) To make maximum use of open-application program interfaces and the Fast Healthcare Interoperability Resources standard (or successor standard).”

(d) IMPLEMENTATION MILESTONES.—Subsection (e) of such section is amended to read as follows:

“(e) IMPLEMENTATION MILESTONES.—

“(1) EVALUATION.—With respect to the electronic health record systems of the Department of Defense and the Department of Veterans Affairs, the Office shall seek to enter into an agreement with an independent entity to conduct an evaluation by not later than October 1, 2021 of the following:

Contracts.  
Deadline.

“(A) Whether a clinician of the Department of Defense, can access, and meaningfully interact with, a complete patient health record of a veteran, from a military medical treatment facility.

“(B) Whether a clinician of the Department of Veterans Affairs can access, and meaningfully interact with, a complete patient health record of a member of the Armed Forces serving on active duty, from a medical center of the Department of Veterans Affairs.

“(C) Whether clinicians of the Departments can access, and meaningfully interact with, the data elements of the health record of a patient who is a veteran or is a member of the Armed Forces which are generated when the individual receives health care from a community care provider of the Department of Veterans Affairs or a TRICARE program provider of the Department of Defense.

“(D) Whether a community care provider of the Department of the Veterans Affairs and a TRICARE program provider of the Department of Defense on a Health Information Exchange-supported electronic health record can access patient health records of veterans and active-duty members of the Armed Forces from the system of the provider.

“(E) An assessment of interoperability between the legacy electronic health record systems and the future electronic health record systems of the Department of Veterans Affairs and the Department of Defense.

Assessment.

“(F) An assessment of the use of interoperable content between—

Assessment.

“(i) the legacy electronic health record systems and the future electronic health record systems of the Department of Veterans Affairs and the Department of Defense; and

“(ii) third-party applications.

(2) SYSTEM CONFIGURATION MANAGEMENT.—The Office shall—

“(A) maintain the common configuration baseline for the electronic health record systems of the Department of Defense and the Department of Veterans Affairs; and

“(B) continually evaluate the state of configuration and the impacts on interoperability; and

“(C) promote the enhancement of such electronic health records systems.

“(3) CONSULTATION.—

“(A) ANNUAL MEETING REQUIRED.—Not less than once per year, the Office shall convene a meeting of clinical staff from the Department of Defense, the Department of Veterans Affairs, the Coast Guard, community providers, and other leading clinical experts, for the purpose of assessing the state of clinical use of the electronic health record systems and whether the systems are meeting clinical and patient needs.

“(B) RECOMMENDATIONS.—Clinical staff participating in a meeting under subparagraph (A) shall make recommendations to the Office on the need for any improvements or concerns with the electronic health record systems.

Time period.

“(4) CLINICAL AND PATIENT SATISFACTION SURVEY.—Beginning October 1, 2021, and on at least a biannual basis thereafter until 2025 at the earliest, the Office shall undertake a clinician and patient satisfaction survey regarding clinical use and patient experience with the electronic health record systems of the Department of Defense and the Department of Veterans Affairs.”.

(e) RESOURCES AND STAFFING.—Subsection (g) of such section is amended—

(1) in paragraph (1), by inserting before the period at the end the following: “, including the assignment of clinical or technical personnel of the Department of Defense or the Department of Veterans Affairs to the Office”; and

(2) by adding at the end the following new paragraphs:

“(3) COST SHARING.—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into an agreement on cost sharing and providing resources for the operations and staffing of the Office.

“(4) HIRING AUTHORITY.—The Secretary of Defense and the Secretary of Veterans Affairs shall delegate to the Director the authority under title 5, United States Code, regarding appointments in the competitive service to hire personnel of the Office.”.

(f) REPORTS.—Subsection (h) of such section is amended to read as follows:

“(h) REPORTS.—

“(1) ANNUAL REPORTS.—Not later than September 30, 2020, and each year thereafter through 2024, the Director shall submit to the Secretary of Defense and the Secretary of Veterans Affairs, and to the appropriate committees of Congress, a report on the activities of the Office during the preceding calendar year. Each report shall include the following:

“(A) A detailed description of the activities of the Office during the year covered by such report, including a detailed description of the amounts expended and the purposes for which expended.

“(B) With respect to the objectives of the strategy under paragraph (2)(C) of subsection (b), and the purposes of the Office under such subsection—

“(i) a discussion, description, and assessment of the progress made by the Department of Defense and the Department of Veterans Affairs during the preceding calendar year; and

Assessment.

“(ii) a discussion and description of the goals of the Department of Defense and the Department of Veterans Affairs for the following calendar year, including updates to strategies and plans.

“(C) A detailed financial summary of the activities of the Office, including the funds allocated to the Office by each Department, the expenditures made, and an assessment as to whether the current funding is sufficient to carry out the activities of the Office.

Financial  
summary.  
Assessment.

“(D) A detailed description of the status of each of the implementation milestones, including the nature of the evaluation, methodology for testing, and findings with respect to each milestone under subsection (e).

“(E) A detailed description of the state of the configuration baseline, including any activities which decremented or enhanced the state of configuration under subsection (e).

“(F) With respect to the annual meeting required under subsection (e)(3)—

“(i) a detailed description of activities, assessments, and recommendations relating to such meeting; and

“(ii) the response of the Office to any such recommendations.

“(2) AVAILABILITY.—Each report under this subsection shall be made publicly available.”

Public  
information.

(g) DEFINITIONS.—Such section is further amended by adding at the end the following new subsection (k):

“(k) DEFINITIONS.—In this section:

“(1) The term ‘appropriate congressional committees’ means—

“(A) the congressional defense committees; and

“(B) the Committees on Veterans’ Affairs of the House of Representatives and the Senate.

“(2) The term ‘configuration baseline’ means a fixed reference in the development cycle or an agreed-upon specification of a product at a point in time that serves as a documented basis for defining incremental change in all aspects of an information technology product.

“(3) The term ‘Electronic Health Record Modernization Program’ has the meaning given that term in section 503 of the Veterans Benefits and Transition Act of 2018 (Public Law 115–407; 132 Stat. 5376).

“(4) The term ‘interoperability’ means the ability of different information systems, devices, or applications to connect, regardless of the technology platform or the location where care is provided—

“(A) in a coordinated and secure manner, within and across organizational boundaries, and across the complete spectrum of care, including all applicable care settings;

“(B) with relevant stakeholders, including the person whose information is being shared, to access, exchange,

integrate, and use computable data regardless of the origin or destination of the data or the applications employed;

“(C) with the capability to reliably exchange information without error;

“(D) with the ability to interpret and to make effective use of such exchanged information;

“(E) with the ability for information that can be used to advance patient care to move between health care entities; and

“(F) without additional intervention by the end user.

“(5) The term ‘meaningfully interact’ means the ability to view, consume, act upon, and edit information in a clinical setting to facilitate high-quality clinical decision making.

“(6) The term ‘seamless health care’ means health care which is optimized through access by patients and clinicians to integrated, relevant, and complete information about the clinical experiences of the patient, social and environmental determinants of health, and health trends over time, in order to enable patients and clinicians to—

“(A) move efficiently within and across organizational boundaries;

“(B) make high-quality decisions; and

“(C) effectively carry out complete plans of care.

“(7) The term ‘Secretary concerned’ means—

“(A) the Secretary of Defense, with respect to matters concerning the Department of Defense;

“(B) the Secretary of Veterans Affairs, with respect to matters concerning the Department of Veterans Affairs; and

“(C) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

“(8) The term ‘TRICARE program’ has the meaning given that term in section 1072 of title 10, United States Code.”.

(h) INTEROPERABILITY STRATEGY.—

(1) REPORT REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Director shall submit to each Secretary concerned and to the appropriate congressional committees a report that contains a comprehensive interoperability strategy with respect to electronic health records jointly developed by the Secretary of Defense and Secretary of Veterans Affairs, including any accompanying or associated implementation plans and supporting plans.

(2) ELEMENTS.—The comprehensive interoperability strategy under paragraph (1) shall discuss the purposes described in paragraphs (K) through (R) of section 1635(b)(2) of the Wounded Warrior Act (title XVI of Public Law 110–181; 10 U.S.C. 1071 note), as amended by subsection (c).

(3) DEFINITIONS.—In this subsection:

(A) The term “appropriate congressional committees” means—

(i) the Committees on Armed Services of the Senate and the House of Representatives; and

(ii) the Committees on Veterans’ Affairs of the Senate and the House of Representatives.

(B) The term “Director” means the individual described in section 1635(c) of the Wounded Warrior Act (title XVI

of Public Law 110–181; 10 U.S.C. 1071 note), as amended by subsection (a).

(C) The term “interoperability” has the meaning given that term in subsection (k) of such section, as added by subsection (g).

(i) **CONFORMING REPEAL.**—Section 713 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 1071 note) is repealed.

**SEC. 716. EXPANSION OF STRATEGY TO IMPROVE ACQUISITION OF MANAGED CARE SUPPORT CONTRACTS UNDER TRICARE PROGRAM.**

Section 705(c)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1073a note) is amended, in the matter preceding subparagraph (A), by striking “, other than overseas medical support contracts”.

**SEC. 717. INCLUSION OF BLAST EXPOSURE HISTORY IN MEDICAL RECORDS OF MEMBERS OF THE ARMED FORCES.**

10 USC 1071  
note.

(a) **REQUIREMENT.**—If a covered incident occurs with respect to a member of the Armed Forces, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall document blast exposure history in the medical record of the member to assist in determining whether a future illness or injury of the member is service-connected and inform future blast exposure risk mitigation efforts of the Department of Defense.

Coordination.

(b) **ELEMENTS.**—A blast exposure history under subsection (a) shall include, at a minimum, the following:

(1) The date of the exposure.

(2) The duration of the exposure, and, if known, the measured blast pressure experienced by the individual during such exposure.

(3) Whether the exposure occurred during combat or training.

(c) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the types of information included in a blast exposure history under subsection (a).

(d) **COVERED INCIDENT DEFINED.**—In this section, the term “covered incident” means a concussive event or injury that requires a military acute concussive evaluation by a skilled health care provider.

**SEC. 718. COMPREHENSIVE POLICY FOR PROVISION OF MENTAL HEALTH CARE TO MEMBERS OF THE ARMED FORCES.**

10 USC 1074  
note.

(a) **POLICY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, shall develop and implement a comprehensive policy for the provision of mental health care to members of the Armed Forces.

Deadline.

(b) **ELEMENTS.**—The policy under subsection (a) shall address each of the following:

(1) The compliance of health professionals in the military health system engaged in the provision of health care services to members with clinical practice guidelines for—

(A) suicide prevention;

(B) medication-assisted therapy for alcohol use disorders; and

(C) medication-assisted therapy for opioid use disorders.

(2) The access and availability of mental health care services to members who are victims of sexual assault or domestic violence.

(3) The availability of naloxone reversal capability on military installations.

(4) The promotion of referrals of members by civilian health care providers to military medical treatment facilities when such members are—

(A) at high risk for suicide and diagnosed with a psychiatric disorder; or

(B) receiving treatment for opioid use disorders.

(5) The provision of comprehensive behavioral health treatment to members of the reserve components that takes into account the unique challenges associated with the deployment pattern of such members and the difficulty such members encounter post-deployment with respect to accessing such treatment in civilian communities.

(c) **CONSIDERATION.**—In developing the policy under subsection (a), the Secretary of Defense shall solicit and consider recommendations from the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff regarding the feasibility of implementation and execution of particular elements of the policy.

(d) **REPORT.**—Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the policy under subsection (a).

**SEC. 719. LIMITATION ON THE REALIGNMENT OR REDUCTION OF MILITARY MEDICAL MANNING END STRENGTH.**

(a) **LIMITATION.**—Except as provided by subsection (d), the Secretary of Defense and the Secretaries concerned may not realign or reduce military medical end strength authorizations until—

(1) each review is conducted under paragraph (1) of subsection (b);

(2) each analysis is conducted under paragraph (2) of such subsection;

(3) the measurement is developed under paragraph (3) of such subsection;

(4) each plan and forum is provided under paragraph (4) of such subsection; and

(5) a period of 90 days elapses following the date on which the Secretary submits the report under subsection (c).

(b) **REVIEWS, ANALYSES, AND OTHER INFORMATION.**—

(1) **REVIEW.**—Each Secretary concerned, in coordination with the Chairman of the Joint Chiefs of Staff, shall conduct a review of the medical manpower requirements of the military department of the Secretary that accounts for all national defense strategy scenarios.

(2) **ANALYSES.**—With respect to each military medical treatment facility that would be affected by a proposed military medical end strength realignment or reduction, the Secretary concerned shall conduct an analysis that—

Time period.

Coordination.

(A) identifies affected billets; and

(B) includes a plan for mitigating any potential gap in health care services caused by such realignment or reduction. Plan.

(3) MEASUREMENT.—The Secretary of Defense shall—

(A) develop a standard measurement for network adequacy to determine the capacity of the local health care network to provide care for covered beneficiaries in the area of a military medical treatment facility that would be affected by a proposed military medical end strength realignment or reduction; and Determination.

(B) use such measurement in carrying out this section and otherwise evaluating proposed military medical end strength realignment or reductions.

(4) OUTREACH.—The Secretary of Defense shall provide to each member of the Armed Forces and covered beneficiary located in the area of a military medical treatment facility that would be affected by a proposed military medical end strength realignment or reduction the following:

(A) A transition plan for continuity of health care services. Plan.

(B) A public forum to discuss the concerns of the member and covered beneficiary regarding such proposed realignment or reduction.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the proposed military medical end strength realignments or reductions, including—

(1) the reviews, analyses, and other information developed under subsection (b); and

(2) a description of the actions the Secretary plans to take with respect to such proposed realignments or reductions.

(d) EXCEPTION.—

(1) IN GENERAL.—The limitation in subsection (a) shall not apply—

(A) to administrative billets of a medical department of a military department that have remained unfilled since at least October 1, 2018;

(B) to billets identified as non-clinical in the budget of the President for fiscal year 2020 submitted to Congress pursuant to section 1105 of title 31, United States Code, except that the amount of such billets shall not exceed 1,700; and

(C) to medical headquarters billets of the military departments not assigned or directly supporting to operational commands.

(2) DETERMINATION PRIOR TO REALIGNMENT OR REDUCTION.—The Secretary concerned may realign or reduce a billet described in paragraph (1) if the Secretary determines that such realignment or reduction does not affect the provision of health care services to members of the Armed Forces or covered beneficiaries.

(e) DEFINITIONS.—In this section:

(1) The term “covered beneficiary” has the meaning given that term in section 1072 of title 10, United States Code.

(2) The term “proposed military medical end strength realignment or reduction” means a realignment or reduction of military medical end strength authorizations as proposed by the budget of the President for fiscal year 2020 submitted to Congress pursuant to section 1105 of title 31, United States Code.

(3) The term “Secretary concerned” means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy; and

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force.

**SEC. 720. STRATEGY TO RECRUIT AND RETAIN MENTAL HEALTH PROVIDERS.**

Reports.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that—

(1) describes the shortage of mental health providers of the Department of Defense;

(2) explains the reasons for such shortage;

(3) explains the effect of such shortage on members of the Armed Forces; and

(4) contains a strategy to better recruit and retain mental health providers, including with respect to psychiatrists, psychologists, mental health nurse practitioners, licensed social workers, and other licensed providers of the military health system, in a manner that addresses the need for cultural competence and diversity among such mental health providers.

10 USC 1071  
note.

**SEC. 721. DEVELOPMENT OF PARTNERSHIPS TO IMPROVE COMBAT CASUALTY CARE FOR PERSONNEL OF THE ARMED FORCES.**

(a) PARTNERSHIPS.—

(1) IN GENERAL.—The Secretary of Defense, through the Joint Trauma Education and Training Directorate established under section 708 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1071 note), may develop partnerships with civilian academic medical centers and large metropolitan teaching hospitals to improve combat casualty care for personnel of the Armed Forces.

(2) PARTNERSHIPS WITH LEVEL I TRAUMA CENTERS.—In carrying out partnerships under paragraph (1), trauma surgeons and physicians of the Department of Defense may partner with level I civilian trauma centers to provide training and readiness for the next generation of medical providers to treat critically injured burn patients.

(b) SUPPORT OF PARTNERSHIPS.—The Secretary of Defense may make every effort to support partnerships under the Joint Trauma Education and Training Directorate with academic institutions that have level I civilian trauma centers, specifically those centers with a burn center, that offer burn rotations and clinical experience to provide training and readiness for the next generation of medical providers to treat critically injured burn patients.



(c) **LEVEL I CIVILIAN TRAUMA CENTER DEFINED.**—In this section, the term “level I civilian trauma center” has the meaning given that term in section 708 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1071 note).

**SEC. 722. MODIFICATION TO REFERRALS FOR MENTAL HEALTH SERVICES.**

10 USC 1071  
note.

If the Secretary of Defense is unable to provide mental health services in a military medical treatment facility to a member of the Armed Forces within 15 days of the date on which such services are first requested by the member, the Secretary may refer the member to a provider under the TRICARE program (as that term is defined in section 1072 of title 10, United States Code) to receive such services.

Deadline.

## Subtitle C—Reports and Other Matters

**SEC. 731. AUTHORIZATION OF CLAIMS BY MEMBERS OF THE UNIFORMED SERVICES AGAINST THE UNITED STATES FOR PERSONAL INJURY OR DEATH CAUSED BY MEDICAL MALPRACTICE.**

(a) **MEDICAL MALPRACTICE CLAIMS.**—

(1) **IN GENERAL.**—Chapter 163 of title 10, United States Code, is amended by inserting after section 2733 the following new section:

**“§ 2733a. Medical malpractice claims by members of the uniformed services**

10 USC 2733a.

“(a) **IN GENERAL.**—Consistent with this section and under such regulations as the Secretary of Defense shall prescribe under subsection (f), the Secretary may allow, settle, and pay a claim against the United States for personal injury or death incident to the service of a member of the uniformed services that was caused by the medical malpractice of a Department of Defense health care provider.

“(b) **REQUIREMENT FOR CLAIMS.**—A claim may be allowed, settled, and paid under subsection (a) only if—

“(1) the claim is filed by the member of the uniformed services who is the subject of the medical malpractice claimed, or by an authorized representative on behalf of such member who is deceased or otherwise unable to file the claim due to incapacitation;

“(2) the claim is for personal injury or death caused by the negligent or wrongful act or omission of a Department of Defense health care provider in the performance of medical, dental, or related health care functions while such provider was acting within the scope of employment;

“(3) the act or omission constituting medical malpractice occurred in a covered military medical treatment facility;

“(4) the claim is presented to the Department in writing within two years after the claim accrues;

“(5) the claim is not allowed to be settled and paid under any other provision of law; and

“(6) the claim is substantiated as prescribed in regulations prescribed by the Secretary of Defense under subsection (f).

Deadline.

“(c) LIABILITY.—(1) The Department of Defense is liable for only the portion of compensable injury, loss, or damages attributable to the medical malpractice of a Department of Defense health care provider.

“(2) The Department of Defense shall not be liable for the attorney fees of a claimant under this section.

Determination.

“(d) PAYMENT OF CLAIMS.—(1) If the Secretary of Defense determines, pursuant to regulations prescribed by the Secretary under subsection (f), that a claim under this section in excess of \$100,000 is meritorious, and the claim is otherwise payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

“(2) Except as provided in paragraph (1), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

“(e) REPORTING MEDICAL MALPRACTICE.—Not later than 30 days after a determination of medical malpractice or the payment of all or part of a claim under this section, the Secretary of Defense shall submit to the Director of the Defense Health Agency a report documenting such determination or payment to be used by the Director for all necessary and appropriate purposes, including medical quality assurance.

“(f) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to implement this section.

“(2) Regulations prescribed by the Secretary under paragraph (1) shall include the following:

Procedures.

“(A) Policies and procedures to ensure the timely, efficient, and effective processing and administration of claims under this section, including—

“(i) the filing, receipt, investigation, and evaluation of a claim;

“(ii) the negotiation, settlement, and payment of a claim;

“(iii) such other matters relating to the processing and administration of a claim, including an administrative appeals process, as the Secretary considers appropriate.

Standards.

“(B) Uniform standards consistent with generally accepted standards used in a majority of States in adjudicating claims under chapter 171 of title 28 (commonly known as the ‘Federal Tort Claims Act’) to be applied to the evaluation, settlement, and payment of claims under this section without regard to the place of occurrence of the medical malpractice giving rise to the claim or the military department or service of the member of the uniformed services, and without regard to foreign law in the case of claims arising in foreign countries, including uniform standards to be applied to determinations with respect to—

“(i) whether an act or omission by a Department of Defense health care provider in the context of performing medical, dental, or related health care functions was negligent or wrongful, considering the specific facts and circumstances;

“(ii) whether the personal injury or death of the member was caused by a negligent or wrongful act or omission of a Department of Defense health care provider in the context of performing medical, dental, or related

health care functions, considering the specific facts and circumstances;

“(iii) requirements relating to proof of duty, breach of duty, and causation resulting in compensable injury or loss, subject to such exclusions as may be established by the Secretary of Defense; and

“(iv) calculation of damages.

“(C) Such other matters as the Secretary considers appropriate.

“(3) In order to implement expeditiously the provisions of this section, the Secretary may prescribe the regulations under this subsection—

“(A) by prescribing an interim final rule; and

“(B) not later than one year after prescribing such interim final rule and considering public comments with respect to such interim final rule, by prescribing a final rule.

Deadline.  
Public comment.

“(g) LIMITATION ON ATTORNEY FEES.—(1) No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 20 percent of any claim paid pursuant to this section.

“(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with a claim under this section any amount in excess of the amount allowed under paragraph (1), if recovery be had, shall be fined not more than \$2,000, imprisoned not more than one year, or both.

“(h) ANNUAL REPORT.—Not less frequently than annually until 2025, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report—

“(1) indicating the number of claims processed under this section;

“(2) indicating the resolution of each such claim; and

“(3) describing any other information that may enhance the effectiveness of the claims process under this section.

“(i) DEFINITIONS.—In this section:

“(1) COVERED MILITARY MEDICAL TREATMENT FACILITY.—The term ‘covered military medical treatment facility’ means a facility described in subsection (b), (c), or (d) of section 1073d of this title.

“(2) DEPARTMENT OF DEFENSE HEALTH CARE PROVIDER.—The term ‘Department of Defense health care provider’ means a member of the uniformed services, civilian employee of the Department of Defense, or personal services contractor of the Department (under section 1091 of this title) authorized by the Department to provide health care services and acting within the scope of employment of such individual.

“(3) MEMBER OF THE UNIFORMED SERVICES.—The term ‘member of the uniformed services’ includes a member of a reserve component of the armed forces if the claim by the member under this section is in connection with personal injury or death that occurred while the member was in Federal status.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 163 of such title is amended by inserting after the item relating to section 2733 the following new item:

10 USC 2731  
prec.

“2733a. Medical malpractice claims by members of the uniformed services.”.

- Deadline. (b) INTERIM BRIEFING ON DEVELOPMENT OF REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on the development of regulations under section 2733a(f) of title 10, United States Code, as added by subsection (a)(1).
- (c) CONFORMING AMENDMENTS.—
- (1) Section 2735 of such title is amended by striking “2733,” and inserting “2733, 2733a.”
- (2) Section 1304(a)(3)(D) of title 31, United States Code, is amended by striking “2733,” and inserting “2733, 2733a.”
- 10 USC 2733a note. (d) EFFECTIVE DATE AND TRANSITION PROVISION.—
- (1) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim filed under section 2733a of such title, as added by subsection (a)(1), on or after January 1, 2020.
- Time period. (2) TRANSITION.—Any claim filed in calendar year 2020 shall be deemed to be filed within the time period specified in section 2733a(b)(4) of such title, as so added, if it is filed within three years after it accrues.

**SEC. 732. EXTENSION AND CLARIFICATION OF AUTHORITY FOR JOINT DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITY DEMONSTRATION FUND.**

Title XVII of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2567) is amended—

- (1) in section 1701—
- (A) in subsection (a), by striking “Subject to subsection (b), the” and inserting “The”;
- (B) by striking subsection (b); and
- (C) by redesignating subsections (c) through (f) as subsections (b) through (e), respectively;
- (2) in section 1702(a)(1), by striking “hereafter in this title” and inserting “in this section”;
- (3) in section 1703, in subsections (a) and (c), by striking “the facility” and inserting “the James A. Lovell Federal Health Care Center”;
- (4) in section 1704—
- (A) in subsections (a)(3), (a)(4)(A), and (b)(1), by striking “the facility” and inserting “the James A. Lovell Federal Health Care Center”; and
- (B) in subsection (e), as most recently amended by section 731 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), by striking “September 30, 2020” and inserting “September 30, 2021”;
- (5) in section 1705—
- (A) in subsection (a), by striking “the facility” and inserting “the James A. Lovell Federal Health Care Center (in this section referred to as the ‘JALFHCC’)”;
- (B) in subsection (b), in the matter preceding paragraph (1), by striking “the facility” and inserting “the JALFHCC”; and
- (C) in subsection (c)—
- (i) by striking “the facility” each place it appears and inserting “the JALFHCC”; and

(ii) by adding at the end the following new paragraph:

“(4) To permit the JALFHCC to enter into personal services contracts to carry out health care responsibilities in the JALFHCC to the same extent and subject to the same conditions and limitations as apply under section 1091 of title 10, United States Code, to the Secretary of Defense with respect to health care responsibilities in medical treatment facilities of the Department of Defense.”

**SEC. 733. APPOINTMENT OF NON-EX OFFICIO MEMBERS OF THE HENRY M. JACKSON FOUNDATION FOR THE ADVANCEMENT OF MILITARY MEDICINE.**

(a) **APPOINTMENT BY NON-EX OFFICIO MEMBERS.**—Subparagraph (C) of paragraph (1) of section 178(c) of title 10, United States Code, is amended to read as follows:

“(C) six members, each of whom shall be appointed at the expiration of the term of a member appointed under this subparagraph, as provided for in paragraph (2), by the members currently serving on the Council pursuant to this subparagraph and paragraph (2), including the member whose expiring term is so being filled by such appointment.”

(b) **REPEAL OF OBSOLETE AUTHORITY ESTABLISHING STAGGERED TERMS.**—Paragraph (2) of such section is amended—

(1) by striking “except that—” and all that follows through “any person” and inserting “except that any person”;

(2) by striking “; and” and inserting a period; and

(3) by striking subparagraph (B).

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) **CONSTRUCTION FOR CURRENT MEMBERS.**—Nothing in the amendments made by this section shall be construed to terminate or otherwise alter the appointment or term of service of members of the Henry M. Jackson Foundation for the Advancement of Military Medicine who are so serving on the date of the enactment of this Act pursuant to an appointment under paragraph (1)(C) or (2) of section 178(c) of title 10, United States Code, made before that date.

10 USC 178 note.

**SEC. 734. ESTABLISHMENT OF ACADEMIC HEALTH SYSTEM IN NATIONAL CAPITAL REGION.**

(a) **IN GENERAL.**—Chapter 104 of title 10, United States Code, is amended by inserting after section 2113a the following new section:

**“§ 2113b. Academic Health System**

10 USC 2113b.

“(a) **IN GENERAL.**—The Secretary of Defense may establish an Academic Health System to integrate the health care, health professions education, and health research activities of the military health system, including under this chapter, in the National Capital Region.

“(b) **LEADERSHIP.**—(1) The Secretary may appoint employees of the Department of Defense to leadership positions in the Academic Health System established under subsection (a).

Appointments.

“(2) Such positions may include responsibilities for management of the health care, health professions education, and health research

activities described in subsection (a) and are in addition to similar leadership positions for members of the armed forces.

“(c) NATIONAL CAPITAL REGION DEFINED.—In this section, the term ‘National Capital Region’ means the area, or portion thereof, as determined by the Secretary, in the vicinity of the District of Columbia.”

10 USC 2112  
prec.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 104 of such title is amended by inserting after the item relating to section 2113a the following new item:

“2113b. Academic Health System.”

**SEC. 735. PROVISION OF VETERINARY SERVICES BY VETERINARY PROFESSIONALS OF THE DEPARTMENT OF DEFENSE IN EMERGENCIES.**

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 1060c.

**“§ 1060c. Provision of veterinary services in emergencies**

“(a) IN GENERAL.—A veterinary professional described in subsection (b) may provide veterinary services for the purposes described in subsection (c) in any State, the District of Columbia, or a territory or possession of the United States, without regard to where such veterinary professional or the patient animal are located, if the provision of such services is within the scope of the authorized duties of such veterinary professional for the Department of Defense.

“(b) VETERINARY PROFESSIONAL DESCRIBED.—A veterinary professional described in this subsection is an individual who is—

“(1)(A) a member of the armed forces, a civilian employee of the Department of Defense, or otherwise credentialed and privileged at a Federal veterinary institution or location designated by the Secretary of Defense for purposes of this section; or

“(B) a member of the National Guard performing training or duty under section 502(f) of title 32;

“(2) certified as a veterinary professional by a certification recognized by the Secretary of Defense; and

“(3) currently licensed by a State, the District of Columbia, or a territory or possession of the United States to provide veterinary services.

“(c) PURPOSES DESCRIBED.—The purposes described in this subsection are veterinary services in response to any of the following:

“(1) A national emergency declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).

“(2) A major disaster or an emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).

“(3) A public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

“(4) An extraordinary emergency, as determined by the Secretary of Agriculture under section 10407(b) of the Animal Health Protection Act (7 U.S.C. 8306(b)).”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 53 of such title is amended by inserting after the item relating to section 1060b the following new item:

10 USC 1030  
prec.

“1060c. Provision of veterinary services in emergencies.”.

**SEC. 736. THREE-YEAR EXTENSION OF AUTHORITY TO CONTINUE THE DOD-VA HEALTH CARE SHARING INCENTIVE FUND.**

Section 8111(d)(3) of title 38, United States Code, is amended by striking “September 30, 2020” and inserting, “September 30, 2023”.

**SEC. 737. PRESERVATION OF RESOURCES OF THE ARMY MEDICAL RESEARCH AND MATERIEL COMMAND AND CONTINUATION AS CENTER OF EXCELLENCE.**

Effective dates.

(a) **IN GENERAL.**—The Secretary of Defense shall preserve the resources of the Army Medical Research and Materiel Command for use by such command, which shall include manpower and funding, at not less than the level of such resources as of the date of the enactment of this Act until September 30, 2022.

(b) **TRANSFER OF FUNDS.**—On October 1, 2022, all amounts available for the Army Medical Research and Materiel Command shall be transferred from accounts for research, development, test, and evaluation for the Army to accounts for the Defense Health Program.

(c) **CONTINUATION AS CENTER OF EXCELLENCE.**—After September 30, 2022, the Army Medical Research and Materiel Command and Fort Detrick shall continue to serve as a Center of Excellence for Joint Biomedical Research, Development and Acquisition Management for efforts undertaken under the Defense Health Program.

**SEC. 738. ENCOURAGEMENT OF PARTICIPATION IN WOMEN’S HEALTH TRANSITION TRAINING PILOT PROGRAM.**

(a) **ENCOURAGEMENT OF PARTICIPATION.**—The Secretaries of the military departments shall encourage female members of the Armed Forces who are separating or retiring from the Armed Forces during fiscal year 2020 to participate in the Women’s Health Transition Training pilot program (in this section referred to as the “pilot program”) administered by the Secretary of Veterans Affairs.

(b) **SELECTION.**—Each Secretary of a military department shall select at least one location at which the pilot program is offered and encourage participation in the pilot program at such location.

(c) **REPORT.**—Not later than September 30, 2020, the Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Committees on Veterans’ Affairs of the Senate and House of Representatives a report on the pilot program that includes the following:

Consultation.

(1) For the period since the commencement of the pilot program—

- (A) the number of courses held under the pilot program;
- (B) the locations at which such courses were held;

and

- (C) for each location identified in subparagraph (B)—
  - (i) the number of female members by military department (with respect to Department of the Navy,

separately for the Navy and Marine Corps) who participated in the pilot program; and

(ii) the number of seats available under the pilot program.

(2) Data relating to—

(A) satisfaction with courses held under the pilot program;

(B) improved awareness of health care services administered by the Secretary of Veterans Affairs; and

(C) any other available statistics regarding the pilot program.

(3) A discussion of regulatory, legal, or resource barriers to—

(A) making the pilot program permanent to enable access by a greater number of female members at locations throughout the United States;

(B) offering the pilot program online for female members who are unable to attend courses held under the pilot program in person; and

(C) providing for automatic enrollment of participants in the pilot program in the patient enrollment system of the Department of Veterans Affairs established and operated under section 1705 of title 38, United States Code.

10 USC 10219  
note.

**SEC. 739. NATIONAL GUARD SUICIDE PREVENTION PILOT PROGRAM.**

(a) **PILOT PROGRAM AUTHORIZED.**—The Chief of the National Guard Bureau may carry out a pilot program to expand suicide prevention and intervention efforts at the community level through the use of a mobile application that provides the capability for a member of the National Guard to receive prompt support, including access to a behavioral health professional, on a smartphone, tablet computer, or other handheld mobile device.

(b) **ELEMENTS.**—The pilot program shall include, subject to such conditions as the Secretary may prescribe—

(1) the use by members of the National Guard of an existing mobile application that provides the capability described in subsection (a); or

(2) the development and use of a new mobile application that provides such capability.

(c) **ELIGIBILITY AND PARTICIPATION REQUIREMENTS.**—The Chief of the National Guard Bureau shall establish requirements with respect to eligibility and participation in the pilot program.

(d) **ASSESSMENT PRIOR TO PILOT PROGRAM COMMENCEMENT.**—Prior to commencement of the pilot program, the Chief of the National Guard Bureau shall—

(1) conduct an assessment of existing prevention and intervention efforts of the National Guard in each State that include the use of mobile applications that provide the capability described in subsection (a) to determine best practices for providing immediate and localized care through the use of such mobile applications; and

(2) determine the feasibility of expanding existing programs on a national scale.

(e) **RESPONSIBILITIES OF ENTITIES PARTICIPATING IN PILOT PROGRAM.**—Each entity that participates in the pilot program shall—

(1) share best practices with other entities participating in the program; and

Determination.



(2) annually assess outcomes with respect to members of the National Guard.

Time period.  
Assessment.

(f) TERM.—The pilot program shall terminate on the date that is three years after the date on which the pilot program commenced.

(g) REPORTS.—

(1) INITIAL REPORT.—If the Chief of the National Guard Bureau commences the pilot program authorized under subsection (a), not later than 180 days after the date of the commencement of such program, the Chief shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a description of the pilot program and such other matters as the Chief considers appropriate.

(2) FINAL REPORT.—

(A) IN GENERAL.—Not later than 180 days after the termination of the pilot program, the Chief of the National Guard Bureau shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on such pilot program.

(B) MATTERS INCLUDED.—The report under subparagraph (A) shall include the following:

(i) A description of the pilot program, including any partnerships entered into by the Chief of the National Guard Bureau under the program.

(ii) An assessment of the effectiveness of the pilot program.

Assessment.

(iii) A description of costs associated with the implementation of the pilot program.

(iv) The estimated costs of making the pilot program permanent.

Cost estimate.

(v) A recommendation as to whether the pilot program should be extended or made permanent.

Recommendations.

(vi) Such other recommendations for legislative or administrative action as the Chief of the National Guard Bureau considers appropriate.

Recommendations.

(h) STATE DEFINED.—In this section, the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

**SEC. 740. PILOT PROGRAM ON CIVILIAN AND MILITARY PARTNERSHIPS TO ENHANCE INTEROPERABILITY AND MEDICAL SURGE CAPABILITY AND CAPACITY OF NATIONAL DISASTER MEDICAL SYSTEM.**

10 USC 1096  
note.

(a) IN GENERAL.—The Secretary of Defense may carry out a pilot program to establish partnerships with public, private, and nonprofit health care organizations, institutions, and entities in collaboration with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Transportation to enhance the interoperability and medical surge capability and capacity of the National Disaster Medical System under section 2812 of the Public Health Service Act (42 U.S.C. 300hh-11) in the vicinity of major aeromedical and other transport hubs and logistics centers of the Department of Defense.

- Time period. (b) DURATION.—The Secretary of Defense may carry out the pilot program under subsection (a) for a period of not more than five years.
- Collaboration. (c) LOCATIONS.—The Secretary shall carry out the pilot program under subsection (a) at not fewer than five aeromedical or other transport hub regions or logistics centers in the United States.
- (d) REQUIREMENTS.—In establishing partnerships under the pilot program under subsection (a), the Secretary, in collaboration with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Transportation, shall establish requirements under such partnerships for staffing, specialized training, medical logistics, telemedicine, patient regulating, movement, situational status reporting, tracking, and surveillance.
- (e) EVALUATION METRICS.—The Secretary of Defense shall establish metrics to evaluate the effectiveness of the pilot program under subsection (a).
- (f) REPORTS.—
- (1) INITIAL REPORT.—
- (A) IN GENERAL.—Not later than 180 days after the commencement of the pilot program under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program.
- (B) ELEMENTS.—The report required by subparagraph (A) shall include the following:
- (i) A description of the pilot program.
- (ii) The requirements established under subsection (d).
- (iii) The evaluation metrics established under subsection (e).
- (iv) Such other matters relating to the pilot program as the Secretary considers appropriate.
- (2) FINAL REPORT.—
- (A) IN GENERAL.—Not later than 180 days after completion of the pilot program under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program.
- (B) ELEMENTS.—The report required by subparagraph (A) shall include the following:
- (i) A description of the pilot program, including the partnerships established under the pilot program as described in subsection (a).
- (ii) An assessment of the effectiveness of the pilot program.
- (iii) An assessment of the cost of the pilot program and an estimate of the cost of making the pilot program a permanent part of the budget of the Department of Defense.
- (iv) Such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the pilot program, including recommendations for extending or making permanent the authority for the pilot program.
- Assessments.
- Cost estimate.
- Recommendations.

**SEC. 741. REPORTS ON SUICIDE AMONG MEMBERS OF THE ARMED FORCES AND SUICIDE PREVENTION PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF DEFENSE.**

(a) DEPARTMENT OF DEFENSE REPORTS ON SUICIDE AMONG MEMBERS OF THE ARMED FORCES.—

(1) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter through January 31, 2021, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on suicide among members of the Armed Forces during the year preceding the date of the report.

(2) MATTERS INCLUDED.—Each report under paragraph (1) shall include the following with respect to the year covered by the report:

(A) The number of suicides, attempted suicides, and known cases of suicidal ideation involving a member of the Armed Forces, including the reserve components thereof, listed by Armed Force.

(B) The number of suicides, attempted suicides, or known cases of suicidal ideation identified under subparagraph (A) that occurred during each of the following periods:

Time periods.

(i) The first 180 days of the member serving in the Armed Forces.

(ii) The period in which the member is deployed in support of a contingency operation.

(C) With respect to the number of suicides, attempted suicides, or known cases of suicidal ideation identified under subparagraph (B)(i), the initial recruit training location of the member.

(D) The number of suicides involving a dependent of a member.

(E) A description of any research collaborations and data sharing by the Department of Defense with the Department of Veterans Affairs, other departments or agencies of the Federal Government, academic institutions, or nongovernmental organizations.

(F) Identification of a research agenda for the Department of Defense to improve the evidence base on effective suicide prevention treatment and risk communication.

(G) The availability and usage of the assistance of chaplains, houses of worship, and other spiritual resources for members of the Armed Forces who identify as religiously affiliated and have attempted suicide, have experienced suicidal ideation, or are at risk of suicide, and metrics on the impact these resources have in assisting religiously-affiliated members who have access to and utilize them compared to religiously-affiliated members who do not.

(H) A description of the effectiveness of the policies developed pursuant to section 567 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 1071 note) and section 582 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 10 U.S.C. 1071 note), including with respect to—

(i) metrics identifying effective treatment modalities for members of the Armed Forces who are at risk for suicide (including any clinical interventions involving early identification and treatment of such members);

(ii) metrics for the rate of integration of mental health screenings and suicide risk and prevention for members during the delivery of primary care for such members;

(iii) metrics relating to the effectiveness of suicide prevention and resilience programs and preventative behavioral health programs of the Department of Defense (including those of the military departments and the Armed Forces); and

(iv) metrics evaluating the training standards for behavioral health care providers to ensure that such providers have received training on clinical best practices and evidence-based treatments.

(b) GAO REPORT ON SUICIDE PREVENTION PROGRAMS AND ACTIVITIES.—

(1) REPORT REQUIRED.—Not later than 240 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the programs and activities of the Department of Defense and the Armed Forces for the prevention of suicide among members of the Armed Forces (including the reserve components) and their families.

(2) ELEMENTS.—The report under paragraph (1) shall include the following:

(A) A description of the current programs and activities of the Department of Defense and the Armed Forces for the prevention of suicide among members of the Armed Forces and their families.

Assessment.

(B) An assessment whether the programs and activities described pursuant to subparagraph (A)—

(i) are evidence-based and incorporate best practices identified in peer-reviewed medical literature;

(ii) are appropriately resourced; and

(iii) deliver outcomes that are appropriate relative to peer activities and programs (including those undertaken in the civilian community and in military forces of other countries).

Assessment.

(C) A description and assessment of any impediments to the effectiveness of such programs and activities.

Recommendations.

(D) Such recommendations as the Comptroller General considers appropriate for improvements to such programs and activities.

Recommendations.

(E) Such recommendations as the Comptroller General considers appropriate for additional programs and activities for the prevention of suicide among members of the Armed Forces and their families.

**SEC. 742. MODIFICATION OF REQUIREMENTS FOR LONGITUDINAL MEDICAL STUDY ON BLAST PRESSURE EXPOSURE OF MEMBERS OF THE ARMED FORCES AND COLLECTION OF EXPOSURE INFORMATION.**

(a) **MODIFICATION OF STUDY.**—Section 734 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1444) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking “; and” and inserting a semicolon;

(B) in paragraph (3), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph: “(4) assess the feasibility and advisability of—

“(A) uploading the data gathered from the study into the Defense Occupational and Environmental Health Readiness System – Industrial Hygiene (DOEHRS-IH) or similar system;

“(B) allowing personnel of the Department of Defense and the Department of Veterans Affairs to have access to such system; and

“(C) ensuring such data is interoperable and can be uploaded into the MHS Genesis electronic health record or successor system of the Department of Defense.”; and

(2) in subsection (c)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph (2):

“(2) **ANNUAL STATUS REPORT.**—Not later than January 1 of each year during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 and ending on the completion of the study under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a status report on the study.”.

(b) **COLLECTION OF EXPOSURE INFORMATION.**—The Secretary of Defense shall collect blast exposure information with respect to a member of the Armed Forces in a manner—

10 USC 2001  
note prec.

(1) consistent with blast exposure measurement training guidance of the Department of Defense, including any guidance developed pursuant to—

(A) the longitudinal medical study on blast pressure exposure required by section 734 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1444); and

(B) the review of guidance on blast exposure during training required by section 253 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2001 note prec.);

(2) compatible with training and operational objectives of the Department; and

(3) that is automated, to the extent practicable, to minimize the reporting burden of unit commanders.

**SEC. 743. STUDY AND PLAN ON THE USE OF MILITARY-CIVILIAN INTEGRATED HEALTH DELIVERY SYSTEMS.**

(a) **STUDY.**—The Secretary of Defense shall conduct a study on the use of local military-civilian integrated health delivery systems pursuant to section 706 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1096 note). The study shall examine the following:

(1) Geographic locations where military medical treatment facilities have existing contractual relationships with local civilian health care networks, including Fort Drum, New York, Joint Base McGuire-Dix-Lakehurst, New Jersey, Joint Base Lewis-McCord, Washington, Fort Leonard Wood, Missouri, Elmendorf Air Force Base, Alaska, Fort Sill, Oklahoma, Tripler Army Medical Center, Hawaii, the National Capital Region, and similar locations.

(2) Health care activities that promote value-based care, measurable health outcomes, patient safety, timeliness of referrals, and transparent communication with covered beneficiaries.

(3) Locations where health care providers of the Department of Defense may be able to attain critical wartime readiness skills in a local integrated military-civilian integrated health delivery system.

(4) The cost of providing care under an integrated military-civilian integrated health delivery system as compared to health care provided by a managed care support contractor.

(b) **PLAN.**—The Secretary of Defense shall develop a plan for the further development of the use of local military-civilian integrated health delivery systems by the Department of Defense.

(c) **SUBMISSION.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate—

Reports. (1) a report on the results of the study under subsection (a); and

(2) the plan developed under subsection (b).

(d) **DEFINITIONS.**—In this section:

(1) The term “covered beneficiaries” has the meaning given that term in section 1072 of title 10, United States Code.

(2) The term “National Capital Region” has the meaning given that term in section 2674 of title 10, United States Code.

**SEC. 744. STUDY ON CASE MANAGEMENT IN THE MILITARY HEALTH SYSTEM.**

(a) **STUDY.**—The Secretary of Defense shall conduct a study on the effectiveness of case management practices in the military health system. The study shall include the following:

Evaluation. (1) A standardized definition of case management.  
 (2) An evaluation of case management practices provided by the military departments before and during the transition of the administration of military medical treatment facilities to the Defense Health Agency pursuant to section 1073c of title 10, United States Code.

(3) A discussion of the metrics used in determining the effectiveness and cost of case management.

(4) An evaluation of the case management and outreach provided by the managed care support contractors supporting the Defense Health Agency, including with respect to—

- (A) the intervals at which patients are contacted;
- (B) the role of the case manager in coordination;
- (C) the approximate number of patients managed by a case manager; and
- (D) any other best practices relating to case management that would improve the experience of care across the military health system.

Evaluation.

(5) A review of case management best practices in the private sector, including with respect to—

- (A) the intervals at which patients should be contacted;
- (B) the role of the case manager in coordination;
- (C) the approximate number of patients managed by a case manager; and
- (D) any other best practices relating to case management that would improve the experience of care across the military health system.

Review.

(6) The results of discussions with covered beneficiaries (as defined in section 1072 of title 10, United States Code) at not less than four public forums held in different geographic areas, relating to the satisfaction of such covered beneficiaries with case management and outreach provided by the Defense Health Agency and the military departments in military medical treatment facilities.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the results of the study under subsection (a).

**SEC. 745. REPORT ON GLOBAL HEALTH SECURITY STRATEGY AND THE NATIONAL BIODEFENSE SECURITY.**

(a) REPORT.—Not later than 180 days after the date on which the Comptroller General of the United States publishes a review of the National Biodefense Strategy, the Secretary of Defense shall submit to the appropriate congressional committees a report on the implementation of the Global Health Security Strategy and the National Biodefense Strategy.

(b) ELEMENTS.—The report under subsection (a) shall, at a minimum—

- (1) designate the individual and offices responsible for overseeing the implementation of each strategy referred to in subsection (a) within the Department of Defense;
- (2) detail actions that the Department is taking to support implementation of the Global Health Security Agenda;
- (3) detail actions taken to coordinate the efforts of the Department with the other agencies responsible for the Global Health Security Strategy and National Biodefense Strategy; and
- (4) with respect to the review of the National Biodefense Strategy conducted by the Comptroller General—

Designation.

- (A) detail the recommendations in the review that the Secretary plans on or is currently implementing;

Recommendations.

(B) specify the official implementing such recommendations and the actions the official is taking to implement the recommendations;

(C) specify the recommendations in the review that the Secretary has determined not to implement; and

(D) explain the rationale of the Secretary with respect to not implementing such recommendations.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the congressional defense committees;

(2) the Committee on Foreign Affairs, the Committee on Energy and Commerce, and the Committee on Homeland Security of the House of Representatives; and

(3) the Committee on Foreign Relations, the Committee on Health, Education, Labor, and Pensions, and the Committee on Homeland Security and Governmental Affairs of the Senate.

**SEC. 746. STUDY ON ESTABLISHMENT OF WOUNDED WARRIOR SERVICE DOG PROGRAM.**

- Deadline. (a) **STUDY.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall conduct a study on the feasibility of establishing a wounded warrior service dog program.
- (b) **ELEMENTS.**—The study under subsection (a) shall include the following:
- Assessment. (1) An assessment of the need and feasibility of establishing a wounded warrior service dog program.
- Assessment. (2) With respect to a nonprofit organization seeking a grant under a wounded warrior service dog program, an assessment of the feasibility of requiring that the organization—
- (A) specify the training requirements for covered members;
- (B) detail the training of dogs that will serve as assistance dogs;
- (C) establish a database—
- (i) to track whether a dog has prior experience as a military working dog, service dog, or assistance dog; and
- (ii) that contains a designation for each dog with prior experience as a military working dog;
- (D) describe the aftercare services that the organization will provide to assistance dogs and covered members; and
- Standards. (E) possess the appropriate accreditation standards for assistance dogs, as the Secretary determines appropriate.
- List. (3) A list of locations at which the greatest number of covered members are likely to participate in a wounded warrior service dog program.
- Cost estimate. (4) An estimate of the costs required to create a wounded warrior service dog program.
- List. (5) A list of peer reviewed articles and other appropriate studies that examine the clinical effectiveness of assistance dogs with respect to the treatment of patients with disabilities.
- (c) **DEFINITIONS.**—In this section:
- (1) **ASSISTANCE DOG.**—



(A) **IN GENERAL.**—The term “assistance dog” means a dog specifically trained to perform physical tasks to mitigate the effects of a disability described in subparagraph (B), except that the term does not include a dog specifically trained for comfort or personal defense.

(B) **DISABILITY DESCRIBED.**—A disability described in this subparagraph is any of the following:

- (i) Blindness or visual impairment.
- (ii) Loss of limb, paralysis, or other significant mobility issues.
- (iii) Loss of hearing.
- (iv) Traumatic brain injury.
- (v) Post-traumatic stress disorder.
- (vi) Any other disability that the Secretary of Defense considers appropriate.

(2) **COVERED MEMBER.**—The term “covered member” means a member of the Armed Forces who is—

- (A) receiving medical treatment, recuperation, or therapy under chapter 55 of title 10, United States Code;
- (B) in medical hold or medical holdover status; or
- (C) covered under section 1202 or 1205 of title 10, United States Code.

(3) **WOUNDED WARRIOR SERVICE DOG PROGRAM.**—The term “wounded warrior service dog program” means a pilot program under which the Secretary of Defense awards competitive grants to non-profit organizations that would assist such organizations in the planning, designing, establishing, or operating (or any combination thereof) of programs to provide assistance dogs to covered members.

**SEC. 747. GAO REPORT ON DEPARTMENT OF DEFENSE QUALITY ASSURANCE PROGRAM AND IMPACTS OF MEDICAL MALPRACTICE ACTIONS.**

Not later than January 1, 2021, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the following:

(1) An assessment of the effectiveness of the quality assurance program of the Department of Defense in querying and monitoring the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.) with respect to—

Assessment.

- (A) recruitment and retention of military service medical providers;
- (B) hiring or contracting of civilian medical providers in military medical treatment facilities;
- (C) recording of adverse privileging and credentialing actions of such military service medical providers and civilian medical providers; and
- (D) any other matters relating to ensuring the highest quality of care is provided throughout the military health system.

(2) An analysis that includes—

Analysis.

- (A) with respect to military health system patients, a comparison of outcomes for such patients who may bring an action against the Federal Government for negligence or malpractice and outcomes for such patients who may

not bring such an action, based on an examination of all relevant data relating to clinical outcome measures and clinical quality management process actions; and

(B) a comparison of—

(i) the elements and average amounts of death and disability compensation that apply regardless of the underlying cause of the death or disability; and

(ii) the elements and average amounts of settlements that result from medical malpractice litigation against the Federal Government.

**SEC. 748. REPORTS ON MILLENNIUM COHORT STUDY RELATING TO WOMEN MEMBERS OF THE ARMED FORCES.**

(a) **ANNUAL REPORTS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, and annually thereafter through January 31, 2022, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on findings of the Millennium Cohort Study relating to the gynecological and perinatal health of women members of the Armed Forces.

(b) **MATTERS INCLUDED.**—Each report under subsection (a) shall include, at a minimum—

Summary.

(1) a summary of general findings of the Millennium Cohort Study pertaining to gynecological and perinatal health, including diseases, disorders, and conditions that affect the functioning of reproductive systems, maternal mortality and severe maternal morbidity, birth defects, developmental disorders, low birth weight, preterm birth, reduced fertility, menstrual disorders, and other health concerns; and

(2) identification of—

(A) all research projects that have concluded during the year covered by the report and the outcomes of such projects;

(B) areas in which the Millennium Cohort Study can increase efforts to capture data and produce studies in the field of gynecological and perinatal health of women members of the Armed Forces; and

(C) activities underway to achieve such efforts.

(c) **MILLENNIUM COHORT STUDY DEFINED.**—In this section, the term “Millennium Cohort Study” means the longitudinal study authorized under section 743 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2074) to evaluate data on the health conditions of members of the Armed Forces upon the return of the members from deployment.

**SEC. 749. STUDY ON EFFECTS OF SLEEP DEPRIVATION ON READINESS OF MEMBERS OF THE ARMED FORCES.**

(a) **STUDY.**—The Secretary of Defense shall conduct a study on the effects of sleep deprivation on the readiness of members of the Armed Forces.

Assessments.

(b) **ELEMENTS.**—The study under subsection (a) shall include the following:

(1) A standardized definition of sleep deprivation.

(2) An assessment of the prevalence of sleep deprivation on members of the Armed Forces related to circadian rhythm disturbances from crossing multiple time zones, mission related

maladaptive sleep practices, uncomfortable or otherwise inhospitable sleeping environments, and the use of stimulants and hypnotics to support operational tempo.

(3) An assessment of whether there may be a relationship between sleep deprivation and medical conditions such as traumatic brain injury, post-traumatic stress disorder, and depression.

(4) Recommendations on efforts to mitigate sleep deprivation described in paragraphs (2) and (3).

Recommendations.

(c) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study under subsection (a).

**SEC. 750. STUDY AND REPORT ON TRAUMATIC BRAIN INJURY MITIGATION EFFORTS.**

(a) STUDY.—The Secretary of Defense shall conduct a meta-analysis of evidence-based traumatic brain injury mitigation efforts by the Secretary and related Federal agency partners, and efforts discussed in academic literature, that have demonstrated the best clinical effectiveness in the treatment of members of the Armed Forces for traumatic brain injury.

(b) ROADMAP.—The Secretary shall develop and include in the study under subsection (a) a roadmap for implementation across the military health system of measures that address, with respect to the treatment of members for traumatic brain injury—

- (1) the process for receiving such treatment;
- (2) patient outcomes;
- (3) cost;
- (4) patient and command satisfaction with such treatment;

and

- (5) structured documentation to monitor system-wide implementation of the measures developed pursuant to paragraphs (1) through (4).

(c) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study under subsection (a).

**TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS**

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

- Sec. 800. Authority for continuous integration and delivery of software applications and upgrades to embedded systems.
- Sec. 801. Pilot program on intellectual property evaluation for acquisition programs.
- Sec. 802. Pilot program to use alpha contracting teams for complex requirements.
- Sec. 803. Failure to provide other than certified cost or pricing data upon request.
- Sec. 804. Comptroller General report on price reasonableness.
- Sec. 805. Limitation on transfer of funds related to cost overruns and cost underruns.

- Sec. 806. Standardizing data collection and reporting on use of source selection procedures by Federal agencies.
- Sec. 807. Department of Defense use of fixed-price contracts.
- Sec. 808. Repeal of continuation of data rights during challenges.
- Sec. 809. Repeal of authority to waive acquisition laws to acquire vital national security capabilities.
- Sec. 810. Repeal of the Defense Cost Accounting Standards Board.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

- Sec. 815. Modification of Director of Operational Test and Evaluation report.
- Sec. 816. Modification of written approval requirement for task and delivery order single contract awards.
- Sec. 817. Responsibility for data analysis and requirements validation for services contracts.
- Sec. 818. Documentation of market research related to commercial item determinations.
- Sec. 819. Availability of data on the use of other transaction authority and report on the use of authority to carry out prototype projects.
- Sec. 820. Notification of Navy procurement production disruptions.
- Sec. 821. Modification to acquisition authority of the Commander of the United States Cyber Command.
- Sec. 822. Extension of Never Contract With the Enemy.
- Sec. 823. Modification of justification and approval requirement for certain Department of Defense contracts.
- Sec. 824. Extension of sunset relating to Federal Data Center Consolidation Initiative.
- Sec. 825. Pilot program to accelerate contracting and pricing processes.
- Sec. 826. Uniformity in application of micro-purchase threshold to certain task or delivery orders.
- Sec. 827. Requirement for cost estimates on models of commercial e-commerce portal program.

Subtitle C—Provisions Relating to Major Defense Acquisition Programs

- Sec. 830. Modification of requirements for reporting to Congress on certain acquisition programs.
- Sec. 831. Pilot program to streamline decision-making processes for weapon systems.
- Sec. 832. Analysis of alternatives pursuant to materiel development decisions.
- Sec. 833. Naval vessel certification required before Milestone B approval.

Subtitle D—Provisions Relating to the Acquisition System

- Sec. 835. Extramural acquisition innovation and research activities.
- Sec. 836. Report on realignment of the defense acquisition system to implement acquisition reforms.
- Sec. 837. Report and limitation on the availability of funds relating to the “middle tier” of acquisition programs.
- Sec. 838. Report on intellectual property policy and the cadre of intellectual property experts.
- Sec. 839. Guidance and reports relating to covered defense business systems.
- Sec. 840. Implementation guidance for use of a modular open system approach.
- Sec. 841. Limitation on availability of funds for the Office of the Chief Management Officer of the Department of Defense.

Subtitle E—Industrial Base Matters

- Sec. 845. Modernization of acquisition processes to ensure integrity of industrial base.
- Sec. 846. Report requirements for the national technology and industrial base.
- Sec. 847. Mitigating risks related to foreign ownership, control, or influence of Department of Defense contractors or subcontractors.
- Sec. 848. Prohibition on operation or procurement of foreign-made unmanned aircraft systems.
- Sec. 849. Modification of prohibition on acquisition of sensitive materials from non-allied foreign nations.
- Sec. 850. Acquisition and disposal of certain rare earth materials.
- Sec. 851. Pilot program for development of technology-enhanced capabilities with partnership intermediaries.
- Sec. 852. Authorized official to carry out the procurement technical assistance cooperative agreement program.
- Sec. 853. Requirement that certain ship components be manufactured in the national technology and industrial base.

- Sec. 854. Addition of domestically produced stainless steel flatware and dinnerware to the Berry Amendment.
- Sec. 855. Application of miscellaneous technology base policies and programs to the Columbia-class submarine program.
- Sec. 856. Application of limitation on procurement of goods other than United States goods to the FFG–Frigate Program.
- Sec. 857. Sense of Congress regarding consideration of price in procurement of the FFG(X) frigate.

Subtitle F—Provisions Relating to Acquisition Workforce

- Sec. 860. Establishment of Defense Civilian Training Corps.
- Sec. 861. Defense acquisition workforce certification, education, and career fields.
- Sec. 862. Software development and software acquisition training and management programs.
- Sec. 863. Modification of temporary assignments of Department of Defense employees to a private-sector organization.
- Sec. 864. Incentives and consideration for qualified training programs.
- Sec. 865. Use of qualified apprentices by military construction contractors.

Subtitle G—Small Business Matters

- Sec. 870. Requirements relating to credit for certain small business concern subcontractors.
- Sec. 871. Inclusion of best in class designations in annual report on small business goals.
- Sec. 872. Reauthorization and improvement of Department of Defense Mentor-Protege Program.
- Sec. 873. Accelerated payments applicable to contracts with certain small business concerns under the Prompt Payment Act.
- Sec. 874. Postaward explanations for unsuccessful offerors for certain contracts.
- Sec. 875. Small business contracting credit for subcontractors that are Puerto Rico businesses or covered territory businesses.
- Sec. 876. Technical amendment regarding treatment of certain surviving spouses under the definition of small business concern owned and controlled by service-disabled veterans.
- Sec. 877. Extension of loan assistance and deferral eligibility to reservists and members of the National Guard beyond periods of military conflict.
- Sec. 878. Modification to the Defense Research and Development Rapid Innovation Program.
- Sec. 879. Alignment of the Department of Defense Small Business Innovation Research Program and Small Business Technology Transfer Program with the National Defense Science and Technology Strategy.
- Sec. 880. Assistance for small business concerns participating in the SBIR and STTR programs.
- Sec. 881. Cybersecurity technical assistance for SBIR and STTR programs.
- Sec. 882. Funding for defense research activities of small business concerns.
- Sec. 883. Modifications to budget display requirements for the Department of Defense Small Business Innovation Research Program and Small Business Technology Transfer Program.
- Sec. 884. Pilot program for domestic investment under the SBIR program.

Subtitle H—Other Matters

- Sec. 885. Review of guidance to contractors on nondiscrimination on the basis of sex.
- Sec. 886. Comptroller General report on contractor violations of certain labor laws.
- Sec. 887. Comptroller General report on contingency contracting.
- Sec. 888. Policies and procedures for contractors to report gross violations of internationally recognized human rights.
- Sec. 889. Comptroller General report on oversight of contractors providing private security functions.
- Sec. 890. Prohibition on contracting with persons that have business operations with the Maduro regime.
- Sec. 891. Report on the Combating Trafficking in Persons initiative.
- Sec. 892. Improved management of information technology and cyberspace investments.
- Sec. 893. Modification to requirements for purchase of commercial leasing services pursuant to multiple award contracts.

## Subtitle A—Acquisition Policy and Management

10 USC 2223a  
note.

### SEC. 800. AUTHORITY FOR CONTINUOUS INTEGRATION AND DELIVERY OF SOFTWARE APPLICATIONS AND UPGRADES TO EMBEDDED SYSTEMS.

(a) SOFTWARE ACQUISITION AND DEVELOPMENT PATHWAYS.—The Secretary of Defense shall establish pathways as described under subsection (b) to provide for the efficient and effective acquisition, development, integration, and timely delivery of secure software. Such a pathway shall include the following:

(1) USE OF PROVEN TECHNOLOGIES AND SOLUTIONS.—A pathway established under this section shall provide for the use of proven technologies and solutions to continuously engineer and deliver capabilities in software.

(2) USE OF AUTHORITY.—In using the authority under this section, the Secretary shall consider how such use will—

(A) initiate the engineering of new software capabilities quickly;

(B) demonstrate the viability and effectiveness of such capabilities for operational use not later than one year after the date on which funds are first obligated to acquire or develop software; and

(C) allow for the continuous updating and delivery of new capabilities not less frequently than annually to iteratively meet a requirement.

(3) TREATMENT NOT AS MAJOR DEFENSE ACQUISITION PROGRAM.—Software acquired or developed using the authority under this section shall not be treated as a major defense acquisition program for purposes of section 2430 of title 10, United States Code, or Department of Defense Directive 5000.01 without the specific direction of the Under Secretary of Defense for Acquisition and Sustainment or a Senior Acquisition Executive.

(4) RISK-BASED APPROACH.—The Secretary of Defense shall use a risk-based approach for the consideration of innovative technologies and new capabilities for software to be acquired or developed under this authority to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders.

(b) PATHWAYS.—The Secretary of Defense may establish as many pathways as the Secretary determines appropriate and shall establish the following pathways:

(1) APPLICATIONS.—The applications software acquisition pathway shall provide for the use of rapid development and implementation of applications and other software or software improvements operated by the Department of Defense, which may include applications running on commercial commodity hardware (including modified hardware) and commercially available cloud computing platforms.

(2) EMBEDDED SYSTEMS.—The embedded systems software acquisition pathway shall provide for the rapid development and insertion of upgrades and improvements for software embedded in weapon systems and other military-unique hardware systems.

(c) EXPEDITED PROCESS.—

(1) IN GENERAL.—A pathway established under subsection (a) shall provide for—

(A) a streamlined and coordinated requirements, budget, and acquisition process to support rapid fielding of software applications and of software upgrades to embedded systems for operational use in a period of not more than one year from the time that the process is initiated;

(B) the collection of data on software fielded; and

(C) continuous engagement with the users of software to support engineering activities, and to support delivery of software for operational use in periods of not more than one year.

(2) EXPEDITED SOFTWARE REQUIREMENTS PROCESS.—

Consultation.

(A) INAPPLICABILITY OF JOINT CAPABILITIES INTEGRATION AND DEVELOPMENT SYSTEM (JCIDS) MANUAL.—Software acquisition or development conducted under the authority of this section shall not be subject to the Joint Capabilities Integration and Development System Manual, except pursuant to a modified process specifically provided for the acquisition or development of software by the Vice Chairman of the Joint Chiefs of Staff, in consultation with Under Secretary of Defense for Acquisition and Sustainment and each service acquisition executive (as defined in section 101(a)(10) of title 10, United States Code).

(B) INAPPLICABILITY OF DEFENSE ACQUISITION SYSTEM DIRECTIVE.—Software acquisition or development conducted under the authority of this section shall not be subject to Department of Defense Directive 5000.01, except when specifically provided for the acquisition or development of software by the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Vice Chairman of the Joint Chiefs of Staff and each service acquisition executive.

(d) ELEMENTS.—In implementing a pathway established under the authority of this section, the Secretary shall tailor requirements relating to—

(1) iterative development of requirements for software to be acquired or developed under the authority of this section through engagement with the user community and through the use of operational user feedback, in order to continuously define and update priorities for such requirements;

(2) early identification of the warfighter or user need, including the rationale for how software capabilities will support increased lethality and efficiency, and identification of a relevant user community;

(3) initial contract requirements and format, including the use of summary-level lists of problems and shortcomings in existing software and desired features or capabilities of new or upgraded software;

(4) continuous refinement and prioritization of contract requirements through use of evolutionary processes, informed by continuous engagement with operational users throughout the development and implementation period;

(5) continuous consideration of issues related to lifecycle costs, technical data rights, and systems interoperability;

(6) planning for support of software capabilities in cases where the software developer may stop supporting the software;

(7) rapid contracting procedures, including expedited timeframes for making awards, selecting contract types, defining teaming arrangements, and defining options;

(8) program execution processes, including supporting development and test infrastructure, automation and tools, digital engineering, data collection and sharing with Department of Defense oversight organizations and with Congress, the role of developmental and operational testing activities, key decision making and oversight events, and supporting processes and activities (such as independent costing activity, operational demonstration, and performance metrics);

(9) assurances that cybersecurity metrics of the software to be acquired or developed, such as metrics relating to the density of vulnerabilities within the code of such software, the time from vulnerability identification to patch availability, the existence of common weaknesses within such code, and other cybersecurity metrics based on widely-recognized standards and industry best practices, are generated and made available to the Department of Defense and the congressional defense committees;

(10) administrative procedures, including procedures related to who may initiate and approve an acquisition under this authority, the roles and responsibilities of the implementing project or product teams and supporting activities, team selection and staffing process, governance and oversight roles and responsibilities, and appropriate independent technology assessments, testing, and cost estimation (including relevant thresholds or designation criteria);

(11) mechanisms and waivers designed to ensure flexibility in the implementation of a pathway under this section, including the use of other transaction authority, broad agency announcements, and other procedures; and

(12) mechanisms the Secretary will use for appropriate reporting to Congress on the use of this authority, including notice of initiation of the use of a pathway and data regarding individual programs or acquisition activities, how acquisition activities are reflected in budget justification materials or requests to reprogram appropriated funds, and compliance with other reporting requirements.

(e) GUIDANCE REQUIRED.—

Deadline.

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall issue initial guidance to implement the requirements of this section.

Expiration date.

(2) LIMITATION.—If the Secretary of Defense has not issued final guidance to implement the requirements of this section before October 1, 2021, the Secretary may not use the authority under this section—

(A) to establish a new pathway to acquire or develop software; or

(B) to continue activities to acquire or develop software using a pathway established under initial guidance described in paragraph (1).

(f) REPORT.—



(1) **IN GENERAL.**—Not later than October 15, 2020, the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the secretaries of the military departments and other appropriate officials, shall report on the use of the authority under this section using the initial guidance issued under subsection (d). Consultation.

(2) **ELEMENTS.**—The report required under paragraph (1) shall include the following elements:

(A) The final guidance required by subsection (d)(2), including a description of the treatment of use of the authority that was initiated before such final guidance was issued.

(B) A summary of how the authority under this section has been used, including a list of the cost estimate, schedule for development, testing and delivery, and key management risks for each initiative conducted pursuant to such authority. Summary.  
List.  
Cost estimate.

(C) Accomplishments from and challenges to using the authority under this section, including organizational, cultural, talent, infrastructure, testing, and training considerations.

(D) Recommendations for legislative changes to the authority under this section. Recommendations.

(E) Recommendations for regulatory changes to the authority under this section to promote effective development and deployment of software acquired or developed under this section. Recommendations.

**SEC. 801. PILOT PROGRAM ON INTELLECTUAL PROPERTY EVALUATION FOR ACQUISITION PROGRAMS.** 10 USC 2322 note.

(a) **PILOT PROGRAM.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Secretaries of the military departments may jointly carry out a pilot program to assess mechanisms to evaluate intellectual property (such as technical data deliverables and associated license rights), including commercially available intellectual property valuation analysis and techniques, in acquisition programs for which each such Secretary is responsible to better understand the benefits associated with these mechanisms on— Deadline.

(1) the development of cost-effective intellectual property strategies;

(2) the assessment and management of the value and acquisition costs of intellectual property during acquisition and sustainment activities (including source selection evaluation factors) throughout the acquisition lifecycle for any acquisition program selected by such Secretary; and Assessment.

(3) the use of a commercial product (as defined in section 103 of title 41, United States Code, as in effect on January 1, 2020), commercial service (as defined in section 103a of title 41, United States Code, as in effect on January 1, 2020), or nondevelopmental item (as defined in section 110 of title 41, United States Code) as an alternative to a product or service to be specifically developed for a selected acquisition program, including evaluation of the benefits of reduced risk regarding cost, schedule, and performance associated with commercial products, commercial services, and nondevelopmental items.

Assessments.	(b) ACTIVITIES.—Activities carried out under the pilot program may include the following:
Recommendations.	<p>(1) Establishment of a team of Department of Defense and private sector subject matter experts (which may include the cadre of intellectual property experts established under section 2322(b) of title 10, United States Code) to—</p> <p>(A) recommend acquisition programs to be selected for the pilot program established under subsection (a);</p> <p>(B) recommend criteria for the consideration of types of commercial products, commercial services, or nondevelopmental items that can be used as an alternative to a product or service to be specifically developed for a selected acquisition program; or</p> <p>(C) identify, to the maximum extent practicable at each milestone established for each selected acquisition program, intellectual property evaluation techniques to obtain quantitative and qualitative analysis of intellectual property during the procurement, production and deployment, and operations and support phases for the each selected acquisition program.</p> <p>(2) Assessment of commercial valuation techniques for intellectual property for use by the Department of Defense.</p> <p>(3) Assessment of the feasibility of agency-level oversight to standardize intellectual property evaluation practices and procedures.</p> <p>(4) Assessment of contracting mechanisms to speed delivery of intellectual property to the Armed Forces or reduce sustainment costs.</p> <p>(5) Assessment of agency acquisition planning to ensure procurement of appropriate intellectual property deliverables and intellectual property rights necessary for Government-planned sustainment activities.</p> <p>(6) Engagement with the private sector to—</p> <p>(A) support the development of strategies and program requirements to aid in acquisition planning for intellectual property;</p> <p>(B) support the development and improvement of intellectual property strategies as part of life-cycle sustainment plans; and</p> <p>(C) propose and implement alternative and innovative methods of intellectual property valuation, prioritization, and evaluation techniques for intellectual property.</p>
Recommendations.	(7) Recommendations to the relevant program manager of an acquisition program selected under subsection (a), including evaluation techniques and contracting mechanisms for acquisition and sustainment activities.
Coordination.	(c) REPORT.—Not later than November 1, 2020, and annually thereafter through November 1, 2023, the Secretary of Defense, in coordination with the Secretaries concerned, shall submit to the congressional defense committees a joint report on the pilot program conducted under this section. The report shall, at a minimum, include—
Assessments.	<p>(1) a description of the acquisition programs selected by the Secretary concerned;</p> <p>(2) a description of the specific activities in subsection (c) that were performed under each program;</p> <p>(3) an assessment of the effectiveness of the activities;</p>

(4) an assessment of improvements to acquisition or sustainment activities related to the pilot program; and

(5) an assessment of the results related to the pilot program, including any cost savings and improvement to mission success during the operations and support phase of the selected acquisition program.

**SEC. 802. PILOT PROGRAM TO USE ALPHA CONTRACTING TEAMS FOR COMPLEX REQUIREMENTS.**

10 USC 2305  
note.

(a) IN GENERAL.—(1) The Secretary of Defense shall select at least 2, and up to 5, initiatives to participate in a pilot to use teams that, with the advice of expert third parties, focus on the development of complex contract technical requirements for services, with each team focusing on developing achievable technical requirements that are appropriately valued and identifying the most effective acquisition strategy to achieve those requirements.

(2) The Secretary shall develop metrics for tracking progress of the program at improving quality and acquisition cycle time.

Deadlines.  
Notifications.

(b) DEVELOPMENT OF CRITERIA AND INITIATIVES.—(1) Not later than February 1, 2020, the Secretary of Defense shall establish the pilot program and notify the congressional defense committees of the criteria used to select initiatives and the metrics used to track progress.

(2) Not later than May 1, 2020, the Secretary shall notify the congressional defense committees of the initiatives selected for the program.

(3) Not later than December 1, 2020, the Secretary shall brief the congressional defense committees on the progress of the selected initiatives, including the progress of the initiatives at improving quality and acquisition cycle time according to the metrics developed under subsection (a)(2).

Briefing.

**SEC. 803. FAILURE TO PROVIDE OTHER THAN CERTIFIED COST OR PRICING DATA UPON REQUEST.**

Section 2306a(d) of title 10, United States Code, is amended—

(1) in paragraph (1), by adding at the end the following: “Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government.”;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph:

“(2) INELIGIBILITY FOR AWARD.—(A) In the event the contracting officer is unable to determine proposed prices are fair and reasonable by any other means, an offeror who fails to make a good faith effort to comply with a reasonable request to submit data in accordance with paragraph (1) is ineligible for award unless the head of the contracting activity, or the designee of the head of contracting activity, determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of pertinent factors, including the following:

“(i) The effort to obtain the data.

“(ii) Availability of other sources of supply of the item or service.

“(iii) The urgency or criticality of the Government’s need for the item or service.

“(iv) Reasonableness of the price of the contract, sub-contract, or modification of the contract or subcontract based on information available to the contracting officer.

“(v) Rationale or justification made by the offeror for not providing the requested data.

“(vi) Risk to the Government if award is not made.

“(B)(i) Any new determination made by the head of the contracting activity under subparagraph (A) shall be reported to the Principal Director, Defense Pricing and Contracting on a quarterly basis.

Reports.  
Time period.

“(ii) The Under Secretary of Defense for Acquisition and Sustainment, or a designee, shall produce an annual report identifying offerors that have denied multiple requests for submission of uncertified cost or pricing data over the preceding three-year period, but nevertheless received an award. The report shall identify products or services offered by such offerors that should undergo should-cost analysis. The Secretary of Defense may include a notation on such offerors in the system used by the Federal Government to monitor or record contractor past performance. The Under Secretary shall assess the extent to which these offerors are sole source providers within the defense industrial base and shall develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply for the product or service.”.

Analysis.

Assessment.  
Strategies.

#### SEC. 804. COMPTROLLER GENERAL REPORT ON PRICE REASONABLENESS.

Not later than March 31, 2021, the Comptroller General of the United States shall submit to the congressional defense committees, the Committee on Oversight and Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the efforts of the Secretary of Defense to secure data relating to the price reasonableness of offers from offerors. The report shall include a review of—

(1) the number of, and justification for, any waiver of requirements for submission of certified cost or pricing data for sole source contracts for spare parts issued during fiscal years 2015 through 2019 pursuant to section 2306a(b)(1)(C) of title 10, United States Code;

(2) the number of, and justification for, any exception to the requirements for submission of certified cost or pricing data for sole source contracts for spare parts provided during fiscal years 2015 through 2019 pursuant to section 2306a(b)(1)(B) of title 10, United States Code;

(3) the number of contracts awarded for which a request for cost or pricing data, including data other than certified cost or pricing data, to determine price reasonableness was denied by an offeror at the time of award;

(4) actions taken by the Secretary if an offeror refused to provide requested data described in paragraph (2), including—

(A) whether the contracting officer included a notation in the system used by the Federal Government to monitor or record contractor past performance regarding the refusal of an offeror to provide such data;

(B) any strategies developed by the Secretary to acquire the good that was the subject of a contract for which the offeror refused to provide such data in the future without the need for such a waiver.

**SEC. 805. LIMITATION ON TRANSFER OF FUNDS RELATED TO COST OVERRUNS AND COST UNDERRUNS.**

(a) **IN GENERAL.**—Section 828(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2430 note) is amended by striking “For each of fiscal years 2018 through 2022” and inserting “For fiscal years 2018 and 2019”.

(b) **TECHNICAL AMENDMENT.**—Section 825 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1466; 10 U.S.C. 2430 note) is amended—

- (1) by repealing subsection (b); and
- (2) by striking “(a) **IN GENERAL.**—”.

Repeal.

**SEC. 806. STANDARDIZING DATA COLLECTION AND REPORTING ON USE OF SOURCE SELECTION PROCEDURES BY FEDERAL AGENCIES.**

(a) **REPEAL OF GOVERNMENT ACCOUNTABILITY OFFICE REPORTING REQUIREMENTS ON USE OF LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION CRITERIA.**—

(1) **DEPARTMENT OF DEFENSE.**—Section 813 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. 2305 note) is amended by striking subsection (d).

(2) **OTHER AGENCIES.**—Section 880 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1910; 41 U.S.C. 3701 note) is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(b) **REVISION TO THE FEDERAL PROCUREMENT DATA SYSTEM.**—Not later than 180 days after the date of the enactment of this Act, the Administrator of General Services, in coordination with the Administrator for Federal Procurement Policy, shall direct appropriate revisions to the Federal procurement data system established pursuant to section 1122(a)(4) of title 41, United States Code (or any successor system), to facilitate the collection of complete, timely, and reliable data on the source selection processes used by Federal agencies for the contract actions being reported in the system. The Administrator of General Services shall ensure that data are collected—

41 USC 1122  
note.  
Deadline.  
Coordination.

(1) at a minimum, on the usage of the lowest price technically acceptable contracting methods and best value contracting methods process; and

(2) on all applicable contracting actions, including task orders or delivery orders issued under indefinite delivery-indefinite quantity contracts.

**SEC. 807. DEPARTMENT OF DEFENSE USE OF FIXED-PRICE CONTRACTS.**

(a) **DEPARTMENT OF DEFENSE REVIEW.**—

(1) **IN GENERAL.**—The Under Secretary of Defense for Acquisition and Sustainment shall review how the Department of Defense informs decisions to use fixed-price contracts to support broader acquisition objectives to ensure that such decisions are made strategically and consistently. The review

- should include decisions on the use of the various types of fixed price contracts, including fixed-price incentive contracts.
- Deadline. (2) BRIEFING.—Not later than February 1, 2020, the Under Secretary shall brief the congressional defense committees on the findings of the review required under paragraph (1).
- (b) COMPTROLLER GENERAL REPORT.—
- (1) IN GENERAL.—Not later than February 1, 2021, the Comptroller General of the United States shall submit to the congressional defense committees a report on the Department of Defense’s use of fixed-price contracts, including different types of fixed-price contracts.
- Assessments. (2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:
- (A) A description of the extent to which fixed-price contracts have been used over time and the conditions in which they are used.
- (B) An assessment of the effects of the decisions to use fixed-price contract types, such as any additional costs or savings or efficiencies in contract administration.
- (C) An assessment of how decisions to use various types of fixed-price contracts affects the contract closeout process.
- 22 USC 2762 note. Effective date. (c) DELAYED IMPLEMENTATION OF REGULATIONS REQUIRING THE USE OF FIXED-PRICE CONTRACTS FOR FOREIGN MILITARY SALES.—The regulations prescribed pursuant to section 830(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 22 U.S.C. 2762 note) shall not take effect until December 31, 2020. The regulations as so prescribed shall take into account the findings of the review conducted under subsection (a)(1).

**SEC. 808. REPEAL OF CONTINUATION OF DATA RIGHTS DURING CHALLENGES.**

(a) REPEAL.—Section 866 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1901; 10 U.S.C. 2321) is repealed.

(b) RESTORATION OF AMENDED PROVISION.—Subsection (i) of section 2321 of title 10, United States Code, is amended to read as follows:

“(i) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—(1) If, upon final disposition, the contracting officer’s challenge to the use or release restriction is sustained—

“(A) the restriction shall be cancelled; and

“(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

“(2) If, upon final disposition, the contracting officer’s challenge to the use or release restriction is not sustained—

“(A) the United States shall continue to be bound by the restriction; and

“(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as

defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.”.

**SEC. 809. REPEAL OF AUTHORITY TO WAIVE ACQUISITION LAWS TO ACQUIRE VITAL NATIONAL SECURITY CAPABILITIES.**

Section 806 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) is repealed.

**SEC. 810. REPEAL OF THE DEFENSE COST ACCOUNTING STANDARDS BOARD.**

(a) REPEAL.—Section 190 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of such title is amended by striking the item relating to section 190.

10 USC 171 prec.

## **Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations**

**SEC. 815. MODIFICATION OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION REPORT.**

Section 139(h) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking “, through January 31, 2021” and inserting “, through January 31, 2025”; and

(2) by amending paragraph (5) to read as follows:

“(5) The Director shall solicit comments from the Secretaries of the military departments on each report of the Director to Congress under this section and include any comments as an appendix to the Director’s report. The Director shall determine the amount of time available for the Secretaries to comment on the draft report on a case by case basis, and consider the extent to which substantive discussions have already been held between the Director and the military department. The Director shall reserve the right to issue the report without comment from a military department if the department’s comments are not received within the time provided, and shall indicate any such omission in the report.”.

Determination.

**SEC. 816. MODIFICATION OF WRITTEN APPROVAL REQUIREMENT FOR TASK AND DELIVERY ORDER SINGLE CONTRACT AWARDS.**

Section 2304a(d)(3) of title 10, United States Code, is amended—

(1) in subparagraph (B), by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively;

(3) by striking “No task or delivery order contract” and inserting “(A) Except as provided under subparagraph (B), no task or delivery order contract”; and

(4) by adding at the end the following new subparagraph:

“(B) A task or delivery order contract in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single source without the written determination otherwise required under subparagraph (A) if the head of the agency has

Determination.

made a written determination pursuant to section 2304(c) of this title that procedures other than competitive procedures may be used for the awarding of such contract.”.

**SEC. 817. RESPONSIBILITY FOR DATA ANALYSIS AND REQUIREMENTS VALIDATION FOR SERVICES CONTRACTS.**

(a) IN GENERAL.—Section 2329 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting “, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,” after “Secretary of Defense”;

(2) in subsection (b), in the matter preceding paragraph (1), by inserting “, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,” after “Secretary of Defense”; and

(3) in subsection (c)(2)(A), by inserting “, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,” after “Secretary of Defense”.

(b) CONFORMING AMENDMENT.—Section 818(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1852) is amended by striking “the Under Secretary of Defense for Acquisition and Sustainment” and inserting “the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation”.

**SEC. 818. DOCUMENTATION OF MARKET RESEARCH RELATED TO COMMERCIAL ITEM DETERMINATIONS.**

(a) DEPARTMENT OF DEFENSE PROCUREMENTS.—

(1) IN GENERAL.—Section 2377(c) of title 10, United States Code, is amended—

(A) by redesignating paragraph (4) as paragraph (5);

and

(B) by inserting after paragraph (3) the following new paragraph:

“(4) The head of an agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.”.

(2) CONFORMING AMENDMENT RELATED TO PROSPECTIVE AMENDMENT.—Section 836(d)(3)(C)(ii) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by striking “in paragraph (4)” and inserting “in paragraph (5)”.

(b) CIVILIAN AGENCY PROCUREMENTS.—Section 3307(d) of title 41, United States Code, is amended by adding at the end the following new paragraph:

“(4) DOCUMENTATION.—The head of the agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.”.

**SEC. 819. AVAILABILITY OF DATA ON THE USE OF OTHER TRANSACTION AUTHORITY AND REPORT ON THE USE OF AUTHORITY TO CARRY OUT PROTOTYPE PROJECTS.**

Section 873 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1905; 10 U.S.C. 2371 note) is amended—

(1) in subsection (b)—



(A) by striking the period at the end and inserting “; and”;

(B) by striking “shall analyze” and inserting the following: “shall—

“(1) analyze”; and

(C) by adding at the end the following new paragraph:

“(2) make the data collected under subsection (a) accessible to any official designated by the Secretary of Defense for inclusion by such official in relevant reports made by such official.”; and

(2) by amending subsection (c) to read as follows:

“(c) REPORT REQUIRED.—

“(1) IN GENERAL.—Not later than December 31, 2019, and annually thereafter through December 31, 2023, the Secretary of Defense shall submit to the congressional defense committees a report on the use of other transaction authority to carry out prototype projects during the preceding fiscal year. Each report shall summarize the data collected under subsection (a) on the nature and extent of each such use of the authority, including a description—

Summary.

“(A) of the participants to an agreement entered into pursuant to the authority of subsection (a) of section 2371b of title 10, United States Code, or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) of such section;

“(B) of the quantity of prototype projects to be produced pursuant to such an agreement, follow-on contract, or transaction;

“(C) of the amount of payments made pursuant to each such agreement, follow-on contract, or transaction;

“(D) of the purpose, description, and status of prototype projects carried out pursuant to each such agreement, follow-on contract, or transaction; and

“(E) including case examples, of the successes and challenges with using the authority of such subsection (a) or (f).

“(2) FORM OF REPORT.—A report required under this subsection shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.”.

**SEC. 820. NOTIFICATION OF NAVY PROCUREMENT PRODUCTION DISRUPTIONS.**

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2339b. Notification of Navy procurement production disruptions**

10 USC 2339b.

“(a) REQUIREMENT FOR CONTRACTOR TO PROVIDE NOTICE OF DELAYS.—The Secretary of the Navy shall require prime contractors of any Navy procurement program funded under either the Shipbuilding and Conversion, Navy account or the Other Procurement, Navy account to report within 15 calendar days any stop work order or other manufacturing disruption of 15 calendar days or more, by the prime contractor or any subcontractor, to the respective program manager and Navy technical authority.

Deadline.  
Time period.

“(b) QUARTERLY REPORTS.—The Secretary of the Navy shall submit to the congressional defense committees not later than 15 calendar days after the end of each quarter of a fiscal year a report listing all notifications made pursuant to subsection (a) during the preceding quarter.”

10 USC 2301  
prec.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by inserting after the item relating to section 2339a the following new item:

“2339b. Notification of Navy procurement production disruptions.”

**SEC. 821. MODIFICATION TO ACQUISITION AUTHORITY OF THE COMMANDER OF THE UNITED STATES CYBER COMMAND.**

Section 807 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2224 note) is amended by inserting “on new contract efforts” after “may not obligate or expend more than \$75,000,000”.

**SEC. 822. EXTENSION OF NEVER CONTRACT WITH THE ENEMY.**

Section 841(n) of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 2302 note) is amended by striking “December 31, 2021” and inserting “December 31, 2023”.

10 USC 2304  
note.

**SEC. 823. MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT FOR CERTAIN DEPARTMENT OF DEFENSE CONTRACTS.**

(a) MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT.—Notwithstanding section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2405)—

(1) no justification and approval is required under such section for a sole-source contract awarded by the Department of Defense in a covered procurement for an amount not exceeding \$100,000,000; and

(2) for purposes of subsections (a)(2) and (c)(3)(A) of such section, the appropriate official designated to approve the justification for a sole-source contract awarded by the Department of Defense in a covered procurement exceeding \$100,000,000 is the official designated in section 2304(f)(1)(B)(ii) of title 10, United States Code.

Deadline.

(b) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance to implement the authority under subsection (a).

(c) COMPTROLLER GENERAL REVIEW.—

(1) DATA TRACKING AND COLLECTION.—The Department of Defense shall track the use of the authority as modified by subsection (a) and make the data available to the Comptroller General for purposes of the report required under paragraph (2).

(2) REPORT.—Not later than March 1, 2022, the Comptroller General of the United States shall submit a report to the congressional defense committees on the use of the authority as modified by subsection (a) through the end of fiscal year 2021. The report shall include—

Review.

(A) a review of the financial effect of the change to the justification and approval requirement in subsection

(a) on the native corporations and businesses and associated native communities;

(B) a description of the nature and extent of contracts excluded from the justification and approval requirement by subsection (a); and

(C) other matters the Comptroller General deems appropriate.

**SEC. 824. EXTENSION OF SUNSET RELATING TO FEDERAL DATA CENTER CONSOLIDATION INITIATIVE.**

Subsection (e) of section 834 of the National Defense Authorization Act for Fiscal Year 2015 (44 U.S.C. 3601 note) is amended by striking “2020” and inserting “2022”.

**SEC. 825. PILOT PROGRAM TO ACCELERATE CONTRACTING AND PRICING PROCESSES.**

Section 890 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1919; 10 U.S.C. 2306a note) is amended—

(1) by striking subsection (b);

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(3) in subsection (b), as redesignated by paragraph (2), by striking “and an assessment of whether the program should be continued or expanded”; and

(4) in subsection (c), as so redesignated, by striking “January 2, 2021” and inserting “January 2, 2023”.

**SEC. 826. UNIFORMITY IN APPLICATION OF MICRO-PURCHASE THRESHOLD TO CERTAIN TASK OR DELIVERY ORDERS.**

Section 4106(c) of title 41, United States Code, is amended by striking “\$2,500” and inserting “the micro-purchase threshold under section 1902 of this title”.

**SEC. 827. REQUIREMENT FOR COST ESTIMATES ON MODELS OF COMMERCIAL E-COMMERCE PORTAL PROGRAM.**

(a) **IN GENERAL.**—In implementing section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 41 U.S.C. 1901 note), the Administrator of General Services shall submit to the appropriate congressional committees, not later than one year after the first contract is awarded pursuant to such section, a cost estimate for the three models for commercial e-commerce portals identified in section 4.1 of “Procurement Through Commercial E-Commerce Portals Phase II Report: Market Research & Consultation” issued by the Administrator in April 2019.

Deadline.

(b) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—The term “appropriate congressional committees” means the following:

(1) The Committees on Armed Services of the Senate and House of Representatives.

(2) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives.

(3) The Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

## Subtitle C—Provisions Relating to Major Defense Acquisition Programs

### SEC. 830. MODIFICATION OF REQUIREMENTS FOR REPORTING TO CONGRESS ON CERTAIN ACQUISITION PROGRAMS.

(a) MODIFICATION OF REPORT TO CONGRESS.—Section 2432 of title 10, United States Code, is amended—

(1) in subsection (b)(1), by adding after “major defense acquisition programs” the following: “and any program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars)”;

(2) by adding at the end the following new subsections:

“(i) FORM OF REPORT.—A Selected Acquisition Report required under this section shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

“(j) TERMINATION.—The requirements under this section shall terminate after the final submission covering fiscal year 2021.”.

(b) PROPOSAL FOR REPORTS ON ACQUISITION PROGRAMS AND ACTIVITIES.—Not later than October 15, 2020, the Secretary of Defense shall submit to the congressional defense committees a proposal for an alternative methodology for reporting on all acquisition programs that includes—

(1) conforming changes from the most recent update of Department of Defense Directive 5000.01 (The Defense Acquisition System) and Department of Defense Instruction 5000.02 (Operation of the Defense Acquisition System);

(2) the reporting requirements relating to Selected Acquisition Reports under section 2432 of title 10, United States Code;

(3) the reporting requirements relating to unit costs under section 2433 of such title; and

(4) the reporting requirements for acquisition programs that use alternative acquisition pathways or tailored acquisition procedures.

### SEC. 831. PILOT PROGRAM TO STREAMLINE DECISION-MAKING PROCESSES FOR WEAPON SYSTEMS.

(a) CANDIDATE ACQUISITION PROGRAMS.—Not later than February 1, 2020, each Service Acquisition Executive shall recommend to the Secretary of Defense at least one major defense acquisition program for a pilot program to include tailored measures to streamline the entire milestone decision process, with the results evaluated and reported for potential wider use.

(b) ELEMENTS.—Each pilot program selected pursuant to subsection (a) shall include the following elements:

(1) Delineating the appropriate information needed to support milestone decisions, assuring program accountability and oversight, which should be based on the business case principles needed for well-informed milestone decisions, including user-defined requirements, reasonable acquisition and life-cycle cost estimates, and a knowledge-based acquisition plan for maturing

Deadline.  
Methodology.

Deadline.  
Recommendations.

technologies, stabilizing the program design, and ensuring key manufacturing processes are in control.

(2) Developing an efficient process for providing this information to the milestone decision authority by—

(A) minimizing any reviews between the program office and the different functional staff offices within each chain of command level; and

(B) establishing frequent, regular interaction between the program office and milestone decision makers, in lieu of documentation reviews, to help expedite the process.

**SEC. 832. ANALYSIS OF ALTERNATIVES PURSUANT TO MATERIEL DEVELOPMENT DECISIONS.**

10 USC 2366a  
note.

(a) **TIMELINE.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall update existing guidance for analyses of alternatives conducted pursuant to a materiel development decision for a major defense acquisition program to incorporate the following:

Deadlines.  
Update.  
Study.

(1) Study completion within nine months.

Time period.

(2) Study guidance issued by the Director, Cost Assessment and Program Evaluation of a scope designed to provide for reasonable completion of the study within the nine-month period.

(3) Procedures for waiver of the timeline requirements of this subsection on a case-by-case basis if—

Procedures.

(A) the subject of the analysis is of extreme technical complexity;

(B) collection of additional intelligence is required to inform the analysis;

(C) insufficient technical expertise is available to complete the analysis; or

(D) the Secretary determines that there other sufficient reasons for delay of the analysis.

Determination.

(b) **REPORTING.**—If an analysis of alternatives cannot be completed within the allotted time, or a waiver is used, the Secretary shall report to the congressional defense committees the following information:

(1) For a waiver, the basis for use of the waivers, including the reasons why the study cannot be completed within the allotted time.

Waiver.

(2) For a study estimated to take more than nine months—

(A) an estimate of when the analysis will be completed;

(B) an estimate of any additional costs to complete the analysis; and

(C) other relevant information pertaining to the analysis and its completion.

Study.  
Estimates.

(c) **REPORT ON ANALYSES OF ALTERNATIVES.**—

(1) **ASSESSMENT.**—

(A) **IN GENERAL.**—The Under Secretary of Defense for Acquisition and Sustainment shall engage with an independent entity, including under the Program for Acquisition Innovation Research, to assess the conduct of analyses of alternatives.

(B) **ELEMENTS.**—The assessment required under subparagraph (A) shall—

- Recommendations.
- (i) assess the time required to complete analyses of alternatives within the Department of Defense completed over the last five fiscal years, as compared with best practices;
- (ii) provide recommendations and policy options to improve analyses of alternatives; and
- (iii) discuss any other matters as identified by the Under Secretary.
- Review.
- (C) ACCESS TO DATA.—The Under Secretary shall ensure that the independent entity is provided access to the data, information, and resources necessary to complete the required analyses and assessment.
- (2) REPORT.—Not later than one year after the date of the enactment of this Act, the Under Secretary shall submit to the congressional defense committees a report including the assessment required under paragraph (1) and a review and assessment by the Under Secretary of the findings made in the assessment.

**SEC. 833. NAVAL VESSEL CERTIFICATION REQUIRED BEFORE MILESTONE B APPROVAL.**

Section 2366b(a) of title 10, United States Code, is amended—

(1) in paragraph (3)(O), by striking “; and” and inserting a semicolon;

(2) in paragraph (4), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:  
 “(5) in the case of a naval vessel program, certifies compliance with the requirements of section 8669b of this title.”.

## Subtitle D—Provisions Relating to the Acquisition System

**SEC. 835. EXTRAMURAL ACQUISITION INNOVATION AND RESEARCH ACTIVITIES.**

(a) EXTRAMURAL ACQUISITION INNOVATION AND RESEARCH ACTIVITIES.—

(1) IN GENERAL.—Chapter 139 of title 10, United States Code, is amended by inserting after section 2361 the following new section:

10 USC 2361a. **“§ 2361a. Extramural acquisition innovation and research activities**

Coordination. **“(a) ESTABLISHMENT.—**The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and in coordination with the Under Secretary of Defense for Research and Engineering, shall establish and maintain extramural acquisition innovation and research activities as described in subsection (d), which shall include an acquisition research organization within a civilian college or university that is not owned or operated by the Federal Government that is established to provide and maintain essential research and development capabilities through a long-term strategic relationship with the Department of Defense.

Analyses. **“(b) GOALS.—**The goal of any activity conducted pursuant to this section shall be to provide academic analyses and policy alternatives for innovation in defense acquisition policies and practices

to policymakers in the Federal Government by using a variety of means intended to widely disseminate research findings from such an activity, in addition to executing demonstration and pilot programs of innovative acquisition policies and practices.

“(c) DIRECTOR.—

“(1) APPOINTMENT.—Not later than June 1, 2020, the Secretary of Defense shall appoint an individual from civilian life to serve as the director for the extramural acquisition innovation and research activities required by this section (referred to in this section as the ‘Director’).

Deadline.

“(2) TERM.—The Director shall serve a term of five years.

“(d) ACTIVITIES.—The activities described in this subsection are as follows:

“(1) Research on past and current defense acquisition policies and practices, commercial and international best practices, and the application of new technologies and analytical capabilities to improve acquisition policies and practices.

“(2) Pilot programs to prototype and demonstrate new acquisition practices for potential transition to wider use in the Department of Defense.

“(3) Establishment of data repositories and development of analytical capabilities, in coordination with the Chief Data Officer of the Department of Defense, to enable researchers and acquisition professionals to access and analyze historical data sets to support research and new policy and practice development.

Data.  
Coordination.

“(4) Executive education to—

“(A) support acquisition workforce development, including for early career, mid-career, and senior leaders; and

“(B) provide appropriate education on acquisition issues to non-acquisition professionals.

“(5) On an ongoing basis, a review of the implementation of recommendations contained in relevant Department of Defense and private sector studies on acquisition policies and practices, including—

Review.

“(A) for recommendations for the enactment of legislation, identify the extent to which the recommendations have been enacted into law by Congress;

“(B) for recommendations for the issuance of regulations, identify the extent to which the recommendations have been adopted through the issuance or revision of regulations;

“(C) for recommendations for revisions to policies and procedures in the executive branch, identify the extent to which the recommendations have been adopted through issuance of an appropriate implementing directive or other form of guidance; and

“(D) for recommendations for the resources required to implement recommendations contained in relevant Department of Defense and private sector studies on acquisition policies and practices.

“(6) Engagement with researchers and acquisition professionals in the Department of Defense, as appropriate.

“(e) FUNDING.—Subject to the availability of appropriations, the Secretary may use amounts available in the Defense Acquisition

Workforce and Development Account to carry out the requirements of this section.

“(f) ANNUAL REPORT.—Not later than September 30, 2021, and annually thereafter, the Director shall submit to the Secretary of Defense and the congressional defense committees a report describing the activities conducted under this section during the previous year.”.

10 USC 2351  
prec.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2361 the following new item:

“2361a. Extramural acquisition innovation and research activities.”.

10 USC 2361a  
note.

(3) IMPLEMENTATION.—

(A) DEADLINE.—Not later than March 1, 2020, the Secretary of Defense shall establish the extramural acquisition innovation and research activities required by section 2361a of title 10, United States Code (as added by this subsection).

(B) REPORT.—

(i) IN GENERAL.—Not later than January 1, 2021, the Director of the extramural acquisition innovation and research activities appointed under such section shall submit to the Secretary of Defense a report setting forth a plan, proposed budget, and schedule for execution of such activities.

(ii) TRANSMITTAL.—Not later than February 1, 2021, the Secretary of Defense shall transmit the report required under clause (i), together with whatever comments the Secretary considers appropriate, to the Committees on Armed Services of the Senate and the House of Representatives.

10 USC 2361a  
note.  
Deadline.

(b) RECORDS OF THE SECTION 809 PANEL.—

(1) TRANSFER AND MAINTENANCE OF RECORDS.—Not later than March 1, 2020, the records of the Section 809 Panel shall be transferred to, and shall be maintained by, the Defense Technical Information Center.

(2) STATUS OF RECORDS.—Working papers, records of interview, and any other draft work products generated for any purpose by the Section 809 Panel shall be covered by the deliberative process privilege exemption under paragraph (5) of section 552(b) of title 5, United States Code.

(3) AVAILABILITY.—To the maximum extent practicable, the Secretary shall make the records available to support activities conducted by the research organization described under section 2361a of title 10, United States Code (as added by subsection (a)).

(4) SECTION 809 PANEL DEFINED.—In this subsection, the term “Section 809 Panel” means the panel established by the Secretary of Defense pursuant to section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92).

**SEC. 836. REPORT ON REALIGNMENT OF THE DEFENSE ACQUISITION SYSTEM TO IMPLEMENT ACQUISITION REFORMS.**

The Secretary of Defense shall include with the budget for fiscal year 2021, as submitted to Congress pursuant to section 1105(a) of title 31, United States Code, a report on the progress



of implementing acquisition reform initiatives that have been enacted into law through Department of Defense regulations, Directives, Instructions, or other guidance. Such report shall include a description of—

(1) how the Secretary will identify, quantify, assess, and manage acquisition program risks;

(2) what changes have been made to systems for collecting and sharing data on acquisition programs, including how access to acquisition program data is managed; and

(3) updates to, or the implementation of, procedures for tailoring acquisition methods, including alternative acquisition pathways such as—

(A) the use of the “middle tier” of acquisition programs described under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note);

(B) the alternative acquisition pathways established under section 805 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note);

(C) a software acquisition pathway described under section 800 of this Act; and

(D) the use of procedures to respond to urgent operational needs.

**SEC. 837. REPORT AND LIMITATION ON THE AVAILABILITY OF FUNDS RELATING TO THE “MIDDLE TIER” OF ACQUISITION PROGRAMS.**

10 USC 2302  
note.

(a) **REPORT.**—Not later than December 15, 2019, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report that includes the guidance required under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note). The Under Secretary of Defense for Acquisition and Sustainment shall ensure such guidance includes the business case elements required by an acquisition program established pursuant to such guidance and the metrics required to assess the performance of such a program.

(b) **LIMITATION.**—

(1) **IN GENERAL.**—Beginning on December 15, 2019, if the Under Secretary of Defense for Acquisition and Sustainment has not submitted the report required under subsection (a), not more than 75 percent of the funds specified in paragraph (2) may be obligated or expended until the date on which the report required under subsection (a) has been submitted.

Effective date.

(2) **FUNDS SPECIFIED.**—The funds specified in this paragraph are the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense that remain unobligated as of December 15, 2019, for the following:

(A) The execution of any acquisition program established pursuant to the guidance required under such section 804(a).

(B) The operations of the Office of the Under Secretary of Defense for Research & Engineering.

(C) The operations of the Office of the Under Secretary of Defense for Acquisition & Sustainment.

(D) The operations of the Office of the Director of Cost Analysis and Program Evaluation.

(E) The operations of the offices of the service acquisition executives of the military departments.

**SEC. 838. REPORT ON INTELLECTUAL PROPERTY POLICY AND THE CADRE OF INTELLECTUAL PROPERTY EXPERTS.**

(a) **IN GENERAL.**—Section 802 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1450) is amended by adding at the end the following new subsection:

“(c) **REPORT.**—Not later than December 15, 2019, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall submit to the congressional defense committees a report that includes—

“(1) the policy required in subsection (a) of section 2322 of title 10, United States Code;

“(2) an identification of each member of the cadre of intellectual property experts required in subsection (b) of such section and the office to which such member belongs;

“(3) a description of the leadership structure and the office that will manage the cadre of intellectual property experts; and

Time period.

“(4) a description of the specific activities performed, and programs and efforts supported, by the cadre of intellectual property experts during the 12-month period preceding the date of the report.”.

(b) **LIMITATION.**—

Effective date.

(1) **IN GENERAL.**—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense, not more than 75 percent may be obligated or expended for any of the offices described in paragraph (2) until the date on which the Secretary of Defense submits the report required under subsection (c) of section 802 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1450), as added by this section.

(2) **OFFICES DESCRIBED.**—The offices described in this paragraph are as follows:

(A) The Office of the Under Secretary of Defense for Acquisition and Sustainment.

(B) The Office of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology.

(C) The Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition.

(D) The Office of the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics.

**SEC. 839. GUIDANCE AND REPORTS RELATING TO COVERED DEFENSE BUSINESS SYSTEMS.**

(a) **AMENDMENTS TO GUIDANCE FOR COVERED DEFENSE BUSINESS SYSTEMS.**—Section 2222(d) of title 10, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking “subsection (c)(1)” and inserting “subsection (c)”; and

(2) by adding at the end the following new paragraphs:

“(7) Policy to ensure a covered defense business system is in compliance with the Department’s auditability requirements.

“(8) Policy to ensure approvals required for the development of a covered defense business system.”.

(b) REPORTS.—

(1) GUIDANCE.—The Secretary of Defense shall submit to the congressional defense committees a report—

(A) not later than December 31, 2019, that includes the guidance required under paragraph (1) of section 2222(c) of title 10, United States Code; and

(B) not later than March 31, 2020, that includes the guidance required under paragraph (2) of such section.

(2) INFORMATION TECHNOLOGY AND DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.—Not later than February 1, 2020, the Chief Information Officer of the Department of Defense shall submit to the congressional defense committees a notification that the information technology enterprise architecture required under subparagraph (B) of section 2222(e)(4) of title 10, United States Code—

(A) has been established, including a schedule for implementing the plan required under such subparagraph (B) and a schedule for integrating the defense business enterprise architecture into the information technology enterprise architecture (as required under subparagraph (A) of such section); or

(B) has not been established, and include a schedule for—

(i) establishing such architecture;

(ii) implementing the plan required under such subparagraph (B); and

(iii) integrating the defense business enterprise architecture into the information technology enterprise architecture (as required under subparagraph (A) of such section).

Deadline.  
Notification.

**SEC. 840. IMPLEMENTATION GUIDANCE FOR USE OF A MODULAR OPEN SYSTEM APPROACH.**

(a) GUIDANCE FOR PROGRAM CAPABILITIES DEVELOPMENT AND ACQUISITION WEAPON SYSTEM DESIGN.—Section 2446b of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f) IMPLEMENTATION GUIDANCE.—The Secretaries of the military departments shall issue guidance to implement the requirements of this section.”.

(b) GUIDANCE FOR MAJOR SYSTEM INTERFACES.—Section 2446c of title 10, United States Code, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and adding “; and”; and

(3) by adding at the end the following new paragraph:

“(6) issue guidance to implement the requirements of this section.”.

**SEC. 841. LIMITATION ON AVAILABILITY OF FUNDS FOR THE OFFICE OF THE CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE.**

Effective date.

Of the funds authorized to be appropriated or otherwise made available for fiscal year 2020 for the Department of Defense, not more than 75 percent may be obligated or expended for the Office of the Chief Management Officer until the date on which the Chief Management Officer submits to the congressional defense committees—

(1) the certification of cost savings described in subparagraph (A) of section 921(b)(5) of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2222 note); or

(2) the notice and justification described in subparagraph (B) of such section.

## **Subtitle E—Industrial Base Matters**

**SEC. 845. MODERNIZATION OF ACQUISITION PROCESSES TO ENSURE INTEGRITY OF INDUSTRIAL BASE.**

(a) IN GENERAL.—Subchapter II of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 2509.

**“§ 2509. Modernization of acquisition processes to ensure integrity of industrial base**

“(a) DIGITIZATION AND MODERNIZATION.—The Secretary of Defense shall streamline and digitize the existing Department of Defense approach for identifying and mitigating risks to the defense industrial base across the acquisition process, creating a continuous model that uses digital tools, technologies, and approaches designed to ensure the accessibility of data to key decision-makers in the Department.

Coordination.

“(b) ANALYTICAL FRAMEWORK.—(1) The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of the Defense Counterintelligence and Security Agency and the heads of other elements of the Department of Defense as appropriate, shall develop an analytical framework for risk mitigation across the acquisition process.

“(2) The analytical framework required under paragraph (1) shall include the following elements:

“(A) Characterization and monitoring of supply chain risks, including—

“(i) material sources and fragility, including the extent to which sources, items, materials, and articles are mined, produced, or manufactured within or outside the United States;

“(ii) telecommunications services or equipment (other than optical transmission components);

“(iii) counterfeit parts;

“(iv) cybersecurity of contractors;

“(v) video surveillance services or equipment;

“(vi) vendor vetting in contingency or operational environments;

“(vii) other electronic or information technology products and services; and

“(viii) other risk areas as determined appropriate.

“(B) Characterization and monitoring of risks posed by contractor behavior that constitute violations of laws or regulations, including those relating to—

- “(i) fraud;
- “(ii) ownership structures;
- “(iii) trafficking in persons;
- “(iv) workers’ health and safety;
- “(v) affiliation with the enemy;
- “(vi) foreign influence; and
- “(vii) other risk areas as deemed appropriate.

“(C) Characterization and assessment of the acquisition processes and procedures of the Department of Defense, including— Assessment.

- “(i) market research;
- “(ii) responsibility determinations, including consideration of the need for special standards of responsibility to address the risks described in subparagraphs (A) and (B);
- “(iii) facilities clearances;
- “(iv) the development of contract requirements;
- “(v) the technical evaluation of offers and contract awards;
- “(vi) contractor mobilization, including hiring, training, and establishing facilities;
- “(vii) contract administration, contract management, and oversight;
- “(viii) contract audit for closeout;
- “(ix) suspension and debarment activities and administrative appeals activities;
- “(x) contractor business system reviews; and
- “(xi) other relevant processes and procedures.

“(D) Characterization and monitoring of the health and activities of the defense industrial base, including those relating to—

- “(i) balance sheets, revenues, profitability, and debt;
- “(ii) investment, innovation, and technological and manufacturing sophistication;
- “(iii) finances, access to capital markets, and cost of raising capital within those markets;
- “(iv) corporate governance, leadership, and culture of performance; and
- “(v) history of performance on past Department of Defense and government contracts.

“(c) ROLES AND RESPONSIBILITIES.—The Secretary of Defense shall designate the roles and responsibilities of organizations and individuals to execute activities under this section, including—

- “(1) the Under Secretary of Defense for Acquisition and Sustainment, including the Office of Defense Pricing and Contracting and the Office of Industrial Policy;
- “(2) service acquisition executives;
- “(3) program offices and procuring contracting officers;
- “(4) administrative contracting officers within the Defense Contract Management Agency and the Supervisor of Shipbuilding;
- “(5) the Defense Counterintelligence and Security Agency;
- “(6) the Defense Contract Audit Agency;

“(7) each element of the Department of Defense which own or operate systems containing data relevant to contractors of the Department;

“(8) the Under Secretary of Defense for Research and Engineering;

“(9) the suspension and debarment official of the Department;

“(10) the Chief Information Officer; and

“(11) other relevant organizations and individuals.

Consultation.  
Assessments.

“(d) ENABLING DATA, TOOLS, AND SYSTEMS.—(1)(A) The Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Chief Data Officer of the Department of Defense and the Director of the Defense Counterintelligence and Security Agency, shall assess the extent to which existing systems of record relevant to risk assessments and contracting are producing, exposing, and timely maintaining valid and reliable data for the purposes of the Department’s continuous assessment and mitigation of risks in the defense industrial base.

“(B) The assessment required under subparagraph (A) shall include the following elements:

“(i) Identification of the necessary source data, to include data from contractors, intelligence and security activities, program offices, and commercial research entities.

“(ii) A description of the modern data infrastructure, tools, and applications and what changes would improve the effectiveness and efficiency of mitigating the risks described in subsection (b)(2).

“(iii) An assessment of the following systems owned or operated outside of the Department of Defense that the Department depends upon or to which it provides data:

“(I) The Federal Awardee Performance and Integrity Information System (FAPIIS).

“(II) The System for Award Management (SAM).

“(III) The Federal Procurement Data System—Next Generation (FPDS—NG).

“(IV) The Electronic Data Management Information System.

“(V) Other systems the Secretary of Defense determines appropriate.

“(iv) An assessment of systems owned or operated by the Department of Defense, including the Defense Counterintelligence and Security Agency and other defense agencies and field activities used to capture and analyze the status and performance (including past performance) of vendors and contractors.

“(2) Based on the findings pursuant to paragraph (1), the Secretary of Defense shall develop a unified set of activities to modernize the systems of record, data sources and collection methods, and data exposure mechanisms. The unified set of activities should feature—

“(A) the ability to continuously collect data on, assess, and mitigate risks;

“(B) data analytics and business intelligence tools and methods; and

“(C) continuous development and continuous delivery of secure software to implement the activities.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or modify any other procurement policy, procedure, requirement, or restriction provided by law.

“(f) IMPLEMENTATION AND REPORTING REQUIREMENTS.—The Secretary of Defense shall carry out the implementation phases set forth in, and submit to the congressional defense committees the items of information required by, the following paragraphs:

“(1) PHASE 1: IMPLEMENTATION PLAN.—Not later than 90 days after the date of the enactment of this section, an implementation plan and schedule for carrying out the framework established pursuant to subsection (b), including—

Deadline.  
Schedule.

“(A) a discussion and recommendations for any changes to, or exemptions from, laws necessary for effective implementation, including updating the definitions in section 2339a(e) of this title relating to covered procurement, covered system, and covered item of supply, and any similar terms defined in other law or regulation; and

Recommendations.

“(B) a process for an entity to contact the Department after the entity has taken steps to remediate, mitigate, or otherwise address the risks identified by the Department in conducting activities under subsection (b).

“(2) PHASE 2: IMPLEMENTATION OF FRAMEWORK.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), a report on the actions taken to implement the framework established pursuant to subsection (b).

“(g) COMPTROLLER GENERAL REVIEWS.—

“(1) BRIEFING.—Not later than February 15, 2020, the Comptroller General of the United States shall brief the congressional defense committees on Department of Defense efforts over the previous 5 years to continuously assess and mitigate risks to the defense industrial base across the acquisition process, and a summary of current and planned efforts.

Deadlines.  
Time period.

“(2) PERIODIC ASSESSMENTS.—The Comptroller General shall submit to the congressional defense committees three periodic assessments of Department of Defense progress in implementing the framework required under subsection (b), to be provided not later than October 15, 2020, March 15, 2022, and March 15, 2024.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of chapter 148 of such title is amended by inserting after the item relating to section 2508 the following new item:

10 USC 2501  
prec.

“2509. Modernization of acquisition processes to ensure integrity of industrial base.”

**SEC. 846. REPORT REQUIREMENTS FOR THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.**

(a) NATIONAL SECURITY STRATEGY FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—Section 2501(a) of title 10, United States Code, is amended by inserting after the first sentence the following new sentence: “The Secretary shall submit such strategy to Congress not later than 180 days after the date of submission of the national security strategy report required under section 108 of the National Security Act of 1947 (50 U.S.C. 3043).”

Deadline.

(b) ANNUAL REPORT TO CONGRESS.—Section 2504(3) of title 10, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting “Executive order or” after “pursuant to”;

(2) by amending subparagraph (A) to read as follows:

“(A) a map of the industrial base;”;

(3) by redesignating subparagraph (B) as subparagraph (C); and

(4) by inserting after subparagraph (A) the following new subparagraph:

List.                   “(B) a prioritized list of gaps or vulnerabilities in the national technology and industrial base, including—

    “(i) a description of mitigation strategies necessary to address such gaps or vulnerabilities;

    “(ii) the identification of the Secretary concerned or the head of the Defense Agency responsible for addressing such gaps or vulnerabilities; and

Timeline.             “(iii) a proposed timeline for action to address such gaps or vulnerabilities; and”.

(c) ANNUAL REPORT ON UNFUNDED PRIORITIES FOR NATIONAL TECHNICAL INDUSTRIAL BASE.—

(1) IN GENERAL.—Subchapter II of chapter 148 of title 10, United States Code, is amended by inserting after section 2504 the following new section:

10 USC 2504a.       **“§ 2504a. Unfunded priorities of the national technology and industrial base: annual report**

    “(a) ANNUAL REPORT.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the congressional defense committees a report on the unfunded priorities to address gaps or vulnerabilities in the national technology and industrial base.

    “(b) ELEMENTS.—

        “(1) IN GENERAL.—Each report under subsection (a) shall specify, for each unfunded priority covered by such report, the following:

Summary.             “    “(A) A summary description of such priority, including the objectives to be achieved if such priority is funded (whether in whole or in part).

        “(B) The additional amount of funds recommended in connection with the objectives under subparagraph (A).

        “(C) Account information with respect to such priority, including the following (as applicable):

            “(i) Line Item Number (LIN) for applicable procurement accounts.

            “(ii) Program Element (PE) number for applicable research, development, test, and evaluation accounts.

            “(iii) Sub-activity group (SAG) for applicable operation and maintenance accounts.

        “(2) PRIORITIZATION OF PRIORITIES.—Each report shall present the unfunded priorities covered by such report in order of urgency of priority.

        “(c) UNFUNDED PRIORITY DEFINED.—In this section, the term ‘unfunded priority’, in the case of a fiscal year, means a program, activity, or mission requirement of the national technology and industrial base that—



“(1) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31;

“(2) is necessary to address gaps or vulnerabilities in the national technology and industrial base; and

“(3) would have been recommended for funding through the budget referred to in paragraph (1) if—

“(A) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

“(B) the program, activity, or mission requirement had emerged before the budget was formulated.”.

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

10 USC 2501  
prec.

“2504a. Unfunded priorities of the national technology and industrial base: annual report.”.

**SEC. 847. MITIGATING RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OF DEPARTMENT OF DEFENSE CONTRACTORS OR SUBCONTRACTORS.**

10 USC 2509  
note.

(a) DEFINITIONS.—In this section:

(1) BENEFICIAL OWNER; BENEFICIAL OWNERSHIP.—The terms “beneficial owner” and “beneficial ownership” shall be determined in a manner that is not less stringent than the manner set forth in section 240.13d–3 of title 17, Code of Federal Regulations (as in effect on the date of the enactment of this Act).

(2) COMPANY.—The term “company” means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.

(3) COVERED CONTRACTOR OR SUBCONTRACTOR.—The term “covered contractor or subcontractor” means a company that is an existing or prospective contractor or subcontractor of the Department of Defense on a contract or subcontract with a value in excess of \$5,000,000, except as provided in subsection (c).

(4) FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE; FOCI.—The terms “foreign ownership, control, or influence” and “FOCI” have the meanings given those terms in the National Industrial Security Program Operating Manual (DOD 5220.22–M), or a successor document.

(b) IMPROVED ASSESSMENT AND MITIGATION OF RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE.—

(1) IN GENERAL.—In developing and implementing the analytical framework for mitigating risk relating to ownership structures, as required by section 2509 of title 10, United States Code, as added by section 845 of this Act, the Secretary of Defense shall improve the process and procedures for the assessment and mitigation of risks related to foreign ownership, control, or influence (FOCI) of contractors and subcontractors doing business with the Department of Defense.

Procedures.

(2) ELEMENTS.—The process and procedures for the assessment and mitigation of risk relating to ownership structures referred to in paragraph (1) shall include the following elements:

Requirements.  
Disclosures.

(A) ASSESSMENT OF FOCI.—(i) A requirement for covered contractors and subcontractors to disclose to the Defense Counterintelligence and Security Agency, or its successor organization, their beneficial ownership and whether they are under FOCI.

Update.

(ii) A requirement to update such disclosures when changes occur to information previously provided, consistent with or similar to the procedures for updating FOCI information under the National Industrial Security Program Operating Manual (DOD 5220.22–M), or a successor document.

(iii) A requirement for covered contractors and subcontractors determined to be under FOCI to disclose contact information for each of its foreign owners that is a beneficial owner.

Deadline.

(iv) A requirement that, at a minimum, the disclosures required by this paragraph be provided at the time the contract or subcontract is awarded, amended, or renewed, but in no case later than one year after the Secretary prescribes regulations to carry out this subsection.

(B) RESPONSIBILITY DETERMINATION.—Consistent with section 2509 of title 10, United States Code, as added by section 845 of this Act, consideration of FOCI risks as part of responsibility determinations, including—

(i) whether to establish a special standard of responsibility relating to FOCI risks for covered contractors or subcontractors, and the extent to which the policies and procedures consistent with or similar to those relating to FOCI under the National Industrial Security Program shall be applied to covered contractors or subcontractors;

Procedures.

(ii) procedures for contracting officers making responsibility determinations regarding whether covered contractors and subcontractors may be under foreign ownership, control, or influence and for determining whether there is reason to believe that such foreign ownership, control, or influence would pose a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems involved with the contract or subcontract; and

(iii) modification of policies, directives, and practices to provide that an assessment that a covered contractor or subcontractor is under FOCI may be a sufficient basis for a contracting officer to determine that a contractor or subcontractor is not responsible.

(C) CONTRACT REQUIREMENTS, ADMINISTRATION, AND OVERSIGHT RELATING TO FOCI.—

(i) Requirements for contract clauses providing for and enforcing disclosures related to changes in FOCI or beneficial ownership during performance of the contract or subcontract, consistent with subparagraph (A), and necessitating the effective mitigation of risks related to FOCI throughout the duration of the contract or subcontract.

(ii) Pursuant to section 831(c), designation of the appropriate Department of Defense official responsible to approve and to take actions relating to award, modification, termination of a contract, or direction to modify or terminate a subcontract due to an assessment by the Defense Counterintelligence and Security Agency, or its successor organization, that a covered contractor or subcontractor under FOCI poses a risk to national security or potential risk of compromise.

(iii) A requirement for the provision of additional information regarding beneficial ownership and control of any covered contractor or subcontractor on the contract or subcontract.

(iv) Other measures as necessary to be consistent with other relevant practices, policies, regulations, and actions, including those under the National Industrial Security Program.

(c) **APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND SERVICES AND OTHER FORMS OF ACQUISITION AGREEMENTS.—**

(1) **COMMERCIAL PRODUCTS AND SERVICES.—**The requirements under subsection (b)(2)(A) and (b)(2)(C) shall not apply to a contract or subcontract for commercial products or services, unless a designated senior Department of Defense official specifically requires the applicability of subsections (b)(2)(A) and (b)(2)(C) based on a determination by the designated senior official that the contract or subcontract involves a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems.

(2) **RESEARCH AND DEVELOPMENT AND PROCUREMENT ACTIVITIES.—**The Secretary of Defense shall ensure that the requirements of this section are applied to research and development and procurement activities, including for the delivery of services, established through any means including those under section 2358(b) of title 10, United States Code.

(d) **AVAILABILITY OF RESOURCES.—**The Secretary shall ensure that sufficient resources, including subject matter expertise, are allocated to execute the functions necessary to carry out this section, including the assessment, mitigation, contract administration, and oversight functions.

(e) **RULE OF CONSTRUCTION.—**Nothing in this section shall be construed to limit or modify any other procurement policy, procedure, requirement, or restriction provided by law, including section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by the Foreign Interference Risk Review Modernization Act of 2018 (subtitle A of title XVII of Public Law 115–232).

(f) **AVAILABILITY OF BENEFICIAL OWNERSHIP DATA.—**

(1) **IN GENERAL.—**Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish a process to update systems of record to improve the assessment and mitigation of risks associated with FOCI through the inclusion and updating of all appropriate associated uniquely identifying information about the contracts and contractors and subcontracts and subcontractors in the Federal Awardee Performance and Integrity Information System

Deadline.

(FAPIIS), administered by the General Services Administration, and the Commercial and Government Entity (CAGE) database, administered by the Defense Logistics Agency.

(2) LIMITED AVAILABILITY OF INFORMATION.—The Secretary of Defense shall ensure that the information required to be disclosed pursuant to this section is—

- (A) not made public;
- (B) made available via the FAPIIS and CAGE databases; and
- (C) made available to appropriate government departments or agencies.

10 USC 2302  
note.

**SEC. 848. PROHIBITION ON OPERATION OR PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS.**

(a) PROHIBITION ON AGENCY OPERATION OR PROCUREMENT.—The Secretary of Defense may not operate or enter into or renew a contract for the procurement of—

- (1) a covered unmanned aircraft system that—
  - (A) is manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;
  - (B) uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;
  - (C) uses a ground control system or operating software developed in a covered foreign country or by an entity domiciled in a covered foreign country; or
  - (D) uses network connectivity or data storage located in or administered by an entity domiciled in a covered foreign country; or
- (2) a system manufactured in a covered foreign country or by an entity domiciled in a covered foreign country for the detection or identification of covered unmanned aircraft systems.

(b) EXEMPTION.—The Secretary of Defense is exempt from the restriction under subsection (a) if the operation or procurement is for the purposes of—

- (1) Counter-UAS surrogate testing and training; or
- (2) intelligence, electronic warfare, and information warfare operations, testing, analysis, and training.

(c) WAIVER.—The Secretary of Defense may waive the restriction under subsection (a) on a case by case basis by certifying in writing to the congressional defense committees that the operation or procurement is required in the national interest of the United States.

(d) DEFINITIONS.—In this section:

- (1) COVERED FOREIGN COUNTRY.—The term “covered foreign country” means the People’s Republic of China.
- (2) COVERED UNMANNED AIRCRAFT SYSTEM.—The term “covered unmanned aircraft system” means an unmanned aircraft system and any related services and equipment.

**SEC. 849. MODIFICATION OF PROHIBITION ON ACQUISITION OF SENSITIVE MATERIALS FROM NON-ALLIED FOREIGN NATIONS.**

(a) EXPANSION OF MATERIALS COVERED BY PROHIBITION ON SALE FROM NATIONAL DEFENSE STOCKPILE.—Subsection (a)(2) of section 2533c of title 10, United States Code, is amended, in the

matter preceding subparagraph (A), by striking “covered material” and inserting “material”.

(b) INCLUSION OF TANTALUM IN DEFINITION OF COVERED MATERIALS.—Subsection (d)(1) of such section is amended—

(1) in subparagraph (C), by striking “; and” and inserting a semicolon;

(2) in subparagraph (D), by striking the period and inserting “; and”; and

(3) by adding at the end the following new subparagraph:  
“(E) tantalum metals and alloys.”.

**SEC. 850. ACQUISITION AND DISPOSAL OF CERTAIN RARE EARTH MATERIALS.** 50 USC 89d note.

(a) AUTHORITY TO DISPOSE OF AND ACQUIRE MATERIALS FOR THE NATIONAL DEFENSE STOCKPILE.—

(1) DISPOSAL AUTHORITY.—Pursuant to section 5(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d(b)), the National Defense Stockpile Manager shall dispose of 3,000,000 pounds of tungsten ores and concentrates contained in the National Defense Stockpile (in addition to any amount previously authorized for disposal).

(2) ACQUISITION AUTHORITY.—

(A) AUTHORITY.—Using funds available in the National Defense Stockpile Transaction Fund, the National Defense Stockpile Manager may acquire the following materials determined to be strategic and critical materials required to meet the defense, industrial, and essential civilian needs of the United States:

(i) Aerospace-grade rayon.

(ii) Electrolytic manganese metal.

(iii) Pitch-based carbon fiber.

(iv) Rare earth cerium compounds.

(v) Rare earth lanthanum compounds.

(B) AMOUNT OF AUTHORITY.—The National Defense Stockpile Manager may use up to \$37,420,000 in the National Defense Stockpile Transaction Fund for acquisition of the materials specified in this paragraph.

(3) FISCAL YEAR LIMITATION.—The authority under this subsection is available for purchases made during fiscal year 2020 through fiscal year 2024.

(b) SENSE OF CONGRESS RELATING TO NATIONAL DEFENSE STOCKPILE SALES.—It is the sense of Congress that tantalum should be designated as a strategic and critical material under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) required to meet the defense, industrial, and essential civilian needs of the United States.

(c) REPORT ON SUPPLY CHAIN ISSUES FOR RARE EARTH MATERIALS.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Defense Logistics Agency, in coordination with the Deputy Assistant Secretary of Defense for Industrial Policy, shall submit a report to Congress assessing issues relating to the supply chain for rare earth materials. Such report shall include the following:

(1) An assessment of the rare earth materials in the reserves held by the United States.

(2) A estimate of the needs of the United States for rare earth materials—

Assessments.  
Coordination.

Estimate.

(A) in general; and

(B) to support a major near-peer conflict as described in war game scenarios in the 2018 National Defense Strategy.

(3) An assessment of the extent to which substitutes for rare earth materials are available.

Strategy.  
Plan.

(4) A strategy or plan to encourage the use of rare earth materials mined, refined, processed, melted, or sintered in the United States, or from trusted allies, including an assessment of the best acquisition practices (which shall include an analysis of best value contracting methods) to ensure the viability of trusted suppliers of rare earth materials to meet national security needs.

10 USC 2283  
note.

**SEC. 851. PILOT PROGRAM FOR DEVELOPMENT OF TECHNOLOGY-ENHANCED CAPABILITIES WITH PARTNERSHIP INTERMEDIARIES.**

(a) **ESTABLISHMENT.**—The Commander of the United States Special Operations Command may use the greater of \$2,000,000 or 5 percent of the funds required to be expended by the United States Special Operations Command under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for a pilot program to increase participation by small business concerns in the development of technology-enhanced capabilities for special operations forces.

(b) **USE OF PARTNERSHIP INTERMEDIARY.**—

(1) **AUTHORIZATION.**—The Commander of the United States Special Operations Command may modify an existing agreement with a partnership intermediary to assist the Commander in carrying out the pilot program under this section, including with respect to the award of contracts and agreements to small business concerns.

(2) **USE OF FUNDS.**—None of the funds referred to in subsection (a) shall be used to pay a partnership intermediary for any administrative costs associated with the pilot program.

Coordination.

(c) **REPORT.**—Not later than October 1, 2020, and October 1, 2021, the Commander of the United States Special Operations Command, in coordination with the Under Secretary of Defense for Research and Engineering, shall submit to the congressional defense committees, the Committee on Small Business of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report describing any agreement with a partnership intermediary entered into pursuant to this section. The report shall include, for each such agreement, the amount of funds obligated, an identification of the recipient of such funds, and a description of the use of such funds.

(d) **TERMINATION.**—The authority to carry out a pilot program under this section shall terminate on September 30, 2021.

(e) **DEFINITIONS.**—In this section:

(1) **PARTNERSHIP INTERMEDIARY.**—The term “partnership intermediary” has the meaning given the term in section 23(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3715(c)).

(2) **SMALL BUSINESS CONCERN.**—The term “small business concern” has the meaning given the term under section 3 of the Small Business Act (15 U.S.C. 632).

(3) **SMALL BUSINESS INNOVATION RESEARCH PROGRAM.**—The term “Small Business Innovation Research Program” has the meaning given the term in section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)).

(4) **SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.**—The term “Small Business Technology Transfer Program” has the meaning given the term in section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)).

(5) **TECHNOLOGY-ENHANCED CAPABILITY.**—The term “technology-enhanced capability” means a product, concept, or process that improves the ability of a member of the Armed Forces to achieve an assigned mission.

**SEC. 852. AUTHORIZED OFFICIAL TO CARRY OUT THE PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM.**

(a) **AUTHORIZED OFFICIAL.**—Effective October 1, 2021, section 2411(3) of title 10, United States Code, is amended by striking “Director of the Defense Logistics Agency” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

Effective date.  
10 USC 2411  
note.

(b) **REPORT AND BRIEFING.**—Not later than November 1, 2020, the Secretary of Defense shall provide to the congressional defense committees a written report and briefing on the activities carried out in preparation for the transition of responsibilities for carrying out the procurement technical assistance cooperative agreement program under chapter 142 of title 10, United States Code, from the Director of Defense Logistics Agency to the Under Secretary of Defense for Acquisition and Sustainment, as required by subsection (a).

Deadline.

(c) **ANNUAL BUDGET JUSTIFICATION DOCUMENTS.**—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials (as defined in section 234(d) of title 10, United States Code) for fiscal year 2021 and each fiscal year thereafter, a budget justification display that includes the procurement technical assistance cooperative agreement program under chapter 142 of title 10, United States Code, as part of the budget justification for Operation and Maintenance, Defense-wide for the Office of the Secretary of Defense.

10 USC 221 note.

**SEC. 853. REQUIREMENT THAT CERTAIN SHIP COMPONENTS BE MANUFACTURED IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.**

(a) **ADDITIONAL PROCUREMENT LIMITATION.**—Section 2534(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(6) **COMPONENTS FOR AUXILIARY SHIPS.**—Subject to subsection (k), large medium-speed diesel engines.”.

(b) **IMPLEMENTATION.**—Such section is further amended by adding at the end the following new subsection:

“(k) **IMPLEMENTATION OF AUXILIARY SHIP COMPONENT LIMITATION.**—Subsection (a)(6) applies only with respect to contracts awarded by the Secretary of a military department for new construction of an auxiliary ship after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy. For purposes of this subsection, the term ‘auxiliary ship’ does not include an icebreaker or a special mission ship.”.

Applicability.

Definition.

**SEC. 854. ADDITION OF DOMESTICALLY PRODUCED STAINLESS STEEL FLATWARE AND DINNERWARE TO THE BERRY AMENDMENT.**

(a) ADDITION OF DOMESTICALLY PRODUCED STAINLESS STEEL FLATWARE AND DINNERWARE.—

(1) IN GENERAL.—Section 2533a(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

“(3) Stainless steel flatware.

“(4) Dinnerware.”.

10 USC 2533a note.

(2) APPLICABILITY.—Paragraphs (3) and (4) of section 2533a(b) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into on or after the date occurring 1 year after the date of the enactment of this Act.

10 USC 2533a note.

(3) REPEAL.—Effective September 30, 2023, such paragraphs (3) and (4) are repealed.

(b) REPORT.—

Survey.  
Cost assessment.  
Recommendations.

(1) REPORT REQUIRED.—Not later than October 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report that provides a market survey, cost assessment, description of national security considerations, and a recommendation regarding whether the procurement of dinnerware and stainless steel flatware should be limited to sources in the United States.

Analysis.

(2) CONTENTS.—The report required under paragraph (1) shall include an analysis of the following with respect to dinnerware and stainless steel flatware:

(A) The extent to which such items have commercial applications.

(B) The number of such items to be procured by current programs of record.

(C) The criticality of such items to a military unit’s mission accomplishment.

Cost estimate.

(D) The estimated cost and other considerations of reconstituting the production capability of such items, if not maintained in the United States.

(E) National security regulations or restrictions imposed on such items that may not be imposed on such items if provided by a competitor outside the United States.

(F) Federal, State, and local government regulations that are not related to national security that are imposed on such items that may not be imposed on a competitor outside the United States.

(G) The extent to which such items is fielded in current programs of record.

(H) The extent to which such items can be procured as and when needed in satisfactory quality and sufficient quantity at United States market prices.

(I) The benefits accrued to the Department of Defense and the defense industrial base to procure such items from sources outside the United States.



**SEC. 855. APPLICATION OF MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS TO THE COLUMBIA-CLASS SUBMARINE PROGRAM.**

Notwithstanding subchapter V of chapter 148 of title 10, United States Code (except for sections 2534, 2533a, and 2533b of such title), for a period of one year beginning on the date of the enactment of this Act, the milestone decision authority (as defined in section 2366a of title 10, United States Code) for the Columbia-class submarine program shall ensure that such program maintains the Acquisition Program Baseline schedule dates approved under the Milestone B approval (as defined in such section).

**SEC. 856. APPLICATION OF LIMITATION ON PROCUREMENT OF GOODS OTHER THAN UNITED STATES GOODS TO THE FFG-FRIGATE PROGRAM.**

Notwithstanding any other provision of law, amounts authorized to carry out the FFG-Frigate Program may be used to award a new contract that provides for the acquisition of the following components regardless of whether those components are manufactured in the United States:

- (1) Auxiliary equipment (including pumps) for shipboard services.
- (2) Propulsion equipment (including engines, reduction gears, and propellers).
- (3) Shipboard cranes.
- (4) Spreaders for shipboard cranes.

**SEC. 857. SENSE OF CONGRESS REGARDING CONSIDERATION OF PRICE IN PROCUREMENT OF THE FFG(X) FRIGATE.**

It is the sense of Congress that during fiscal year 2020, in evaluating proposals for a contract to procure a FFG(X) frigate, the Secretary of the Navy should ensure price is a critical factor.

## Subtitle F—Provisions Relating to Acquisition Workforce

**SEC. 860. ESTABLISHMENT OF DEFENSE CIVILIAN TRAINING CORPS.**

(a) **IN GENERAL.**—Part III of subtitle A of title 10, United States Code, is amended by inserting after chapter 112 the following new chapter:

**“CHAPTER 113—DEFENSE CIVILIAN TRAINING CORPS**10 USC 2200g  
prec.

“Sec. 2200g. Establishment.  
“Sec. 2200h. Program elements.  
“Sec. 2200i. Model authorities.  
“Sec. 2200j. Definitions.

**“SEC. 2200g. ESTABLISHMENT.**

10 USC 2200g.

“For the purposes of preparing selected students for public service in Department of Defense occupations relating to acquisition, science, engineering, or other civilian occupations determined by the Secretary of Defense, and to target critical skill gaps in the Department of Defense, the Secretary of Defense shall establish and maintain a Defense Civilian Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees.

10 USC 2200h.	<b>“SEC. 2200h. PROGRAM ELEMENTS.</b>
Determination.	“In establishing the program, the Secretary of Defense shall determine the following:
Methodology.	<p>“(1) A methodology to identify and target critical skills gaps in Department of Defense occupations relating to acquisition, science, engineering, or other civilian occupations determined by the Secretary of Defense.</p> <p>“(2) A mechanism to track and report the success of the program in eliminating any critical skills gaps identified under paragraph (1).</p>
Criteria.	“(3) Criteria for an accredited civilian educational institution to participate in the program.
Criteria.	“(4) The eligibility of a student to become a member of the program.
Criteria.	“(5) Criteria required for a member of the program to receive financial assistance from the Department of Defense.
Criteria.	“(6) The term of service as an employee of the Department of Defense required for a member of the program to receive such financial assistance.
Criteria.	“(7) Criteria required for a member of the program to be released from a term of service.
	“(8) The method by which a successful graduate of the program may gain immediate employment in the Department of Defense.
	“(9) Resources required for implementation of the program.
10 USC 2200i.	<b>“SEC. 2200i. MODEL AUTHORITIES.</b>
	“In making determinations under section 2200h of this title, the Secretary of Defense shall use the authorities under chapters 103 and 111 of this title as guides.
10 USC 2200j.	<b>“SEC. 2200j. DEFINITIONS.</b>
	“In this chapter:
	“(1) The term ‘program’ means the Defense Civilian Training Corps program established under section 2200g.
	“(2) The term ‘member of the program’ means a student at an accredited civilian educational institution who is enrolled in the program.”
Deadlines. Plans. Schedules. 10 USC 2200g note.	<p>(b) IMPLEMENTATION TIMELINE.—</p> <p>(1) INITIAL IMPLEMENTATION.—Not later than February 15, 2020, the Secretary of Defense shall submit to the congressional defense committees a plan and schedule to implement the Defense Civilian Training Corps program established under chapter 113 of title 10, United States Code (as added by subsection (a)) at one accredited civilian educational institution authorized to grant baccalaureate degrees not later than August 1, 2021. The plan shall include a list of critical skills gaps the program will address and recommendations for any legislative changes required for effective implementation of the program.</p> <p>(2) EXPANSION.—Not later than December 31, 2020, the Secretary of Defense shall submit to the congressional defense committees an expansion plan and schedule to expand the Defense Civilian Training Corps program to five accredited civilian educational institutions not later than August 1, 2022.</p> <p>(3) FULL IMPLEMENTATION.—Not later than December 31, 2021, the Secretary of Defense shall submit to the congressional</p>
List. Recommendations.	

defense committees a full implementation plan and schedule to expand the Defense Civilian Training Corps program to at least 20 accredited civilian educational institutions with not fewer than 400 members enrolled in the program not later than August 1, 2023.

**SEC. 861. DEFENSE ACQUISITION WORKFORCE CERTIFICATION, EDUCATION, AND CAREER FIELDS.**

(a) PROFESSIONAL CERTIFICATION REQUIREMENT.—

(1) PROFESSIONAL CERTIFICATION REQUIRED FOR ALL ACQUISITION WORKFORCE PERSONNEL.—Section 1701a of title 10, United States Code, is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

“(c) PROFESSIONAL CERTIFICATION.—(1) IN GENERAL.—The Secretary of Defense shall implement a certification program to provide for a professional certification requirement for all members of the acquisition workforce. Except as provided in paragraph (2), the certification requirement for any acquisition workforce career field shall be based on standards developed by a third-party accredited program based on nationally or internationally recognized standards.

“(2) REQUIREMENTS FOR SECRETARY.—If the Secretary determines that, for a particular acquisition workforce career field, a third-party accredited program based on nationally or internationally recognized standards does not exist, the Secretary shall establish the certification requirement for that career field that conforms with the practices of national or international accrediting organizations. The Secretary shall determine the best approach for meeting the certification requirement for any such career field, including by implementing such certification requirement through entities outside the Department of Defense, and may design and implement such certification requirement without regard to section 1746 of this title.”

Determinations.

(2) PERFORMANCE MANAGEMENT.—Subsection (b) of such section is amended—

(A) in paragraph (5), by striking “encourage” and inserting “direct”; and

(B) in paragraph (6), by inserting “and consequences” after “warnings”.

(3) PARTICIPATION IN PROFESSIONAL ASSOCIATIONS.—Subsection (b) of such section is further amended—

(A) by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (7), (8), (9), and (10), respectively; and

(B) by inserting after paragraph (5) the following new paragraph:

“(6) authorize a member of the acquisition workforce to participate in professional associations, consistent with the performance plan of such a member in order to provide the member with the opportunity to gain leadership and management skills.”

(4) GENERAL EDUCATION, TRAINING, AND EXPERIENCE REQUIREMENTS.—Section 1723 of such title is amended—

(A) in subsection (a)(3), by striking the second sentence; and

Procedures.  
10 USC 1701a  
note.

(B) in subsection (b)(1), by striking “encourage” and inserting “direct”.

(5) EFFECTIVE DATE.—The Secretary of Defense shall implement procedures to institute the program required by subsection (c) of section 1701a of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act.

(b) ELIMINATION OF STATUTORY REQUIREMENT FOR COMPLETION OF 24 SEMESTER CREDIT HOURS.—

(1) QUALIFICATION REQUIREMENTS FOR CONTRACTING POSITIONS.—Section 1724 of title 10, United States Code, is amended—

(A) in subsection (a)(3)—

(i) by striking “(A)” after “(3)”; and

(ii) by striking “, and (B)” and all that follows through “and management”; and

(B) in subsection (b), by striking “requirements” in the first sentences of paragraphs (1) and (2) and inserting “requirement”;

(C) in subsection (e)—

(i) in paragraph (1)—

(I) by striking “requirements in subparagraphs (A) and (B) of subsection (a)(3)” and inserting “requirement of subsection (a)(3)”; and

(II) in subparagraph (C), by striking “requirements” and inserting “requirement”; and

(ii) in paragraph (2)—

(I) by striking “shall have—” and all that follows through “been awarded” and inserting “shall have been awarded”;

(II) by striking “; or” and inserting a period; and

(III) by striking subparagraph (B); and

(D) in subsection (f), by striking “, including—” and all that follows and inserting a period.

(2) SELECTION CRITERIA AND PROCEDURES.—Section 1732 of such title is amended—

(A) in subsection (b)(1)—

(i) by striking “Such requirements,” and all the follows through “the person—” and inserting “Such requirements shall include a requirement that the person—”;

(ii) by striking subparagraph (B); and

(iii) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and conforming the margins accordingly;

(B) in subsection (c), by striking “requirements of subsections (b)(1)(A) and (b)(1)(B)” in paragraphs (1) and (2) and inserting “requirement of subsection (b)(1)”; and

(C) in subsection (d)—

(i) by striking “(1) Except as provided in paragraph (2),”; and

(ii) by striking paragraph (2).

(c) DEFENSE ACQUISITION UNIVERSITY.—Section 1746 of title 10, United States Code, is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively;

(B) by inserting after paragraph (1) the following new paragraphs:

“(2) The professors, instructors, and lecturers employed under paragraph (1) shall include individuals from civilian colleges or universities that are not owned or operated by the Federal Government, commercial learning and development organizations, industry, or federally funded research and development centers.

“(3) The Secretary of Defense shall ensure that—

“(A) not later than September 1, 2021, not less than five full-time visiting professors employed under paragraph (1) are from civilian colleges or universities described under paragraph (2); ; and

“(B) not later than September 1, 2022, not less than ten full-time visiting professors employed under paragraph (1) are from such civilian colleges or universities.”; and (2) in subsection (c), by inserting “, and with commercial training providers,” after “military departments”.

(d) DESIGNATION OF SECURITY COOPERATION AS AN ACQUISITION POSITION.—Section 1721(b) of title 10, United States Code, is amended—

(1) by amending paragraph (11) to read as follows:

“(11) Security cooperation.”; and

(2) by adding at the end the following new paragraph:

“(13) Other positions, as necessary.”.

(e) CAREER PATHS.—

(1) CAREER PATH REQUIRED FOR EACH ACQUISITION WORKFORCE CAREER FIELD.—Paragraph (4) of section 1701a(b) of title 10, United States Code, is amended to read as follows:

“(4) develop and implement a career path, as described in section 1722(a) of this title, for each career field designated by the Secretary under section 1721(a) of this title as an acquisition workforce career field;”.

(2) CONFORMING AMENDMENTS.—Section 1722(a) of such title is amended—

(A) by striking “appropriate career paths” and inserting “an appropriate career path”; and

(B) by striking “are identified” and inserting “is identified for each acquisition workforce career field”.

(3) DEADLINE FOR IMPLEMENTATION OF CAREER PATHS.—Not later than the end of the two-year period beginning on the date of the enactment of this Act, the Secretary of Defense shall carry out the requirements of paragraph (4) of section 1701a(b) of title 10, United States Code (as amended by paragraph (1)).

(f) CAREER FIELDS.—

(1) DESIGNATION OF ACQUISITION WORKFORCE CAREER FIELDS.—Section 1721(a) of such title is amended by adding at the end the following new sentence: “The Secretary shall also designate in regulations those career fields in the Department of Defense that are acquisition workforce career fields for purposes of this chapter.”.

(2) CLERICAL AMENDMENTS.—(A) The heading of section 1721 of such title is amended to read as follows:

Deadlines.

Time period.  
10 USC 1701a  
note.

Regulations.

**“§ 1721. Designation of acquisition positions and acquisition workforce career fields”.**

10 USC 1721 prec.

(B) The item relating to such section in the table of sections at the beginning of subchapter II of chapter 87 of such title is amended to read as follows:

“1721. Designation of acquisition positions and acquisition workforce career fields.”.

10 USC 1721 prec.

(3)(A) The heading of subchapter II of chapter 87 of such title is amended to read as follows:

“SUBCHAPTER II—ACQUISITION POSITIONS AND ACQUISITION WORKFORCE CAREER FIELDS”.

10 USC 1701 prec.

(B) The item relating to such subchapter in the table of subchapters at the beginning of such chapter is amended to read as follows:

“II. Acquisition Positions And Acquisition Workforce Career Fields ..... 1721”.

Time period.  
10 USC 1721 note.

(4) DEADLINE FOR DESIGNATION OF CAREER FIELDS.—Not later than the end of the six-month period beginning on the date of the enactment of this Act, the Secretary of Defense shall carry out the requirements of the second sentence of section 1721(a) of title 10, United States Code (as added by paragraph (1)).

(g) KEY WORK EXPERIENCES.—

(1) DEVELOPMENT OF KEY WORK EXPERIENCES FOR EACH ACQUISITION WORKFORCE CAREER FIELD.—Section 1722b of such title is amended by adding at the end the following new subsection:

“(c) KEY WORK EXPERIENCES.—In carrying out subsection (b)(2), the Secretary shall ensure that key work experiences, in the form of multidisciplinary experiences, are developed for each acquisition workforce career field.”.

10 USC 1722b note.  
Deadline.

(2) PLAN FOR IMPLEMENTATION OF KEY WORK EXPERIENCES.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a plan identifying the specific actions the Secretary has taken, and is planning to take, to develop and establish key work experiences for each acquisition workforce career field as required by subsection (c) of section 1722b of title 10, United States Code (as added by paragraph (1)). The plan shall specify the percentage of the acquisition workforce, or funds available for administration of the acquisition workforce on an annual basis, that the Secretary will dedicate towards developing and establishing such key work experiences.

(h) APPLICABILITY OF CAREER PATH REQUIREMENTS TO ALL MEMBERS OF ACQUISITION WORKFORCE.—Section 1723(b) of such title is amended by striking “the critical acquisition-related”.

(i) COMPETENCY DEVELOPMENT.—

(1) IN GENERAL.—Subchapter V of chapter 87 of such title is amended by adding at the end the following new section:

10 USC 1765.

**“§ 1765. Competency development**

“For each acquisition workforce career field, the Secretary of Defense shall—

<p>“(1) establish, for the civilian personnel in that career field, defined proficiency standards and technical and nontechnical competencies which shall be used in personnel qualification assessments; and</p> <p>“(2) assign resources to accomplish such technical and nontechnical competencies.”.</p> <p>(2) The table of sections at the beginning of such subchapter II is amended by adding at the end the following new item:</p> <p>“1765. Competency development.”.</p> <p>(3) DEADLINE FOR IMPLEMENTATION.—Not later than the end of the two-year period beginning on the date of the enactment of this Act, the Secretary of Defense shall carry out the requirements of section 1765 of title 10, United States Code (as added by paragraph (1)).</p> <p>(j) TERMINATION OF DEFENSE ACQUISITION CORPS.—</p> <p>(1) The Acquisition Corps for the Department of Defense referred to in section 1731(a) of title 10, United States Code, is terminated.</p> <p>(2) Section 1733 of title 10, United States Code, is amended—</p> <p>(A) by striking subsection (a); and</p> <p>(B) by redesignating subsection (b) as subsection (a).</p> <p>(3) Subsection (b) of section 1731 of such title is transferred to the end of section 1733 of such title, as amended by paragraph (2), and amended—</p> <p>(A) by striking “ACQUISITION CORPS” in the heading and inserting “THE ACQUISITION WORKFORCE”; and</p> <p>(B) by striking “selected for the Acquisition Corps” and inserting “in the acquisition workforce”.</p> <p>(4) Subsection (e) of section 1732 of such title is transferred to the end of section 1733 of such title, as amended by paragraphs (2) and (3), redesignated as subsection (c), and amended—</p> <p>(A) by striking “in the Acquisition Corps” in paragraphs (1) and (2) and inserting “in critical acquisition positions”; and</p> <p>(B) by striking “serving in the Corps” in paragraph (2) and inserting “employment”.</p> <p>(5) Sections 1731 and 1732 of such title are repealed.</p> <p>(6)(A) Section 1733 of such title, as amended by paragraphs (2), (3), and (4), is redesignated as section 1731.</p> <p>(B) The table of sections at the beginning of subchapter III of chapter 87 of such title is amended by striking the items relating to sections 1731, 1732, and 1733 and inserting the following new item:</p> <p>“1731. Critical acquisition positions.”.</p> <p>(7)(A) The heading of subchapter III of chapter 87 of such title is amended to read as follows:</p> <p>“SUBCHAPTER III—CRITICAL ACQUISITION POSITIONS”.</p> <p>(B) The item relating to such subchapter in the table of subchapters at the beginning of such chapter is amended to read as follows:</p> <p>“III. Critical Acquisition Positions ..... 1731”.</p>	<p>Standards.</p> <p>10 USC 1761 prec.</p> <p>10 USC 1765 note.</p> <p>10 USC 1731 note.</p> <p>Repeals.</p> <p>10 USC 1731 prec.</p> <p>10 USC 1731 prec.</p> <p>10 USC 1701 prec.</p>
---	---

(8) Section 1723(a)(2) of such title is amended by striking “section 1733 of this title” and inserting “section 1731 of this title”.

(9) Section 1725 of such title is amended—

(A) in subsection (a)(1), by striking “Defense Acquisition Corps” and inserting “acquisition workforce”; and

(B) in subsection (d)(2), by striking “of the Defense Acquisition Corps” and inserting “in the acquisition workforce serving in critical acquisition positions”.

(10) Section 1734 of such title is amended—

(A) by striking “of the Acquisition Corps” in subsections (e)(1) and (h) and inserting “of the acquisition workforce”; and

(B) in subsection (g)—

(i) by striking “of the Acquisition Corps” in the first sentence and inserting “of the acquisition workforce”;

(ii) by striking “of the Corps” and inserting “of the acquisition workforce”; and

(iii) by striking “of the Acquisition Corps” in the second sentence and inserting “of the acquisition workforce in critical acquisition positions”.

(11) Section 1737 of such title is amended—

(A) in subsection (a)(1), by striking “of the Acquisition Corps” and inserting “of the acquisition workforce”; and

(B) in subsection (b), by striking “of the Corps” and inserting “of the acquisition workforce”.

(12) Section 1742(a)(1) of such title is amended by striking “the Acquisition Corps” and inserting “acquisition positions in the Department of Defense”.

(13) Section 2228(a)(4) of such title is amended by striking “under section 1733(b)(1)(C) of this title” and inserting “under section 1731 of this title”.

(14) Section 7016(b)(5)(B) of such title is amended by striking “under section 1733 of this title” and inserting “under section 1731 of this title”.

(15) Section 8016(b)(4)(B) of such title is amended by striking “under section 1733 of this title” and inserting “under section 1731 of this title”.

(16) Section 9016(b)(4)(B) of such title is amended by striking “under section 1733 of this title” and inserting “under section 1731 of this title”.

(17) Paragraph (1) of section 317 of title 37, United States Code, is amended to read as follows:

“(1) is a member of the acquisition workforce selected to serve in, or serving in, a critical acquisition position designated under section 1731 of title 10.”

10 USC 1741  
note.

**SEC. 862. SOFTWARE DEVELOPMENT AND SOFTWARE ACQUISITION TRAINING AND MANAGEMENT PROGRAMS.**

(a) ESTABLISHMENT OF SOFTWARE DEVELOPMENT AND SOFTWARE ACQUISITION TRAINING AND MANAGEMENT PROGRAMS.—

Consultation.

(1) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and in consultation with the Under Secretary of Defense for Research and Engineering, the Under Secretary



of Defense for Personnel and Readiness, and the Chief Information Officer of the Department of Defense, shall establish software development and software acquisition training and management programs for all software acquisition professionals, software developers, and other appropriate individuals (as determined by the Secretary of Defense), to earn a certification in software development and software acquisition.

(2) PROGRAM CONTENTS.—The programs established under paragraph (1) shall—

(A) develop and expand the use of specialized training programs for chief information officers of the military departments and the Defense Agencies, service acquisition executives, program executive officers, and program managers to include training on and experience in—

(i) continuous software development; and

(ii) acquisition pathways available to acquire software;

(B) ensure that appropriate program managers—

(i) have demonstrated competency in current software processes;

(ii) have the skills to lead a workforce that can quickly meet challenges, use software tools that prioritize continuous or frequent upgrades as such tools become available, take up opportunities provided by new innovations, and plan software activities in short iterations to learn from risks of software testing; and

(iii) have the experience and training to delegate technical oversight and execution decisions; and

(C) include continuing education courses, exchanges with private-sector organizations, and experiential training to help individuals maintain skills learned through the programs.

(b) REPORTS.—

(1) REPORTS REQUIRED.—The Secretary shall submit to the congressional defense committees—

(A) not later than 90 days after the date of the enactment of this Act, an initial report; and

(B) not later than one year after the date of the enactment of this Act, a final report.

(2) CONTENTS.—Each report required under paragraph (1) shall include—

(A) the status of implementing the software development and software acquisition training and management programs established under subsection (a)(1);

(B) a description of the requirements for certification, including the requirements for competencies in current software processes;

(C) a description of potential career paths in software development and software acquisition within the Department of Defense;

(D) an independent assessment conducted by the Defense Innovation Board of the progress made on implementing the programs established under subsection (a)(1); and

Assessment.

(E) any recommendations for changes to existing law to facilitate the implementation of the programs established under subsection (a)(1).

Recommendations.

(c) DEFINITIONS.—In this section:

(1) PROGRAM EXECUTIVE OFFICER; PROGRAM MANAGER.—The terms “program executive officer” and “program manager” have the meanings given those terms, respectively, in section 1737 of title 10, United States Code.

(2) SERVICE ACQUISITION EXECUTIVE.—The terms “military department”, “Defense Agency”, and “service acquisition executive” have the meanings given those terms, respectively, in section 101 of title 10, United States Code.

(3) MAJOR DEFENSE ACQUISITION PROGRAM.—The term “major defense acquisition program” has the meaning given in section 2430 of title 10, United States Code.

(4) DEFENSE BUSINESS SYSTEM.—The term “defense business system” has the meaning given in section 2222(i)(1) of title 10, United States Code.

**SEC. 863. MODIFICATION OF TEMPORARY ASSIGNMENTS OF DEPARTMENT OF DEFENSE EMPLOYEES TO A PRIVATE-SECTOR ORGANIZATION.**

(a) PUBLIC-PRIVATE TALENT EXCHANGE PROGRAM.—Section 1599g of title 10, United States Code, is amended by adding at the end the following new subsections:

“(i) CONFLICTS OF INTEREST.—A private-sector organization that is temporarily assigned a member of the acquisition workforce under this section shall not be considered to have a conflict of interest with the Department of Defense solely because of participation in the program established under this section.

“(j) FUNDING; USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Funds for the expenses for the program established under this section may be provided from amounts in the Department of Defense Acquisition Workforce Development Fund. Expenses for the program include—

“(1) notwithstanding section 1705(e)(5) of this title, the base salary of a civilian member of the acquisition workforce assigned to a private-sector organization under this section, during the period of that assignment;

“(2) expenses relating to assignment under this section of a member of the acquisition workforce away from the member’s regular duty station, including expenses for travel, per diem, and lodging; and

“(3) expenses for the administration of the program.”

(b) USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Section 1705(e)(1) of such title is amended by adding at the end the following new subparagraph:

“(C) Amounts in the Fund may be used to pay the expenses of the public-private talent exchange program established under section 1599g of this title.”

**SEC. 864. INCENTIVES AND CONSIDERATION FOR QUALIFIED TRAINING PROGRAMS.**

(a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2409 the following new section:

10 USC 2409a.

**“§ 2409a. Incentives and consideration for qualified training programs**

“(a) INCENTIVES.—The Secretary of Defense shall develop workforce development investment incentives for a contractor that implements a qualified training program to develop the workforce

of the contractor in a manner consistent with the needs of the Department of Defense.

“(b) CONSIDERATION OF QUALIFIED TRAINING PROGRAMS.—The Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that the system used by the Federal Government to monitor or record contractor past performance includes an analysis of the availability, quality, and effectiveness of a qualified training program of an offeror as part of the past performance rating of such offeror.

Revision.  
Requirement.  
Analysis.

“(c) QUALIFIED TRAINING PROGRAM DEFINED.—The term ‘qualified training program’ means any of the following:

“(1) A program eligible to receive funds under the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.).

“(2) A program eligible to receive funds under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

“(3) A program registered under the Act of August 16, 1937 (commonly known as the ‘National Apprenticeship Act’; Stat. 664, chapter 663; 29 U.S.C. 50 et seq.).

“(4) Any other program determined to be a qualified training program for purposes of this section, and that meets the workforce needs of the Department of Defense, as determined by the Secretary of Defense.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2409 the following new item:

10 USC 2381  
prec.

“2409a. Incentives and consideration for qualified training programs.”

**SEC. 865. USE OF QUALIFIED APPRENTICES BY MILITARY CONSTRUCTION CONTRACTORS.**

(a) USE OF QUALIFIED APPRENTICES BY MILITARY CONSTRUCTION CONTRACTORS.—

(1) IN GENERAL.—Subchapter III of chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2870. Use of qualified apprentices by military construction contractors**

10 USC 2870.

“(a) CERTIFICATION REQUIRED.—The Secretary of Defense shall require each offeror for a contract for a military construction project to certify to the Secretary that, if awarded such a contract, the offeror will—

“(1) establish a goal that not less than 20 percent of the total workforce employed in the performance of such a contract are qualified apprentices; and

“(2) make a good faith effort to meet or exceed such goal.

“(b) INCENTIVES.—The Secretary of Defense shall develop incentives for offerors for a contract for military construction projects to meet or exceed the goal described in subsection (a).

“(c) CONSIDERATION OF USE OF QUALIFIED APPRENTICES.—The Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that the system used by the Federal Government to monitor or record contractor past performance includes an analysis of whether the contractor has made a good faith effort to meet or exceed the goal described in subsection (a), including consideration of the actual

Revision.  
Requirement.  
Analysis.

number of qualified apprentices used by the contractor on the contract, as part of the past performance rating of such contractor.

“(d) QUALIFIED APPRENTICE DEFINED.—In this section, the term ‘qualified apprentice’ means an employee participating in an apprenticeship program that is—

“(1) registered with the Office of Apprenticeship of the Employment Training Administration of the Department of Labor pursuant to the Act of August 16, 1937 (popularly known as the ‘National Apprenticeship Act’; 29 U.S.C. 50 et seq.);

“(2) registered with a State apprenticeship agency recognized by such Office of Apprenticeship pursuant to such Act; or

“(3) determined to be a high-quality apprenticeship program by industry and the Secretary of Labor.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter III of chapter 169 of title 10, United States Code, is amended by adding at the end the following new item:

10 USC 2851  
prec.

“2870. Use of qualified apprentices by military construction contractors.”

10 USC 2870  
note.

(b) APPLICABILITY.—The amendments made by this section shall apply with respect to contracts awarded on or after the date that is 180 days after the date of the enactment of this Act.

## Subtitle G—Small Business Matters

### SEC. 870. REQUIREMENTS RELATING TO CREDIT FOR CERTAIN SMALL BUSINESS CONCERN SUBCONTRACTORS.

(a) CREDIT FOR CERTAIN SMALL BUSINESS CONCERN SUBCONTRACTORS.—Section 8(d)(16) of the Small Business Act (15 U.S.C. 637(d)) is amended to read as follows:

“(16) CREDIT FOR CERTAIN SMALL BUSINESS CONCERN SUBCONTRACTORS.—

“(A) IN GENERAL.—For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

“(i) if the subcontracting goals pertain only to a single contract with a Federal agency, the prime contractor may elect to receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the total dollar value of any subcontracts awarded to such small business concerns; and

“(ii) if the subcontracting goals pertain to more than one contract with one or more Federal agencies, or to one contract with more than one Federal agency, the prime contractor may only receive credit for first tier subcontractors that are small business concerns.

“(B) COLLECTION AND REVIEW OF DATA ON SUBCONTRACTING PLANS.—The head of each contracting agency shall ensure that the agency—

“(i) collects and reports data on the extent to which prime contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

“(ii) periodically reviews data collected and reported pursuant to clause (i) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection.

“(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to allow a Federal agency to establish a goal for an number of subcontracts with a subcontractor at any tier for a prime contractor otherwise eligible to receive credit under this paragraph.”

(b) MAINTENANCE OF RECORDS WITH RESPECT TO CREDIT UNDER A SUBCONTRACTING PLAN.—Section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)) is amended—

(1) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively (and conforming the margins accordingly); and

(2) by inserting after subparagraph (F) the following new subparagraph:

“(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate that procedures have been adopted to substantiate the credit the successful offeror or bidder will elect to receive under paragraph (16)(A);”.

**SEC. 871. INCLUSION OF BEST IN CLASS DESIGNATIONS IN ANNUAL REPORT ON SMALL BUSINESS GOALS.**

Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended by adding at the end the following new paragraph:

“(4) BEST IN CLASS SMALL BUSINESS PARTICIPATION REPORTING.—

“(A) ADDENDUM.—In addition to the requirements under paragraph (2) and for each best in class designation, the Administrator shall include in the report required by such paragraph—

“(i) the total amount of spending Governmentwide in such designation; and

“(ii) the number of small business concerns awarded contracts and the dollar amount of such contracts awarded within each such designation to each of the following—

“(I) qualified HUBZone small business concerns;

“(II) small business concerns owned and controlled by women;

“(III) small business concerns owned and controlled by service-disabled veterans; and

“(IV) small business concerns owned and controlled by socially and economically disadvantaged individuals.

“(B) BEST IN CLASS DEFINED.—The term ‘best in class’ has the meaning given such term by the Director of the Office of Management and Budget.

“(C) EFFECTIVE DATE.—The Administrator shall report on the information described by subparagraph (A) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any successor to such systems.”.

**SEC. 872. REAUTHORIZATION AND IMPROVEMENT OF DEPARTMENT OF DEFENSE MENTOR-PROTEGE PROGRAM.****(a) REAUTHORIZATION.—**

(1) **IN GENERAL.**—Subsection (j) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note) is amended—

(A) in paragraph (1), by striking “September 30, 2018” and inserting “September 30, 2024”; and

(B) in paragraph (2), by striking “September 30, 2021” and inserting “September 30, 2026”.

(2) **PROGRAM PARTICIPATION TERM.**—Subsection (e)(2) of such section is amended by striking “three years” each place such term appears and inserting “two years”.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date on which the Secretary of Defense submits to Congress the small business strategy required under section 2283 of title 10, United States Code. The Secretary of Defense shall notify the Law Revision Counsel of the House of Representatives of the submission of the strategy so that the Law Revision Counsel may execute the amendments made by this subsection.

**(b) OFFICE OF SMALL BUSINESS PROGRAMS OVERSIGHT.**—Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note) is amended—

(1) by redesignating subsection (n) as subsection (o); and

(2) by inserting after subsection (m) the following new subsection:

“(n) **ESTABLISHMENT OF PERFORMANCE GOALS AND PERIODIC REVIEWS.**—The Office of Small Business Programs of the Department of Defense shall—

“(1) establish performance goals consistent with the stated purpose of the Mentor-Protege Program and outcome-based metrics to measure progress in meeting those goals; and

“(2) submit to the congressional defense committees, not later than February 1, 2020, a report on progress made toward implementing these performance goals and metrics, based on periodic reviews of the procedures used to approve mentor-protege agreements.”.

**(c) MODIFICATION OF DISADVANTAGED SMALL BUSINESS CONCERN DEFINITION.**—Paragraph (2) of section 831(o) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note), as redesignated by subsection (b)(1), is amended in the matter preceding subparagraph (A) by striking “has less than half the size standard corresponding to its primary North American Industry Classification System code” and inserting “is not more than the size standard corresponding to its primary North American Industry Classification System code”.

**(d) INDEPENDENT REPORT ON PROGRAM EFFECTIVENESS.**—The Secretary of Defense shall direct the Defense Business Board to submit, not later than March 31, 2022, to the congressional defense committees a report evaluating the effectiveness of the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note), including recommendations for improving the program in terms of performance metrics, forms of assistance, and overall program effectiveness.

Strategy.  
10 USC 2302  
note.

Notification.

Reports.

Recommendations.

(e) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, and annually thereafter until September 30, 2024, the Secretary of Defense shall submit to the congressional defense committees a report on the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) that describes—

(1) each mentor-protege agreement entered into under such section, disaggregated by the type of disadvantaged small business concern (as defined in subsection (o) of such section) receiving assistance pursuant to such an agreement;

(2) the type of assistance provided to protege firms (as defined in such subsection) under each such agreement;

(3) the benefits provided to mentor firms (as defined in such subsection) under each such agreement; and

(4) the progress of protege firms under each such agreement with respect to competing for Federal prime contracts and subcontracts.

**SEC. 873. ACCELERATED PAYMENTS APPLICABLE TO CONTRACTS WITH CERTAIN SMALL BUSINESS CONCERNS UNDER THE PROMPT PAYMENT ACT.**

Section 3903(a) of title 31, United States Code, is amended—

(1) in paragraph (1)(B), by inserting “except as provided in paragraphs (10) and (11),” before “30 days”;

(2) in paragraph (8), by striking “and”;

(3) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following new paragraphs:

“(10) for a prime contractor (as defined in section 8701(5) of title 41) that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), to the fullest extent permitted by law, require that the head of an agency establish an accelerated payment date with a goal of 15 days after a proper invoice for the amount due is received if a specific payment date is not established by contract; and

“(11) for a prime contractor (as defined in section 8701(5) of title 41) that subcontracts with a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), to the fullest extent permitted by law, require that the head of an agency establish an accelerated payment date with a goal of 15 days after a proper invoice for the amount due is received if—

“(A) a specific payment date is not established by contract; and

“(B) such prime contractor agrees to make payments to such subcontractor in accordance with such accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to such subcontractor.”

**SEC. 874. POSTAWARD EXPLANATIONS FOR UNSUCCESSFUL OFFERORS FOR CERTAIN CONTRACTS.**

Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to require that with respect to an offer for a task order or delivery order in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41, United States Code) and

Time period.

Deadline.  
Revision.  
Requirement.  
Summary.  
Evaluation.  
41 USC 4106  
note.

less than or equal to \$5,500,000 issued under an indefinite delivery-indefinite quantity contract, the contracting officer for such contract shall, upon written request from an unsuccessful offeror, provide a brief explanation as to why such offeror was unsuccessful that includes a summary of the rationale for the award and an evaluation of the significant weak or deficient factors in the offeror's offer.

**SEC. 875. SMALL BUSINESS CONTRACTING CREDIT FOR SUBCONTRACTORS THAT ARE PUERTO RICO BUSINESSES OR COVERED TERRITORY BUSINESSES.**

Section 15(x) of the Small Business Act (15 U.S.C. 644(x)(1)) is amended—

(1) in the subsection heading, by adding “AND COVERED TERRITORY BUSINESSES” after “PUERTO RICO BUSINESSES”;

(2) in paragraph (1)—

(A) by inserting “or a covered territory business, or a prime contractor awards a subcontract (at any tier) to a subcontractor that is a Puerto Rico business or a covered territory business,” after “Puerto Rico business”;

(B) by inserting “or subcontract” after “the contract”;

and

(C) by striking “subsection (g)(1)(A)(i)” and inserting “subsection (g)(1)(A)”; and

(3) by adding at the end the following new paragraph:  
“(3) COVERED TERRITORY BUSINESS DEFINED.—In this subsection, the term ‘covered territory business’ means a small business concern that has its principal office located in one of the following:

“(A) The United States Virgin Islands.

“(B) American Samoa.

“(C) Guam.

“(D) The Northern Mariana Islands.”.

15 USC 632 note. **SEC. 876. TECHNICAL AMENDMENT REGARDING TREATMENT OF CERTAIN SURVIVING SPOUSES UNDER THE DEFINITION OF SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.**

Effective date. Effective on the date specified in subsection (e) of section 1832 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2660), section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)) is amended—

(1) in subparagraph (C)(i)(II), by striking “rated as 100 percent” and all that follows through “service-connected disability”; and

(2) by amending subparagraph (C)(ii)(III) to read as follows:

Time periods.

“(III) the date that—

“(aa) in the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, is 10 years after the date of the death of the veteran; or

“(bb) in the case of a surviving spouse of a veteran with a service-connected disability rated as less than 100 percent disabling who does not die as a result of a service-connected disability, is 3 years after the date of the death of the veteran.”.



**SEC. 877. EXTENSION OF LOAN ASSISTANCE AND DEFERRAL ELIGIBILITY TO RESERVISTS AND MEMBERS OF THE NATIONAL GUARD BEYOND PERIODS OF MILITARY CONFLICT.**

(a) **SMALL BUSINESS ACT AMENDMENTS.**—Section 7 of the Small Business Act (15 U.S.C. 636) is amended—

(1) in subsection (b)(3)—

(A) in subparagraph (A)—

(i) by striking clause (ii);

(ii) by redesignating clause (i) as clause (ii);

(iii) by inserting before clause (ii), as so redesignated, the following:

“(i) the term ‘active service’ has the meaning given that term in section 101(d)(3) of title 10, United States Code;” and

Definition.

(iv) in clause (ii), as so redesignated, by adding “and” at the end;

(B) in subparagraph (B), by striking “being ordered to active military duty during a period of military conflict” and inserting “being ordered to perform active service for a period of more than 30 consecutive days”;

(C) in subparagraph (C), by striking “active duty” each place it appears and inserting “active service”; and

(D) in subparagraph (G)(ii)(II), by striking “active duty” and inserting “active service”; and

(2) in subsection (n)—

(A) in the subsection heading, by striking “ACTIVE DUTY” and inserting “ACTIVE SERVICE”;

(B) in paragraph (1)—

(i) by striking subparagraph (C);

(ii) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(iii) by inserting before subparagraph (B), as so redesignated, the following:

“(A) **ACTIVE SERVICE.**—The term ‘active service’ has the meaning given that term in section 101(d)(3) of title 10, United States Code.”;

Definition.

(iv) in subparagraph (B), as so redesignated, by striking “ordered to active duty during a period of military conflict” and inserting “ordered to perform active service for a period of more than 30 consecutive days”; and

(v) in subparagraph (D), by striking “active duty” each place it appears and inserting “active service”; and

(C) in paragraph (2)(B), by striking “active duty” each place it appears and inserting “active service”.

(b) **APPLICABILITY.**—The amendments made by subsection (a)(1) shall apply to an economic injury suffered or likely to be suffered as the result of an essential employee being ordered to perform active service (as defined in section 101(d)(3) of title 10, United States Code) for a period of more than 30 consecutive days who is discharged or released from such active service on or after the date of enactment of this Act.

Time period.  
15 USC 636 note.

(c) **SEMIANNUAL REPORT.**—Not later than 180 days after the date of enactment of this Act, and semiannually thereafter, the President shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the

President.  
15 USC 636/.

Senate and the Committee on Small Business and the Committee on Appropriations of the House of Representatives a report on the number of loans made under the Military Reservist Economic Injury Disaster Loan program and the dollar volume of those loans. The report shall contain the subsidy rate of the disaster loan program as authorized under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) with the loans made under the Military Reservist Economic Injury Disaster Loan program and without those loans included.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 8(l) of the Small Business Act (15 U.S.C. 637(l)) is amended—

(1) by striking “The Administration” and inserting the following:

“(1) IN GENERAL.—The Administration”;

(2) by striking “(as defined in section 7(n)(1))”; and

(3) by adding at the end the following:

“(2) DEFINITION OF PERIOD OF MILITARY CONFLICT.—In this subsection, the term ‘period of military conflict’ means—

“(A) a period of war declared by the Congress;

“(B) a period of national emergency declared by the Congress or by the President; or

“(C) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code.”.

**SEC. 878. MODIFICATION TO THE DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM.**

(a) TYPES OF AWARDS; AWARD SIZE; LIMITATION ON CERTAIN AWARDS.—Section 2359a of title 10, United States Code, is amended—

(1) in subsection (a)(1), by inserting “phase II Small Business Technology Transfer Program projects,” after “projects.”;

(2) in subsection (b)—

(A) in paragraph (3), by striking “\$3,000,000” and all that follows through the period at the end and inserting “\$6,000,000.”; and

(B) by adding at the end the following new paragraph:

“(7) A preference under the program for funding small business concerns.”; and

(3) in subsection (d)—

(A) by striking “Subject to” and inserting “(1) Subject to”;

(B) in paragraph (1), as so designated, by inserting “and to the limitation under paragraph (2)” after “for such purpose”; and

(C) by adding at the end the following new paragraph:

“(2) During any fiscal year, the total amount of awards in an amount greater than \$3,000,000 made under the program established under subsection (a) may not exceed 25 percent of the amount made available to carry out such program during such fiscal year.”.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the program established under section 2359a(a) of title 10, United States Code (commonly known as the “Defense Research and Development Rapid Innovation Program”), which shall include—

(1) with respect to the two fiscal years preceding the submission of the report—

(A) a description of the total number of proposals funded under the program;

(B) the percent of funds made available under the program for phase II Small Business Innovation Research Program projects (as defined under section 9 of the Small Business Act (15 U.S.C. 638)); and

(C) a list of phase II Small Business Innovation Research Program projects that received funding under the program that were included in major defense acquisition programs (as defined in section 2430 of title 10, United States Code) and other defense acquisition programs that meet critical national security needs; and

List.

(2) an assessment on the effectiveness of the program in stimulating innovative technologies, reducing acquisition or lifecycle costs, addressing technical risk, and improving the timeliness and thoroughness of test and evaluation outcomes.

Assessment.

**SEC. 879. ALIGNMENT OF THE DEPARTMENT OF DEFENSE SMALL BUSINESS INNOVATION RESEARCH PROGRAM AND SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM WITH THE NATIONAL DEFENSE SCIENCE AND TECHNOLOGY STRATEGY.**

The Secretary of Defense and Secretaries of the military departments shall, to the extent practicable, align the research topics selected for activities conducted under the Small Business Innovation Research Program and Small Business Technology Transfer Program (as defined under section 9 of the Small Business Act (15 U.S.C. 638)) with the National Defense Science and Technology Strategy developed under section 218 of the John. S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1679).

**SEC. 880. ASSISTANCE FOR SMALL BUSINESS CONCERNS PARTICIPATING IN THE SBIR AND STTR PROGRAMS.**

(a) **DEFINITION OF SENIOR PROCUREMENT EXECUTIVE.**—Section 9(e) of the Small Business Act (15 U.S.C. 638(e)) is amended—

(1) in paragraph (12)(B), by striking “and” at the end;

(2) in paragraph (13)(B), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(14) the term ‘senior procurement executive’ means an official designated under section 1702(c) of title 41, United States Code, as the senior procurement executive of a Federal agency participating in a SBIR or STTR program.”

(b) **INCLUSION OF SENIOR PROCUREMENT EXECUTIVES IN SBIR AND STTR.**—

(1) **IN GENERAL.**—Section 9(b) of the Small Business Act (15 U.S.C. 638(b)) is amended—

(A) in paragraph (8), by striking “and” at the end;

(B) in paragraph (9), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(10) to consult, where appropriate, with personnel from the relevant Federal agency to assist small business concerns participating in a SBIR or STTR program with commercializing research developed under such a program before such small

Consultation.

business concern is awarded a contract from such Federal agency.”

(2) TECHNICAL AMENDMENT.—Section 9(b)(3) of the Small Business Act (15 U.S.C. 638(b)(3)) is amended by striking “and” at the end.

(c) MODIFICATIONS RELATING TO PROCUREMENT CENTER REPRESENTATIVES AND OTHER ACQUISITION PERSONNEL.—

(1) SBIR AMENDMENT.—Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) is amended by adding at the end the following new paragraph:

Requirement.  
Consultation.

“(4) MODIFICATIONS RELATING TO PROCUREMENT CENTER REPRESENTATIVES.—Upon the enactment of this paragraph, the Administrator shall modify the policy directives issued pursuant to this subsection to require procurement center representatives (as described in section 15(l)) to consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in the SBIR program, particularly in Phase III.”

(2) STTR AMENDMENT.—Section 9(p)(2) of the Small Business Act (15 U.S.C. 638(p)(2)) is amended—

(A) in subparagraph (E)(ii), by striking “and” at the end;

(B) in subparagraph (F), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

Consultations.

“(G) procedures to ensure that procurement center representatives (as described in section 15(l))—

“(i) consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in the STTR program, particularly in Phase III;

Bid.

“(ii) provide technical assistance to such concerns to submit a bid for an award of a Federal contract; and

“(iii) consult with the appropriate personnel from the relevant Federal agency in providing the assistance described in clause (i).”

(d) AMENDMENT TO DUTIES OF PROCUREMENT CENTER REPRESENTATIVES.—Section 15(l)(2) of the Small Business Act (15 U.S.C. 644(l)(2)) is amended—

(1) in subparagraph (I), by striking “and” at the end;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

Consultation.

“(J) consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in a SBIR or STTR program under section 9 with Phase III;”

(e) AMENDMENT TO THE DUTIES OF THE DIRECTOR OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION FOR FEDERAL AGENCIES.—Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) is amended—

(1) in paragraph (19), by striking “and” at the end;

(2) in paragraph (20), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraph:  
 “(21) shall consult with the appropriate personnel from the relevant Federal agency to assist small business concerns participating in a SBIR or STTR program under section 9 with researching applicable solicitations for the award of a Federal contract (particularly with the Federal agency that has a funding agreement, as defined under section 9, with the concern) to market the research developed by such concern under such SBIR or STTR program.”.

Consultation.

**SEC. 881. CYBERSECURITY TECHNICAL ASSISTANCE FOR SBIR AND STTR PROGRAMS.**

15 USC 638 note.

(a) **IN GENERAL.**—The Secretary of Defense may enter into an agreement with 1 or more vendors selected under section 9(q)(2) of the Small Business Act (15 U.S.C. 638(q)(2)) to provide small business concerns engaged in SBIR or STTR projects with cybersecurity technical assistance, such as access to a network of cybersecurity experts and engineers engaged in designing and implementing cybersecurity practices.

(b) **AMOUNTS.**—In carrying out subsection (a), the Secretary of Defense may provide the amounts described under section 9(q)(3) of such Act (15 U.S.C. 638(q)(3)) to a recipient that meets the eligibility requirements under the such paragraph, if the recipient requests to seek cybersecurity technical assistance from an individual or entity other than a vendor selected as described in subsection (a).

**SEC. 882. FUNDING FOR DEFENSE RESEARCH ACTIVITIES OF SMALL BUSINESS CONCERNS.**

Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report on funds or other assistance made available to small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)) as prime contractors for research, development, test, and evaluation activities, in each of fiscal years 2017, 2018, and 2019 under any—

Reports.

- (1) research, development, test, and evaluation programs of the Department of Defense;
- (2) Small Business Innovation Research programs of the Department of Defense;
- (3) Small Business Technology Transfer programs of the Department of Defense; and
- (4) other relevant activities of the Department of Defense.

**SEC. 883. MODIFICATIONS TO BUDGET DISPLAY REQUIREMENTS FOR THE DEPARTMENT OF DEFENSE SMALL BUSINESS INNOVATION RESEARCH PROGRAM AND SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.**

Section 857 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1891) is amended—

- (1) in subsection (a)—
  - (A) by inserting “Under Secretary of Defense (Comptroller) and the” before “Under Secretary of Defense for Research and Engineering”; and
  - (B) by striking “a budget display” and inserting “one or more budget displays”;
- (2) in subsection (b), by striking “The budget display” and inserting “The budget displays”; and

(3) in subsection (d), by striking “The budget display” and inserting “The budget displays”.

15 USC 638 note. **SEC. 884. PILOT PROGRAM FOR DOMESTIC INVESTMENT UNDER THE SBIR PROGRAM.**

Deadline.

(a) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act and subject to subsection (b), the Secretary of Defense shall establish and administer a program to be known as the “Domestic Investment Pilot Program” under which the Secretary and the service acquisition executive for each military department may make a SBIR award under section 9(dd) of the Small Business Act (15 U.S.C. 638) to a small business concern without providing the written determination described under paragraph (2) of such section 9(dd) if such concern is—

(1) exclusively owned by multiple United States-owned venture capital operating companies, hedge funds, or private equity firms, or

(2) majority-owned by multiple United States-owned venture capital operating companies, hedge funds, or private equity firms, if the minority foreign ownership of such concern is limited to members of the national technology and industrial base as defined under section 2500 of title 10, United States Code.

(b) **LIMITATION.**—During any fiscal year, the aggregate amount of awards made under the Domestic Investment Pilot Program shall not exceed an amount equal to 10 percent of the total amount that the Secretary of Defense may award under section 9 of the Small Business Act (15 U.S.C. 638) during such fiscal year.

(c) **EVALUATION CRITERIA.**—In carrying out the Domestic Investment Pilot Program, the Secretary of Defense may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for the award of contracts under the SBIR program or STTR program.

(d) **ANNUAL REPORTING.**—The Secretary of Defense shall include as part of each annual report required under section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) information on the implementation of the Domestic Investment Pilot Program with respect to the year covered by the report, including—

(1) the number of applications for participation received from small business concerns;

(2) the number of awards made to small business concerns, including an identification of such concerns;

(3) the extent to which a small business concern participant is foreign-owned, including an identification of the foreign owners; and

Assessment.

(4) an assessment of the effect of the Domestic Investment Pilot Program on—

(A) inducing additional venture capital, hedge fund, or private equity funding of research as defined in section 9(e)(5) of the Small Business Act (15 U.S.C. 638(e)(5));

(B) substantially contributing to the mission of the Department of Defense; and

(C) otherwise fulfilling the capital needs of small business concerns for additional financing for SBIR projects.

Deadline.

(e) **NOTIFICATION.**—The Secretary of Defense shall notify the Small Business Administration of an award made under the

Domestic Investment Pilot Program not later than 30 days after such award is made.

(f) **TERMINATION.**—The Domestic Investment Pilot Program established under this section shall terminate on September 30, 2022.

(g) **DEFINITIONS.**—In this section:

(1) **MILITARY DEPARTMENT; SERVICE ACQUISITION EXECUTIVE.**—The terms “military department” and “service acquisition executive” have the meanings given those terms, respectively, in section 101 of title 10, United States Code.

(2) **SBIR; STTR.**—The terms “SBIR” and “STTR” have the meanings given those terms, respectively, in section 9(e) of the Small Business Act (15 U.S.C. 638(e)).

(3) **SMALL BUSINESS ACT DEFINITIONS.**—The terms “small business concern”, “venture capital operating company”, “hedge fund”, and “private equity firm” have the meanings given those terms, respectively, in section 3 of the Small Business Act (15 U.S.C. 632).

## Subtitle H—Other Matters

### SEC. 885. REVIEW OF GUIDANCE TO CONTRACTORS ON NON-DISCRIMINATION ON THE BASIS OF SEX.

Deadlines.  
10 USC 1741  
note.

(a) **REVIEW.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment, serving as the senior procurement executive for the Department of Defense pursuant to section 133b(b)(4)(B) of title 10, United States Code, shall conduct a review of the implementation of the requirement for Government contracting agencies under Executive Order 11246 (42 U.S.C. 2000e note) relating to expectations of contractors and subcontractors to ensure nondiscrimination on the basis of sex.

(b) **ELEMENTS.**—The review required under subsection (a) shall, at a minimum, consider—

(1) existing contracting processes and tools for oversight of contracts, including contractor responsibility determinations and documentation of performance; and

(2) the extent to which best practices for contractors and subcontractors identified in the appendix to part 60–20 of title 41 of the Code of Federal Regulations, such as establishing and implementing procedures for handling and resolving complaints about harassment and intimidation based on sex, have been incorporated in Department policies and procedures.

(c) **UPDATED TRAINING GUIDANCE.**—Not later than 180 days after the date of the completion of the review required under subsection (a), the Under Secretary of Defense for Acquisition and Sustainment shall update any relevant training guidance for the acquisition workforce to account for the conclusions of the review.

(d) **BRIEFING REQUIRED.**—Not later than December 15, 2020, the Secretary of Defense shall brief the congressional defense committees on the review required under subsection (a), which shall include any updates to training guidance or contracting procedures resulting from the review.

**SEC. 886. COMPTROLLER GENERAL REPORT ON CONTRACTOR VIOLATIONS OF CERTAIN LABOR LAWS.**

Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the number of contractors—

(1) that performed a contract with the Department of Defense during the five-year period preceding the date of the enactment of this Act; and

(2) that have been found by the Department of Labor to have committed willful or repeat violations of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) or the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), and the nature of the violations committed.

Evaluations.

**SEC. 887. COMPTROLLER GENERAL REPORT ON CONTINGENCY CONTRACTING.**

Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the use of contractors to perform work supporting contingency operations, including the logistical support for such operations, since January 1, 2009. Such report shall include—

(1) an evaluation of the nature and extent to which the Department of Defense has used contractors to perform such work, including the type of operation or exercise, the functions performed by a contractor, the place of performance, and contract obligations;

(2) an evaluation of the processes for tracking and reporting on the use of such contractors;

(3) an evaluation of the extent to which recommendations made by the Wartime Contracting Commission established in section 841 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 230) have been implemented in policy, guidance, education and training, as appropriate; and

(4) any other issues the Comptroller General determines to be appropriate.

10 USC 2302  
note.**SEC. 888. POLICIES AND PROCEDURES FOR CONTRACTORS TO REPORT GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.**Deadline.  
Guidance.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall update Department of Defense policy and guidance and the Department of Defense Supplement to the Federal Acquisition Regulation to provide specific guidance to Department of Defense employees and contractors performing a Department of Defense contract that supports United States Armed Forces deployed outside of the United States on monitoring and reporting allegations of gross violations of internationally recognized human rights.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate congressional committees a report that describes—

(1) the policies and procedures in place to obtain information about possible cases of gross violations of internationally



recognized human rights from Department of Defense contractors described in subsection (a), including the methods for tracking cases; and

(2) the resources needed to investigate reports made pursuant to subsection (a).

(c) **FORM OF REPORT.**—The report required by subsection (b) shall be submitted in unclassified form, but may include a classified annex.

(d) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—the term “appropriate congressional committees” means—

(A) the congressional defense committees; and

(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(2) **GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.**—The term “gross violations of internationally recognized human rights” has the meaning given such term in subsection (d)(1) of section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304).

**SEC. 889. COMPTROLLER GENERAL REPORT ON OVERSIGHT OF CONTRACTORS PROVIDING PRIVATE SECURITY FUNCTIONS.**

(a) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on efforts of the Secretary of Defense to improve the oversight of contractors providing private security functions to fulfill non-combat requirements for security in contingency operations, humanitarian operations, peacekeeping operations, or other similar operations or exercises since January 1, 2009.

(b) **ELEMENTS.**—The report required under subsection (a) shall evaluate—

(1) the nature and extent to which the Department of Defense has used contractors to perform private security functions described under subsection (a), including the type of operation or exercise, the functions performed by a contractor, the place of performance, and contract obligations;

(2) the processes for tracking and reporting on the use of such contractors;

(3) changes to law, regulation, and policy on the use of such contractors and how the Secretary has implemented such changes, including—

(A) the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict (published on May 2, 2011);

(B) using standards for such contractors issued by the American National Standards Institute and the International Organization for Standardization; and

(C) using other associated accreditation and certification standards for such contractors; and

(4) the oversight outcomes of the Department due to implementing the processes described in paragraph (2) and the changes described in paragraph (3), including—

(A) progress with certification and accreditation of companies;

Evaluations.

(B) the use of the maturity model of the Department to assess contractors; and

(C) the nature and extent of referrals for suspension and debarment and the number of suspensions and debarments that have resulted from such referrals.

(c) **FORM OF REPORT.**—The report required by subsection (a) shall be submitted in unclassified form, to the maximum extent possible, but may contain a classified annex, if necessary.

Venezuela.  
10 USC 2302  
note.

**SEC. 890. PROHIBITION ON CONTRACTING WITH PERSONS THAT HAVE BUSINESS OPERATIONS WITH THE MADURO REGIME.**

(a) **PROHIBITION.**—Except as provided under subsections (c), (d), and (e), the Department of Defense may not enter into a contract for the procurement of goods or services with any person that has business operations with an authority of the Government of Venezuela that is not recognized as the legitimate Government of Venezuela by the United States Government.

(b) **EXCEPTIONS.**—

(1) **IN GENERAL.**—The prohibition under subsection (a) does not apply to a contract that the Secretary of Defense and the Secretary of State jointly determine—

(A) is necessary—

(i) for purposes of providing humanitarian assistance to the people of Venezuela;

(ii) for purposes of providing disaster relief and other urgent life-saving measures; or

(iii) to carry out noncombatant evacuations; or

(B) is vital to the national security interests of the United States.

(2) **NOTIFICATION REQUIREMENT.**—The Secretary of Defense shall notify the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate of any contract entered into on the basis of an exception provided for under paragraph (1).

(c) **OFFICE OF FOREIGN ASSETS CONTROL LICENSES.**—The prohibition in subsection (a) shall not apply to a person that has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(d) **AMERICAN DIPLOMATIC MISSION IN VENEZUELA.**—The prohibition in subsection (a) shall not apply to contracts related to the operation and maintenance of the United States Government’s consular offices and diplomatic posts in Venezuela.

(e) **DEFINITIONS.**—In this section:

(1) **BUSINESS OPERATIONS.**—The term “business operations” means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) **GOVERNMENT OF VENEZUELA.**—The term “Government of Venezuela” includes the government of any political subdivision of Venezuela, and any agency or instrumentality of the Government of Venezuela. For purposes of this paragraph, the term “agency or instrumentality of the Government of Venezuela” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code,

with each reference in such section to “a foreign state” deemed to be a reference to “Venezuela”.

(3) PERSON.—The term “person” means—

(A) a natural person, corporation, company, business association, partnership, society, trust, or any other non-governmental entity, organization, or group;

(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and

(C) any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in subparagraph (A) or (B).

(f) APPLICABILITY.—This section shall apply with respect to any contract entered into on or after the date of the enactment of this section.

**SEC. 891. REPORT ON THE COMBATING TRAFFICKING IN PERSONS INITIATIVE.**

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing an analysis of the progress of the Department of Defense in implementing the Combating Trafficking in Persons initiative described in Department of Defense Instruction 2200.01 (published February 2007; revised on June 21, 2019).

**SEC. 892. IMPROVED MANAGEMENT OF INFORMATION TECHNOLOGY AND CYBERSPACE INVESTMENTS.**

(a) IMPROVED MANAGEMENT.—

(1) IN GENERAL.—The Chief Information Officer of the Department of Defense shall work with the Chief Data Officer of the Department of Defense to optimize the Department’s process for accounting for, managing, and reporting its information technology and cyberspace investments. The optimization should include alternative methods of presenting budget justification materials to the public and congressional staff to more accurately communicate when, how, and with what frequency capability is delivered to end users, in accordance with best practices for managing and reporting on information technology investments.

(2) BRIEFING.—Not later than February 3, 2020, the Chief Information Officer of the Department of Defense shall brief the congressional defense committees on the process optimization undertaken pursuant to paragraph (1), including any recommendations for legislation.

(b) DELIVERY OF INFORMATION TECHNOLOGY BUDGET.—The Secretary of Defense shall submit to the congressional defense committees the Department of Defense budget request for information technology not later than 15 days after the submittal to Congress of the budget of the President for a fiscal year pursuant to section 1105 of title 31, United States Code.

Deadlines.  
10 USC 2223  
note.

Recommendations.

**SEC. 893. MODIFICATION TO REQUIREMENTS FOR PURCHASE OF COMMERCIAL LEASING SERVICES PURSUANT TO MULTIPLE AWARD CONTRACTS.**

(a) REPEAL.—Section 877 of the John S. McCain National Defense Authorization Act For Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1907; 41 U.S.C. 3302 note) is repealed.

(b) EXEMPTION FOR COMMERCIAL LEASING SERVICES.—

(1) IN GENERAL.—Section 3302 of title 41, United States Code, is amended by adding at the end the following new subsection:

“(f) COMMERCIAL LEASING SERVICES.—The regulations required by subsection (b) shall not apply to individual purchases for commercial leasing services that are made on a no cost basis and made under a multiple award contract awarded in accordance with the requirements for full and open competition.”

(2) TERMINATION.—Effective December 31, 2025, subsection (f) of section 3302 of title 41, United States Code, as added by paragraph (1), is repealed.

(c) AUDIT.—The Comptroller General of the United States shall—

(1) conduct an audit not later than the last day of fiscal year 2021, 2023, and 2025 analyzing the National Broker Contract program of the General Services Administration to determine—

(A) whether brokers selected under the program provide lower lease rental rates than rates negotiated by employees of the General Services Administration; and

(B) the impact of the program on the length of time of lease procurements;

(2) conduct a review of whether the application of section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat.4547) resulted in rental cost savings for the Government during the years in which such section was applicable; and

(3) not later than September 30, 2022, and September 30, 2024, submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that—

(A) summarizes the results of the most recent audit required under paragraph (1) and the review required by paragraph (2);

(B) includes an assessment of whether the National Broker Contract program provides greater efficiencies and savings than the use of employees of the General Services Administration; and

(C) includes recommendations for improving General Services Administration lease procurements.

Repeal.  
41 USC 3302  
note.

Deadline.

Review.

Reports.

Summaries.

Assessment.

Recommendations.

**TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT**

Subtitle A—Office of the Secretary of Defense and Related Matters

Sec. 901. Headquarters activities of the Department of Defense matters.

Sec. 902. Clarifying the roles and responsibilities of the Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Defense for Research and Engineering.

- Sec. 903. Return to Chief Information Officer of the Department of Defense of responsibility for business systems and related matters.
- Sec. 904. Assessments of responsibilities and authorities of the Chief Management Officer of the Department of Defense.
- Sec. 905. Senior Military Advisor for Cyber Policy and Deputy Principal Cyber Advisor.
- Sec. 906. Exclusion from limitations on personnel in the Office of the Secretary of Defense and Department of Defense headquarters of fellows appointed under the John S. McCain Defense Fellows Program.

Subtitle B—Organization and Management of Other Department of Defense Offices and Elements

- Sec. 911. Codification of Assistant Secretaries for Energy, Installations, and Environment of the Army, Navy, and Air Force.

Subtitle C—Other Department of Defense Organization and Management Matters

- Sec. 921. Prohibition on ownership or trading of stocks in certain companies by certain officials of the Department of Defense.
- Sec. 922. Limitation on consolidation of Defense Media Activity.
- Sec. 923. Report on resources to implement the civilian casualty policy of the Department of Defense.

Subtitle D—United States Space Force

- Sec. 951. Short title.
- Sec. 952. The Space Force.
- Sec. 953. Chief of Space Operations.
- Sec. 954. Space Force Acquisition Council.
- Sec. 955. Assistant Secretary of Defense for Space Policy.
- Sec. 956. Assistant Secretary of the Air Force for Space Acquisition and Integration.
- Sec. 957. Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs.
- Sec. 958. Conforming amendments and clarification of authorities.
- Sec. 959. Effects on military installations.
- Sec. 960. Availability of funds.
- Sec. 961. Implementation.

## Subtitle A—Office of the Secretary of Defense and Related Matters

### SEC. 901. HEADQUARTERS ACTIVITIES OF THE DEPARTMENT OF DEFENSE MATTERS.

(a) MODIFICATION OF LIMITATIONS ON NUMBER OF PERSONNEL IN OSD AND OTHER DOD HEADQUARTERS.—

(1) OSD.—Section 143 of title 10, United States Code, is amended—

(A) in subsection (a), by striking “3,767” and inserting “4,300”; and

(B) in subsection (b), by striking “, civilian, and detailed personnel” and inserting “and civilian personnel”.

(2) JOINT STAFF.—

(A) IN GENERAL.—Section 155(h)(1) of such title is amended by striking “2,069” and inserting “2,250”.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on December 31, 2019, immediately after the coming into effect of the amendment made by section 903(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2344), to which such amendments relate

(3) OFFICE OF SECRETARY OF THE ARMY.—Section 7014(f) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking “3,105” and inserting “3,250”; and

10 USC 155 note.

(B) in paragraph (2), by striking “1,865” and inserting “1,900”.

(4) OFFICE OF SECRETARY OF THE NAVY.—Section 8014(f) of such title is amended—

(A) in paragraph (1), by striking “2,866” and inserting “3,150”; and

(B) in paragraph (2), by striking “1,720” and inserting “1,800”.

(5) OFFICE OF SECRETARY OF THE AIR FORCE.—Section 9014(f) of such title is amended—

(A) in paragraph (1), by striking “2,639” and inserting “2,750”; and

(B) in paragraph (2), by striking “1,585” and inserting “1,650”.

(b) SUNSET OF REDUCTION IN FUNDING FOR DOD HEADQUARTERS, ADMINISTRATIVE, AND SUPPORT ACTIVITIES.—Section 346 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 111 note) is amended by adding at the end the following new subsection:

“(d) SUNSET.—No action is required under this section with respect to any fiscal year after fiscal year 2019.”.

**SEC. 902. CLARIFYING THE ROLES AND RESPONSIBILITIES OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT AND THE UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING.**

The laws of the United States are amended as follows:

(1) Section 129a(c)(3) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(2) Section 133a(b)(2) of title 10, United States Code, is amended—

(A) by striking “prototyping,” and inserting “appropriate prototyping activities,”; and

(B) by striking “, including the allocation of resources for defense research and engineering,”.

(3) Section 134(c) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics,” and inserting “Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,”.

(4) Section 139 of title 10, United States Code, is amended—

(A) in subsection (b), by striking “and the Under Secretary of Defense for Acquisition, Technology, and Logistics” each place it appears and inserting “, the Under Secretary of Defense for Acquisition and Sustainment, and the Under Secretary of Defense for Research and Engineering”; and

(B) in subsections (c) and (h), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,”.

(5) Section 139a(d)(6) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering.”.

(6) Section 171(a) of title 10, United States Code, is amended—

(A) in paragraph (3), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) by redesignating paragraphs (9) through (13) as paragraphs (12) through (16);

(C) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively;

(D) by inserting after paragraph (3) the following new paragraph:

“(4) the Under Secretary of Defense for Research and Engineering;”;

(E) by inserting after paragraph (9), as redesignated, the following new paragraphs:

“(10) the Deputy Under Secretary of Defense for Research and Engineering;

“(11) the Deputy Under Secretary of Defense for Acquisition and Sustainment;”.

(7) Subsection (d)(1) of section 181 of title 10, United States Code, is amended—

(A) in subparagraph (C), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) by inserting after subparagraph (C) the following new subparagraph:

“(D) the Under Secretary of Defense for Research and Engineering.”; and

(C) by redesignating paragraphs (D) through (G) as paragraphs (E) through (H), respectively.

(8) Subsection (b)(2) of section 393 of title 10, United States Code, is amended—

(A) in subparagraph (B), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) by inserting after subparagraph (B) the following new subparagraph:

“(C) the Under Secretary of Defense for Research and Engineering.”; and

(C) by redesignating subparagraphs (C) through (E) as subparagraphs (D) through (F).

(9) Section 1111 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1032; 10 U.S.C. 1701 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(10) Section 231 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 45;

10 U.S.C. 1701 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(11) Section 1702 of title 10, United States Code, is amended—

(A) in the section heading, by striking “**UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS**” and inserting “**UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT**”; and

(B) by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(12) Section 807(a) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2608; 10 U.S.C. 1702 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(13) Section 1705 of title 10, United States Code, is amended—

(A) in subsection (c), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) in subsection (e)(3), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(C) in subsection (g)(2)(B), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(14) Section 803(c) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1825; 10 U.S.C. 1705 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(15) Section 1722 of title 10, United States Code, is amended—

(A) in subsection (a), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (b)(2)(B), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(16) Section 1722a of title 10, United States Code, is amended—

(A) in subsection (a), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (e), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and



inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(17) Section 1722b(a) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(18) Section 1723 of title 10, United States Code, is amended—

(A) in subsection (a)(3), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (b), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(19) Section 1725(e)(2) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(20) Section 1735(c)(1) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(21) Section 1737(c) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(22) Section 1741(b) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(23) Section 1746(a) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(24) Section 1748 of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(25) Section 2222 of title 10, United States Code, is amended—

(A) in subsection (c)(2), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (f)(2)(B)(i), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(26) Section 217(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 770; 10 U.S.C. 2222 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment and Under Secretary of Defense for Research and Engineering”.

(27) Section 882(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 128 Stat. 4308; 10 U.S.C. 2222 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(28) Section 2272 of title 10, United States Code, is amended by striking “Assistant Secretary of Defense for Research and Engineering” and inserting “Under Secretary of Defense for Research and Engineering”.

(29) Section 2275(a) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(30) Section 2279(d) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(31) Section 2279b of title 10, United States Code, is amended—

(A) in subsection (b)—

(i) by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively;

(ii) by striking paragraph (2); and

(iii) by inserting after paragraph (1) the following new paragraphs:

“(2) The Under Secretary of Defense for Research and Engineering.

“(3) The Under Secretary of Defense for Acquisition and Sustainment.”; and

(B) in subsection (c) by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment.”.

(32) Section 898(a)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2000; 10 U.S.C. 2302 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(33) Section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 726; 10 U.S.C. 2302 note) is amended—

(A) in subsection (a), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (d)(1)(A), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Deputy Secretary of Defense”.

(34) Section 852 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 130 Stat. 3458; 10 U.S.C. 2302 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(35) Section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1487; 10 U.S.C. 2302 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(36) Section 843 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1487; 10 U.S.C. 2302 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(37) Section 254(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4402; 10 U.S.C. 2302 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(38) Section 802(d) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 2004; 10 U.S.C. 2302 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(39) Section 2304 of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(40) Section 806(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4260; 10 U.S.C. 2304 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(41) Section 821(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 226; 10 U.S.C. 2304 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(42) Section 801(b)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 204; 10 U.S.C. 2304 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(43) Section 817(e) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2326; 10 U.S.C. 2304 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(44) Section 811(e)(1) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 120 Stat. 2326; 10 U.S.C. 2304 note) is amended by striking “Under Secretary

of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(45) Section 875 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2310; 10 U.S.C. 2305 note) is amended—

(A) in subsection (b)(2), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) in subsection (c), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(C) in subsection (d), by striking “The Under Secretary for Acquisition, Technology, and Logistics” and inserting “The Under Secretary of Defense for Research and Engineering”; and

(D) in subsection (e) through (f), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(46) Section 888(b)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2322; 10 U.S.C. 2305 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(47) Section 829(b)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2281; 10 U.S.C. 2306 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(48) Section 2306b(i)(7) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(49) Section 2311(c) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in paragraph (2)(B), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(50) Section 2326(g) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(51) Section 2330 of title 10, United States Code, is amended—

(A) in subsection (a)(1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and

inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) in subsection (a)(3), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(C) in subsection (b)(2), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(D) in subsection (b)(3)(A), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(52) Section 882 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 942; 10 U.S.C. 2330 note) is amended in the matter preceding paragraph (1) by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(53) Section 2334 of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(54) Section 2350a(b)(2) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering” and inserting “Under Secretary of Defense for Acquisition and Sustainment, and the Under Secretary of Defense for Research and Engineering”.

(55) Section 2359(b)(1) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”.

(56) Section 2359b of title 10, United States Code, is amended—

(A) in subsection (a)(1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”; and

(B) in subsection (1)(1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”.

(57) Section 2375 of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(58) Section 874(b)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2310; 10 U.S.C. 2375 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(59) Section 876 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2311; 10 U.S.C. 2377 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(60) Section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 919; 10 U.S.C. 2377 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place such term appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(61) Section 856(a)(2)(B) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 920; 10 U.S.C. 2377 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(62) Section 2399(b)(3) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics,” and inserting “Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,”.

(63) Section 2419(a)(1) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(64) Section 826(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 908; 10 U.S.C. 2430 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(65) Section 827(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 909; 10 U.S.C. 2430 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(66) Section 811(b)(1) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1828; 10 U.S.C. 2430 note) is amended by striking “if the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “if the service acquisition executive, in the case of a major defense acquisition program of the military department, or the Under Secretary of Defense for Acquisition and Sustainment, in the case of a Defense-wide or Defense Agency major defense acquisition program,”.

(67) Section 814 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4528) is amended—

(A) in subsection (b)(2)—

(i) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively;

(ii) by striking subparagraph (A); and

(iii) by inserting before subparagraph (C), as redesignated by clause (i), the following new subparagraphs:

“(A) The Office of the Under Secretary of Defense for Research and Engineering.

“(B) The Office of the Under Secretary of Defense for Acquisition and Sustainment.”; and

(B) in subsection (c)(5), in the flush matter following subparagraph (B), by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics certifies to the congressional defense committees, and includes” and inserting “the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment jointly certify to the congressional defense committees, and include”.

(68) Section 801(a)(1) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2312; 10 U.S.C. 2430 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(69) Section 1675 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 192 Stat. 1131; 10 U.S.C. 2431 note) is amended—

(A) in subsection (a), by striking “The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Vice Chairman of the Joint Chiefs of Staff, acting through the Missile Defense Executive Board” and inserting “The Vice Chairman of the Joint Chiefs of Staff and the chairman of the Missile Defense Executive Board (pursuant to section 1681(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2162)), acting through the Missile Defense Executive Board.”; and

(B) in subsection (b)(2), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “chairman of the Missile Defense Executive Board”.

(70) Section 2431a(b) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(71) Section 2435 of title 10, United States Code, is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” each place it appears and inserting “the Under Secretary of Defense for Acquisition and Sustainment”.

(72) Section 2438(b) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking “Under Secretary of Defense for Acquisition, Technology and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in paragraph (2), by striking “Under Secretary of Defense for Acquisition, Technology and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

Risk  
assessments.

(73) Section 2448b of title 10, United States Code, is amended by striking subsections (a) and (b) and inserting the following new subsections:

“(a) IN GENERAL.—With respect to a major defense acquisition program, the Secretary of Defense shall conduct or approve independent technical risk assessments—

“(1) before any decision to grant Milestone A approval for the program pursuant to section 2366a of this title, that identifies critical technologies and manufacturing processes that need to be matured; and

“(2) before any decision to grant Milestone B approval for the program pursuant to section 2366b of this title, any decision to enter into low-rate initial production or full-rate production, or at any other time considered appropriate by the Secretary, that includes the identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

“(b) GUIDANCE.—The Secretary shall issue guidance and a framework for the conduct, execution, and approval of independent technical risk assessments.”.

(74) Section 2503(b) of title 10, United States Code, is amended—

(A) by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment”; and

(B) by striking “the Under Secretary shall” and inserting “the Under Secretaries shall”.

(75) Section 2508(b) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(76) Section 2521 of title 10, United States Code, is amended—

(A) in subsection (a), by striking “The Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “The Under Secretary of Defense for Research and Engineering”;

(B) in subsection (e)(4)(D), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”; and

(C) in subsection (e)(5), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”.

(77) Section 2533b(k)(2)(A) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(78) Section 2546 of title 10, United States Code, is amended—

(A) in the heading of subsection (a), by striking “UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS” and inserting “UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT”;



(B) in subsection (a), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(C) in subsection (b), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(79) Section 2548 of title 10, United States Code, is amended—

(A) in subsection (a), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (c)(8), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(80) Section 2902(b) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking “Office of the Assistant Secretary of Defense for Research and Engineering” and inserting “Office of the Under Secretary of Defense for Research and Engineering”; and

(B) in paragraph (3), by striking “Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Office of the Under Secretary of Defense for Acquisition and Sustainment”.

(81) Section 2824(d) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 2154; 10 U.S.C. 2911 note) is amended by striking “Under Secretary of Defense” and all that follows through “Environment” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(82) Section 315(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1357; 10 U.S.C. 2911 note) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(83) Section 2926(e)(5)(D) of title 10, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(84) Section 836(a)(2) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1508; 22 U.S.C. 2767 note) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Assistant Secretary of Defense for Research,” and inserting “the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,”.

(85) Section 105(d)(7)(M)(v) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103(d)(7)(M)(v)) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(86) Section 1126(a)(3) of title 31, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(87) Section 11319(d)(4) of title 40, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(88) Section 1302(b)(2)(A)(i) of title 41, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(89) Section 1311(b)(3) of title 41, United States Code, is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(90) Section 7(a)(3) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98f(a)(3)) is amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(91) Section 1412 of the National Defense Authorization Act, 1986 (50 U.S.C. 1521) is amended—

(A) in subsection (f)(1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (g)(2), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment.”

(92) Section 133b(b)(2) of title 10, United States Code, is amended by inserting “appropriate prototyping activities,” after “development.”

(93)(A) Section 5314 of title 5, United States Code, is amended by inserting before the item relating to the Under Secretary of Defense for Acquisition and Sustainment the following new item: “Under Secretary of Defense for Research and Engineering.”

(B) Section 5313 of title 5, United States Code, is amended by striking the item relating to the Under Secretary of Defense for Research and Engineering.

(C) This paragraph shall have no force or effect until the next date on which the Congress confirms an individual to serve as the Under Secretary of Defense for Research and Engineering after the date of enactment of this Act.

(94) Section 338 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1728) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Acquisition and Sustainment”.

(95) Section 136(a)(1) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1317) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Acquisition and Sustainment”.

(96) Section 1652(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2609) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Research and Engineering”.

(97) Section 1689(d) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2631) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Research and Engineering”.

10 USC 2431  
note.

(98) Section 144 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1325) is amended—

(A) in subsection (a), by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Acquisition and Sustainment”; and

(B) in subsection (b)(4), by striking “the Assistant Secretary of Defense for Research and Engineering” and inserting “the Under Secretary of Defense for Research and Engineering”.

(99) Section 838(2)(B) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1509) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Acquisition and Sustainment”.

10 USC 2410p  
note.

(100) Section 802(a)(3)(C) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2410p note) is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “the Under Secretary of Defense for Acquisition and Sustainment”.

**SEC. 903. RETURN TO CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF DEFENSE OF RESPONSIBILITY FOR BUSINESS SYSTEMS AND RELATED MATTERS.**

(a) RETURN OF RESPONSIBILITY.—

(1) IN GENERAL.—Section 142(b)(1) of title 10, United States Code, is amended by striking “systems and” each place it appears in subparagraphs (A), (B), and (C).

(2) CONFORMING AMENDMENTS TO CMO AUTHORITIES.—Section 132a(b) of such title is amended—

(A) in paragraph (2), by striking “performance measurement and management, and business information technology management and improvement activities and programs” and inserting “and performance measurement and management activities and programs”;

(B) by striking paragraphs (4) and (5); and

(C) by redesignating paragraphs (6) and (7) as paragraphs (4) and (5), respectively.

(b) CHIEF DATA OFFICER RESPONSIBILITY FOR DoD DATA SETS.—

10 USC 2223  
note.

(1) IN GENERAL.—In addition to any other functions and responsibilities specified in section 3520(c) of title 44, United States Code, the Chief Data Officer of the Department of Defense shall also be the official in the Department of Defense

with principal responsibility for providing for the availability of common, usable, Defense-wide data sets.

(2) ACCESS TO ALL DOD DATA.—In order to carry out the responsibility specified in paragraph (1), the Chief Data Officer shall have access to all Department of Defense data, including data in connection with warfighting missions and back-office data.

(3) RESPONSIBLE TO CIO.—The Chief Data Officer shall report directly to the Chief Information Officer of the Department of Defense in the performance of the responsibility specified in paragraph (1).

Recommendations.

(4) REPORT.—Not later than December 1, 2019, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth such recommendations for legislative or administrative action as the Secretary considers appropriate to carry out this subsection.

**SEC. 904. ASSESSMENTS OF RESPONSIBILITIES AND AUTHORITIES OF THE CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE.**

(a) IN GENERAL.—The Secretary of Defense shall provide for the conduct of two assessments of the implementation of the position of Chief Management Officer of the Department of Defense pursuant to section 132a of title 10, United States Code, as follows:

(1) DEPARTMENT OF DEFENSE ASSESSMENT.—An assessment conducted by the Secretary or a designee of the Secretary.

(2) INDEPENDENT ASSESSMENT.—An assessment conducted by the Defense Business Board or an appropriate number of individuals selected by the Secretary from among individuals in academia or academic institutions with expertise in public administration and management.

(b) ASSESSMENT ELEMENTS.—Each assessment conducted pursuant to subsection (a) shall include an assessment of the implementation of the position of Chief Management Officer of the Department of Defense, including and taking into account the following:

(1) The extent to which the position has been effective in achieving the service, and exercising the powers and authorities, specified in section 132a of title 10, United States Code

(2) The perspectives of the Under Secretaries of the military departments on the matters described in paragraph (1) based on the experiences of such Under Secretaries as the Chief Management Officer of a military department

(3) The extent to which the ingrained organizational culture of the Department of Defense poses fundamental structural challenges for the position of Chief Management Officer of the Department, irrespective of the individual appointed to the position.

(4) The observations of the Comptroller General of the United States on progress and challenges during the prior 10 years in the establishment of positions of Chief Management Officer in agencies throughout the Executive Branch, including in the Department of Defense and in other Federal agencies.

(5) An identification and comparison of best practices in the private sector and the public sector for the responsibilities and authorities of Chief Management Officers.

(6) An identification and assessment of differences in responsibilities and authorities of the Chief Management Office of the Department, the Chief Operating Officer of the Department of Defense, and the Deputy Secretary of Defense.

(c) MODIFICATION OF RESPONSIBILITIES AND AUTHORITIES.—The Secretary shall identify such modifications, if any, to the responsibilities and authorities of the Chief Management Officer of the Department (whether specified in statute or otherwise) as the Secretary considers appropriate in light of the assessments conducted pursuant to subsection (a). In identifying any such modification, the Secretary shall develop recommendations for such legislative action as the Secretary considers appropriate to implement such modification.

Recommendations.

(d) REPORT.—Not later than March 15, 2020, the Secretary shall submit to the congressional defense committees a report on the assessments conducted pursuant to subsection (a) and on any modifications to the responsibilities and authorities of the Chief Management Officer of the Department identified pursuant to subsection (c). The report shall include the following:

(1) A description and the results of the assessment conducted pursuant to subsection (a).

(2) Any modifications of the responsibilities and authorities of the Chief Management Officer identified pursuant to subsection (c), including recommendations developed for legislative action to implement such recommendations and a proposed timeline for the implementation of such recommendations.

**SEC. 905. SENIOR MILITARY ADVISOR FOR CYBER POLICY AND DEPUTY PRINCIPAL CYBER ADVISOR.**

10 USC 391 note.

(a) ADVISOR.—

(1) IN GENERAL.—The Under Secretary of Defense for Policy shall, acting through the Joint Staff, designate an officer within the Office of the Under Secretary of Defense for Policy to serve within that Office as the Senior Military Advisor for Cyber Policy, and concurrently, as the Deputy Principal Cyber Advisor.

Designation.

(2) OFFICERS ELIGIBLE FOR DESIGNATION.—The officer designated pursuant to this subsection shall be designated from among commissioned regular officers of the Armed Forces in a general or flag officer grade who are qualified for designation

(3) GRADE.—The officer designated pursuant to this subsection shall have the grade of major general or rear admiral (upper half) while serving in that position, without vacating the officer's permanent grade.

(b) SCOPE OF POSITIONS.—

(1) IN GENERAL.—The officer designated pursuant to subsection (a) is each of the following:

(A) The Senior Military Advisor for Cyber Policy to the Under Secretary of Defense for Policy.

(B) The Deputy Principal Cyber Advisor to the Secretary of Defense.

(2) DIRECTION AND CONTROL AND REPORTING.—In carrying out duties under this section, the officer designated pursuant to subsection (a) shall be subject to the authority, direction, and control of, and shall report directly to, the following:

(A) The Under Secretary with respect to Senior Military Advisor for Cyber Policy duties.

(B) The Principal Cyber Advisor with respect to Deputy Principal Cyber Advisor duties.

(c) DUTIES.—

(1) DUTIES AS SENIOR MILITARY ADVISOR FOR CYBER POLICY.—The duties of the officer designated pursuant to subsection (a) as Senior Military Advisor for Cyber Policy are as follows:

(A) To serve as the principal uniformed military advisor on military cyber forces and activities to the Under Secretary of Defense for Policy.

(B) To assess and advise the Under Secretary on aspects of policy relating to military cyberspace operations, resources, personnel, cyber force readiness, cyber workforce development, and defense of Department of Defense networks.

(C) To advocate, in consultation with the Joint Staff, and senior officers of the Armed Forces and the combatant commands, for consideration of military issues within the Office of the Under Secretary of Defense for Policy, including coordination and synchronization of Department cyber forces and activities.

(D) To maintain open lines of communication between the Chief Information Officer of the Department of Defense, senior civilian leaders within the Office of the Under Secretary, and senior officers on the Joint Staff, the Armed Forces, and the combatant commands on cyber matters, and to ensure that military leaders are informed on cyber policy decisions.

(2) DUTIES AS DEPUTY PRINCIPAL CYBER ADVISOR.—The duties of the officer designated pursuant to subsection (a) as Deputy Principal Cyber Advisor are as follows:

(A) To synchronize, coordinate, and oversee implementation of the Cyber Strategy of the Department of Defense and other relevant policy and planning.

(B) To advise the Secretary of Defense on cyber programs, projects, and activities of the Department, including with respect to policy, training, resources, personnel, manpower, and acquisitions and technology.

(C) To oversee implementation of Department policy and operational directives on cyber programs, projects, and activities, including with respect to resources, personnel, manpower, and acquisitions and technology.

(D) To assist in the overall supervision of Department cyber activities relating to offensive missions.

(E) To assist in the overall supervision of Department defensive cyber operations, including activities of component-level cybersecurity service providers and the integration of such activities with activities of the Cyber Mission Force.

(F) To advise senior leadership of the Department on, and advocate for, investment in capabilities to execute Department missions in and through cyberspace.

(G) To identify shortfalls in capabilities to conduct Department missions in and through cyberspace, and make recommendations on addressing such shortfalls in the Program Budget Review process.

(H) To coordinate and consult with stakeholders in the cyberspace domain across the Department in order to identify other issues on cyberspace for the attention of senior leadership of the Department.

(I) On behalf of the Principal Cyber Advisor, to lead the cross-functional team established pursuant to 932(c)(3) of the National Defense Authorization Act for Fiscal Year 2014 (10 U.S.C. 2224 note) in order to synchronize and coordinate military and civilian cyber forces and activities of the Department.

**SEC. 906. EXCLUSION FROM LIMITATIONS ON PERSONNEL IN THE OFFICE OF THE SECRETARY OF DEFENSE AND DEPARTMENT OF DEFENSE HEADQUARTERS OF FELLOWS APPOINTED UNDER THE JOHN S. MCCAIN DEFENSE FELLOWS PROGRAM.**

Section 932(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1938; 10 U.S.C. 1580 note prec.) is amended by adding at the end the following new sentence: “An individual appointed pursuant to this paragraph shall not count against the limitation on the number of Office of the Secretary of Defense personnel in section 143 of title 10, United States Code, or any similar limitation in law on the number of personnel in headquarters of the Department that would otherwise apply to the office or headquarters to which appointed.”

## **Subtitle B—Organization and Management of Other Department of Defense Offices and Elements**

**SEC. 911. CODIFICATION OF ASSISTANT SECRETARIES FOR ENERGY, INSTALLATIONS, AND ENVIRONMENT OF THE ARMY, NAVY, AND AIR FORCE.**

(a) ASSISTANT SECRETARY OF THE ARMY.—Section 7016(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(6)(A) One of the Assistant Secretaries shall be the Assistant Secretary for Energy, Installations, and Environment.

“(B) The principal duty of the Assistant Secretary for Energy, Installations, and Environment shall be the overall supervision of energy, installation, and environment matters for the Department of the Army.”

(b) ASSISTANT SECRETARY OF THE NAVY.—Section 8016(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(5)(A) One of the Assistant Secretaries shall be the Assistant Secretary for Energy, Installations, and Environment.

“(B) The principal duty of the Assistant Secretary for Energy, Installations, and Environment shall be the overall supervision of energy, installation, and environment matters for the Department of the Navy.”

(c) ASSISTANT SECRETARY OF THE AIR FORCE.—Section 9016(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(5)(A) One of the Assistant Secretaries shall be the Assistant Secretary for Energy, Installations, and Environment.

“(B) The principal duty of the Assistant Secretary for Energy, Installations, and Environment shall be the overall supervision of energy, installation, and environment matters for the Department of the Air Force.”.

## Subtitle C—Other Department of Defense Organization and Management Matters

### SEC. 921. PROHIBITION ON OWNERSHIP OR TRADING OF STOCKS IN CERTAIN COMPANIES BY CERTAIN OFFICIALS OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Chapter 49 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 988.

#### “§ 988. Prohibition on ownership or trading of stocks in certain companies by certain officials of the Department of Defense

Time period.

“(a) PROHIBITION.—Except as provided in subsection (b), a covered official of the Department of Defense may not own or purchase publicly traded stock of a company if that company is one of the 10 entities awarded the most amount of contract funds by the Department of Defense in a fiscal year during the five preceding fiscal years.

“(b) EXCEPTIONS.—This section shall not apply to the purchase or ownership of a publicly traded stock of a company otherwise described in subsection (a) as follows:

“(1) If the aggregate market value of the holdings of the covered official, and the spouse and minor children of the covered official, in the stock of that company, both before and after purchase (in the case of a purchase), does not exceed the de minimis threshold established in section 2640.202(a)(2) of title 5, Code of Federal Regulations.

“(2) If the stock is purchased and owned as part of an Excepted Investment Fund or mutual fund.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘covered official of the Department of Defense’ means any of the following:

“(A) A civilian appointed to a position in the Department of Defense by the President, by and with the advice and consent of the Senate.

“(B) If serving in a key acquisition position (as designated by the Secretary of Defense or the Secretary concerned for purposes of this section), the following:

“(i) A member of the armed forces in a grade above O–6.

“(ii) A civilian officer or employee in a Senior Executive Service, Senior-Level, or Scientific or Professional position.

“(2) The term ‘Excepted Investment Fund’ means a widely-held investment fund described in section 102(f)(8) of the Ethics in Government Act of 1978 (5 U.S.C. App.).”.



(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 49 of such title is amended by adding at the end the following new item: 10 USC 971 prec.

“988. Prohibition on ownership or trading of stocks in certain companies by certain officials of the Department of Defense.”.

**SEC. 922. LIMITATION ON CONSOLIDATION OF DEFENSE MEDIA ACTIVITY.**

(a) LIMITATION.—The Secretary of Defense may not take any action to consolidate the Defense Media Activity until a period of 60 days has elapsed following the date on which the Secretary of Defense submits the report required under subsection (b). Time period.

(b) REPORT REQUIRED.—The Secretary of Defense shall submit to the congressional defense committees a report that includes the following:

(1) Any current or future plans to restructure, reduce, or eliminate the functions, personnel, facilities, or capabilities of the Defense Media Activity, including the timelines associated with such plans. Plans.

(2) Any modifications that have been made, or that may be made, to personnel compensation or funding accounts in preparation for, or in response to, efforts to consolidate the Defense Media Activity.

(3) Any contractual agreements that have been entered into to consolidate or explore the consolidation of the Defense Media Activity. Contracts.

(4) Any Department of Defense directives or Administration guidance relating to efforts to consolidate the Defense Media Activity, including any directives or guidance intended to inform or instruct such efforts. Directives. Guidance.

(c) CONSOLIDATE DEFINED.—In this section, the term “consolidate”, means any action to reduce the functions, personnel, facilities, or capabilities of the Defense Media Activity.

**SEC. 923. REPORT ON RESOURCES TO IMPLEMENT THE CIVILIAN CASUALTY POLICY OF THE DEPARTMENT OF DEFENSE.**

Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report, in unclassified form, on the resources necessary over the period of the future-years defense plan for fiscal year 2020 under section 221 of title 10, United States Code, to fulfill the requirements of section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1939; 10 U.S.C. 134 note) and fully implement policies developed as a result of such section.

**Subtitle D—United States Space Force**

United States  
Space Force Act.

**SEC. 951. SHORT TITLE.**

10 USC 101 note.

This subtitle may be cited as the “United States Space Force Act”.

**SEC. 952. THE SPACE FORCE.**

10 USC 9081  
note.

(a) REDESIGNATION.—The Air Force Space Command is hereby redesignated as the United States Space Force (USSF).

(b) AUTHORITY.—Title 10, United States Code, is amended—

(1) in chapter 907 of part I of subtitle D, by redesignating sections 9067, 9069, 9074, 9075, 9081, and 9084 as sections 9063, 9064, 9065, 9066, 9067, and 9068, respectively;

(2) by adding at the end of such part the following new chapter:

10 USC 9081 prec.

**“CHAPTER 908—THE SPACE FORCE**

“Sec.

“9081. The United States Space Force.

“9082. Chief of Space Operations.

“9083. Officer career field for space.”;

(3) by transferring section 2279c to chapter 908, as so added, and redesignating such section as section 9081; and

(4) by amending such section 9081 to read as follows:

**“§ 9081. The United States Space Force**

“(a) ESTABLISHMENT.—There is established a United States Space Force as an armed force within the Department of the Air Force.

“(b) COMPOSITION.—The Space Force shall be composed of the following:

“(1) The Chief of Space Operations.

“(2) The space forces and such assets as may be organic therein.

“(c) FUNCTIONS.—The Space Force shall be organized, trained, and equipped to provide—

“(1) freedom of operation for the United States in, from, and to space; and

“(2) prompt and sustained space operations.

“(d) DUTIES.—It shall be the duty of the Space Force to—

“(1) protect the interests of the United States in space;

“(2) deter aggression in, from, and to space; and

“(3) conduct space operations.”.

(c) SPACE FORCE AS AN ARMED FORCE.—Section 101(a)(4) of title 10, United States Code, is amended by inserting “Space Force,” after “Marine Corps,”.

10 USC 9081 note. Effective date.

(d) MEMBERS.—

(1) IN GENERAL.—Effective as of the date of the enactment of this Act, there shall be assigned to the Space Force such members of the Air Force as the Secretary of the Air Force shall specify.

(2) NO AUTHORIZATION OF ADDITIONAL MILITARY BILLETS.—The Secretary shall carry out this subsection within military personnel of the Air Force otherwise authorized by this Act. Nothing in this subsection shall be construed to authorize additional military billets for the purposes of, or in connection with, the establishment of the Space Force.

(e) OFFICER CAREER FIELD FOR SPACE.—Section 9068 of title 10, United States Code (as redesignated by subsection (b)(1)), is hereby transferred to the end of chapter 908 of such title (as added by subsection (b)(2)) and redesignated as section 9083.

(f) TABLES OF CHAPTERS.—The tables of chapters at the beginning of subtitle D of title 10, United States Code, and part I of such subtitle are each amended by inserting after the item relating to chapter 907 the following new item:

10 USC 9011 prec.

**“908. The Space Force .....9081.”.**

(g) CONFORMING CLERICAL AMENDMENT TO CHAPTER 907.—The table of sections at the beginning of chapter 907 of title 10, United States Code, is amended by striking the items relating to sections 9067, 9069, 9074, 9075, 9081, and 9084 and inserting the following new items:

10 USC 9061  
prec.

- “9063. Designation: officers to perform certain professional functions.
- “9064. Air Force nurses: Chief; appointment.
- “9065. Commands: territorial organization.
- “9066. Regular Air Force: composition.
- “9067. Assistant Surgeon General for Dental Services.”.

**SEC. 953. CHIEF OF SPACE OPERATIONS.**

(a) CHIEF.—Chapter 908 of title 10, United States Code (as added by section 952 of this Act), is amended by inserting after section 9081 the following new section:

**“§ 9082. Chief of Space Operations**

10 USC 9082.

“(a) APPOINTMENT.—(1) There is a Chief of Space Operations, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. The Chief serves at the pleasure of the President.

President.

“(2) The Chief shall be appointed for a term of four years. In time of war or during a national emergency declared by Congress, the Chief may be reappointed for a term of not more than four years.

Time period.

“(b) GRADE.—The Chief, while so serving, has the grade of general without vacating the permanent grade of the officer.

“(c) RELATIONSHIP TO THE SECRETARY OF THE AIR FORCE.—Except as otherwise prescribed by law and subject to section 9013(f) of this title, the Chief performs the duties of such position under the authority, direction, and control of the Secretary of the Air Force and is directly responsible to the Secretary.

“(d) DUTIES.—Subject to the authority, direction, and control of the Secretary of the Air Force, the Chief shall—

“(1) preside over the Office of the Chief of Space Operations;

“(2) transmit the plans and recommendations of the Office of the Chief of Space Operations to the Secretary and advise the Secretary with regard to such plans and recommendations;

Plans.  
Recommendations.

“(3) after approval of the plans or recommendations of the Office of the Chief of Space Operations by the Secretary, act as the agent of the Secretary in carrying them into effect;

“(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Space Force as the Secretary determines; and

“(5) perform such other military duties, not otherwise assigned by law, as are assigned to the Chief by the President, the Secretary of Defense, or the Secretary of the Air Force.

“(e) JOINT CHIEFS OF STAFF.—(1) Commencing one year after the date of the enactment of the United States Space Force Act, the Chief of Space Operations shall be a member of the Joint Chiefs of Staff.

Effective date.

“(2) To the extent that such action does not impair the independence of the Chief in the performance of the duties of the Chief as a member of the Joint Chiefs of Staff pursuant to paragraph (1), the Chief shall inform the Secretary of the Air Force regarding military advice rendered by members of the Joint

Chiefs of Staff on matters affecting the Department of the Air Force.

“(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief shall keep the Secretary of the Air Force fully informed of significant military operations affecting the duties and responsibilities of the Secretary.”.

10 USC 9082  
note.  
Effective date.

(b) SERVICE.—

(1) INCUMBENT.—The individual serving as Commander of the Air Force Space Command as of the day before the date of the enactment of this Act may serve as the Chief of Space Operations under subsection (a) of section 9082 of title 10, United States Code (as added by subsection (a) of this section), after that date without further appointment as otherwise provided for by subsection (a) of such section 9082.

Time period.  
Effective date.

(2) U.S. SPACE COMMAND.—During the one-year period beginning on the date of the enactment of this Act, the Secretary of Defense may authorize an officer serving as the Chief of Space Operations to serve concurrently as the Commander of the United States Space Command, without further appointment.

Effective date.  
10 USC 151 note.

(c) JOINT CHIEFS OF STAFF MATTERS.—Effective on the date that is one year after the date of the enactment of this Act, section 151(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(8) The Chief of Space Operations.”.

#### SEC. 954. SPACE FORCE ACQUISITION COUNCIL.

(a) IN GENERAL.—Chapter 903 of title 10, United States Code, is amended—

(1) by redesignating section 9021 as section 9021a; and

(2) by inserting after section 9020 the following new section 9021:

10 USC 9021.

#### “§ 9021. Space Force Acquisition Council

“(a) ESTABLISHMENT.—There is in the Office of the Secretary of the Air Force a council to be known as the ‘Space Force Acquisition Council’ (in this section referred to as the ‘Council’).

“(b) MEMBERS.—The members of the Council are as follows:

“(1) The Under Secretary of the Air Force.

“(2) The Assistant Secretary of the Air Force for Space Acquisition and Integration, who shall act as chair of the Council.

“(3) The Assistant Secretary of Defense for Space Policy.

“(4) The Director of the National Reconnaissance Office.

“(5) The Chief of Space Operations.

“(6) The Commander of the United States Space Command.

“(c) DUTIES.—The Council shall oversee, direct, and manage acquisition and integration of the Air Force for space systems and programs in order to ensure integration across the national security space enterprise.

“(d) MEETINGS.—The Council shall meet not less frequently than monthly.

“(e) REPORTS.—Not later than 30 days after the end of each calendar year quarter through the first calendar year quarter of 2025, the Council shall submit to the congressional defense committees a report on the activities of the Council during the calendar

year quarter preceding the calendar year quarter in which such report is submitted.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 903 of such title is amended by striking the item relating to section 9021 and inserting the following new items:

10 USC 9011  
prec.

“9021. Space Force Acquisition Council.

“9021a. Air Force Reserve Forces Policy Committee.”

**SEC. 955. ASSISTANT SECRETARY OF DEFENSE FOR SPACE POLICY.**

(a) IN GENERAL.—Section 138(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(5) One of the Assistant Secretaries is the Assistant Secretary of Defense for Space Policy. The principal duty of the Assistant Secretary shall be the overall supervision of policy of the Department of Defense for space warfighting.”

(b) ELEMENTS OF OFFICE.—

(1) DEVELOPMENT OF RECOMMENDATIONS.—The Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center on the development of recommendations as to the appropriate elements of the Office of the Assistant Secretary of Defense for Space Policy, including, in particular, whether the elements of the Office should include elements on space that are currently assigned to the Office of the Under Secretary of Defense for Intelligence or the Military Intelligence Program.

Contracts.

(2) TRANSMITTAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall transmit to the Committees on Armed Services of the Senate and the House of Representatives the recommendations developed pursuant to paragraph (1), together with an assessment of such recommendations by the Secretary.

Deadline.

**SEC. 956. ASSISTANT SECRETARY OF THE AIR FORCE FOR SPACE ACQUISITION AND INTEGRATION.**

10 USC 9016  
note.

(a) REDESIGNATION OF PRINCIPAL ASSISTANT FOR SPACE AS ASSISTANT SECRETARY FOR SPACE ACQUISITION AND INTEGRATION.—

(1) IN GENERAL.—The Principal Assistant to the Secretary of the Air Force for Space is hereby redesignated as the Assistant Secretary of the Air Force for Space Acquisition and Integration.

(2) REFERENCES.—Any reference to the Principal Assistant to the Secretary of the Air Force for Space in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the Assistant Secretary of the Air Force for Space Acquisition and Integration.

(b) CODIFICATION OF POSITION AND RESPONSIBILITIES.—

(1) IN GENERAL.—Section 9016 of title 10, United States Code, as amended by subtitle B of this title, is further amended—

(A) in subsection (a), by striking “four” and inserting “five”; and

(B) in subsection (b), by adding at the end the following new paragraph:

“(6)(A) One of the Assistant Secretaries is the Assistant Secretary of the Air Force for Space Acquisition and Integration.

“(B) Subject to the authority, direction, and control of the Secretary of the Air Force, the Assistant Secretary shall do as follows:

“(i) Be responsible for all architecture and integration of the Air Force for space systems and programs, including in support of the Chief of Space Operations under section 9082 of this title.

“(ii) Act as the chair of the Space Force Acquisition Council under section 9021 of this title.

“(iii) Advise the service acquisition executive of the Air Force with responsibility for space systems and programs (including for all major defense acquisition programs under chapter 144 of this title for space) on the acquisition of such systems and programs by the Air Force.

“(iv) Oversee and direct each of the following:

“(I) The Space Rapid Capabilities Office under section 2273a of this title.

“(II) The Space and Missile Systems Center.

“(III) The Space Development Agency.

“(v) Advise and synchronize acquisition projects for all space systems and programs of the Air Force, including projects for space systems and programs responsibility for which is transferred to the Assistant Secretary pursuant to section 956(b)(3) of the United States Space Force Act.

Effective date.

“(vi) Effective as of October 1, 2022, in accordance with section 957 of that Act, serve as the Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs.”.

(2) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Assistant Secretaries of the Air Force and inserting the following new item:

“Assistant Secretaries of the Air Force (5).”.

10 USC 9016  
note.  
Effective date.

(3) TRANSFER OF ACQUISITION PROJECTS FOR SPACE SYSTEMS AND PROGRAMS.—Effective October 1, 2022, the Secretary of the Air Force shall transfer to the Assistant Secretary of the Air Force for Space Acquisition and Integration under paragraph (6) of section 9016(b) of title 10, United States Code (as added by this subsection), responsibility for architecture and integration of any acquisition projects for space systems and programs of the Air Force that are under the oversight or direction of the Assistant Secretary of the Air Force for Acquisition as of September 30, 2022.

Effective date.  
10 USC 9016  
note.

**SEC. 957. SERVICE ACQUISITION EXECUTIVE OF THE DEPARTMENT OF THE AIR FORCE FOR SPACE SYSTEMS AND PROGRAMS.**

(a) IN GENERAL.—Effective October 1, 2022, there shall be within the Department of the Air Force a Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs.

(b) SERVICE.—

(1) IN GENERAL.—Effective as of October 1, 2022, and subject to paragraph (2), the individual serving as Assistant Secretary of the Air Force for Space Acquisition and Integration under paragraph (6) of section 9016(b) of title 10, United States Code (as added by section 1832(b) of this Act), shall also serve

as the Service Acquisition Executive for Space Systems and Programs.

(2) **INCUMBENT.**—The individual serving as Assistant Secretary of the Air Force for Space Acquisition and Integration as of October 1, 2022, may also serve as the Service Acquisition Executive for Space Systems and Programs pursuant to paragraph (1) only if appointed as the Service Acquisition Executive for Space Systems and Programs by the President, by and with the advice and consent of the Senate, pursuant to a nomination submitted to the Senate on or after that date.

(c) **AUTHORITIES AND RESPONSIBILITIES.**—

(1) **IN GENERAL.**—The Service Acquisition Executive for Space Systems and Programs shall have within the Department of the Air Force all the authorities and responsibilities of a service acquisition executive under section 1704 of title 10, United States Code, and other applicable law, for the Department of the Air Force with respect to space systems and programs.

(2) **SEPARATE SAE WITHIN THE AIR FORCE.**—The Service Acquisition Executive for Space Systems and Programs shall be in addition to the service acquisition executive in the Department of the Air Force for all acquisition matters of the Department of the Air Force other than with respect to space systems and programs.

(3) **GUIDANCE ON RELATIONSHIP AMONG SAES.**—Not later than October 1, 2022, and from time to time thereafter, the Secretary of the Air Force shall issue guidance for the Department of the Air Force on the authorities and responsibilities of the Service Acquisition Executive for Space Systems and Programs and the authorities and responsibilities of the service acquisition executive of the Department for all acquisition matters of the Department other than with respect to space systems and programs.

Deadline.

**SEC. 958. CONFORMING AMENDMENTS AND CLARIFICATION OF AUTHORITIES.**

(a) **CONFORMING AMENDMENTS.**—Title 10, United States Code, is amended as follows:

(1) In section 101(a)(9)(C), by inserting “and the Space Force” before the semicolon.

(2) In section 2273a—

(A) in subsection (a), by striking “Air Force Space Command” and inserting “Space Force”; and

(B) in subsection (b), by striking “Commander of the Air Force Space Command” and inserting “Chief of Space Operations”.

(b) **CLARIFICATION OF AUTHORITIES.**—

(1) **IN GENERAL.**—Except as specifically provided by this subtitle or the amendments made by this subtitle—

(A) a member of the Space Force shall be treated as a member of the Air Force for the purpose of the application of any provision of law, including provisions of law relating to pay, benefits, and retirement; and

(B) a civilian employee of the Space Force shall be treated as a civilian employee of the Air Force for the purpose of the application of any provision of law, including provisions of law relating to pay, benefits, and retirement.

10 USC 9081  
note.

(2) APPOINTMENT AND ENLISTMENT.—For purposes of the appointment or enlistment of individuals as members of the Space Force pending the integration of the Space Force into the laws providing for the appointment or enlistment of individuals as members of the Armed Forces, appointments and enlistments of individuals as members of the Armed Forces in the Space Force may be made in the same manner in which appointments and enlistments of individuals as members of the Armed Forces in the other Armed Forces may be made by law.

10 USC 9081  
note.

**SEC. 959. EFFECTS ON MILITARY INSTALLATIONS.**

Nothing in this subtitle, or the amendments made by this subtitle, shall be construed to authorize or require the relocation of any facility, infrastructure, or military installation of the Air Force.

**SEC. 960. AVAILABILITY OF FUNDS.**

(a) IN GENERAL.—Subject to subsection (b), amounts authorized to be appropriated for fiscal year 2020 by this Act and available for the Air Force may be obligated and expended for programs, projects, and activities for space, including personnel and acquisition programs, projects, and activities, for and in connection with the establishment of the Space Force and the discharge of the other requirements of this title and the amendments made by this subtitle.

(b) LIMITATION.—The total amount obligated and expended in fiscal year 2020 from amounts authorized to be appropriated by this Act for and in connection with the establishment of the Space Force and the discharge of the requirements described in subsection (a) may not exceed the total amount requested for the Space Force in the budget of the President for fiscal year 2020, as submitted to Congress pursuant to section 1105(a) of title 10, United States Code.

Deadlines.  
10 USC 9081  
note.

**SEC. 961. IMPLEMENTATION.**

(a) REQUIREMENT.—Except as specifically provided by this subtitle, the Secretary of the Air Force shall implement this subtitle, and the amendments made by this subtitle, by not later than 18 months after the date of the enactment of this Act.

(b) BRIEFINGS.—Not later than 60 days after the date of the enactment of this Act, and every 60 days thereafter until March 31, 2023, the Secretary of the Air Force and the Chief of Space Operations shall jointly provide to the congressional defense committees a briefing on the status of the implementation of the Space Force pursuant to this subtitle and the amendments made by this subtitle. Each briefing shall address the current missions, operations and activities, manpower requirements and status, and budget and funding requirements and status of the Space Force, and such other matters with respect to the implementation and operation of the Space Force as the Secretary and the Chief jointly consider appropriate to keep Congress fully and currently informed on the status of the implementation of the Space Force.



**TITLE X—GENERAL PROVISIONS**

## Subtitle A—Financial Matters

- Sec. 1001. General transfer authority.
- Sec. 1002. Defense Business Audit Remediation Plan.
- Sec. 1003. Financial improvement and audit remediation plan.
- Sec. 1004. Reporting requirements relating to Department of Defense audits.
- Sec. 1005. Inclusion of certain military construction projects in annual reports on unfunded priorities of the Armed Forces and the combatant commands.
- Sec. 1006. Prohibition on delegation of responsibility for submittal to Congress of Out-Year Unconstrained Total Munitions Requirements and Out-Year Inventory numbers.
- Sec. 1007. Annual budget justification display for service-common and other support and enabling capabilities for special operations forces.
- Sec. 1008. Element in annual reports on the Financial Improvement and Audit Remediation Plan on activities with respect to classified programs.
- Sec. 1009. Plan of the Department of Defense for financial management information.
- Sec. 1010. Update of authorities and renaming of Department of Defense Acquisition Workforce Development Fund.
- Sec. 1011. Transparency of accounting firms used to support Department of Defense audit.
- Sec. 1012. Modification of required elements of annual reports on emergency and extraordinary expenses of the Department of Defense.

## Subtitle B—Counterdrug Activities

- Sec. 1021. Modification of authority to support a unified counterdrug and counterterrorism campaign in Colombia.
- Sec. 1022. Extension of authority for joint task forces to provide support to law enforcement agencies conducting counter-terrorism activities.
- Sec. 1023. Sense of Congress regarding Department of Defense counterdrug activities in the transit zone and Caribbean basin.
- Sec. 1024. Assessment of impact of any planned or proposed border wall on volume of illegal narcotics.

## Subtitle C—Naval Vessels

- Sec. 1031. Modification of authority to purchase vessels using funds in National Defense Sealift Fund.
- Sec. 1032. Use of National Defense Sealift Fund for procurement of two used vessels.
- Sec. 1033. Transportation by sea of supplies for the Armed Forces and Defense Agencies.
- Sec. 1034. Senior Technical Authority for each naval vessel class.
- Sec. 1035. Permanent authority for sustaining operational readiness of littoral combat ships on extended deployment.
- Sec. 1036. Formal training for shipboard system programs of record.
- Sec. 1037. Report on shipbuilder training and the defense industrial base.
- Sec. 1038. Use of competitive procedures for CVN–80 and CVN–81 dual aircraft carrier contract.
- Sec. 1039. Report on expanding naval vessel maintenance.

## Subtitle D—Counterterrorism

- Sec. 1041. Modification of support of special operations to combat terrorism.
- Sec. 1042. Extension of prohibition on use of funds for transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, to certain countries.
- Sec. 1043. Extension of prohibition on use of funds for transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, to the United States.
- Sec. 1044. Extension of prohibition on use of funds to construct or modify facilities in the United States to house detainees transferred from United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1045. Extension of prohibition on use of funds to close or relinquish control of United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1046. Chief Medical Officer at United States Naval Station, Guantanamo Bay, Cuba.
- Sec. 1047. Independent assessment on gender and countering violent extremism.

## Subtitle E—Miscellaneous Authorities and Limitations

- Sec. 1051. Scheduling of Department of Defense executive aircraft controlled by Secretaries of military departments.

- Sec. 1052. Explosive ordnance defense disposal program.
- Sec. 1053. Technical correction and extension of reporting requirement regarding enhancement of information sharing and coordination of military training between Department of Homeland Security and Department of Defense.
- Sec. 1054. Notification on the provision of defense sensitive support.
- Sec. 1055. Revision to authorities relating to mail service for members of the Armed Forces and Department of Defense civilians overseas.
- Sec. 1056. Access to and use of military post offices by United States citizens employed overseas by the North Atlantic Treaty Organization who perform functions in support of military operations of the Armed Forces.
- Sec. 1057. Expenditure of funds for Department of Defense intelligence and counterintelligence activities.
- Sec. 1058. Limitation on use of funds for the inactivation of Army watercraft units.

## Subtitle A—Financial Matters

### SEC. 1001. GENERAL TRANSFER AUTHORITY.

#### (a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—

Determination.

(1) AUTHORITY.—Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2020 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) LIMITATION.—Except as provided in paragraph (3), the total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed \$4,000,000,000.

(3) EXCEPTION FOR TRANSFERS BETWEEN MILITARY PERSONNEL AUTHORIZATIONS.—A transfer of funds between military personnel authorizations under title IV shall not be counted toward the dollar limitation in paragraph (2).

#### (b) LIMITATIONS.—The authority provided by subsection (a) to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

### SEC. 1002. DEFENSE BUSINESS AUDIT REMEDIATION PLAN.

(a) IN GENERAL.—Chapter 9A of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 240g.

#### “§ 240g. Defense Business Audit Remediation Plan

“(a) IN GENERAL.—The Secretary of Defense shall maintain a plan, to be known as the ‘Defense Business Systems Audit Remediation Plan’. Such plan shall include a current accounting of the defense business systems of the Department of Defense

that will be introduced, replaced, updated, modified, or retired in connection with the audit of the full financial statements of the Department, including a comprehensive roadmap that displays—

“(1) in-service, retirement, and other pertinent dates for affected defense business systems;

“(2) current cost-to-complete estimates for each affected defense business system; and

“(3) dependencies both between the various defense business systems and between the introduction, replacement, update, modification, and retirement of such systems.

“(b) REPORT AND BRIEFING REQUIREMENTS.—

“(1) ANNUAL REPORT.—Not later than June 30, 2020, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees an updated report on the Defense Business Systems Audit Remediation Plan under subsection (a).

“(2) SEMIANNUAL BRIEFINGS.—Not later than January 31 and June 30 each year, the Secretary shall provide to the congressional defense committees a briefing on the status of the Defense Business Systems Audit Remediation Plan. Such briefing shall include a description of any updates to the defense business systems roadmap referred to in subsection (a).

“(c) DEFENSE BUSINESS SYSTEM.—In this section, the term ‘defense business system’ has the meaning given such term in section 2222(i)(1)(A) of this title.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“240g. Defense Business Audit Remediation Plan.”

**SEC. 1003. FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION PLAN.**

(a) ELEMENTS OF ANNUAL REPORT.—Subsection (b)(1)(B) of section 240b of title 10, United States Code, is amended—

(1) in clause (vii)—

(A) by striking “or if less than 50 percent of the audit remediation services”; and

(B) by striking “and audit remediation activities”; and

(2) in clause (viii), by striking “or if less than 25 percent of the audit remediation services”.

(b) SEMIANNUAL BRIEFINGS.—Subsection (b)(2) of such section is amended by striking “or audit remediation”.

(c) AUDIT REMEDIATION SERVICES.—Subsection (b) of such section is further amended—

(1) in paragraph (1)(B), by adding at the end the following new clauses:

“(ix) If less than 50 percent of the audit remediation services under contract, as described in the briefing required under paragraph (2)(B), are being performed by individual professionals meeting the qualifications described in subsection (c), a detailed description of the risks associated with the risks of the acquisition strategy of the Department with respect to conducting audit remediation activities and an explanation of how the strategy complies with the policies expressed by Congress.

Certification.

“(x) If less than 25 percent of the audit remediation services under contract, as described in the briefing required under paragraph (2)(B), are being performed by individual professionals meeting the qualifications described in subsection (c), a written certification that the staffing ratio complies with commercial best practices and presents no increased risk of delay in the Department’s ability to achieve a clean audit opinion.”; and

(2) in paragraph (2)—

(A) by striking “Not later” and inserting “(A) Not later”;

and

(B) by adding at the end the following new subparagraph:

Deadlines.  
Briefings.

“(B) Not later than January 31 and June 30 each year, the Under Secretary of Defense (Comptroller) and the comptrollers of the military departments shall provide a briefing to the congressional defense committees on the status of the corrective action plan. Such briefing shall include both the absolute number and percentage of personnel performing the amount of audit remediation services being performed by professionals meeting the qualifications described in subsection (c).”.

(d) SELECTION OF AUDIT REMEDIATION SERVICES.—Such section is further amended by adding at the end the following new subsection:

“(c) SELECTION OF AUDIT REMEDIATION SERVICES.—The selection of audit remediation service providers shall be based, among other appropriate criteria, on qualifications, relevant experience, and capacity to develop and implement corrective action plans to address internal control and compliance deficiencies identified during a financial statement or program audit.”.

**SEC. 1004. REPORTING REQUIREMENTS RELATING TO DEPARTMENT OF DEFENSE AUDITS.**

(a) ANNUAL REPORT.—

(1) IN GENERAL.—Chapter 9A of title 10, United States Code, as amended by section 1002 is further amended by adding at the end the following new section:

10 USC 240h.

**“§ 240h. Annual report on auditable financial statements**

“(a) IN GENERAL.—Not later than January 30 of each year, the Secretary of Defense shall submit to the congressional defense committees a report that includes a ranking of all of the military departments and Defense Agencies in order of how advanced each such department and Agency is in achieving auditable financial statements, as required by law. In preparing the report, the Secretary shall seek to exclude information that is otherwise available in other reports to Congress.

“(b) BOTTOM QUARTILE.—Not later than June 30 of each year, the head of each of the military departments and Defense Agencies that were ranked in the bottom quartile of the report submitted under subsection (a) for that year shall submit to the congressional defense committees a report that includes the following information for that military department or Defense Agency:

“(1) A description of the material weaknesses of the military department or Defense Agency.

“(2) The underlying causes of such weaknesses.

“(3) A plan for remediating such weaknesses.

Plans.

“(4) The total number of open audit notices of findings and recommendations (hereinafter referred to as ‘NFRs’) for the most recently concluded fiscal year and the preceding two fiscal years, where applicable.

“(5) The number of repeat or reissued NFRs from the most recently concluded fiscal year.

“(6) The number of NFRs that were previously forecasted to be closed during the most recently concluded fiscal year that remain open.

“(7) The number of closed NFRs during the current fiscal year and prior fiscal years.

“(8) The number of material weaknesses that were validated by external auditors as fully resolved or downgraded in the current fiscal year over prior fiscal years.

“(9) A breakdown by fiscal years in which open NFRs are forecasted to be closed.

“(10) Explanations for unfavorable trends in the information under paragraphs (1) through (9).”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter , as amended by section 1002 is futher amended by adding at the end the following new item:

10 USC 240a  
prec.

“240h. Annual report on auditable financial statements.”.

(b) PLAN FOR REMEDIATED AUDIT FINDINGS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on Department-wide audit metrics. Such report shall include each of the following:

(1) The total number of open audit notices of findings and recommendations (hereinafter referred to as “NFRs”) for the most recent fiscal year and the preceding two fiscal years where applicable.

(2) The number of repeat or reissued NFRs from the most recent fiscal year.

(3) The number of NFRs that were previously forecasted to be closed in the most recently completed fiscal year that remain open,

(4) The number of closed NFRs in the current fiscal year and prior fiscal years.

(5) The number of material weaknesses that were validated by external auditors as fully resolved or downgraded in the current fiscal year over prior fiscal years.

(6) A breakdown by fiscal years in which open NFRs are forecasted to be closed.

(7) Explanations for unfavorable trends in the information under paragraphs (1) through (5).

**SEC. 1005. INCLUSION OF CERTAIN MILITARY CONSTRUCTION PROJECTS IN ANNUAL REPORTS ON UNFUNDED PRIORITIES OF THE ARMED FORCES AND THE COMBATANT COMMANDS.**

(a) INCLUSION OF CERTAIN MILITARY CONSTRUCTION PROJECTS AMONG UNFUNDED PRIORITIES.—Subsection (d) of section 222a of title 10, United States Code, is amended to read as follows:

“(d) DEFINITIONS.—In this section:

“(1) The term ‘unfunded priority’, in the case of a fiscal year, means a program, activity, or mission requirement, including a covered military construction project, that—

“(A) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31;

“(B) is necessary to fulfill a requirement associated with an operational or contingency plan of a combatant command or other validated requirement; and

“(C) would have been recommended for funding through the budget referred to in subparagraph (1) by the officer submitting the report required by subsection (a) in connection with the budget if—

“(i) additional resources been available for the budget to fund the program, activity, or mission requirement; or

“(ii) the program, activity, or mission requirement has emerged since the budget was formulated.

“(2) The term ‘covered military construction project’, in connection with a fiscal year, means a military construction project that—

“(A) is included in any fiscal year of the future-years defense program under section 221 of this title that is submitted in connection with the budget of the President for the fiscal year, and is executable in the fiscal year; or

“(B) is considered by the commander of a combatant command referred to in subsection (b)(5) to be an urgent need, and is executable in the fiscal year.”

(b) ORDER OF URGENCY OF PRIORITIES.—Paragraph (2) of subsection (c) of such section is amended to read as follows:

“(2) PRIORITIZATION OF PRIORITIES.—Each report shall present the unfunded priorities covered by such report as follows:

“(A) In overall order of urgency of priority.

“(B) In overall order of urgency of priority among unfunded priorities (other than covered military construction projects).

“(C) In overall order of urgency of priority among covered military construction projects.”

**SEC. 1006. PROHIBITION ON DELEGATION OF RESPONSIBILITY FOR SUBMITTAL TO CONGRESS OF OUT-YEAR UNCONSTRAINED TOTAL MUNITIONS REQUIREMENTS AND OUT-YEAR INVENTORY NUMBERS.**

Section 222c of title 10, United States Code, is amended—

(1) in subsection (a), by striking “subsection (b)” and inserting “subsection (c)”;

(2) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(3) by inserting after subsection (a) the following new subsection (b):

“(b) PROHIBITION ON DELEGATION OF SUBMITTAL RESPONSIBILITY.—The responsibility of the chief of staff of an armed force in subsection (a) to submit a report may not be delegated outside the armed force concerned.”; and

(4) in subsection (c), as redesignated by paragraph (2), by striking “subsection (c)” in paragraph (6) and inserting “subsection (d)”.

**SEC. 1007. ANNUAL BUDGET JUSTIFICATION DISPLAY FOR SERVICE-COMMON AND OTHER SUPPORT AND ENABLING CAPABILITIES FOR SPECIAL OPERATIONS FORCES.**

(a) IN GENERAL.—Chapter 9 of title 10, United States Code, is amended by inserting after section 225 the following new section:

**“§ 226. Special operations forces: display of service-common and other support and enabling capabilities** 10 USC 226.

“(a) IN GENERAL.—The Secretary shall include, in the budget materials submitted to Congress under section 1105 of title 31 for fiscal year 2021 and any subsequent fiscal year, a consolidated budget justification display showing service-common and other support and enabling capabilities for special operations forces requested by a military service or Defense Agency. Such budget justification display shall include any amount for service-common or other capability development and acquisition, training, operations, pay, base operations sustainment, and other common services and support.

“(b) SERVICE-COMMON AND OTHER SUPPORT AND ENABLING CAPABILITIES.—In this section, the term ‘service-common and other support and enabling capabilities’ means capabilities provided in support of special operations that are not reflected in Major Force Program–11 or designated as special operations forces-peculiar.”. Definition.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 225 the following new item: 10 USC 221 prec.

“226. Special operations forces: display of service-common and other support and enabling capabilities.”.

**SEC. 1008. ELEMENT IN ANNUAL REPORTS ON THE FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION PLAN ON ACTIVITIES WITH RESPECT TO CLASSIFIED PROGRAMS.**

Section 240b(b)(1) of title 10, United States Code, is amended—  
(1) in subparagraph (B), as amended by section 1003, by adding at the end the following new clause:

“(xi) A description of audit activities and results for classified programs, including a description of the use of procedures and requirements to prevent unauthorized exposure of classified information in such activities.”; and

(2) in subparagraph (C)(i), by inserting “or (ix)” after “clause (vii)”.

**SEC. 1009. PLAN OF THE DEPARTMENT OF DEFENSE FOR FINANCIAL MANAGEMENT INFORMATION.**

(a) ELEMENT ON SUPPORT OF NDS BY CORRECTIVE ACTION PLANS.—Section 240b(b)(1)(B) of title 10, United States Code, as amended by section 1008 of this Act, is further amended by adding at the end the following new clause:

“(xii) An identification the manner in which the corrective action plan or plans of each department, agency, component, or element of the Department of Defense, and the corrective action plan of the Department as a whole, support the National Defense Strategy (NDS) of the United States.”.

(b) TECHNICAL AMENDMENT.—Clause (i) of such section is amended by striking “section 253a” and inserting “section 240c”.

Estimate.  
10 USC 240b  
note.

(c) ANNUAL REPORTS ON FUNDING FOR CORRECTIVE ACTION PLANS.—Not later than five days after the submittal to Congress under section 1105(a) of title 31, United States Code, of the budget of the President for any fiscal year after fiscal year 2020, the Secretary of Defense shall submit to the congressional defense committees a reporting setting forth a detailed estimate of the funding required for such fiscal year to procure, obtain, or otherwise implement each process, system, and technology identified to address the current corrective action plans of the departments, agencies, components, and elements of the Department of Defense, and the corrective action plan of the Department as a whole, for purposes of chapter 9A of title 10, United States Code, during such fiscal year.

**SEC. 1010. UPDATE OF AUTHORITIES AND RENAMING OF DEPARTMENT OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.**

(a) RENAMING AS ACCOUNT.—

(1) IN GENERAL.—Section 1705 of title 10, United States Code, is amended—

(A) in subsection (a), by striking “the ‘Department of Defense Acquisition Workforce Development Fund’ (in this section referred to as the ‘Fund’)” and inserting “the ‘Department of Defense Acquisition Workforce Development Account’ (in this section referred to as the ‘Account’)”; and

(B) by striking “Fund” each place it appears (other than subsection (e)(6)) and inserting “Account”.

(2) CONFORMING AND CLERICAL AMENDMENTS.—

(A) SECTION HEADING.—The heading of such section is amended to read as follows:

**“§ 1705. Department of Defense Acquisition Workforce Development Account”.**

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 87 of such title is amended by striking the item relating to section 1705 and inserting the following new item:

10 USC 1701  
prec.

“1705. Department of Defense Acquisition Workforce Development Account.”.

(b) MANAGEMENT.—Such section is further amended by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” each place it appears and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(c) APPROPRIATIONS AS SOLE ELEMENTS OF ACCOUNT.—Subsection (d) of such section is amended to read as follows:

“(d) ELEMENTS.—The Account shall consist of amounts appropriated to the Account by law.”.

(d) AVAILABILITY OF AMOUNTS IN ACCOUNT.—Subsection (e)(6) of such section is amended by striking “credited to the Fund” and all that follows and inserting “appropriated to the Account pursuant to subsection (d) shall remain available for expenditure for the fiscal year in which appropriated and the succeeding fiscal year.”.

10 USC 1705  
note.

(e) EFFECTIVE DATE.—



(1) **IN GENERAL.**—The amendments made by this section shall take effect on October 1, 2019, and shall apply with respect to fiscal years that begin on or after that date.

(2) **DURATION OF AVAILABILITY OF PREVIOUSLY DEPOSITED FUNDS.**—Nothing in the amendments made by this section shall modify the duration of availability of amounts in the Department of Defense Acquisition Workforce Development Fund that were appropriated or credited to, or deposited, in the Fund, before October 1, 2019, as provided for in section 1705(e)(6) of title 10, United States Code, as in effect on the day before such date.

**SEC. 1011. TRANSPARENCY OF ACCOUNTING FIRMS USED TO SUPPORT DEPARTMENT OF DEFENSE AUDIT.**

Section 1006 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

10 USC 240d  
note.

(1) by striking “For all contract actions” and inserting “(a) **IN GENERAL.**—For all contract actions”; and

(2) by adding at the end the following new subsections  
“(b) **TREATMENT OF STATEMENT.**—A statement setting forth the details of a disciplinary proceeding submitted pursuant to subsection (a), and the information contained in such a statement, shall be—

“(1) treated as confidential to the extent required by the court or agency in which the proceeding has occurred; and

“(2) treated in a manner consistent with any protections or privileges established by any other provision of Federal law.”.

**SEC. 1012. MODIFICATION OF REQUIRED ELEMENTS OF ANNUAL REPORTS ON EMERGENCY AND EXTRAORDINARY EXPENSES OF THE DEPARTMENT OF DEFENSE.**

Paragraph (2) of section 127(d) of title 10, United States Code, is amended to read as follows:

“(2) Each report submitted under paragraph (1) shall include, for each individual expenditure covered by such report in an amount in excess of \$100,000, the following:

“(A) A detailed description of the purpose of such expenditure.

“(B) The amount of such expenditure.

“(C) An identification of the approving authority for such expenditure.

“(D) A justification why other authorities available to the Department could not be used for such expenditure.

“(E) Any other matters the Secretary considers appropriate.”.

## **Subtitle B—Counterdrug Activities**

**SEC. 1021. MODIFICATION OF AUTHORITY TO SUPPORT A UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.**

(a) **ORGANIZATIONS WITH RESPECT TO WHICH ASSISTANCE MAY BE PROVIDED.**—Subsection (a) of section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2042), as most recently amended

- by section 1011(1) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1545), is further amended—
- Colombia.  
Determination.
- (1) in paragraph (1), by striking “organizations designated as” and all that follows and inserting “the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), the United Self-Defense Forces of Colombia (AUC), and any covered organization that the Secretary of Defense, with the concurrence of the Secretary of State, determines poses a threat to the national security interests of the United States.”;
- (2) by redesignating paragraph (2) as paragraph (3); and
- (3) by inserting after paragraph (1) the following new paragraph (2):
- “(2) For purposes of paragraph (1), a covered organization is any foreign terrorist organization, or other organization that is a non-state armed group, that—
- “(A) promotes illicit economies;
- “(B) employs violence to protect its interests;
- “(C) has a military type structure, tactics, and weapons that provide it the ability to carry out large-scale violence;
- “(D) challenges the security response capacity of Colombia; and
- “(E) has the capability to control territory.”.
- (b) NOTICE ON ASSISTANCE.—Such section is further amended—
- (1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and
- (2) by inserting after subsection (d) the following new subsection (e):
- “(e) NOTICE ON ASSISTANCE WITH RESPECT TO COVERED ORGANIZATIONS.—(1) Not later than 30 days before providing assistance pursuant to the authority in subsection (a) with respect to a covered organization, the Secretary of Defense shall submit to the appropriate committees of Congress a written notification of the intent to use such authority with respect to such organization, including the name of such organization, the characteristics of such organization, and threat posed by such organization.
- “(2) In this subsection, the term ‘appropriate committees of Congress’ means—
- “(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and
- “(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.”.
- SEC. 1022. EXTENSION OF AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.**
- (a) EXTENSION.—Subsection (b) of section 1022 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 271 note) is amended by striking “2020” and inserting “2022”.
- (b) TECHNICAL CORRECTIONS.—Subsection (e) of such section is amended—
- (1) in paragraph (1), by inserting a period at the end; and
- (2) by adding at the end the following paragraph (2):
- “(2) For purposes of applying the definition of transnational organized crime under paragraph (1) to this section, the term ‘illegal
- Deadline.
- Definitions.
- Definition.

means’, as it appears in such definition, includes the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural resources and wildlife, trade in illegal drugs and weapons, and other forms of illegal means determined by the Secretary of Defense.”.

**SEC. 1023. SENSE OF CONGRESS REGARDING DEPARTMENT OF DEFENSE COUNTERDRUG ACTIVITIES IN THE TRANSIT ZONE AND CARIBBEAN BASIN.**

It is the sense of Congress that—

(1) combating transnational criminal organizations and illicit narcotics trafficking across the transit zone and the Caribbean basin is critical to the national security of the United States;

(2) the Department of Defense should work with the Department of Homeland Security, the Department of State, and other relevant Federal, State, local, and international partners to improve surveillance capabilities and maximize the effectiveness of counterdrug operations in the region; and

(3) the Secretary of Defense should, to the greatest extent possible, ensure United States Northern Command and United States Southern Command have the necessary assets to support and increase counter-drug activities within their respective areas of operations in the transit zone and the Caribbean basin.

**SEC. 1024. ASSESSMENT OF IMPACT OF ANY PLANNED OR PROPOSED BORDER WALL ON VOLUME OF ILLEGAL NARCOTICS.**

(a) **ASSESSMENT REQUIRED.**—The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall conduct an assessment of the impact that any planned or proposed border wall construction under section 284 or 2808 of title 10, United States Code, along the southern border of the United States would have on the volume of illegal narcotics entering the United States.

Consultation.

(b) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Homeland Security shall jointly submit to Congress a report on the assessment required by subsection (a).

## Subtitle C—Naval Vessels

**SEC. 1031. MODIFICATION OF AUTHORITY TO PURCHASE VESSELS USING FUNDS IN NATIONAL DEFENSE SEALIFT FUND.**

(a) **IN GENERAL.**—Section 2218(f)(3)(E) of title 10, United States Code, is amended—

(1) in clause (i), by striking “ten new sealift vessels” and inserting “ten new vessels that are sealift vessels, auxiliary vessels, or a combination of such vessels”; and

(2) in clause (ii), by striking “sealift”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on October 1, 2019, and shall apply with respect to fiscal years beginning on or after that date.

10 USC 2218  
note.

**SEC. 1032. USE OF NATIONAL DEFENSE SEALIFT FUND FOR PROCUREMENT OF TWO USED VESSELS.**

Pursuant to section 2218(f)(3) of title 10, United States Code, and using amounts authorized to be appropriated for Operation

and Maintenance, Navy, for fiscal year 2020, the Secretary of the Navy shall seek to enter into a contract for the procurement of two used vessels.

**SEC. 1033. TRANSPORTATION BY SEA OF SUPPLIES FOR THE ARMED FORCES AND DEFENSE AGENCIES.**

Section 2631 of title 10, United States Code, is amended—

(1) in the first sentence of subsection (a), by inserting “or for a Defense Agency” after “Marine Corps”; and

(2) in subsection (b)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following new paragraph (2):

“(2) Before entering into a contract for the transportation by sea of fuel products under this section, the Secretary shall provide a minimum variance of three days on the shipment date.”; and

(C) in paragraph (4), as redesignated by subparagraph

(A), by striking “the requirement described in paragraph (1)” and insert “a requirement under paragraph (1) or (2)”.

**SEC. 1034. SENIOR TECHNICAL AUTHORITY FOR EACH NAVAL VESSEL CLASS.**

(a) SENIOR TECHNICAL AUTHORITY FOR EACH CLASS REQUIRED.—Chapter 863 of title 10, United States Code, is amended by inserting after section 8669a the following new section:

10 USC 8669b.

**“§ 8669b. Senior Technical Authority for each naval vessel class**

“(a) SENIOR TECHNICAL AUTHORITY.—

“(1) DESIGNATION FOR EACH VESSEL CLASS REQUIRED.—The Secretary of the Navy shall designate, in writing, a Senior Technical Authority for each class of naval vessels as follows:

Deadline.

“(A) In the case of a class of vessels which has received Milestone A approval, an approval to enter into technology maturation and risk reduction, or an approval to enter into a subsequent Department of Defense or Department of the Navy acquisition phase as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, not later than 30 days after such date of enactment.

“(B) In the case of any class of vessels which has not received any approval described in subparagraph (A) as of such date of enactment, at or before the first of such approvals.

“(2) INDIVIDUALS ELIGIBLE FOR DESIGNATION.—Each individual designated as a Senior Technical Authority under paragraph (1) shall be an employee of the Navy in the Senior Executive Service in an organization of the Navy that—

“(A) possesses the technical expertise required to carry out the responsibilities specified in subsection (b); and

“(B) operates independently of chains-of-command for acquisition program management.

Determination.

“(3) TERM.—Each Senior Technical Authority shall be designated for a fixed term, not shorter than the time anticipated to establish demonstrated successful performance of the class of vessels concerned in accordance with its approved capabilities

document, as determined by the Secretary at the time of designation.

“(4) VOLUNTARY DEPARTURE.—If an individual designated as a Senior Technical Authority voluntarily departs the position before demonstrated successful performance of the class of vessels concerned, the Secretary shall designate, in writing, a replacement, and shall notify, in writing, the congressional defense committees not later than 90 days after such departure.

Deadline.  
Notification.

“(5) REMOVAL.—An individual may be removed involuntarily from designation as a Senior Technical Authority only by the Secretary. Not later than 15 days after the involuntary removal of an individual from such designation, the Secretary shall notify, in writing, the congressional defense committees of the removal, including the reasons for the removal. Not later than 90 days after the involuntary removal, the Secretary shall designate, in writing, a replacement, and shall notify, in writing, the congressional defense committees of such designation.

Deadlines.  
Notifications.

Designation.

“(6) REASSIGNMENT FOR MISSION NEEDS.—Subject to paragraphs (4) and (5), the Secretary may reassign a Senior Technical Authority or remove an individual from designation as a Senior Technical Authority in furtherance of Department of the Navy mission needs.

“(b) RESPONSIBILITIES AND AUTHORITY.—Each Senior Technical Authority shall be responsible for, and have the authority to, establish, monitor, and approve technical standards, tools, and processes for the class of naval vessels for which designated under this section in conformance with applicable laws and Department of Defense and Department of the Navy policies, requirements, architectures, and standards.

“(c) LIMITATION ON OBLIGATION OF FUNDS ON LEAD VESSEL IN VESSEL CLASS.—

“(1) IN GENERAL.—On or after January 1, 2021, funds authorized to be appropriated for Shipbuilding and Conversion, Navy or Other Procurement, Navy may not be obligated for the first time on the lead vessel in a class of naval vessels unless the Secretary of the Navy certifies as described in paragraph (2).

Effective date.

“(2) CERTIFICATION ELEMENTS.—The certification on a class of naval vessels described in this paragraph is a certification containing each of the following:

“(A) The name or names of the individual or individuals designated as the Senior Technical Authority for such class of vessels, and the qualifications and professional biography or biographies of the individual or individuals so designated.

“(B) A description by the Senior Technical Authority of the systems engineering, technology, and ship integration risks for such class of vessels.

“(C) The designation by the Senior Technical Authority of each critical hull, mechanical, electrical, propulsion, and combat system of such class of vessels, including systems relating to power generation, power distribution, and key operational mission areas.

- Plans. “(D) The date on which the Senior Technical Authority approved the systems engineering, engineering development, and land-based engineering and testing plans for such class of vessels.
- “ (E) A description by the Senior Technical Authority of the key technical knowledge objectives and demonstrated system performance of each plan approved as described in subparagraph (D).
- Determination. “(F) A determination by the Senior Technical Authority that such plans are sufficient to achieve thorough technical knowledge of critical systems of such class of vessels before the start of detail design and construction.
- Determination. “(G) A determination by the Senior Technical Authority that actual execution of activities in support of such plans as of the date of the certification have been and continue to be effective and supportive of the acquisition schedule for such class of vessels.
- “ (H) A description by the Senior Technical Authority of other technology maturation and risk reduction efforts not included in such plans for such class of vessels taken as of the date of the certification.
- “ (I) A certification by the Senior Technical Authority that each critical system covered by subparagraph (C) has been demonstrated through testing of a prototype or identical component in its final form, fit, and function in a realistic environment.
- Determination. “(J) A determination by the Secretary that the plans approved as described in subparagraph (D) are fully funded and will be fully funded in the future-years defense program for the fiscal year beginning in the year in which the certification is submitted.
- Determination. “(K) A determination by the Secretary that the Senior Technical Authority will approve, in writing, the ship specification for such class of vessels before the request for proposals for detail design, construction, or both, as applicable, is released.
- “(3) DEADLINE FOR SUBMITTAL OF CERTIFICATION.—The certification required by this subsection with respect to a class of naval vessels shall be submitted, in writing, to the congressional defense committees not fewer than 30 days before the Secretary obligates for the first time funds authorized to be appropriated for Shipbuilding and Conversion, Navy or Other Procurement, Navy for the lead vessel in such class of naval vessels.
- “(d) DEFINITIONS.—In this section:
- “(1) The term ‘class of naval vessels’—
- “(A) means any group of similar undersea or surface craft procured with Shipbuilding and Conversion, Navy or Other Procurement, Navy funds, including manned, unmanned, and optionally-manned craft; and
- “(B) includes—
- “(i) a substantially new class of craft (including craft procured using ‘new start’ procurement); and
- “(ii) a class of craft undergoing a significant incremental change in its existing class (such as a next ‘flight’ of destroyers or next ‘block’ of attack submarines).

“(2) The term ‘future-years defense program’ has the meaning given that term in section 221 of this title.

“(3) The term ‘Milestone A approval’ has the meaning given that term in section 2431a of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 863 of such title is amended by inserting after the item relating to section 8669a the following new item:

10 USC 8661  
prec.

“8669b. Senior Technical Authority for each naval vessel class.”.

**SEC. 1035. PERMANENT AUTHORITY FOR SUSTAINING OPERATIONAL READINESS OF LITTORAL COMBAT SHIPS ON EXTENDED DEPLOYMENT.**

Section 8680(a)(2) of title 10, United States Code, is amended—

(1) in subparagraph (C)(ii)—

(A) by striking “means preservation or corrosion control efforts and cleaning services” and inserting “means—”; and

(B) by adding at the end the following new subclauses:

“(I) the effort required to provide housekeeping services throughout the ship;

“(II) the effort required to perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

“(III) the effort required to clean mechanical spaces, mission zones, and topside spaces.”; and

(2) by striking subparagraph (D).

**SEC. 1036. FORMAL TRAINING FOR SHIPBOARD SYSTEM PROGRAMS OF RECORD.**

10 USC 8013  
note.

(a) IN GENERAL.—The Secretary of the Navy shall ensure that there is formal training provided for any shipboard system that is a program of record on any Navy surface vessel.

(b) TIMELINE FOR IMPLEMENTATION.—

Deadlines.

(1) CURRENT PROGRAMS.—In the case of any shipboard system program of record that is in use as of the date of the enactment of this Act for which no formal training is available, the Secretary shall ensure that such training is available by not later than 12 months after the date of the enactment of this Act.

(2) FUTURE PROGRAMS.—In the case of any shipboard system program of record that is first accepted by the Government after the date of the enactment of this Act, the Secretary shall ensure that formal training is established for such program by not later than 12 months after the date on which the shipboard system program of record is first accepted by the Government.

**SEC. 1037. REPORT ON SHIPBUILDER TRAINING AND THE DEFENSE INDUSTRIAL BASE.**

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of Labor, shall submit to the Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Armed Services and the Committee on Education and Labor of the House of Representatives a report on shipbuilder training and hiring requirements necessary to achieve the Navy’s 30-year shipbuilding plan and to maintain

Coordination.

- Analyses. the shipbuilding readiness of the defense industrial base. Such report shall include each of the following:
- Estimate. (1) An analysis and estimate of the time and investment required for new shipbuilders to gain proficiency in particular shipbuilding occupational specialties, including detailed information about the occupational specialty requirements necessary for construction of naval surface ship and submarine classes to be included in the Navy’s 30-year shipbuilding plan.
- (2) An analysis of the age demographics and occupational experience level (measured in years of experience) of the shipbuilding defense industrial workforce.
- (3) An analysis of the potential time and investment challenges associated with developing and retaining shipbuilding skills in organizations that lack intermediate levels of shipbuilding experience.
- Recommendations. (4) Recommendations concerning how to address shipbuilder training during periods of demographic transition, including whether emerging technologies, such as augmented reality, may aid in new shipbuilder training.
- Recommendations. (5) Recommendations concerning how to encourage young adults to enter the defense shipbuilding industry and to develop the skills necessary to support the shipbuilding defense industrial base.

**SEC. 1038. USE OF COMPETITIVE PROCEDURES FOR CVN-80 AND CVN-81 DUAL AIRCRAFT CARRIER CONTRACT.**

To the extent practicable and unless otherwise required by law, the Secretary of the Navy shall ensure that competitive procedures are used with respect to any task order or delivery order issued under a dual aircraft carrier contract relating to the CVN-80 and CVN-81.

**SEC. 1039. REPORT ON EXPANDING NAVAL VESSEL MAINTENANCE.**

- (a) REPORT REQUIRED.—Not later than May 1, 2020, the Secretary of the Navy shall submit to the congressional defense committees a report on the feasibility and advisability of allowing maintenance to be performed on a naval vessel at a shipyard other than a homeport shipyard of the vessel.
- Assessments. (b) ELEMENTS.—The report required under subsection (a) shall include the following:
- (1) An assessment of the ability of homeport shipyards to meet the current naval vessel maintenance demands.
- (2) An assessment of the ability of homeport shipyards to meet the naval vessel maintenance demands of the force structure assessment requirement of the Navy for a 355-ship navy.
- (3) An assessment of the ability of non-homeport firms to augment repair work at homeport shipyards, including an assessment of the following:
- (A) The capability and proficiency of shipyards in the Great Lakes, Gulf Coast, East Coast, West Coast, and Alaska regions to perform technical repair work on naval vessels at locations other than their homeports.
- (B) The improvements to the capability and capacity of shipyards in the Great Lakes, Gulf Coast, East Coast, West Coast, and Alaska regions that would be required to enable performance of technical repair work on naval vessels at locations other than their homeports.



(C) The types of naval vessels (such as noncombatant vessels or vessels that only need limited periods of time in shipyards) best suited for repair work performed by shipyards in locations other than their homeports.

(D) The potential benefits to fleet readiness of expanding shipyard repair work to include shipyards not located at the homeports of naval vessels.

(E) The ability of non-homeport firms to maintain surge capacity when homeport shipyards lack the capacity or capability to meet homeport requirements.

(4) An assessment of the potential benefits of expanding repair work for naval vessels to shipyards not eligible for short-term work in accordance with section 8669a(c) of title 10, United States Code.

(5) Such other related matters as the Secretary of the Navy considers appropriate.

(c) RULES OF CONSTRUCTION.—

(1) REQUIREMENTS RELATING TO CONSTRUCTION OF COMBATANT AND ESCORT VESSELS AND ASSIGNMENT OF VESSEL PROJECTS.—Nothing in this section may be construed to override the requirements of section 8669a of title 10, United States Code.

(2) NO FUNDING FOR SHIPYARDS OF NON-HOMEPORT FIRMS.—Nothing in this section may be construed to authorize funding for shipyards of non-homeport firms.

(d) DEFINITIONS.—In this section:

(1) HOMEPORT SHIPYARD.—The term “homeport shipyard” means a shipyard associated with a firm capable of being awarded short-term work at the homeport of a naval vessel in accordance with section 8669a(c) of title 10, United States Code.

(2) SHORT-TERM WORK.—The term “short-term work” has the meaning given that term in section 8669a(c)(4) of such title.

## Subtitle D—Counterterrorism

### SEC. 1041. MODIFICATION OF SUPPORT OF SPECIAL OPERATIONS TO COMBAT TERRORISM.

Section 127e of title 10, United States Code, is amended—

(1) in subsection (a), by inserting “authorized” before “ongoing”; and

(2) in subsection (d)(2)—

(A) in subparagraph (A), by inserting “and a description of the authorized ongoing operation” before the period at the end;

(B) by redesignating subparagraph (C) as subparagraph (D);

(C) by striking subparagraphs (B) and inserting the following new subparagraphs after subparagraph (A):

“(B) A description of the foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating the authorized ongoing operation who will receive support provided under this section.

“(C) A detailed description of the support provided or to be provided to the recipient.”; and

(D) by adding at the end the following new subparagraphs:

“(E) A detailed description of the legal and operational authorities related to the authorized ongoing operation, including relevant execute orders issued by the Secretary of Defense and combatant commanders related to the authorized ongoing operation, including an identification of operational activities United States Special Operations Forces are authorized to conduct under such execute orders.

“(F) The duration for which the support is expected to be provided and an identification of the timeframe in which the provision of support will be reviewed by the combatant commander for a determination regarding the necessity of continuation of support.”.

**SEC. 1042. EXTENSION OF PROHIBITION ON USE OF FUNDS FOR TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO CERTAIN COUNTRIES.**

132 Stat. 1954. Section 1035 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

**SEC. 1043. EXTENSION OF PROHIBITION ON USE OF FUNDS FOR TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO THE UNITED STATES.**

132 Stat. 1953. Section 1033 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

**SEC. 1044. EXTENSION OF PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.**

132 Stat. 1954. Section 1034(a) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by striking “December 31, 2019” and inserting “December 31, 2020”.

**SEC. 1045. EXTENSION OF PROHIBITION ON USE OF FUNDS TO CLOSE OR RELINQUISH CONTROL OF UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.**

Section 1036 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1551), as amended by section 1032 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1953), is further amended by striking “or 2019” and inserting “, 2019, or 2020”.

10 USC 801 note. **SEC. 1046. CHIEF MEDICAL OFFICER AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.**

(a) CHIEF MEDICAL OFFICER.—

(1) IN GENERAL.—There shall be at United States Naval Station, Guantanamo Bay, Cuba, a Chief Medical Officer of

United States Naval Station, Guantanamo Bay (in this section referred to as the “Chief Medical Officer”).

(2) **GRADE.**—The individual serving as Chief Medical Officer shall be an officer of the Armed Forces who holds a grade not below the grade of colonel, or captain in the Navy.

(3) **CHAIN OF COMMAND.**—Notwithstanding sections 162 and 164 of title 10, United States Code, the Chief Medical Officer shall be assigned and report to the Assistant Secretary of Defense for Health Affairs, with duty at United States Naval Station, Guantanamo Bay, Cuba, in the performance of duties and the exercise of powers of the Chief Medical Officer under this section.

(b) **DUTIES.**—

(1) **IN GENERAL.**—The Chief Medical Officer shall oversee the provision of medical care to individuals detained at Guantanamo.

(2) **QUALITY OF CARE.**—The Chief Medical Officer shall ensure that medical care provided as described in paragraph (1) meets applicable standards of care.

(c) **POWERS.**—

(1) **IN GENERAL.**—The Chief Medical Officer shall make medical determinations relating to medical care for individuals detained at Guantanamo, including—

Determinations.

(A) decisions regarding assessment, diagnosis, and treatment; and

(B) determinations concerning medical accommodations to living conditions and operating procedures for detention facilities.

(2) **RESOLUTION OF DECLINATION TO FOLLOW DETERMINATIONS.**—If the commander of Joint Task Force Guantanamo or the Commander of United States Southern Command declines to follow a determination of the Chief Medical Officer under paragraph (1), the matter covered by such determination shall be resolved by the Assistant Secretary of Defense for Health Affairs, in consultation with the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, not later than seven days after receipt by both Assistant Secretaries of written notification of the matter from the Chief Medical Officer.

Consultation.  
Deadline.

(3) **SECURITY CLEARANCES.**—The appropriate departments or agencies of the Federal Government shall, to the extent practicable in accordance with existing procedures and requirements, process expeditiously any application and adjudication for a security clearance required by the Chief Medical Officer to carry out the Chief Medical Officer’s duties and powers under this section.

(d) **ACCESS TO INDIVIDUALS, INFORMATION, AND ASSISTANCE.**—

(1) **IN GENERAL.**—The Chief Medical Officer may secure directly from the Department of Defense access to any individual, information, or assistance that the Chief Medical Officer considers necessary to enable the Chief Medical Officer to carry out this section, including full access to the following:

(A) Any individual detained at Guantanamo.

(B) Any medical records of any individual detained at Guantanamo.

(C) Medical professionals of the Department who are working, or have worked, at United States Naval Station, Guantanamo Bay.

(2) ACCESS UPON REQUEST.—Upon request of the Chief Medical Officer, the Department shall make available to the Chief Medical Officer on an expeditious basis access to individuals, information, and assistance as described in paragraph (1).

Notification.

(3) LACK OF EXPEDITIOUS AVAILABILITY.—If access to individuals, information, or assistance is not made available to the Chief Medical Officer upon request on an expeditious basis as required by paragraph (2), the Chief Medical Officer shall notify the Assistant Secretary of Defense for Health Affairs and the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, who shall take actions to resolve the matter expeditiously.

(e) DEFINITIONS.—In this section:

(1) INDIVIDUAL DETAINED AT GUANTANAMO DEFINED.—The term “individual detained at Guantanamo” means an individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

(A) is not a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or a member of the Armed Forces of the United States; and

(B) is—

(i) in the custody or under the control of the Department of Defense; or

(ii) otherwise detained at United States Naval Station, Guantanamo Bay.

(2) MEDICAL CARE.—The term “medical care” means physical and mental health care.

(3) STANDARD OF CARE.—The term “standard of care” means evaluation and treatment that is accepted by medical experts and reflected in peer-reviewed medical literature as the appropriate medical approach for a condition, symptoms, illness, or disease and that is widely used by healthcare professionals.

10 USC 113 note.

**SEC. 1047. INDEPENDENT ASSESSMENT ON GENDER AND COUNTERING VIOLENT EXTREMISM.**

Consultation.  
Contracts.  
Research and  
development.  
Analysis.

(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of State, shall seek to enter into a contract with a nonprofit entity or a federally funded research and development center independent of the Department of Defense and the Department of State to conduct research and analysis on the relationship between gender and violent extremism.

(b) ELEMENTS.—The research and analysis conducted under subsection (a) shall include consideration of the following:

(1) The probable causes and historical trends of women’s participation in violent extremist organizations.

(2) Potential ways in which women’s participation in violent extremism is likely to change in the near- and medium-term.

(3) The relationship between violent extremism and each of the following:

(A) Gender-based violence, abduction, and human trafficking.

(B) The perceived role or value of women at the community level, including with respect to property and inheritance rights and bride-price and dowry.

(C) Community opinions of killing or harming of women.

(D) Violations of girls’ rights, including child, early, and forced marriage and access to education.

(4) Ways for the Department of Defense to engage and support women and girls who are vulnerable to extremist behavior and activities as a means to counter violent extremism and terrorism.

(c) UTILIZATION.—The Secretary of Defense and the Secretary of State shall utilize the results of the research and analysis conducted under subsection (a) to inform the strategic and operational objectives of the geographic combatant command, where appropriate. Such utilization shall be in accordance with the Women, Peace, and Security Act of 2017 (Public Law 115–68; 22 U.S.C. 2152j et seq.).

(d) REPORTS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the nonprofit entity or federally funded research and development center with which the Secretary of Defense enters into the contract under subsection (a) shall submit to the Secretary of Defense and Secretary of State a report on the results of the research and analysis required by subsection (a).

(2) SUBMISSION TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees each of the following:

(A) A copy of the report submitted under paragraph (1) without change.

Records.

(B) Any comments, changes, recommendations, or other information provided by the Secretary of Defense and the Secretary of State relating to the research and analysis required by subsection (a) and contained in such report.

Recommendations.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this paragraph, the term “appropriate congressional committees” means—

Definitions.

(A) the congressional defense committees;

(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives; and

(C) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

## Subtitle E—Miscellaneous Authorities and Limitations

### SEC. 1051. SCHEDULING OF DEPARTMENT OF DEFENSE EXECUTIVE AIRCRAFT CONTROLLED BY SECRETARIES OF MILITARY DEPARTMENTS.

(a) IN GENERAL.—Chapter 2 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 120.

**“§ 120. Department of Defense executive aircraft controlled by Secretaries of military departments**

“(a) IN GENERAL.—The Secretary of Defense shall ensure that the Chief of the Air Force Special Air Mission Office is given the responsibility for coordination of scheduling all Department of Defense executive aircraft controlled by the Secretaries of the military departments in order to support required use travelers.

Deadline.  
Memorandums.

“(b) RESPONSIBILITIES.—(1) Not later than 180 days after the date of the enactment of this section, the Secretary of each of the military departments shall execute a memorandum of understanding with the Air Force Special Air Mission Office regarding oversight and management of executive aircraft controlled by that military department.

“(2) The Secretary of Defense shall be responsible for prioritizing travel when requests exceed available executive airlift capability.

“(3) The Secretary of a military department shall maintain overall authority for scheduling the required use travelers of that military department on executive aircraft controlled by the Secretary. When an executive aircraft controlled by the Secretary of a military department is not supporting required use travelers of that military department, the Secretary of the military department shall make such executive aircraft available for scheduling of other required use travelers.

“(c) LIMITATIONS.—(1) The Secretary of Defense may not establish a new command and control organization to support aircraft.

“(2) No executive aircraft controlled by the Secretary of a military department may be permanently stationed at any location without a required use traveler without the approval of the Secretary of Defense.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘required use traveler’ has the meaning given such term in Department of Defense directive 4500.56, as in effect on the date of the enactment of this section.

“(2) The term ‘executive aircraft’ has the meaning given such term in Department of Defense directive 4500.43, as in effect on the date of the enactment of this section.”.

10 USC 111 prec.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“120. Department of Defense executive aircraft controlled by Secretaries of military departments.”.

**SEC. 1052. EXPLOSIVE ORDNANCE DEFENSE DISPOSAL PROGRAM.**

(a) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—Subsection (b) of section 2284 of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) in paragraph (1)—

(A) in subparagraph (A), by inserting “and” after the semicolon;

(B) by redesignating subparagraph (B) as paragraph (2), moving it to appear after paragraph (1), and adjusting the margins accordingly;

(C) by redesignating subparagraph (C) as subparagraph (B);

(D) in subparagraph (B), as so redesignated—

- (i) by striking “joint program executive officer who” and inserting “training and technology program that”;
- (ii) by inserting “, provides common individual training,” after “explosive ordnance disposal”;
- (iii) by striking “and procurement”;
- (iv) by inserting “for common tools” after “activities”;
- (v) by striking “and combatant commands”; and

(E) by striking subparagraphs (D) and (E);

(3) in paragraph (2), as redesignated by paragraph (2)(B) of this subsection, by inserting “(A)” after “paragraph (1)”;

(4) in paragraph (3), as redesignated by paragraph (1) of this subsection, by striking “such as weapon systems, manned and unmanned vehicles and platforms, cyber and communication equipment, and the integration of explosive ordnance disposal sets, kits and outfits and explosive ordnance disposal tools, equipment, sets, kits, and outfits developed by the department.” and inserting “; and”; and

(5) by adding at the end the following new paragraph:

“(4) the Secretary of the Army shall designate an Army explosive ordnance disposal-qualified general officer to serve as the co-chair of the Department of Defense explosive ordnance disposal defense program.”.

Designation.

(b) DEFINITIONS.—Such section is further amended by adding at the end the following new subsection:

“(d) DEFINITIONS.—In this section:

“(1) The term ‘explosive ordnance’ has the meaning given such term in section 283(d) of this title.

“(2) The term ‘explosive ordnance disposal’ means the detection, identification, on-site evaluation, rendering safe, exploitation, recovery, and final disposal of explosive ordnance.”.

**SEC. 1053. TECHNICAL CORRECTION AND EXTENSION OF REPORTING REQUIREMENT REGARDING ENHANCEMENT OF INFORMATION SHARING AND COORDINATION OF MILITARY TRAINING BETWEEN DEPARTMENT OF HOMELAND SECURITY AND DEPARTMENT OF DEFENSE.**

Section 1014 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328) is amended—

10 USC 271 note.

(1) by striking “section 371 of title 10, United States Code” each place it appears and inserting “section 271 of title 10, United States Code”; and

(2) in subsection (d)(3) by striking “January 31, 2020” and inserting “December 31, 2022”.

**SEC. 1054. NOTIFICATION ON THE PROVISION OF DEFENSE SENSITIVE SUPPORT.**

Section 1055(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 113 note) is amended—

(1) in paragraph (2)—

(A) by redesignating subparagraph (C) as subparagraph (E); and

(B) by inserting after subparagraph (B) the following new subparagraphs:

“(C) A description of the required duration of the support.

“(D) A description of the initial costs for the support.”;

and

(2) by adding at the end the following new paragraph:

Determination.  
Deadline.  
Certification.

“(5) SUSTAINMENT COSTS.—If the Secretary determines that sustainment costs will be incurred as a result of the provision of defense sensitive support, the Secretary, not later than 15 days after the initial provision of such support, shall certify to the congressional defense committees (and the congressional intelligence committees with respect to matters relating to members of the intelligence community) that such sustainment costs will not interfere with the ability of the Department to execute operations, accomplish mission objectives, and maintain readiness.”.

**SEC. 1055. REVISION TO AUTHORITIES RELATING TO MAIL SERVICE FOR MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIANS OVERSEAS.**

(a) ELIGIBILITY FOR FREE MAIL.—Section 3401(a) of title 39, United States Code, is amended to read as follows:

President.

“(a)(1) First-class letter mail having the character of personal correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by an eligible individual described in paragraph (2) and addressed to a place within the delivery limits of a United States post office, if—

Determination.

“(A) such letter mail is mailed by the eligible individual at an Armed Forces post office established in an overseas area designated by the President, where the Armed Forces of the United States are deployed for a contingency operation as determined by the Secretary of Defense; or

“(B) the eligible individual is hospitalized as a result of disease or injury incurred as a result of service in an overseas area designated by the President under subparagraph (A).

“(2) An eligible individual described in this paragraph is—

“(A) a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10; or

“(B) a civilian employee of the Department of Defense or a military department who is providing support to military operations.”.

(b) SURFACE SHIPMENT OF MAIL AUTHORIZED.—Section 3401 of title 39, United States Code, is amended—

(1) by striking subsection (c);

(2) by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively; and

(3) by amending subsection (b) to read as follows:

“(b) There shall be transported by surface or air, consistent with the service purchased by the mailer, between Armed Forces post offices or from an Armed Forces post office to a point of entry into the United States, the following categories of mail matter which are mailed at any such Armed Forces post office:

“(1) Letter mail communications having the character of personal correspondence.

“(2) Any parcel exceeding 1 pound in weight but less than 70 pounds in weight and less than 130 inches in length and girth combined.

“(3) Publications published not less frequently than once per week and featuring principally current news of interest



to members of the Armed Forces of the United States and the general public.”

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 3401 of title 39, United States Code, is amended in the section heading by striking “**and of friendly foreign nations**”.

(2) The table of sections for chapter 34 of title 39, United States Code, is amended by striking the item relating to section 3401 and inserting the following:

39 USC 3401  
prec.

“3401. Mailing privileges of members of Armed Forces of the United States.”.

**SEC. 1056. ACCESS TO AND USE OF MILITARY POST OFFICES BY UNITED STATES CITIZENS EMPLOYED OVERSEAS BY THE NORTH ATLANTIC TREATY ORGANIZATION WHO PERFORM FUNCTIONS IN SUPPORT OF MILITARY OPERATIONS OF THE ARMED FORCES.**

Section 406 of title 39, United States Code, is amended by adding at the end the following:

“(c)(1) The Secretary of Defense may authorize the use of a post office established under subsection (a) in a location outside the United States by citizens of the United States—

“(A) who—

“(i) are employed by the North Atlantic Treaty Organization; and

“(ii) perform functions in support of the Armed Forces of the United States; and

“(B) if the Secretary makes a written determination that such use is—

Determination.

“(i) in the best interests of the Department of Defense; and

“(ii) otherwise authorized by applicable host nation law or agreement.

“(2) No funds may be obligated or expended to establish, maintain, or expand a post office established under subsection (a) for the purpose of use described in paragraph (1) of this subsection.”.

**SEC. 1057. EXPENDITURE OF FUNDS FOR DEPARTMENT OF DEFENSE INTELLIGENCE AND COUNTERINTELLIGENCE ACTIVITIES.**

(a) IN GENERAL.—Subject to subsections (b) and (c), the Secretary of Defense may expend amounts made available for the Military Intelligence Program for any of fiscal years 2020 through 2025 for intelligence and counterintelligence activities for any purpose the Secretary determines to be proper with regard to intelligence and counterintelligence objects of a confidential, extraordinary, or emergency nature. Such a determination is final and conclusive upon the accounting officers of the United States.

Determination.

(b) LIMITATION ON AMOUNT.—The Secretary of Defense may not expend more than five percent of the amounts described in subsection (a) for any fiscal year for objects described in that subsection unless—

(1) the Secretary notifies the congressional defense committees and the congressional intelligence committees of the intent to expend the amounts and purpose of the expenditure; and

Notification.

(2) 30 days have elapsed from the date on which the Secretary provides the notice described in paragraph (1).

Time period.

(c) **CERTIFICATION.**—For each expenditure of funds under this section, the Secretary shall certify that such expenditure was made for an object of a confidential, extraordinary, or emergency nature.

(d) **REPORT.**—Not later than December 31 of each of 2020 through 2025, the Secretary of Defense shall submit to the congressional defense committees and the congressional intelligence committees a report on expenditures made under this section during the fiscal year preceding the year in which the report is submitted. Each such report shall include, for each expenditure under this section during the fiscal year covered by the report, a description, the purpose, the program element, and the certification required under section (c).

(e) **LIMITATION ON DELEGATIONS.**—The Secretary of Defense may not delegate the authority under this section with respect to any expenditure in excess of \$100,000.

(f) **CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.**—In this section, the term “congressional intelligence committees” means—

- (1) the Select Committee on Intelligence of the Senate;
- and
- (2) the Permanent Select Committee on Intelligence of the House of Representatives.

Certification.  
Reviews.

**SEC. 1058. LIMITATION ON USE OF FUNDS FOR THE INACTIVATION OF ARMY WATERCRAFT UNITS.**

None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 may be obligated or expended for the inactivation of any Army watercraft unit until the Secretary of Defense submits to Congress certification that—

Contracts.

(1) the Secretary has completed the Army Watercraft Requirements Review; and

(2) the Secretary has entered into a contract with a federally funded research and development corporation for the review of the ability of the Army to meet the watercraft requirements of the combatant commanders and the effects on preparedness to provide support to States and territories in connection with natural disasters, threats, and emergencies.

## **TITLE XI—CIVILIAN PERSONNEL MATTERS**

### Subtitle A—General Provisions

- Sec. 1101. Defense Advanced Research Projects Agency personnel management authority.
- Sec. 1102. Report on the probationary period for Department of Defense employees.
- Sec. 1103. Civilian personnel management.
- Sec. 1104. One-year extension of temporary authority to grant allowances, benefits, and gratuities to civilian personnel on official duty in a combat zone.
- Sec. 1105. One-year extension of authority to waive annual limitation on premium pay and aggregate limitation on pay for Federal civilian employees working overseas.
- Sec. 1106. Performance of civilian functions by military personnel.
- Sec. 1107. Extension of direct hire authority for domestic industrial base facilities and Major Range and Test Facilities Base.
- Sec. 1108. Authority to provide additional allowances and benefits for certain Defense Clandestine Service employees.
- Sec. 1109. Modification of direct hire authorities for the Department of Defense.
- Sec. 1110. Designating certain FEHBP and FEGLI services provided by Federal employees as excepted services under the Anti-Deficiency Act.

- Sec. 1111. Continuing supplemental dental and vision benefits and long-term care insurance coverage during a Government shutdown.
- Sec. 1112. Limitation on transfer of Office of Personnel Management.
- Sec. 1113. Assessment of Accelerated Promotion Program suspension.
- Sec. 1114. Reimbursement for Federal, State, and local income taxes incurred during travel, transportation, and relocation.
- Sec. 1115. Clarification of limitation on expedited hiring authority for post-secondary students.
- Sec. 1116. Modification of temporary assignments of Department of Defense employees to a private-sector organization.
- Sec. 1117. Extension of authority for part-time reemployment.

Subtitle B—Fair Chance Act

- Sec. 1121. Short title.
- Sec. 1122. Prohibition on criminal history inquiries prior to conditional offer for Federal employment.
- Sec. 1123. Prohibition on criminal history inquiries by contractors prior to conditional offer.
- Sec. 1124. Report on employment of individuals formerly incarcerated in Federal prisons.

Subtitle C—ATC Hiring Reform

- Sec. 1131. Short title; definition.
- Sec. 1132. Hiring of air traffic control specialists.
- Sec. 1133. Ensuring hiring preference for applicants with experience at an air traffic control facility of the National Guard.
- Sec. 1134. FAA reports on air traffic controller hiring and training.
- Sec. 1135. DOT Inspector General review and report.

## Subtitle A—General Provisions

**SEC. 1101. DEFENSE ADVANCED RESEARCH PROJECTS AGENCY PERSONNEL MANAGEMENT AUTHORITY.**

Section 1599h(b)(1)(B) of title 10, United States Code, is amended by striking “100 positions” and inserting “140 positions”.

**SEC. 1102. REPORT ON THE PROBATIONARY PERIOD FOR DEPARTMENT OF DEFENSE EMPLOYEES.**

(a) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense shall—

(1) conduct an independent review on the probationary periods applicable to Department of Defense employees under section 1599e of title 10, United States Code; and

(2) submit a report on such review to the Committees on Armed Services and Oversight and Reform of the House of Representatives and the Committees on Armed Services and Homeland Security and Governmental Affairs of the Senate.

(b) CONTENTS.—The review and report under subsection (a) shall cover the period beginning on the date of the enactment of such section 1599e and ending on December 31, 2018, and include the following:

(1) An assessment and identification of the demographics of each Department of Defense employee who, during such period, was on a probationary period and who was removed from the civil service, subject to any disciplinary action (up to and including removal), or who filed a claim or appeal with the Office of Special Counsel or the Equal Employment Opportunity Commission.

(2) A statistical assessment of the distribution patterns with respect to any removal from the civil service during such period of, or any disciplinary action (up to and including a removal) taken during such period against, any Department employee while the employee was on a probationary period.

Review.

Time period.  
Assessments.

- Analysis. (3) An analysis of the best practices and abuses of discretion by supervisors and managers of the Department with respect to probationary periods.
- Recommendations. Determination. (4) An assessment of the utility of the probationary period prescribed by such section 1599e on the successful recruitment, retention, and professional development of civilian employees of the Department, including any recommendation for regulatory or statutory changes the Secretary determines to be appropriate.
- Determination. (5) A discussion of the cases where the Department made a determination to remove a Department employee during the second year of such employee's probationary period.
- Summary. (6) A summary of how the Department has implemented the authority provided in such section 1599e with respect to probationary periods, including the number, and a demographic summary, of each Department employee removed from the civil service, subject to any disciplinary action (up to and including removal), or who filed a claim or appeal with the Office of Special Counsel or the Equal Employment Opportunity Commission during the second year of any such employee's probationary period.
- (c) CONSULTATION.—The analysis and recommendations in the report required under subsection (a) shall be prepared in consultation with Department of Defense employees and managers, labor organizations representing such employees, staff of the Office of Special Counsel and the Equal Employment Opportunity Commission, and attorneys representing Department employees in wrongful termination actions.

**SEC. 1103. CIVILIAN PERSONNEL MANAGEMENT.**

Section 129 of title 10, United States Code, is amended—

- (1) in subsection (a)—
- (A) in the first sentence, by striking “each fiscal year” and inserting “each fiscal year primarily”; and
- (B) in the second sentence—
- (i) by striking “Any” and inserting “The management of such personnel in any fiscal year shall not be subject solely to any”; and
- (ii) by striking “shall be developed” and all that follows through “changed circumstances”; and
- (2) in subsection (c)(2)—
- (A) in each of subparagraphs (A) and (B), by inserting “and associated cost” after each instance of “projected size”; and
- (B) in subparagraph (B), by striking “that have been taken” and all that follows through the period and inserting “to reduce the overall costs of the total force of military, civilian, and contract workforces.”.

**SEC. 1104. ONE-YEAR EXTENSION OF TEMPORARY AUTHORITY TO GRANT ALLOWANCES, BENEFITS, AND GRATUITIES TO CIVILIAN PERSONNEL ON OFFICIAL DUTY IN A COMBAT ZONE.**

Paragraph (2) of section 1603(a) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109–234; 120 Stat. 443), as added by section 1102 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122

Stat. 4616) and as most recently amended by section 1115 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is further amended by striking “2020” and inserting “2021”.

132 Stat. 2013.

**SEC. 1105. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.**

Subsection (a) of section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4615), as most recently amended by section 1104(a) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2001), is further amended by striking “through 2019” and inserting “through 2020”.

**SEC. 1106. PERFORMANCE OF CIVILIAN FUNCTIONS BY MILITARY PERSONNEL.**

Subparagraph (B) of paragraph (1) of subsection (g) of section 129a of title 10, United States Code, is amended to read as follows:

“(B) such functions may be performed by military personnel for a period that does not exceed one year if the Secretary of the military department concerned determines that—

Time period.  
Determination.

“(i) the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress; and

“(ii) the military department concerned is in compliance with the policies, procedures, and analysis required by this section and section 129 of this title.”.

**SEC. 1107. EXTENSION OF DIRECT HIRE AUTHORITY FOR DOMESTIC INDUSTRIAL BASE FACILITIES AND MAJOR RANGE AND TEST FACILITIES BASE.**

(a) IN GENERAL.—Subsection (a) of section 1125 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), as amended by subsection (a) of section 1102 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91), is further amended by striking “through 2021,” and inserting “through 2025.”

10 USC 1580  
note prec.

(b) BRIEFING.—Subsection (b) of such section 1102 is amended by striking “fiscal years 2019 and 2021” and inserting “fiscal years 2019 through 2025”.

**SEC. 1108. AUTHORITY TO PROVIDE ADDITIONAL ALLOWANCES AND BENEFITS FOR CERTAIN DEFENSE CLANDESTINE SERVICE EMPLOYEES.**

Section 1603 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) ADDITIONAL ALLOWANCES AND BENEFITS FOR CERTAIN EMPLOYEES OF THE DEFENSE CLANDESTINE SERVICE.—(1) Beginning on the date on which the Secretary of Defense submits the report under paragraph (3)(A), in addition to the authority to provide compensation under subsection (a), the Secretary may provide a covered employee allowances and benefits under paragraph (1) of section 9904 of title 5 without regard to the limitations in that section—

Effective date.

- “(A) that the employee be assigned to activities outside the United States; or
- “(B) that the activities to which the employee is assigned be in support of Department of Defense activities abroad.
- “(2) The Secretary may not provide allowances and benefits under paragraph (1) to more than 125 covered employees per year.
- Reports.  
Strategy. “(3)(A) The Secretary shall submit to the appropriate congressional committees a report containing a strategy addressing the mission of the Defense Clandestine Service during the period covered by the most recent future-years defense program submitted under section 221 of this title, including—
- “(i) how such mission will evolve during such period;
- “(ii) how the authority provided by paragraph (1) will assist the Secretary in carrying out such mission; and
- Implementation  
plan. “(iii) an implementation plan for carrying out paragraph (1), including a projection of how much the amount of the allowances and benefits provided under such paragraph compare with the amount of the allowances and benefits provided before the date of the report.
- “(B) Not later than December 31, 2020, and each year thereafter, the Secretary shall submit to the appropriate congressional committees a report, with respect to the fiscal year preceding the date on which the report is submitted—
- “(i) identifying the number of covered employees for whom the Secretary provided allowances and benefits under paragraph (1); and
- Evaluation. “(ii) evaluating the efficacy of such allowances and benefits in enabling the execution of the objectives of the Defense Intelligence Agency.
- “(C) The reports under subparagraphs (A) and (B) may be submitted in classified form.
- Definitions. “(4) In this subsection:
- “(A) The term ‘appropriate congressional committees’ means—
- “(i) the congressional defense committees; and
- “(ii) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.
- “(B) The term ‘covered employee’ means an employee in a defense intelligence position who is assigned to the Defense Clandestine Service at a location in the United States that the Secretary determines has living costs equal to or higher than the District of Columbia.”.

**SEC. 1109. MODIFICATION OF DIRECT HIRE AUTHORITIES FOR THE DEPARTMENT OF DEFENSE.**

(a) IN GENERAL.—Section 9905 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by amending paragraph (2) to read as follows:

“(2) Any cyber workforce position.”; and

(B) by adding after paragraph (4) the following:

“(5) Any scientific, technical, engineering, or mathematics positions, including technicians, within the defense acquisition workforce, or any category of acquisition positions within the Department designated by the Secretary as a shortage or critical need category.

“(6) Any scientific, technical, engineering, or mathematics position, except any such position within any defense Scientific and Technology Reinvention Laboratory, for which a qualified candidate is required to possess a bachelor’s degree or an advanced degree, or for which a veteran candidate is being considered.

“(7) Any category of medical or health professional positions within the Department designated by the Secretary as a shortage category or critical need occupation.

“(8) Any childcare services position for which there is a critical hiring need and a shortage of childcare providers.

“(9) Any financial management, accounting, auditing, actuarial, cost estimation, operational research, or business or business administration position for which a qualified candidate is required to possess a finance, accounting, management or actuarial science degree or a related degree, or a related degree of equivalent experience.

“(10) Any position, as determined by the Secretary, for the purpose of assisting and facilitating the efforts of the Department in business transformation and management innovation.”; and

(2) by striking subsection (b) and inserting the following: “(b) SUNSET.—

“(1) IN GENERAL.—Except as provided in paragraph (2), effective on September 30, 2025, the authority provided under subsection (a) shall expire.

“(2) EXCEPTION.—Paragraph (1) shall not apply to the authority provided under subsection (a) to make appointments to positions described under paragraph (5) of such subsection.

“(c) SUSPENSION OF OTHER HIRING AUTHORITIES.—During the period beginning on the effective date of the regulations issued in paragraphs (5) through (10) of subsection (a) and ending on the date described in subsection (b)(1), the Secretary of Defense may not exercise or otherwise use any hiring authority provided under the following provisions of law:

“(1) Sections 1599c(a)(2) and 1705(h) of title 10.

“(2) Sections 1112 and 1113 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1033).

“(3) Sections 1110 and 1643(a)(3) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2450 and 2602).

“(4) Sections 559 and 1101 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1406 and 1627).”.

(b) REPORT.—

(1) IN GENERAL.—Not later than February 1, 2021, the Secretary of Defense, in coordination with the Director of the Office of Personnel Management, shall provide for the conduct of an independent review and report to the congressional defense committees and the Committee on Oversight and Reform of the House of Representatives.

(2) CONTENTS.—The report required under paragraph (1) shall—

(A) assess and identify steps that could be taken to improve the competitive hiring process at the Department

Time period.

Coordination.  
Review.

Assessment.

and ensure that direct hiring is conducted in a manner consistent with ensuring a merit based civil service and a diverse workforce in the Department and the rest of the Federal Government; and

(B) consider the feasibility and desirability of using cohort hiring, or hiring “talent pools”, instead of conducting all hiring on a position-by-position basis.

Analysis.  
Recommendations.  
Survey.

(3) CONSULTATION.—The analysis and recommendations in the report required under paragraph (1) shall be prepared in consultation with all stakeholders, public sector unions, hiring managers, career agency, and Office of Personnel Management personnel specialists, and after a survey of public sector employees and job applicants.

**SEC. 1110. DESIGNATING CERTAIN FEHBP AND FEGLI SERVICES PROVIDED BY FEDERAL EMPLOYEES AS EXCEPTED SERVICES UNDER THE ANTI-DEFICIENCY ACT.**

(a) FEHBP.—Section 8905 of title 5, United States Code, is amended by adding at the end the following:

“(i) Any services by an officer or employee under this chapter relating to enrolling individuals in a health benefits plan under this chapter, or changing the enrollment of an individual already so enrolled, shall be deemed, for purposes of section 1342 of title 31, services for emergencies involving the safety of human life or the protection of property.”

(b) FEGLI.—Section 8702 of title 5, United States Code, is amended by adding at the end the following:

“(d) Any services by an officer or employee under this chapter relating to benefits under this chapter shall be deemed, for purposes of section 1342 of title 31, services for emergencies involving the safety of human life or the protection of property.”

5 USC 8702 note.  
Deadline.

(c) REGULATIONS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Office of Personnel Management shall prescribe regulations to carry out the amendments made by subsections (a) and (b).

(2) PAY STATUS FOR FURLOUGHED EMPLOYEES.—The regulations prescribed under paragraph (1) for the amendments made by subsection (a) shall provide that an employee furloughed as result of a lapse in appropriations shall, during such lapse, be deemed to be in a pay status for purposes of enrolling or changing the enrollment (as the case may be) of that employee under chapter 89 of title 5, United States Code.

5 USC 8702 note.

(d) APPLICATION.—The amendments made by subsection (a) and (b) shall apply to any lapse in appropriations beginning on or after the date of enactment of this Act.

**SEC. 1111. CONTINUING SUPPLEMENTAL DENTAL AND VISION BENEFITS AND LONG-TERM CARE INSURANCE COVERAGE DURING A GOVERNMENT SHUTDOWN.**

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in section 8956, by adding at the end the following:

“(d) Coverage under a dental benefits plan under this chapter for any employee or a covered TRICARE-eligible individual enrolled in such a plan and who, as a result of a lapse in appropriations, is furloughed or excepted from furlough and working without pay shall continue during such lapse and may not be cancelled as



a result of nonpayment of premiums or other periodic charges due to such lapse.”;

(2) in section 8986, by adding at the end the following:

“(d) Coverage under a vision benefits plan under this chapter for any employee or a covered TRICARE-eligible individual enrolled in such a plan and who, as a result of a lapse in appropriations, is furloughed or excepted from furlough and working without pay shall continue during such lapse and may not be cancelled as a result of nonpayment of premiums or other periodic charges due to such lapse.”; and

(3) in section 9003, by adding at the end the following:

“(e) EFFECT OF GOVERNMENT SHUTDOWN.—Coverage under a master contract under this chapter for long-term care insurance for an employee or member of the uniformed services enrolled under such contract and who, due to a lapse in appropriations, is furloughed or excepted from furlough and working without pay shall continue during such lapse and may not be cancelled as a result of nonpayment of premiums or other periodic charges due to such lapse.”.

(b) REGULATIONS.—

5 USC 8956 note.

(1) IN GENERAL.—Consistent with paragraph (2), the Director of the Office of Personnel Management shall prescribe regulations under which premiums for supplemental dental, supplemental vision, or long-term care insurance under chapter 89A, 89B, or 90 (respectively) of title 5, United States Code, (as amended by subsection (a)) that are unpaid by an employee, a covered TRICARE-eligible individual, or a member of the uniformed services (as the case may be), as a result of that employee, covered TRICARE-eligible individual, or member being furloughed or excepted from furlough and working without pay as a result of a lapse in appropriations, are paid to the applicable carrier from back pay made available to the employee or member as soon as practicable upon the end of such lapse.

(2) LONG-TERM CARE PREMIUMS FROM SOURCE OTHER THAN BACKPAY.—The regulations promulgated under paragraph (1) for the amendments made by subsection (a)(3) may provide, with respect to any individual who elected under section 9004(d) of title 5, United States Code, to pay premiums directly to the carrier, that such individual may continue to pay premiums pursuant to such election instead of from back pay made available to such individual.

(c) APPLICATION.—The amendments made by subsection (a) shall apply to any contract for supplemental dental, supplemental vision, or long-term care insurance under chapter 89A, 89B, or 90 (respectively) of title 5, United States Code, entered into before, on, or after the date of enactment of this Act.

5 USC 8956 note.

**SEC. 1112. LIMITATION ON TRANSFER OF OFFICE OF PERSONNEL MANAGEMENT.**

(a) IN GENERAL.—No person may assign, transfer, transition, merge, or consolidate any function, responsibility, authority, service, system, or program that is assigned in law to the Office of Personnel Management to or with the General Services Administration, the Office of Management and Budget, or the Executive Office of the President, until on or after the date that is 180 days after the date on which the report required by subsection (c) is submitted

Time period.

to the appropriate committees of Congress, and subject to the enactment of any legislation required.

Recommendations.

(b) INDEPENDENT STUDY AND REPORT.—

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Personnel Management (in this section referred to as the “Director”) shall contract with the National Academy of Public Administration (in this section referred to as the “Academy”) to conduct a study addressing each of the elements set forth in paragraph (3) and to report the findings and recommendations derived from such study.

(2) DEADLINE.—Not later than one year after the date the contract required by paragraph (1) is entered into, the Academy shall submit the report prepared under such contract to the Director and the appropriate committees of Congress.

Assessment. Analysis. Recommendations.

(3) REQUIREMENTS.—The study and report required by paragraph (1) and (2) shall include a comprehensive assessment and analysis of—

(A) the statutory mandates assigned to the Office of Personnel Management and the challenges associated with the Office’s execution of those mandates;

(B) the non-statutory functions, responsibilities, authorities, services, systems, and programs performed or executed by the Office of Personnel Management; the Office’s justification for carrying out such functions, responsibilities, authorities, services, systems, and programs; and the challenges associated with the Office’s execution of same;

(C) the means, options, and recommended courses of action for addressing the challenges identified pursuant to subparagraphs (A) and (B), including an analysis of the benefits, costs, and feasibility of each option and the effect of each on labor-management agreements;

(D) a timetable for the implementation of options and recommended courses of action identified pursuant to subparagraph (C);

(E) statutory or regulatory changes necessary to execute any course of action recommended;

(F) the methods for involving, engaging with, and receiving input from other Federal agencies, departments, and entities potentially affected by any change in the structure, functions, responsibilities, authorities of the Office of Personnel Management that may be recommended;

(G) the views of identified stakeholders, including other Federal agencies, departments, and entities; non-Federal entities or organizations representing customers or intended beneficiaries of Office of Personnel Management functions, services, systems, or programs; and such individual customers and intended beneficiaries; and

(H) such other matters as the Director may prescribe.

Recommendations. Consultation.

(c) OPM REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date on which the report is submitted pursuant to subsection (b)(2) to the Director and the appropriate committees of Congress, the Director, in consultation with the General Services Administration, the Office of Management and Budget, and other appropriate Federal agencies, departments, or entities, shall submit

to the appropriate committees of Congress a report on the views of the Office of Personnel Management on the findings and recommendations set forth in the report prepared under subsection (b), together with any recommendations for changes in the structure, functions, responsibilities, and authorities of the Office of Personnel Management.

(2) **BUSINESS CASE ANALYSIS.**—Any recommendation submitted in the report under paragraph (1) for change shall be accompanied by a business case analysis setting forth the operational efficiencies and cost savings (in both the short- and long-terms) associated with such change, and a proposal for legislative or administrative action required to effect the change proposed.

(d) **DEFINITION OF APPROPRIATE COMMITTEES OF CONGRESS.**—For purposes of this section, the term “appropriate committees of Congress” are the Committees on Appropriations and Homeland Security and Governmental Affairs of the Senate and the Committees on Appropriations and Oversight and Reform of the House of Representatives.

**SEC. 1113. ASSESSMENT OF ACCELERATED PROMOTION PROGRAM SUSPENSION.**

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Navy shall conduct an assessment of the impacts resulting from the Navy’s suspension in 2016 of the Accelerated Promotion Program (in this section referred to as the “APP”).

Deadline.

(b) **ELEMENTS.**—The assessment required under subsection (a) shall include the following elements:

Time periods.  
Determination.

(1) An identification of the number of employees who were hired at the four public shipyards between January 23, 2016, and December 22, 2016, covering the period in which APP was suspended, and who would have otherwise been eligible for APP had the program been in effect at the time they were hired.

(2) An assessment for employees identified in paragraph (1) to determine the difference between wages earned from the date of hire to the date on which wage data is collected for purposes of the assessment and the wages which would have been earned during this same period had that employee participated in APP from the date of hire and been promoted according to the average promotion timeframe for participants hired in the five-year period prior to the suspension.

(3) An assessment for each employee identified in paragraph (1) to determine at what grade and step each effected employee who would have met the required experience and training to qualify for an accelerated promotion would be on October 1, 2020, had that employee been promoted according to the average promotion timeframe for participants hired in the five-year period prior to the suspension.

(4) An evaluation of existing authorities available to the Secretary to determine whether the Secretary can take measures using those authorities to provide the pay difference and corresponding interest to each effected employee who has otherwise met the required experience and training to qualify for an accelerated promotion identified in paragraph (2) and

Evaluation.

directly promote the employee to the grade and step identified in paragraph (3).

(c) **REPORT.**—The Secretary shall submit to the congressional defense committees a report on the results of the assessment required under subsection (a) by not later than June 1, 2020, and shall provide interim briefings upon request.

**SEC. 1114. REIMBURSEMENT FOR FEDERAL, STATE, AND LOCAL INCOME TAXES INCURRED DURING TRAVEL, TRANSPORTATION, AND RELOCATION.**

(a) **IN GENERAL.**—Section 5724b of title 5, United States Code, is amended—

(1) in the section heading, by striking “**of employees transferred**”;

(2) in subsection (a)—

(A) in the first sentence, by striking “employee, or by an employee and such employee’s spouse (if filing jointly), for any moving or storage” and inserting “individual, or by an individual and such individual’s spouse (if filing jointly), for any travel, transportation, or relocation”; and

(B) in the second sentence, by striking “employee” and inserting “individual, or the individual”; and

(3) by striking subsection (b) and inserting the following:

Definition.

“(b) For purposes of this section, the term ‘travel, transportation, or relocation expenses’ means all travel, transportation, or relocation expenses reimbursed or furnished in kind pursuant to this subchapter of chapter 41.”.

5 USC 5701 prec.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 57 of title 5, United States Code, is amended by striking the item relating to section 5724b and inserting the following:

“5724b. Taxes on reimbursements for travel, transportation, and relocation expenses”.

5 USC 5724b note.

(c) **RETROACTIVE EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2018.

**SEC. 1115. CLARIFICATION OF LIMITATION ON EXPEDITED HIRING AUTHORITY FOR POST-SECONDARY STUDENTS.**

Section 3116(d)(1) of title 5, United States Code, is amended to read as follows:

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position at the GS–11 level, or an equivalent level, or below.”.

**SEC. 1116. MODIFICATION OF TEMPORARY ASSIGNMENTS OF DEPARTMENT OF DEFENSE EMPLOYEES TO A PRIVATE-SECTOR ORGANIZATION.**

Section 1599g(e)(2)(A) of title 10, United States Code, is amended by inserting “permanent” after “without the”.

**SEC. 1117. EXTENSION OF AUTHORITY FOR PART-TIME REEMPLOYMENT.**

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8344(l)(7) of title 5, United States Code, is amended by striking “December 31, 2019” and inserting “December 31, 2024”.

(b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—Section 8468(i)(7) of title 5, United States Code, is amended by striking “December 31, 2019” and inserting “December 31, 2024”.

**Subtitle B—Fair Chance Act****SEC. 1121. SHORT TITLE.**

This subtitle may be cited as the “Fair Chance to Compete for Jobs Act of 2019” or the “Fair Chance Act”.

**SEC. 1122. PROHIBITION ON CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER FOR FEDERAL EMPLOYMENT.**

(a) IN GENERAL.—Subpart H of part III of title 5, United States Code, is amended by adding at the end the following:

**“CHAPTER 92—PROHIBITION ON CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER**

Fair Chance to  
Compete for Jobs  
Act of 2019.  
5 USC 101 note.

5 USC 9201 prec.

“Sec.  
“9201. Definitions.  
“9202. Limitations on requests for criminal history record information.  
“9203. Agency policies; complaint procedures.  
“9204. Adverse action.  
“9205. Procedures.  
“9206. Rules of construction.

**“§ 9201. Definitions**

5 USC 9201.

“In this chapter—

“(1) the term ‘agency’ means ‘Executive agency’ as such term is defined in section 105 and includes—

“(A) the United States Postal Service and the Postal Regulatory Commission; and

“(B) the Executive Office of the President;

“(2) the term ‘appointing authority’ means an employee in the executive branch of the Government of the United States that has authority to make appointments to positions in the civil service;

“(3) the term ‘conditional offer’ means an offer of employment in a position in the civil service that is conditioned upon the results of a criminal history inquiry;

“(4) the term ‘criminal history record information’—

“(A) except as provided in subparagraphs (B) and (C), has the meaning given the term in section 9101(a);

“(B) includes any information described in the first sentence of section 9101(a)(2) that has been sealed or expunged pursuant to law; and

“(C) includes information collected by a criminal justice agency, relating to an act or alleged act of juvenile delinquency, that is analogous to criminal history record information (including such information that has been sealed or expunged pursuant to law); and

“(5) the term ‘suspension’ has the meaning given the term in section 7501.

5 USC 9202.

**“§ 9202. Limitations on requests for criminal history record information**

“(a) INQUIRIES PRIOR TO CONDITIONAL OFFER.—Except as provided in subsections (b) and (c), an employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (Office of Personnel Management Optional Form 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant.

“(b) OTHERWISE REQUIRED BY LAW.—The prohibition under subsection (a) shall not apply with respect to an applicant for a position in the civil service if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

“(c) EXCEPTION FOR CERTAIN POSITIONS.—

“(1) IN GENERAL.—The prohibition under subsection (a) shall not apply with respect to an applicant for an appointment to a position—

“(A) that requires a determination of eligibility described in clause (i), (ii), or (iii) of section 9101(b)(1)(A);

“(B) as a Federal law enforcement officer (as defined in section 115(c) of title 18); or

“(C) identified by the Director of the Office of Personnel Management in the regulations issued under paragraph (2).

“(2) REGULATIONS.—

“(A) ISSUANCE.—The Director of the Office of Personnel Management shall issue regulations identifying additional positions with respect to which the prohibition under subsection (a) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

“(B) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under subparagraph (A) shall—

“(i) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

“(ii) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

Publication.  
5 USC 9203.**“§ 9203. Agency policies; complaint procedures**

“The Director of the Office of Personnel Management shall—

“(1) develop, implement, and publish a policy to assist employees of agencies in complying with section 9202 and the regulations issued pursuant to such section; and

“(2) establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202.

5 USC 9204.

**“§ 9204. Adverse action**Determination.  
Notice.

“(a) FIRST VIOLATION.—If the Director of the Office of Personnel Management determines, after notice and an opportunity for a

hearing on the record, that an employee of an agency has violated section 9202, the Director shall—

“(1) issue to the employee a written warning that includes a description of the violation and the additional penalties that may apply for subsequent violations; and

“(2) file such warning in the employee’s official personnel record file.

“(b) **SUBSEQUENT VIOLATIONS.**—If the Director of the Office of Personnel Management determines, after notice and an opportunity for a hearing on the record, that an employee that was subject to subsection (a) has committed a subsequent violation of section 9202, the Director may take the following action:

Determination.  
Notice.

“(1) For a second violation, suspension of the employee for a period of not more than 7 days.

“(2) For a third violation, suspension of the employee for a period of more than 7 days.

“(3) For a fourth violation—

“(A) suspension of the employee for a period of more than 7 days; and

“(B) a civil penalty against the employee in an amount that is not more than \$250.

“(4) For a fifth violation—

“(A) suspension of the employee for a period of more than 7 days; and

“(B) a civil penalty against the employee in an amount that is not more than \$500.

“(5) For any subsequent violation—

“(A) suspension of the employee for a period of more than 7 days; and

“(B) a civil penalty against the employee in an amount that is not more than \$1,000.

#### “§ 9205. Procedures

5 USC 9205.

“(a) **APPEALS.**—The Director of the Office of Personnel Management shall by rule establish procedures providing for an appeal from any adverse action taken under section 9204 by not later than 30 days after the date of the action.

Regulations.  
Deadline.

“(b) **APPLICABILITY OF OTHER LAWS.**—An adverse action taken under section 9204 (including a determination in an appeal from such an action under subsection (a) of this section) shall not be subject to—

Determination.

“(1) the procedures under chapter 75; or

“(2) except as provided in subsection (a) of this section, appeal or judicial review.

#### “§ 9206. Rules of construction

5 USC 9206.

“Nothing in this chapter may be construed to—

“(1) authorize any officer or employee of an agency to request the disclosure of information described under subparagraphs (B) and (C) of section 9201(4); or

“(2) create a private right of action for any person.”.

(b) **REGULATIONS; EFFECTIVE DATE.**—

(1) **REGULATIONS.**—Not later than 1 year after the date of enactment of this subtitle, the Director of the Office of Personnel Management shall issue such regulations as are necessary to carry out chapter 92 of title 5, United States Code (as added by this subtitle).

Deadline.  
5 USC 9201 note.

5 USC 9202 note.

(2) EFFECTIVE DATE.—Section 9202 of title 5, United States Code (as added by this subtitle), shall take effect on the date that is 2 years after the date of enactment of this subtitle.

5 USC 2101 prec.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 91 the following:

“92. Prohibition on criminal history inquiries prior to conditional offer ..... 9201”.

(d) APPLICATION TO LEGISLATIVE BRANCH.—

(1) IN GENERAL.—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

(A) in section 102(a) (2 U.S.C. 1302(a)), by adding at the end the following:

“(12) Section 9202 of title 5, United States Code.”;

(B) by redesignating section 207 (2 U.S.C. 1317) as section 208; and

(C) by inserting after section 206 (2 U.S.C. 1316) the following new section:

2 USC 1316b.

“SEC. 207. RIGHTS AND PROTECTIONS RELATING TO CRIMINAL HISTORY INQUIRIES.

“(a) DEFINITIONS.—In this section, the terms ‘agency’, ‘criminal history record information’, and ‘suspension’ have the meanings given the terms in section 9201 of title 5, United States Code, except as otherwise modified by this section.

“(b) RESTRICTIONS ON CRIMINAL HISTORY INQUIRIES.—

“(1) IN GENERAL.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an employee of an employing office may not request that an applicant for employment as a covered employee disclose criminal history record information if the request would be prohibited under section 9202 of title 5, United States Code, if made by an employee of an agency.

“(B) CONDITIONAL OFFER.—For purposes of applying that section 9202 under subparagraph (A), a reference in that section 9202 to a conditional offer shall be considered to be an offer of employment as a covered employee that is conditioned upon the results of a criminal history inquiry.

Applicability.

“(2) RULES OF CONSTRUCTION.—The provisions of section 9206 of title 5, United States Code, shall apply to employing offices, consistent with regulations issued under subsection (d).

“(c) REMEDY.—

“(1) IN GENERAL.—The remedy for a violation of subsection (b)(1) shall be such remedy as would be appropriate if awarded under section 9204 of title 5, United States Code, if the violation had been committed by an employee of an agency, consistent with regulations issued under subsection (d), except that the reference in that section to a suspension shall be considered to be a suspension with the level of compensation provided for a covered employee who is taking unpaid leave under section 202.

“(2) PROCESS FOR OBTAINING RELIEF.—An applicant for employment as a covered employee who alleges a violation of subsection (b)(1) may rely on the provisions of title IV (other than section 407 or 408, or a provision of this title that permits a person to obtain a civil action or judicial review), consistent with regulations issued under subsection (d).



## “(d) REGULATIONS TO IMPLEMENT SECTION.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Board shall, pursuant to section 304, issue regulations to implement this section. Deadline.

“(2) PARALLEL WITH AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations issued by the Director of the Office of Personnel Management under section 2(b)(1) of the Fair Chance to Compete for Jobs Act of 2019 to implement the statutory provisions referred to in subsections (a) through (c) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

“(e) EFFECTIVE DATE.—Section 102(a)(12) and subsections (a) through (c) shall take effect on the date on which section 9202 of title 5, United States Code, applies with respect to agencies.”. Applicability.

## (2) CLERICAL AMENDMENTS.—

(A) The table of contents in section 1(b) of the Congressional Accountability Act of 1995 (Public Law 104–1; 109 Stat. 3) is amended—

(i) by redesignating the item relating to section 207 as the item relating to section 208; and

(ii) by inserting after the item relating to section 206 the following new item:

“Sec. 207. Rights and protections relating to criminal history inquiries.”.

(B) Section 62(e)(2) of the Internal Revenue Code of 1986 is amended by striking “or 207” and inserting “207, or 208”. 26 USC 62.

(e) APPLICATION TO JUDICIAL BRANCH.—Section 604 of title 28, United States Code, is amended by adding at the end the following:

## “(i) RESTRICTIONS ON CRIMINAL HISTORY INQUIRIES.—

“(1) DEFINITIONS.—In this subsection—

“(A) the terms ‘agency’ and ‘criminal history record information’ have the meanings given those terms in section 9201 of title 5;

“(B) the term ‘covered employee’ means an employee of the judicial branch of the United States Government, other than—

“(i) any judge or justice who is entitled to hold office during good behavior;

“(ii) a United States magistrate judge; or

“(iii) a bankruptcy judge; and

“(C) the term ‘employing office’ means any office or entity of the judicial branch of the United States Government that employs covered employees.

“(2) RESTRICTION.—A covered employee may not request that an applicant for employment as a covered employee disclose criminal history record information if the request would be prohibited under section 9202 of title 5 if made by an employee of an agency.

“(3) EMPLOYING OFFICE POLICIES; COMPLAINT PROCEDURE.— Applicability.  
The provisions of sections 9203 and 9206 of title 5 shall apply

to employing offices and to applicants for employment as covered employees, consistent with regulations issued by the Director to implement this subsection.

“(4) ADVERSE ACTION.—

“(A) ADVERSE ACTION.—The Director may take such adverse action with respect to a covered employee who violates paragraph (2) as would be appropriate under section 9204 of title 5 if the violation had been committed by an employee of an agency.

Regulations.  
Deadline.

“(B) APPEALS.—The Director shall by rule establish procedures providing for an appeal from any adverse action taken under subparagraph (A) by not later than 30 days after the date of the action.

Determination.

“(C) APPLICABILITY OF OTHER LAWS.—Except as provided in subparagraph (B), an adverse action taken under subparagraph (A) (including a determination in an appeal from such an action under subparagraph (B)) shall not be subject to appeal or judicial review.

Deadline.

“(5) REGULATIONS TO BE ISSUED.—

“(A) IN GENERAL.—Not later than 18 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Director shall issue regulations to implement this subsection.

“(B) PARALLEL WITH AGENCY REGULATIONS.—The regulations issued under subparagraph (A) shall be the same as substantive regulations promulgated by the Director of the Office of Personnel Management under section 2(b)(1) of the Fair Chance to Compete for Jobs Act of 2019 except to the extent that the Director of the Administrative Office of the United States Courts may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.

Applicability.

“(6) EFFECTIVE DATE.—Paragraphs (1) through (4) shall take effect on the date on which section 9202 of title 5 applies with respect to agencies.”.

**SEC. 1123. PROHIBITION ON CRIMINAL HISTORY INQUIRIES BY CONTRACTORS PRIOR TO CONDITIONAL OFFER.**

(a) CIVILIAN AGENCY CONTRACTS.—

(1) IN GENERAL.—Chapter 47 of title 41, United States Code, is amended by adding at the end the following new section:

41 USC 4714.

**“§ 4714. Prohibition on criminal history inquiries by contractors prior to conditional offer**

“(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an executive agency—

“(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

“(B) shall require, as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally, or through written form,

request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before the contractor extends a conditional offer to the applicant.

“(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

“(3) EXCEPTION FOR CERTAIN POSITIONS.—

“(A) IN GENERAL.—The prohibition under paragraph (1) does not apply with respect to—

“(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

“(ii) a position that the Administrator of General Services identifies under the regulations issued under subparagraph (B).

“(B) REGULATIONS.—

“(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Administrator of General Services, in consultation with the Secretary of Defense, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

Deadline.  
Consultation.

“(ii) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under clause (i) shall—

“(I) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

“(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

“(b) COMPLAINT PROCEDURES.—The Administrator of General Services shall establish and publish procedures under which an applicant for a position with a Federal contractor may submit to the Administrator a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

Publication.

“(c) ACTION FOR VIOLATIONS OF PROHIBITION ON CRIMINAL HISTORY INQUIRIES.—

Determinations.

“(1) FIRST VIOLATION.—If the head of an executive agency determines that a contractor has violated subsection (a)(1)(B), such head shall—

“(A) notify the contractor;

“(B) provide 30 days after such notification for the contractor to appeal the determination; and

“(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

Notification.  
Deadline.  
Appeal.

Notification.  
Deadline.  
Appeal.  
Consultation.

“(2) SUBSEQUENT VIOLATION.—If the head of an executive agency determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), such head shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor’s history of violations, including—

Deadline.

“(A) providing written guidance to the contractor that the contractor’s eligibility for contracts requires compliance with this section;

“(B) requiring that the contractor respond within 30 days affirming that the contractor is taking steps to comply with this section; and

“(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

“(d) DEFINITIONS.—In this section:

“(1) CONDITIONAL OFFER.—The term ‘conditional offer’ means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

“(2) CRIMINAL HISTORY RECORD INFORMATION.—The term ‘criminal history record information’ has the meaning given that term in section 9201 of title 5.”

41 USC 4701  
prec.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 41, United States Code, is amended by adding at the end the following new item:

“4714. Prohibition on criminal history inquiries by contractors prior to conditional offer.”.

Applicability.  
41 USC 4714  
note.

(3) EFFECTIVE DATE.—Section 4714 of title 41, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded pursuant to solicitations issued after the effective date described in section 1122(b)(2) of this subtitle.

(b) DEFENSE CONTRACTS.—

(1) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2338 the following new section:

10 USC 2339.

**“§ 2339. Prohibition on criminal history inquiries by contractors prior to conditional offer**

“(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the head of an agency—

“(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

“(B) shall require as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally or through written form request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before such contractor extends a conditional offer to the applicant.

“(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

“(3) EXCEPTION FOR CERTAIN POSITIONS.—

“(A) IN GENERAL.—The prohibition under paragraph (1) does not apply with respect to—

“(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

“(ii) a position that the Secretary of Defense identifies under the regulations issued under subparagraph (B).

“(B) REGULATIONS.—

“(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Secretary of Defense, in consultation with the Administrator of General Services, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

Deadline.

“(ii) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under clause (i) shall—

“(I) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

“(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

“(b) COMPLAINT PROCEDURES.—The Secretary of Defense shall establish and publish procedures under which an applicant for a position with a Department of Defense contractor may submit a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

Publication.

“(c) ACTION FOR VIOLATIONS OF PROHIBITION ON CRIMINAL HISTORY INQUIRIES.—

Determinations.

“(1) FIRST VIOLATION.—If the Secretary of Defense determines that a contractor has violated subsection (a)(1)(B), the Secretary shall—

“(A) notify the contractor;

Notification.

“(B) provide 30 days after such notification for the contractor to appeal the determination; and

Deadline.

“(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

“(2) SUBSEQUENT VIOLATIONS.—If the Secretary of Defense determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), the Secretary shall notify the contractor, shall provide 30 days

Notification.  
Deadline.  
Consultation.

after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor’s history of violations, including—

“(A) providing written guidance to the contractor that the contractor’s eligibility for contracts requires compliance with this section;

Deadline.

“(B) requiring that the contractor respond within 30 days affirming that the contractor is taking steps to comply with this section; and

“(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

“(d) DEFINITIONS.—In this section:

“(1) CONDITIONAL OFFER.—The term ‘conditional offer’ means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

“(2) CRIMINAL HISTORY RECORD INFORMATION.—The term ‘criminal history record information’ has the meaning given that term in section 9201 of title 5.”.

Applicability.  
10 USC 2339  
note.

(2) EFFECTIVE DATE.—Section 2339(a) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded pursuant to solicitations issued after the effective date described in section 1122(b)(2) of this subtitle.

10 USC 2301  
prec.

(3) CLERICAL AMENDMENT.—The table of sections for chapter 137 of title 10, United States Code, is amended by inserting after the item relating to section 2338 the following new item:

“2339. Prohibition on criminal history inquiries by contractors prior to conditional offer.”.

10 USC 2339  
note.  
Deadline.

(c) REVISIONS TO FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this subtitle, the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation to implement section 4714 of title 41, United States Code, and section 2339 of title 10, United States Code, as added by this section.

(2) CONSISTENCY WITH OFFICE OF PERSONNEL MANAGEMENT REGULATIONS.—The Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation under paragraph (1) to be consistent with the regulations issued by the Director of the Office of Personnel Management under section 1122(b)(1) to the maximum extent practicable. The Council shall include together with such revision an explanation of any substantive modification of the Office of Personnel Management regulations, including an explanation of how such modification will more effectively implement the rights and protections under this section.

34 USC 10132  
note.

**SEC. 1124. REPORT ON EMPLOYMENT OF INDIVIDUALS FORMERLY INCARCERATED IN FEDERAL PRISONS.**

(a) DEFINITION.—In this section, the term “covered individual”—

(1) means an individual who has completed a term of imprisonment in a Federal prison for a Federal criminal offense; and

(2) does not include an alien who is or will be removed from the United States for a violation of the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(b) **STUDY AND REPORT REQUIRED.**—The Director of the Bureau of Justice Statistics, in coordination with the Director of the Bureau of the Census, shall—

Coordination.

(1) not later than 180 days after the date of enactment of this subtitle, design and initiate a study on the employment of covered individuals after their release from Federal prison, including by collecting—

(A) demographic data on covered individuals, including race, age, and sex; and

(B) data on employment and earnings of covered individuals who are denied employment, including the reasons for the denials; and

(2) not later than 2 years after the date of enactment of this subtitle, and every 5 years thereafter, submit a report that does not include any personally identifiable information on the study conducted under paragraph (1) to—

Time period.

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

(C) the Committee on Oversight and Reform of the House of Representatives; and

(D) the Committee on Education and Labor of the House of Representatives.

## Subtitle C—ATC Hiring Reform

ATC Hiring Reform Act.

### SEC. 1131. SHORT TITLE; DEFINITION.

(a) **SHORT TITLE.**—This subtitle may be cited as the “ATC Hiring Reform Act”.

(b) **DEFINITION OF APPROPRIATE COMMITTEES OF CONGRESS.**—In this subtitle, the term “appropriate committees of Congress” means—

49 USC 40101 note.

(1) the Committee on Oversight and Reform of the House of Representatives;

(2) the Committee on Transportation and Infrastructure of the House of Representatives;

(3) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(4) the Committee on Commerce, Science, and Transportation of the Senate.

### SEC. 1132. HIRING OF AIR TRAFFIC CONTROL SPECIALISTS.

Section 44506(f)(1)(B)(i) of title 49, United States Code, is amended by striking “referring” and all that follows through “10 percent.” and inserting “giving further preferential consideration, within each qualification category based upon pre-employment testing results (including application of veterans’ preference as required under section 40122(g)(2)(B)), to pool 1 applicants described in clause (ii) before pool 2 applicants described in clause (iii).”.

**SEC. 1133. ENSURING HIRING PREFERENCE FOR APPLICANTS WITH EXPERIENCE AT AN AIR TRAFFIC CONTROL FACILITY OF THE NATIONAL GUARD.**

Section 44506(f)(1)(A)(ii) of title 49, United States Code, is amended by inserting “(including a facility of the National Guard)” after “Department of Defense”.

**SEC. 1134. FAA REPORTS ON AIR TRAFFIC CONTROLLER HIRING AND TRAINING.**

(a) **REPORTS TO CONGRESS.**—Not later than September 30 of 2020, 2021, 2022, and 2023, the Administrator of the Federal Aviation Administration shall submit to the appropriate committees of Congress a report regarding the hiring and training of air traffic controllers.

(b) **CONTENTS.**—Each report under subsection (a) shall include the following information:

(1) The number of applicants, from each hiring pool (by vacancy announcement beginning with vacancy announcement FAA-ATO-19-ALLSRCE-61676 (issued on June 14, 2019)) who have done the following:

(A) Applied for the position of air traffic controller.

(B) Been issued a tentative offer letter for the position of air traffic controller.

(C) Been issued a firm offer letter for the position of air traffic controller.

(D) Been hired for the position of air traffic controller.

(E) Reported to the FAA Academy for initial qualification training.

(F) Successfully passed Air Traffic Basics training at the FAA Academy.

(G) Successfully passed Terminal initial training at the FAA Academy.

(H) Successfully passed En Route initial training at the FAA Academy.

(2) The average cost of training per individual for each such hiring pool for the following:

(A) Air Traffic Basics training at the FAA Academy.

(B) Terminal initial training at the FAA Academy.

(C) En Route initial training at the FAA Academy.

(3) The FAA Academy attrition rate for each such hiring pool.

(4) The number of applicants, from each such hiring pool, who have successfully completed qualification training at their first FAA facility and the number who are still in training at their first facility.

(5) Other information determined appropriate by the Administrator of the Federal Aviation Administration.

**SEC. 1135. DOT INSPECTOR GENERAL REVIEW AND REPORT.**

(a) **REVIEW.**—

Assessments.

(1) **IN GENERAL.**—The Inspector General of the Department of Transportation (in this section referred to as the “Inspector General”) shall conduct a review that assesses the assumptions and methodologies used to develop the air traffic controller pre-employment test. Such review shall include—



(A) what job-relevant aptitudes are measured by the air traffic controller pre-employment test and to what extent such aptitudes are tested;

(B) the scoring methodology for the air traffic controller pre-employment test, including an assessment of whether such methodology is applied uniformly for all classes of applicants;

(C) whether the air traffic controller pre-employment test incorporates any biographical questionnaire or assessment other than basic identifiers, such as name and questions that assess personal characteristics, and the extent to which such biographical assumptions are relied upon to assess air traffic controller applicants;

(D) the effectiveness of the pre-employment test, mental health screening, and any other applicable pre-employment assessment to determine whether an applicant possesses the skills necessary to perform the duties of a controller; and

(E) ways to improve the pre-employment test and other applicable pre-employment assessments as the Inspector General determines appropriate.

(2) **START DATE.**—The Inspector General shall initiate the review under paragraph (1) by not later than 90 days after the date of enactment of this Act.

(b) **REPORT.**—Not later than 180 days after the date the Inspector General initiates the review under subsection (a), the Inspector General shall submit to the appropriate committees of Congress a report on such review.

## TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

### Subtitle A—Assistance and Training

- Sec. 1201. Modification of authority to build capacity of foreign security forces.
- Sec. 1202. Modification and extension of cross servicing agreements for loan of personnel protection and personnel survivability equipment in coalition operations.
- Sec. 1203. Modifications of authorities relating to acquisition and cross-servicing agreements.
- Sec. 1204. Modification of quarterly report on obligation and expenditure of funds for security cooperation programs and activities.
- Sec. 1205. Gender perspectives and participation by women in security cooperation activities.
- Sec. 1206. Plan to provide consistency of administration of authorities relating to vetting of units of security forces of foreign countries; modification of assessment, monitoring, and evaluation of security cooperation programs and activities.
- Sec. 1207. Extension of authority for support of special operations for irregular warfare.
- Sec. 1208. Extension and modification of Commanders' Emergency Response Program and elimination of certain payments to redress injury and loss.
- Sec. 1209. Two-year extension of program authority for Global Security Contingency Fund.
- Sec. 1210. Legal institutional capacity building initiative for foreign defense institutions.
- Sec. 1210A. Department of Defense support for stabilization activities in national security interest of the United States.

### Subtitle B—Matters Relating to Afghanistan and Pakistan

- Sec. 1211. Extension of authority to transfer defense articles and provide defense services to the military and security forces of Afghanistan.

- Sec. 1212. Extension and modification of authority to acquire products and services produced in countries along a major route of supply to Afghanistan.
- Sec. 1213. Authority for certain payments to redress injury and loss.
- Sec. 1214. Extension and modification of semiannual report on enhancing security and stability in Afghanistan.
- Sec. 1215. Special Immigrant Visa program reporting requirement.
- Sec. 1216. Meaningful inclusion of Afghan women in peace negotiations.
- Sec. 1217. Extension and modification of authority for reimbursement of certain coalition nations for support provided to United States military operations.
- Sec. 1218. Support for reconciliation activities led by the Government of Afghanistan.
- Sec. 1219. Modification and extension of the Afghan Special Immigrant Visa Program.

Subtitle C—Matters Relating to Syria, Iraq, and Iran

- Sec. 1221. Modification of authority and limitation on use of funds to provide assistance to counter the Islamic State of Iraq and Syria.
- Sec. 1222. Extension and modification of authority to provide assistance to vetted Syrian groups and individuals.
- Sec. 1223. Modification of authority to support operations and activities of the Office of Security Cooperation in Iraq.
- Sec. 1224. Establishing a coordinator for detained ISIS members and relevant displaced populations in Syria.
- Sec. 1225. Report on lessons learned from efforts to liberate Mosul and Raqqa from control of the Islamic State of Iraq and Syria.
- Sec. 1226. Expansion of availability of financial assets of Iran to victims of terrorism.
- Sec. 1227. Report on the status of deconfliction channels with Iran.
- Sec. 1228. Prohibition on provision of weapons and other forms of support to certain organizations.

Subtitle D—Matters Relating to the Russian Federation

- Sec. 1231. Extension of limitation on military cooperation between the United States and Russia.
- Sec. 1232. Prohibition on availability of funds relating to sovereignty of Russia over Crimea.
- Sec. 1233. Sense of Congress on updating and modernizing existing agreements to avert miscalculation between the United States and Russia.
- Sec. 1234. United States participation in Open Skies Treaty.
- Sec. 1235. Modifications of briefing, notification, and reporting requirements relating to non-compliance by the Russian Federation with its obligations under the INF Treaty.
- Sec. 1236. Report on treaties relating to nuclear arms control.
- Sec. 1237. Reports relating to the New START Treaty.
- Sec. 1238. Report on military activities of the Russian Federation and the People's Republic of China in the Arctic region.
- Sec. 1239. Updated strategy to counter the threat of malign influence by the Russian Federation and other countries.

Subtitle E—Matters Relating to Europe and NATO

- Sec. 1241. Sense of Congress on support for the North Atlantic Treaty Organization.
- Sec. 1242. Prohibition on the use of funds to suspend, terminate, or provide notice of denunciation of the North Atlantic Treaty.
- Sec. 1243. Future years plans and planning transparency for the European Deterrence Initiative.
- Sec. 1244. Modification and extension of Ukraine Security Assistance Initiative.
- Sec. 1245. Limitation on transfer of F–35 aircraft to Turkey.
- Sec. 1246. Baltic defense assessment; extension and modification of security assistance for Baltic countries for joint program for interoperability and deterrence against aggression.
- Sec. 1247. Extension of authority for and report on training for Eastern European national security forces in the course of multilateral exercises.
- Sec. 1248. Extension and modification of NATO Special Operations Headquarters.
- Sec. 1249. North Atlantic Treaty Organization Joint Force Command.
- Sec. 1250. Report on North Atlantic Treaty Organization Readiness Initiative.
- Sec. 1250A. Repeal of prohibition on transfer of articles on the United States munitions list to the Republic of Cyprus.

Subtitle F—Matters Relating to the Indo-Pacific Region

- Sec. 1251. Modification of Indo-Pacific Maritime Security Initiative.

- Sec. 1252. Expansion of Indo-Pacific Maritime Security Initiative and limitation on use of funds.
- Sec. 1253. Report on resourcing United States defense requirements for the Indo-Pacific region and study on competitive strategies.
- Sec. 1254. Limitation on use of funds to reduce the total number of members of the Armed Forces serving on active duty who are deployed to South Korea.
- Sec. 1255. Report on direct, indirect, and burden-sharing contributions of Japan and South Korea.
- Sec. 1256. Sense of Congress on security commitments to the Governments of Japan and the Republic of Korea and trilateral cooperation among the United States, Japan, and the Republic of Korea.
- Sec. 1257. Sense of Congress on North Korea.
- Sec. 1258. Statement of policy and sense of Congress on, and strategy to fulfill obligations under, Mutual Defense Treaty with the Republic of the Philippines.
- Sec. 1259. Report on security cooperation with the Philippine National Police.
- Sec. 1260. Modification of annual report on military and security developments involving the People's Republic of China.
- Sec. 1260A. Report on foreign military activities in Pacific Island countries.
- Sec. 1260B. Report on cybersecurity activities with Taiwan.
- Sec. 1260C. Review and report related to the Taiwan Relations Act.
- Sec. 1260D. Sense of Congress on enhancement of the United States-Taiwan defense relationship.
- Sec. 1260E. Chinese foreign direct investment in countries of the Arctic region.
- Sec. 1260F. Sense of Congress on policy toward Hong Kong.
- Sec. 1260G. Sense of Congress on enhancing defense and security cooperation with the Republic of Singapore.
- Sec. 1260H. Authority to transfer funds for Bien Hoa dioxin cleanup.
- Sec. 1260I. Limitation on removal of Huawei Technologies Co. Ltd. from entity list of Bureau of Industry and Security.
- Sec. 1260J. Report on ZTE compliance with Superseding Settlement Agreement and Superseding Order.
- Sec. 1260K. Report on the lay-down of United States Marines in the Indo-Pacific Region.

## Subtitle G—Other Matters

- Sec. 1261. Modification to report on legal and policy frameworks for the use of military force.
- Sec. 1262. Independent review of sufficiency of resources available to United States Southern Command and United States Africa Command.
- Sec. 1263. United States Central Command posture assessment and review.
- Sec. 1264. Limitation on production of nuclear proliferation assessment statements.
- Sec. 1265. Western Hemisphere resource assessment.
- Sec. 1266. Human rights in Brazil.
- Sec. 1267. Certification relating to assistance for Guatemala.
- Sec. 1268. Independent analysis of human rights situation in Honduras.
- Sec. 1269. Briefing on strategy to improve the efforts of the Nigerian military to prevent, mitigate, and respond to civilian harm.
- Sec. 1270. Report on implications of Chinese military presence in Djibouti.
- Sec. 1271. Rule of construction on the permanent stationing of United States Armed Forces in Somalia.
- Sec. 1272. Defense and diplomatic strategy for Libya.
- Sec. 1273. Prohibition on in-flight refueling to non-United States aircraft that engage in hostilities in the ongoing civil war in Yemen.
- Sec. 1274. Report on Saudi-led coalition strikes in Yemen.
- Sec. 1275. Reports on expenses incurred for in-flight refueling of Saudi coalition aircraft conducting missions relating to civil war in Yemen.
- Sec. 1276. Report on Saudi Arabia's human rights record.
- Sec. 1277. Report on intelligence community assessment relating to the killing of Washington Post columnist Jamal Khashoggi.
- Sec. 1278. United States-Israel cooperation to counter unmanned aerial systems.
- Sec. 1279. Extension and modification of authority for United States-Israel anti-tunnel cooperation activities.
- Sec. 1280. Report on cost imposition strategy.
- Sec. 1281. Modification of initiative to support protection of national security academic researchers from undue influence and other security threats.
- Sec. 1282. Modification of responsibility for policy on civilian casualty matters.
- Sec. 1283. Report on export of certain satellites to entities with certain beneficial ownership structures.
- Sec. 1284. Rule of construction relating to the use of military force.
- Sec. 1285. Reports and briefings on use of military force and support of partner forces.

## Subtitle A—Assistance and Training

### SEC. 1201. MODIFICATION OF AUTHORITY TO BUILD CAPACITY OF FOREIGN SECURITY FORCES.

(a) **AUTHORITY.**—Subsection (a)(7) of section 333 of title 10, United States Code, is amended by inserting “existing” before “international coalition operation”.

(b) **NOTICE AND WAIT ON ACTIVITIES UNDER PROGRAMS.**—Subsection (e) of such section is amended by adding at the end the following:

“(9) In the case of a program described in subsection (a), each of the following:

“(A) A description of whether assistance under the program could be provided pursuant to other authorities under this title, the Foreign Assistance Act of 1961, or any other train and equip authorities of the Department of Defense.

“(B) An identification of each such authority described in subparagraph (A).”.

### SEC. 1202. MODIFICATION AND EXTENSION OF CROSS SERVICING AGREEMENTS FOR LOAN OF PERSONNEL PROTECTION AND PERSONNEL SURVIVABILITY EQUIPMENT IN COALITION OPERATIONS.

Section 1207 of the Carl Levin and Howard P. “Buck” Mckean National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 2342 note) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) by inserting after subsection (c) the following:

“(d) **REPORTS TO CONGRESS.**—If the authority provided under this section is exercised during a fiscal year, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report on the exercise of such authority by not later than October 30 of the year in which such fiscal year ends. Each report on the exercise of such authority shall specify the recipient country of the equipment loaned, the type of equipment loaned, and the duration of the loan of such equipment.”; and

(3) in subsection (f), as redesignated, by striking “September 30, 2019” and inserting “December 31, 2024”.

### SEC. 1203. MODIFICATIONS OF AUTHORITIES RELATING TO ACQUISITION AND CROSS-SERVICING AGREEMENTS.

(a) **DESIGNATION AND NOTICE OF INTENT TO ENTER INTO AGREEMENT WITH NON-NATO COUNTRY.**—Subsection (b) of section 2342 of title 10, United States Code, is amended to read as follows:

“(b)(1) The Secretary of Defense may not designate a country for an agreement under this section unless—

“(A) the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

“(B) in the case of a country that is not a member of the North Atlantic Treaty Organization, the Secretary submits to the appropriate committees of Congress notice of the intended designation not less than 30 days before the date on which

Consultation.  
Determination.

Deadline.

such country is designated by the Secretary under subsection (a).

“(2) In the case of a country that is not a member of the North Atlantic Treaty Organization, the Secretary of Defense may not enter into an agreement under this section unless the Secretary submits to the appropriate committees of Congress a notice of intent to enter into such an agreement not less than 30 days before the date on which the Secretary enters into the agreement.”. Deadline.

(b) OVERSIGHT RESPONSIBILITIES.—Such section is further amended—

(1) by redesignating subsections (f) through (h) as subsections (g) through (i), respectively; and

(2) by inserting after subsection (e) the following new subsection (f):

“(f) Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall designate an existing senior civilian or military official who shall have primary responsibility for— Deadline. Designation.

“(1) accounting for logistic support, supplies, and services received or provided under acquisition and cross-servicing agreements;

“(2) ensuring consistent standards and guidance to the armed forces and combatant commands in executing acquisition and cross-servicing agreements;

“(3) overseeing and monitoring the implementation of acquisition and cross-servicing agreements in coordination with the Under Secretary of Defense for Policy; and Coordination.

“(4) such other responsibilities as may be prescribed by the Secretary.”.

(c) REGULATIONS.—Subsection (g) of such section, as redesignated by subsection (b)(1), is amended to read as follows:

“(g)(1) Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall prescribe regulations to ensure that— Deadline.

“(A) contracts entered into under this subchapter are free from self-dealing, bribery, and conflict of interests; Contracts.

“(B) adequate processes and controls are in place to provide for the accurate accounting of logistic support, supplies, and services received or provided under the authority of this subchapter; and

“(C) personnel responsible for accounting for logistic support, supplies, and services received or provided under such authority are fully trained and aware of such responsibilities.

“(2)(A) Not later than 270 days after the issuance of the regulations under paragraph (1), the Comptroller General of the United States shall conduct a review of the implementation by the Secretary of such regulations. Deadline. Review.

“(B) The review conducted under subparagraph (A) shall—

“(i) assess the effectiveness of such regulations and the implementation of such regulations to ensure the effective management and oversight of an agreement under subsection (a)(1); and

“(ii) include any other matter the Comptroller General considers relevant.”.

(d) REPORTS.—Subsection (h) of such section, as redesignated by subsection (b)(1), is amended—

(1) in paragraph (1), by striking “in effect” and inserting “that have entered into force or were applied provisionally”;

(2) in paragraph (2), by striking “date on which the Secretary” and all that follows through the period at the end and inserting “dates on which the Secretary notified Congress—

“(A) pursuant to subsection (b)(1)(B) of the designation of such country under subsection (a); and

“(B) pursuant to subsection (b)(2) of the intent of the Secretary to enter into the agreement.”;

(3) by amending paragraph (3) to read as follows:

“(3) The class of supply, total dollar amount, the amount collected, and the outstanding balance of logistic support, supplies, and services provided during the preceding fiscal year under each such agreement.”;

(4) by amending paragraph (4) to read as follows:

“(4) The class of supply, total dollar amount, the amount collected, and the outstanding balance of logistic support, supplies, and services received during the preceding fiscal year under each such agreement.”;

(5) by striking paragraph (5); and

(6) by adding at the end the following new paragraphs:

“(5) With respect to any transaction for logistic support, supplies, and services that has not been reconciled more than one year after the date on which the transaction occurred, a description of the transaction that includes the following:

“(A) The date on which the transaction occurred.

“(B) The country or organization to which logistic support, supplies, and services were provided.

“(C) The value of the transaction.

“(6) An explanation of any waiver granted under section 2347(c) during the preceding fiscal year, including an identification of the relevant contingency operation or non-combat operation.”.

**SEC. 1204. MODIFICATION OF QUARTERLY REPORT ON OBLIGATION AND EXPENDITURE OF FUNDS FOR SECURITY COOPERATION PROGRAMS AND ACTIVITIES.**

Section 381(b) of title 10, United States Code, is amended by striking “30 days” and inserting “60 days”.

**SEC. 1205. GENDER PERSPECTIVES AND PARTICIPATION BY WOMEN IN SECURITY COOPERATION ACTIVITIES.**

Coordination. Consistent with the Women, Peace, and Security Act of 2017 (Public Law 115–68), the Secretary of Defense, in coordination with the Secretary of State, should seek to incorporate gender perspectives and participation by women in security cooperation activities to the maximum extent practicable.

10 USC 362 note. **SEC. 1206. PLAN TO PROVIDE CONSISTENCY OF ADMINISTRATION OF AUTHORITIES RELATING TO VETTING OF UNITS OF SECURITY FORCES OF FOREIGN COUNTRIES; MODIFICATION OF ASSESSMENT, MONITORING, AND EVALUATION OF SECURITY COOPERATION PROGRAMS AND ACTIVITIES.**

Deadline. (a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and Secretary of State shall jointly develop, implement, and submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House

of Representatives a plan to provide consistency in administration of section 362 of title 10, United States Code, and section 620M of the Foreign Assistance Act of 1961 (22 U.S.C. 2378d).

(b) MATTERS TO BE INCLUDED.—The plan required by subsection (a) shall contain the following:

(1) Common standards and procedures which shall be used by the Department of Defense and Department of State to obtain and verify information regarding the vetting of units of the security forces of foreign countries for gross violation of human rights under the authorities described in subsection (a), including—

Standards.  
Procedures.  
Human rights.

(A) public guidelines for external sources to report information; and

Public  
information.  
Guidelines.  
Criteria.  
Determination.

(B) methods and criteria employed by the Department of Defense and Department of State to determine whether sources, source reporting, and allegations are credible.

(2) Measures to ensure the Department of Defense has read-only access to the International Vetting and Security Tracking (INVEST) system, and any successor or equivalent system.

(3) Measures to ensure the authorities described in subsection (a) are applied to any foreign forces, irregular forces, groups, and individuals that receive training, equipment, or other assistance from the United States military.

Applicability.

(c) FORM.—The plan required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) INTEGRATION OF HUMAN RIGHTS AND CIVILIAN PROTECTION INTO ASSESSMENT, MONITORING, AND EVALUATION OF SECURITY COOPERATION PROGRAMS AND ACTIVITIES.—

(1) REPORTS REQUIRED.—The Secretary of Defense shall submit to the appropriate congressional committees an interim report and a final report on the steps the Secretary will take to incorporate partner units' activities, as such activities relate to human rights and protection of civilians, into the program elements described in section 383(b)(1) of title 10, United States Code.

(2) DEADLINES.—

(A) INTERIM REPORT.—The interim report required under paragraph (1) shall be submitted to the appropriate congressional committees not later than 180 days after the date of the enactment of this Act and shall include a summary of the progress of the Secretary in implementing the steps described in such paragraph.

Summary.

(B) FINAL REPORT.—The final report required under paragraph (1) shall be submitted to the appropriate congressional committees not later than one year after the date of enactment of this Act and shall specifically identify the actions the Secretary took to implement the steps described in paragraph (1).

(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the following:

(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(B) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1207. EXTENSION OF AUTHORITY FOR SUPPORT OF SPECIAL OPERATIONS FOR IRREGULAR WARFARE.**

Section 1202(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1639) is amended by striking “2020” and inserting “2023”.

**SEC. 1208. EXTENSION AND MODIFICATION OF COMMANDERS’ EMERGENCY RESPONSE PROGRAM AND ELIMINATION OF CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS.**

(a) EXTENSION AND MODIFICATION OF COMMANDERS’ EMERGENCY RESPONSE PROGRAM.—Section 1201 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1619), as most recently amended by the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is further amended—

132 Stat. 2032.

(1) in subsection (a)—

(A) by striking “During the period beginning on October 1, 2016, and ending on December 31, 2019” and inserting “During the period beginning on October 1, 2019, and ending on December 31, 2020”; and

(B) by striking “\$10,000,000” and inserting “\$2,500,000”;

(2) in subsection (b)(1), by striking “of fiscal years 2017 through 2019” and inserting “for each of fiscal years 2017 through 2020”; and

(3) in subsection (f), in the first sentence, by striking “during the period beginning on October 1, 2016, and ending on December 31, 2019” and inserting “during the period beginning on October 1, 2019, and ending on December 31, 2020”.

(b) ELIMINATION OF AUTHORITY FOR CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS IN AFGHANISTAN, IRAQ, SYRIA, SOMALIA, LIBYA, AND YEMEN.—Section 1211 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2477), as most recently amended by section 1224(a) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is further amended by striking subsection (b).

132 Stat. 2032.

**SEC. 1209. TWO-YEAR EXTENSION OF PROGRAM AUTHORITY FOR GLOBAL SECURITY CONTINGENCY FUND.**

Section 1207 of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 2151 note) is amended—

(1) in subsection (i)—

(A) in paragraph (1), by striking “September 30, 2019” and inserting “September 30, 2021”; and

(B) by amending paragraph (2) to read as follows:

“(2) EXCEPTION.—Amounts appropriated and transferred to the Fund before September 30, 2019, shall remain available for obligation and expenditure after that date, but only for activities under programs commenced under subsection (b) before September 30, 2019.”; and

(2) in subsection (o)—

(A) in the first sentence, by striking “September 30, 2019” and inserting “September 30, 2021”; and

(B) in the second sentence, by striking “through 2019” and inserting “through 2021”.



**SEC. 1210. LEGAL INSTITUTIONAL CAPACITY BUILDING INITIATIVE FOR FOREIGN DEFENSE INSTITUTIONS.** 10 USC 332 note.

(a) **INITIATIVE.**—The Secretary of Defense may carry out, in accordance with section 332 of title 10, United States Code, an initiative of legal institutional capacity building in collaboration with the appropriate ministry of defense (or security agency serving a similar defense function) legal institutions that support the efforts of one or more foreign countries to establish or improve legal institutional capacity.

(b) **PURPOSE.**—The purpose of the initiative under subsection (a) is to enhance, through advisory services, training, or related training support services, as appropriate, the legal institutional capacity of the applicable foreign country to do the following:

(1) Integrate legal matters into the authority, doctrine, and policies of the ministry of defense (or security agency serving a similar defense function) and forces of such country.

(2) Provide appropriate legal support to commanders conducting defense and national security operations.

(3) With respect to defense and national security law, institutionalize education, training, and professional development for personnel and forces, including uniformed lawyers, officers, noncommissioned officers, and civilian lawyers and leadership within such ministries of defense (and security agencies serving a similar defense function).

(4) Establish a military justice system that is objective, transparent, and impartial.

(5) Conduct effective and transparent command and administrative investigations.

(6) Build the legal capacity of the forces and civilian personnel of ministries of defense (and security agencies serving a similar defense function) to provide equitable, transparent, and accountable institutions and provide for anti-corruption measures within such institutions.

(7) Build capacity—

(A) to provide for the protection of civilians consistent with the law of armed conflict and human rights law; and

(B) to investigate incidents of civilian casualties.

(8) Promote understanding and observance of—

(A) the law of armed conflict;

(B) human rights and fundamental freedoms;

(C) the rule of law; and

(D) civilian control of the military.

(9) Establish mechanisms for effective civilian oversight of defense and national security legal institutions and legal matters.

(c) **ELEMENTS.**—The initiative under subsection (a) shall include the following elements:

(1) A measure for monitoring the implementation of the initiative and evaluating the efficiency and effectiveness of the initiative, in accordance with section 383 of title 10, United States Code.

Evaluation.

(2) An assessment of the organizational weaknesses for legal institutional capacity building of the applicable foreign country, including baseline information, an assessment of gaps in the capability and capacity of the appropriate institutions

Assessment.

Engagement plan.	<p>of such country, and any other indicator of efficacy, in accordance with section 383 of title 10, United States Code.</p> <p>(3) An engagement plan for building legal institutional capacity that addresses the weaknesses identified under paragraph (2), including objectives, milestones, and a timeline.</p> <p>(d) REPORTS.—</p>
Effective date. Time period.	<p>(1) IN GENERAL.—Beginning in fiscal year 2020 through the fiscal year in which the initiative under subsection (a) terminates, the Secretary of Defense shall submit to the appropriate committees of Congress an annual report on the legal institutional capacity building activities carried out under this section.</p> <p>(2) INTEGRATION INTO OTHER CAPACITY BUILDING REPORTS.—The report submitted under paragraph (1) for a fiscal year shall be integrated into the report required pursuant to subsection (b)(2) of section 332 of title 10, United States Code, for the fourth fiscal year quarter of such fiscal year.</p> <p>(3) MATTERS TO BE INCLUDED.—Each report submitted under paragraph (1) shall include the following:</p> <p>(A) The same information required under subsection (b)(2) of section 332 of title 10, United States Code.</p> <p>(B) The names of the one or more countries in which the initiative was conducted.</p> <p>(C) For each such country—</p> <p style="padding-left: 2em;">(i) the purpose of the initiative;</p> <p style="padding-left: 2em;">(ii) the objectives, milestones, and timeline of the initiative;</p> <p style="padding-left: 2em;">(iii) the number and type of advisors assigned and deployed to the country, as applicable; and</p> <p style="padding-left: 2em;">(iv) an assessment of the progress of the implementation of the initiative.</p> <p>(e) SUNSET.—The initiative under subsection (a) shall terminate on December 31, 2024.</p> <p>(f) FUNDING.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.</p>
Assessment.	<p><b>SEC. 1210A. DEPARTMENT OF DEFENSE SUPPORT FOR STABILIZATION ACTIVITIES IN NATIONAL SECURITY INTEREST OF THE UNITED STATES.</b></p>
Consultation.	<p>(a) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State and in consultation with the Administrator of the United States Agency for International Development, provide support for the stabilization activities of other Federal agencies specified in subsection (c)(1).</p> <p>(b) DESIGNATION OF FOREIGN AREAS.—</p> <p>(1) IN GENERAL.—Amounts authorized to be provided pursuant to this section shall be available only for support for stabilization activities—</p> <p style="padding-left: 2em;">(A) in a country specified in paragraph (2); and</p> <p style="padding-left: 2em;">(B) that the Secretary of Defense, with the concurrence of the Secretary of State, has determined are in the national security interest of the United States.</p>

(2) SPECIFIED COUNTRIES.—The countries specified in this paragraph are as follows:

- (A) Iraq.
- (B) Syria.
- (C) Afghanistan.
- (D) Somalia.

(c) SUPPORT TO OTHER AGENCIES.—

(1) IN GENERAL.—Support may be provided for stabilization activities under subsection (a) to the Department of State, the United States Agency for International Development, or other Federal agencies, on a reimbursable or nonreimbursable basis. The authority to provide such support under this paragraph on a reimbursable basis is in addition to other authorities to provide support on such basis.

(2) TYPE OF SUPPORT.—Support under subsection (a) may consist of logistic support, supplies, and services.

(d) REQUIREMENT FOR A STABILIZATION STRATEGY.—

(1) LIMITATION.—With respect to any country specified in subsection (b)(2), no amount of support may be provided under subsection (a) until 15 days after the date on which the Secretary of Defense, with the concurrence of the Secretary of State, submits to the appropriate committees of Congress a detailed report setting forth a stabilization strategy for such country.

Time period.  
Reports.

(2) ELEMENTS OF STRATEGY.—The stabilization strategy required by paragraph (1) shall set forth the following:

(A) The United States interests in conducting stabilization activities in the country specified in subsection (b)(2).

(B) The key foreign partners and actors in such country.

(C) The desired end states and objectives of the United States stabilization activities in such country.

(D) The Department of Defense support intended to be provided for the stabilization activities of other Federal agencies under subsection (a).

(E) Any mechanism for civil-military coordination regarding support for stabilization activities.

(F) The mechanisms for monitoring and evaluating the effectiveness of Department of Defense support for United States stabilization activities in the area.

(e) IMPLEMENTATION IN ACCORDANCE WITH GUIDANCE.—Support provided under subsection (a) shall be implemented in accordance with the guidance of the Department of Defense entitled “DoD Directive 3000.05 Stabilization”, dated December 13, 2018 (or successor guidance).

(f) REPORT.—The Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate committees of Congress on an annual basis a report that includes the following:

(1) The identification of each foreign area within countries specified in subsection (b)(2) for which support to stabilization has occurred.

(2) The total amount spent by the Department of Defense, broken out by recipient Federal agency and activity.

(3) An assessment of the contribution of each activity toward greater stability.

Assessment.

(4) An articulation of any plans for continued Department of Defense support to stabilization in the specified foreign area in order to maintain or improve stability.

(5) Other matters as the Secretary of Defense considers to be appropriate.

(g) USE OF FUNDS.—

(1) SOURCE OF FUNDS.—Amounts for activities carried out under this section in a fiscal year shall be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for Operation and Maintenance, Defense-wide.

(2) LIMITATION.—Not more than \$18,000,000 in each fiscal year is authorized to be used to provide nonreimbursable support under this section.

(h) EXPIRATION.—The authority provided under this section may not be exercised after December 31, 2020.

(i) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(2) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES.—The term “logistic support, supplies, and services” has the meaning given the term in section 2350(1) of title 10, United States Code.

## **Subtitle B—Matters Relating to Afghanistan and Pakistan**

### **SEC. 1211. EXTENSION OF AUTHORITY TO TRANSFER DEFENSE ARTICLES AND PROVIDE DEFENSE SERVICES TO THE MILITARY AND SECURITY FORCES OF AFGHANISTAN.**

(a) EXTENSION OF AUTHORITY.—Subsection (h) of section 1222 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1992) is amended by striking “December 31, 2020” and inserting “December 31, 2022”.

(b) EXCESS DEFENSE ARTICLES.—Subsection (i)(2) of such section is amended by striking “December 31, 2020” each place it appears and inserting “December 31, 2022”.

### **SEC. 1212. EXTENSION AND MODIFICATION OF AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN COUNTRIES ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.**

(a) TERMINATION OF AUTHORITY.—Subsection (f) of section 801 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2399) is amended by striking “December 31, 2019” and inserting “December 31, 2021”.

(b) REPORT ON AUTHORITY.—Such section, as so amended, is further amended by adding at the end the following:

“(g) REPORT ON AUTHORITY.—

“(1) IN GENERAL.—Not later than March 1, 2020, and March 1, 2021, the Secretary of Defense shall submit to the appropriate congressional committees a report on the use of the

authority provided in subsection (a). The report shall address, at a minimum, the following:

“(A) The number of determinations made by the Secretary pursuant to subsection (b). Determinations.

“(B) A description of the products and services acquired using the authority.

“(C) The extent to which the use of the authority has met the objectives of subparagraph (A), (B), or (C) of subsection (b)(2).

“(D) A list of the countries providing products or services as a result of a determination made pursuant to subsection (b). List.

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—For purposes of this subsection, the term ‘appropriate congressional committees’ means—

“(A) the congressional defense committees; and

“(B) the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.”.

**SEC. 1213. AUTHORITY FOR CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS.** 10 USC 2731 note.

(a) **AUTHORITY.**—During the period beginning on the date of the enactment of this Act and ending on December 31, 2022, not more than \$3,000,000 for each calendar year, to be derived from funds authorized to be appropriated to the Office of the Secretary of Defense under the Operation and Maintenance, Defense-wide account, may be made available for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition.

(b) **CONDITIONS ON PAYMENT.**—An ex gratia payment authorized pursuant to subsection (a) may be provided only if—

(1) the prospective foreign civilian recipient is determined by the local military commander to be friendly to the United States;

(2) a claim for damages would not be compensable under chapter 163 of title 10, United States Code (commonly known as the “Foreign Claims Act”);

(3) the property damage, personal injury, or death was not caused by action by an enemy;

(4) the claimant suffered property damage, personal injury, or death that was—

(A) caused by the United States Armed Forces, a coalition that includes the United States, or a military organization supporting the United States or such a coalition; and

(B) occurred during an operation carried out by the United States, such coalition, or such military organization; and

(5) the claimant had no involvement in planning or executing an attack or other hostile action that gave rise to the use of force by the United States, such coalition, or such military organization resulting in such property damage, personal injury, or death.

(c) NATURE OF PAYMENT.—A payment provided pursuant to the authority under subsection (a) may not be construed or considered as an admission or acknowledgment of any legal obligation to provide compensation for any property damage, personal injury, or death.

Determination.  
Regulations.  
Assessment.  
Consultation.

(d) AMOUNT OF PAYMENTS.—If the Secretary of Defense determines a payment under subsection (a) to be appropriate in a particular setting, the amounts of payments, if any, to be provided to civilians determined to have suffered harm incident to the use of force by the United States Armed Forces under the program should be determined pursuant to regulations prescribed by the Secretary and based on an assessment, conducted in consultation with the Secretary of State, that includes such factors as cultural appropriateness and prevailing economic conditions. A copy of any regulations so prescribed shall be provided to the congressional defense committees upon finalization.

Records.

(e) LEGAL ADVICE.—Local military commanders shall receive legal advice before making ex gratia payments under this subsection. The legal advisor, under regulations of the Department of Defense, shall advise on whether an ex gratia payment is proper under this section and applicable Department of Defense regulations.

Determination.

(f) WRITTEN RECORD.—A written record of any ex gratia payment offered pursuant to the authority under subsection (a), and whether accepted or denied, shall be kept by the local military commander and on a timely basis submitted to the appropriate office in the Department of Defense as determined by the Secretary of Defense.

(g) QUARTERLY REPORT.—Not later than 90 days after the date of the enactment of this Act, and every 90 days thereafter, the Secretary of Defense shall submit to the congressional defense committees a report including the following:

(1) With respect to each ex gratia payment made under the authority in this subsection or any other authority during the preceding 90-day period, each of the following:

(A) The amount used for such payments and the country with respect to which each such payment was made.

(B) The manner in which claims for such payments were verified.

(C) The position of the official who approved the payment.

(D) The manner in which payments are made.

(2) With respect to a preceding 90-day period in which no ex gratia payments were made—

(A) whether any such payment was refused, along with the reason for such refusal; or

(B) any other reason for which no such payments were made.

(h) RELATION TO OTHER AUTHORITIES.—Notwithstanding any other provision of law, the authority provided by this section shall be construed as the sole authority available to make ex gratia payments for property damage, personal injury, or death that is incident to the use of force by the United States Armed Forces.

**SEC. 1214. EXTENSION AND MODIFICATION OF SEMIANNUAL REPORT ON ENHANCING SECURITY AND STABILITY IN AFGHANISTAN.**

(a) **EXTENSION.**—Paragraph (2) of subsection (a) of section 1225 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 127 Stat. 3550), as most recently amended by section 1215 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1649), is further amended by striking “December 15, 2020” and inserting “December 15, 2022”.

128 Stat. 3550.

(b) **FORM.**—Paragraph (3) of such subsection is amended to read as follows:

“(3) **FORM.**—Each report required under paragraph (1) shall be submitted in unclassified form without any designation relating to dissemination control, but may include a classified annex.”.

(c) **MODIFICATION OF ELEMENTS.**—Subsection (b) of such section 1225, as amended by section 1215(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2480), is further amended—

(1) in paragraph (1)—

(A) in the paragraph heading, by inserting “AND TAKING INTO ACCOUNT THE AUGUST 2017 STRATEGY OF THE UNITED STATES” after “2014”;

(B) by amending subparagraph (A) to read as follows:

“(A) the strategy and objectives of any post-2014 United States mission, including the 2017 South Asia Strategy of the United States and any subsequent United States strategy, and any mission agreed by the North Atlantic Treaty Organization (NATO), that are pertinent to—

“(i) training, advising, and assisting the ANSF;

or

“(ii) conducting counterterrorism operations in Afghanistan; and”;

(C) in subparagraph (B)—

(i) by striking the period at the end and inserting a semicolon;

(ii) by striking “in the assessment of any such” and inserting “in the assessment of—

“(i) any such”;

(iii) by adding at the end the following new clauses:

“(ii) the United States counterterrorism mission;

and

“(iii) efforts by the Department of Defense to support reconciliation efforts and develop conditions for the expansion of the reach of the Government of Afghanistan throughout Afghanistan.”;

(2) in paragraph (2)—

(A) by inserting “, including the progress of the Government of Afghanistan on securing Afghan territory and population,” after “the current security conditions in Afghanistan”; and

(B) by striking “and the Haqqani Network” and inserting “the Haqqani Network, and the Islamic State of Iraq and Syria Khorasan”; and

(3) by adding at the end the following new paragraph:

“(9) MONITORING AND EVALUATION MEASURES RELATING TO ASFF.—A description of the monitoring and evaluation measures that the Department of Defense and the Government of Afghanistan are taking to ensure that funds of the Afghanistan Security Forces Fund provided to the Government of Afghanistan as direct government-to-government assistance are not subject to waste, fraud, or abuse.”.

**SEC. 1215. SPECIAL IMMIGRANT VISA PROGRAM REPORTING REQUIREMENT.**

- Reports. (a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of State shall submit a report, which may contain a classified annex, to—
- (1) the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Armed Services of the Senate; and
  - (2) the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Armed Services of the House of Representatives.
- Evaluation. (b) CONTENTS.—The report submitted under subsection (a) shall evaluate the obstacles to effective protection of Afghan and Iraqi allies through the special immigrant visa programs and suggestions for improvements in future programs, including information relating to—
- (1) the hiring of locally employed staff and contractors;
  - (2) documenting the identity and employment of locally employed staff and contractors of the United States Government, including the possibility of establishing a central database of employees of the United States Government and its contractors;
  - (3) the protection and safety of employees of locally employed staff and contractors;
  - (4) means of expediting processing at all stages of the process for applicants, including consideration of reducing required forms;
  - (5) appropriate staffing levels for expedited processing domestically and abroad;
  - (6) the effect of uncertainty of visa availability on visa processing;
  - (7) the cost and availability of medical examinations; and
  - (8) means to reduce delays in interagency processing and security checks.
- (c) CONSULTATION.—In preparing the report under subsection (a), the Inspector General shall consult with current and, to the extent possible, former employees of—
- (1) the Department of State, Bureau of Consular Affairs, Visa Office;
  - (2) the Department of State, Bureau of Near Eastern Affairs and South and Central Asian Affairs, Executive Office;
  - (3) the United States embassy in Kabul, Afghanistan, Consular Section;
  - (4) the United States embassy in Baghdad, Iraq, Consular Section;
  - (5) the Department of Homeland Security, U.S. Citizenship and Immigration Services;
  - (6) the Department of Defense; and



(7) non-governmental organizations providing legal aid in the special immigrant visa application process.

**SEC. 1216. MEANINGFUL INCLUSION OF AFGHAN WOMEN IN PEACE NEGOTIATIONS.**

Coordination.  
22 USC 7511  
note.

(a) **IN GENERAL.**—The Secretary of State, in coordination with the Secretary of Defense, shall seek to ensure the meaningful participation of Afghan women in the peace process in Afghanistan in a manner consistent with the Women, Peace, and Security Act of 2017 (22 U.S.C. 2152j et seq.), including through advocacy for the inclusion of Afghan women in ongoing and future negotiations to end the conflict in Afghanistan.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in coordination with the Secretary of Defense, shall submit to the appropriate committees of Congress a report describing the steps taken to fulfill the duties of the Secretary of State and the Secretary of Defense under subsection (a).

(c) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

- (1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and
- (2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1217. EXTENSION AND MODIFICATION OF AUTHORITY FOR REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.**

(a) **EXTENSION.**—Subsection (a) of section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 393), as most recently amended by section 1225 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is further amended to read as follows:

132 Stat. 2032.

“(a) **AUTHORITY.**—From funds made available for the Department of Defense for the period beginning on October 1, 2019, and ending on December 31, 2020, for overseas contingency operations for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation (other than Pakistan) for—

Time period.

“(1) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and

“(2) logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in paragraph (1).”

(b) **MODIFICATION TO LIMITATION.**—Subsection (d)(1) of such section is amended—

(1) by striking “October 1, 2018, and ending on December 31, 2019” and inserting “October 1, 2019, and ending on December 31, 2020”; and

(2) by striking “\$350,000,000” and inserting “\$450,000,000”.

**SEC. 1218. SUPPORT FOR RECONCILIATION ACTIVITIES LED BY THE GOVERNMENT OF AFGHANISTAN.**

(a) **IN GENERAL.**—The Secretary of Defense may, with the concurrence of the Secretary of State, provide covered support for

- reconciliation activities to one or more designated persons or entities or Federal agencies.
- Reports. (b) FRAMEWORK FOR USE OF AUTHORITY.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate committees of Congress a report on the use of the authority under subsection (a) that includes—
- Evaluation. (1) a framework for use of such authority;  
(2) evaluation requirements; and  
(3) a prioritization of covered support.
- Deadline. (c) DESIGNATION.—Not later than 15 days before the Secretary of Defense designates an individual or organization as a designated person or entity, the Secretary shall notify the congressional defense committees of the intent of the Secretary to make such designation.
- Notification. (d) REIMBURSEMENT.—  
(1) DESIGNATED PERSONS OR ENTITIES.—The Secretary of Defense may provide covered support to a designated person or entity on a nonreimbursable basis.  
(2) FEDERAL AGENCIES.—The Secretary of Defense may provide covered support to a Federal agency on a reimbursable or nonreimbursable basis.
- Afghanistan. (e) LOCATION OF COVERED SUPPORT.—  
(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense may only provide covered support within Afghanistan.  
(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary of Defense may provide covered support in Pakistan if the Secretary of Defense, with the concurrence of the Secretary of State, determines, and certifies to the appropriate committees of Congress, that providing covered support in Pakistan is in the national security interest of the United States.
- Pakistan. (f) NOTIFICATION.—Not later than 15 days after the date on which the Secretary of Defense provides covered support in Pakistan, or an individual expenditure for covered support reaches a monetary threshold of \$75,000 or greater, the Secretary shall submit to the appropriate committees of Congress written notice that includes—  
(1) the intended recipient of such covered support and the specific covered support to be provided; and  
(2) a description of the manner in which such covered support facilitates reconciliation.
- Determination. (g) FUNDING.—  
(1) SOURCE OF FUNDS.—Amounts for covered support may only be derived from amounts authorized to be appropriated for the Department of Defense for operation and maintenance.  
(2) LIMITATION.—Not more than \$15,000,000 may be used in each fiscal year to provide covered support under this section.
- Certification. (h) RULE OF CONSTRUCTION.—Covered support shall not be construed to violate section 2339, 2339A, or 2339B of title 18, United States Code.
- Deadline. (i) REPORTS.—  
(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, and quarterly thereafter, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report on covered support during the preceding 90-day period.
- Pakistan.

(2) ELEMENTS.—Each report under this subsection shall include, for the preceding reporting period, the following:

(A) A summary of the reconciliation activities for which covered support was provided. Summary.

(B) A description of the covered support, by class or type, and the designated person or entity or Federal agency that received each class or type of covered support.

(C) The total dollar amount of each class or type of covered support, including budget details.

(D) The intended duration of each provision of covered support.

(E) Any other matter the Secretary of Defense considers appropriate.

(j) SUNSET.—The authority to carry out this section shall terminate on December 31, 2020.

(k) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the congressional defense committees;

(B) the Committee on Foreign Relations of the Senate; and

(C) the Committee on Foreign Affairs of the House of Representatives.

(2) COVERED SUPPORT.—

(A) IN GENERAL.—The term “covered support” means logistic support, supplies, and services (as defined in section 2350 of title 10, United States Code) and security provided under this section.

(B) EXCLUSIONS.—The term “covered support” does not include the following support, supplies, or services described in section 2350 of title 10, United States Code:

(i) Ammunition, construction incident to base operations support, training services, and the temporary use of general purpose vehicles.

(ii) With respect to any member of the Taliban, transportation in vehicles or on aircraft owned by the United States Government.

(3) DESIGNATED PERSON OR ENTITY.—

(A) IN GENERAL.—The term “designated person or entity” means an individual or organization designated by the Secretary of Defense, with the concurrence of the Secretary of State, as necessary to facilitate a reconciliation activity.

(B) EXCLUSION.—The term “designated person or entity” does not include a Federal agency or department.

(4) RECONCILIATION ACTIVITY.—The term “reconciliation activity” means any activity intended to support, facilitate, or enable a political settlement between the Government of Afghanistan and the Taliban for the purpose of ending the war in Afghanistan.

(5) SECURITY.—The term “security” means any measure determined by the Secretary of Defense to be necessary to protect reconciliation activities from hostile acts.

**SEC. 1219. MODIFICATION AND EXTENSION OF THE AFGHAN SPECIAL IMMIGRANT VISA PROGRAM.**

(a) **PRINCIPAL ALIENS.**—Subclause (I) of section 602(b)(2)(A)(ii) of the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note) is amended to read as follows:

“(I) by, or on behalf of, the United States Government; or”.

(b) **EXTENSION OF AFGHAN SPECIAL IMMIGRANT PROGRAM.**—Section 602(b)(3)(F) of the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note) is amended—

(1) in the heading, by striking “2015, 2016, AND 2017” and inserting “2015 THROUGH 2020”;

(2) in the matter preceding clause (i), by striking “18,500” and inserting “22,500”;

(3) in clause (i), by striking “December 31, 2020” and inserting “December 31, 2021”; and

(4) in clause (ii), by striking “December 31, 2020” and inserting “December 31, 2021”.

## **Subtitle C—Matters Relating to Syria, Iraq, and Iran**

**SEC. 1221. MODIFICATION OF AUTHORITY AND LIMITATION ON USE OF FUNDS TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE OF IRAQ AND SYRIA.**

**Reports.** (a) **LIMITATION ON USE OF FUNDS.**—Of the amounts authorized to be appropriated for fiscal year 2020 by this Act for activities under section 1236 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3558), as amended by this section, not more than 50 percent may be obligated or expended for such activities until the date on which the Secretary of Defense submits to the congressional defense committees a report setting forth the following:

**Assessment.** (1) An assessment of—

(A) security in liberated areas in Iraq;

(B) the extent to which security forces trained and equipped, directly or indirectly, by the United States are prepared to provide post-conflict stabilization and security in such liberated areas; and

(C) the effectiveness of security forces in the post-conflict environment and an identification of which such forces will provide post-conflict stabilization and security in such liberated areas.

**Summary.** (2) A summary of available information relating to the disposition of militia groups throughout Iraq, with particular focus on groups in areas liberated from ISIS or in sensitive areas with historically mixed ethnic or minority communities.

**Updates.** (3) Any updates to or changes in the plan, strategy, process, vetting requirements and process as described in subsection (e) of such section 1236, and end-use monitoring mechanisms and procedures.

(4) An identification of the specific units of the Iraqi Security Forces to receive training and equipment or other support in fiscal year 2020.

- (5) A plan for ensuring that any vehicles or equipment provided to the Iraqi Security Forces pursuant to such authority are maintained in subsequent fiscal years using funds of Iraq. Plan.
- (6) A description of any misuse or loss of provided equipment and how such misuse or loss is being mitigated.
- (7) An estimate, by fiscal year, of the funding anticipated to be required for support of the Iraqi Security Forces during the five fiscal years beginning in fiscal year 2020. Estimate.  
Time periods.
- (8) A plan for normalizing assistance to the Iraqi Security Forces under chapter 16 of title 10, United States Code, beginning in fiscal year 2020. Plan.
- (9) A detailed plan for the obligation and expenditure of the funds requested for fiscal year 2020 for the Department of Defense for stipends. Plan.
- (10) A plan for the transition to the Government of Iraq the responsibility for funding for stipends for any fiscal year after fiscal year 2020. Transition plan.
- (11) A description of how attacks against United States or coalition personnel are being mitigated, statistics on any such attacks, including “green-on-blue” attacks.
- (12) A list of the forces or elements of forces that are restricted from receiving assistance under subsection (a) of such section 1236, other than the forces or elements of forces with respect to which the Secretary of Defense has exercised the waiver authority under subsection (j) of such section 1236, as a result of vetting required by subsection (e) of such section 1236 or by section 362 of title 10, United States Code, and a detailed description of the reasons for such restriction, including for each force or element, as applicable, the following: List.
- (A) Information relating to gross violation of human rights committed by such force or element, including the time-frame of the alleged violation.
- (B) The source of the information described in subparagraph (A) and an assessment of the veracity of the information. Assessment.
- (C) The association of such force or element with terrorist groups or groups associated with the Government of Iran.
- (D) The amount and type of any assistance provided to such force or element by the Government of Iran.
- (b) FUNDING.—Subsection (g) of section 1236 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3558) is amended—
- (1) by striking “fiscal year 2019” and inserting “fiscal year 2020”; and
- (2) by striking “\$850,000,000” and inserting “\$645,000,000”.
- (c) CLARIFICATION WITH RESPECT TO SCOPE OF AUTHORITY.—
- (1) IN GENERAL.—Subsection (j)(2) of such section 1236 is amended to read as follows:
- “(2) SCOPE OF ASSISTANCE AUTHORITY.—Notwithstanding paragraph (1), the authority granted by subsection (a) may only be exercised in consultation with the Government of Iraq.”.
- (2) TECHNICAL CORRECTION.—The heading of subsection (j) of such section 1236 is amended by inserting “; SCOPE” after “AUTHORITY”.

(d) TECHNICAL CORRECTION.—Subsection (c) of such section 1236 is amended in the matter preceding paragraph (1) by striking “subsection (a)(1)” and inserting “subsection (b)(1)(A)”.

Effective date.

(e) ADDITIONAL TECHNICAL CORRECTION.—Effective as of December 12, 2017, and as if included therein as enacted, section 1222 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1651) is amended—

- (1) by striking subsection (b); and
- (2) by striking subsection (c)(3).

**SEC. 1222. EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE ASSISTANCE TO VETTED SYRIAN GROUPS AND INDIVIDUALS.**

128 Stat. 3541.

(a) EXTENSION AND MODIFICATION.—Section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3559) is amended as follows:

(1) In subsection (a)—

(A) in the matter preceding paragraph (1), by striking “with a cost” and all that follows through “through December 31, 2019” and inserting “and sustainment to appropriately vetted Syrian groups and individuals through December 31, 2020”; and

(B) by striking paragraphs (1) through (3) and inserting the following:

“(1) Defending the Syrian people from attacks by the Islamic State of Iraq and Syria.

“(2) Securing territory formerly controlled by the Islamic State of Iraq and Syria.

“(3) Protecting the United States and its partners and allies from the threats posed by the Islamic State of Iraq and Syria, al Qaeda, and associated forces in Syria.

“(4) Providing appropriate support to vetted Syrian groups and individuals to conduct temporary and humane detention and repatriation of Islamic State of Iraq and Syria foreign terrorist fighters in accordance with all laws and obligations related to the conduct of such operations, including, as applicable—

“(A) the law of armed conflict;

“(B) internationally recognized human rights;

“(C) the principle of non-refoulement;

“(D) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and

“(E) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).”.

(2) By amending subsection (b) to read as follows:

“(b) NOTICE BEFORE PROVISION OF ASSISTANCE.—

“(1) IN GENERAL.—In accordance with the requirements under paragraph (2), the Secretary of Defense shall notify the congressional defense committees in writing of the use of the relevant authority to provide assistance and include the following:

“(A) The requirements and process used to determine appropriately vetted recipients.

“(B) The mechanisms and procedures that will be used to monitor and report to the appropriate congressional committees and leadership of the House of Representatives and Senate on unauthorized end-use of provided training and equipment or other violations of relevant law by appropriately vetted recipients. Procedures.

“(C) The amount, type, and purpose of assistance to be funded and the recipient of the assistance.

“(D) The goals and objectives of the assistance.

“(E) The number and role of United States Armed Forces personnel involved.

“(F) Any other relevant details.

“(2) TIMING OF REQUIRED NOTICE.—A notice described in paragraph (1) shall be required— Deadlines.

“(A) not later than 15 days before the expenditure of each 10-percent increment of the amount made available in fiscal year 2019 or fiscal year 2020 to carry out the authorization in this section; or

“(B) not later than 48 hours after such an expenditure, if the Secretary determines that extraordinary circumstances that affect the national security of the United States exist.” Determination.

(3) By amending subsection (c) to read as follows:

“(c) FORM.—The notifications required under subsection (b) shall be submitted in unclassified form but may include a classified annex.” Notifications.

(4) By amending subsection (d) to read as follows:

“(d) QUARTERLY PROGRESS REPORTS.—

“(1) IN GENERAL.—Beginning on January 15, 2020, and every 90 days thereafter, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees and leadership of the House of Representatives and the Senate a progress report. Effective date. Time period. Coordination.

“(2) MATTERS TO BE INCLUDED.—Each progress report under paragraph (1) shall include, based on the most recent quarterly information, the following:

“(A) A description of the appropriately vetted recipients receiving assistance under subsection (a), including a description of their geographical locations, demographic profiles, political affiliations, and current capabilities.

“(B) A description of training, equipment, supplies, stipends, and other support provided to appropriately vetted recipients under subsection (a) and a statement of the amount of funds expended for such purposes during the period covered by the report.

“(C) Any misuse or loss of provided training and equipment and how such misuse or loss is being mitigated.

“(D) An assessment of the recruitment, throughput, and retention rates of appropriately vetted recipients. Assessment.

“(E) An assessment of the operational effectiveness of appropriately vetted recipients in meeting the purposes specified in subsection (a). Assessment.

“(F) A description of the current and planned posture of United States forces and the planned level of engagement by such forces with appropriately vetted recipients,

including the oversight of equipment provided under this section and the activities conducted by such appropriately vetted recipients.

“(G) A detailed explanation of the relationship between appropriately vetted recipients and civilian governance authorities, including a description of efforts to ensure appropriately vetted recipients are subject to the control of competent civilian authorities.

“(H) A description of United States Government stabilization objectives and activities carried out in areas formerly controlled by the Islamic State of Iraq and Syria, including significant projects and funding associated with such projects.

“(I) A description of coalition contributions to the purposes specified in subsection (a) and other related stabilization activities.

Estimates.

“(J) With respect to Islamic State of Iraq and Syria foreign terrorist fighters—

“(i) an estimate of the number of such individuals being detained by appropriately vetted Syrian groups and individuals;

“(ii) an estimate of the number of such individuals that have been repatriated and the countries to which such individuals have been repatriated; and

“(iii) a description of United States Government support provided to facilitate the repatriation of such individuals.

Assessment.

“(I) An assessment of the extent to which appropriately vetted Syrian groups and individuals have enabled progress toward establishing inclusive, representative, accountable, and civilian-led governance and security structures in territories liberated from the Islamic State of Iraq and Syria.”.

(5) In subsection (e)(1)(A), by striking “include,” and all that follows through “(ISIL)” and inserting “include the Islamic State of Iraq and Syria”.

(6) By striking subsection (f) and inserting the following:

“(f) RESTRICTION ON SCOPE OF ASSISTANCE IN THE FORM OF WEAPONS.—

“(1) IN GENERAL.—The Secretary may only provide assistance in the form of weapons pursuant to the authority under subsection (a) if such weapons are small arms or light weapons.

Certification.

“(2) WAIVER.—The Secretary may waive the restriction under paragraph (1) upon certification to the appropriate congressional committees that such provision of law would (but for the waiver) impede national security objectives of the United States by prohibiting, restricting, delaying, or otherwise limiting the provision of assistance.”.

(5) In subsection (g)—

Time period.  
Effective date.  
Notification.

(A) by inserting “, at the end of the 15-day period beginning on the date the Secretary notifies the congressional defense committees of the amount, source, and intended purpose of such contributions” after “as authorized by this section”; and



(B) by striking “operation and maintenance accounts” and all that follows through the end of the subsection and inserting “accounts.”.

(6) By amending subsection (l) to read as follows:

“(l) **LIMITATION ON COST OF CONSTRUCTION AND REPAIR PROJECTS.**—

“(1) **IN GENERAL.**—The cost of construction and repair projects carried out under this section may not exceed, in any fiscal year—

“(A) \$4,000,000 per project; or

“(B) \$20,000,000 in the aggregate.

“(2) **FOREIGN CONTRIBUTIONS.**—The limitation under paragraph (1) shall not apply to the expenditure of foreign contributions in excess of the per-project or aggregate limitation set forth in that paragraph.”.

(b) **AVAILABILITY OF AUTHORITY.**—Not more than 10 percent of the funds authorized to be appropriated for the Department of Defense for activities under the authority provided by section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3559), as amended by subsection (a) of this section, may be obligated or expended until the first quarterly report required to be submitted pursuant to subsection (d) of such section 1209 (as so amended) has been submitted to the appropriate congressional committees and leadership in accordance with such subsection.

128 Stat. 3541.

**SEC. 1223. MODIFICATION OF AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OF THE OFFICE OF SECURITY COOPERATION IN IRAQ.**

(a) **MODIFICATION.**—Section 1215 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 113 note) is amended as follows:

(1) **AUTHORITY.**—By amending subsection (a) to read as follows:

“(a) **AUTHORITY.**—The Secretary of Defense may support United States Government security cooperation activities in Iraq by providing funds for the operations and activities of the Office of Security Cooperation in Iraq.”.

(2) **TYPES OF SUPPORT.**—In subsection (b)—

(A) by striking the comma after “life support” and inserting “and”; and

(B) by striking “, and construction and renovation of facilities”.

(3) **LIMITATION ON AMOUNT.**—In subsection (c)—

(A) by striking “fiscal year 2019” and inserting “fiscal year 2020”; and

(B) by striking “\$45,300,000” and inserting “\$30,000,000”.

(4) **SOURCE OF FUNDS.**—In subsection (d), by striking “fiscal year 2019” and inserting “fiscal year 2020”.

(5) **COVERAGE OF COSTS OF THE OFFICE OF SECURITY COOPERATION IN IRAQ.**—In subsection (e)—

(A) in the heading, by striking “OF OSCI”;

(B) by inserting “appropriate administrative charges” after “includes” and

(C) by striking “, charges sufficient to recover” and all that follows through “with such sale”.

(6) **ADDITIONAL AUTHORITY.**—In subsection (f), by adding at the end the following new paragraph:

“(3) **SUNSET.**—The authority provided in this subsection shall terminate on the date that is 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.”

(7) **REPORTS.**—In subsection (g)—

(A) in paragraph (1), by striking “September 30, 2015” and inserting “September 30, 2020”; and

(B) in paragraph (2)—

(i) by striking “current” each place it appears;

(ii) in subparagraph (A), by striking “Iraq, including” and inserting “Iraq that also addresses”;

(iii) in subparagraph (B), by striking “the programs conducted” and all that follows through “will address” and inserting “United States security assistance and security cooperation activities are intended to address”; and

(iv) by amending subparagraph (F) to read as follows:

Evaluation.

“(F) An evaluation of the effectiveness of United States efforts to promote respect for human rights, military professionalism, and respect for legitimate civilian authority in Iraq.”

(b) **LIMITATION ON AVAILABILITY OF FUNDS.**—Such section 1215 is further amended by adding at the end the following:

Certification.

“(h) **LIMITATION ON AVAILABILITY OF FUNDS.**—Of the amount made available for fiscal year 2020 to carry out section 1215 of the National Defense Authorization Act for Fiscal Year 2012, not more than \$20,000,000 may be obligated or expended for the Office of Security Cooperation in Iraq until the date on which the Secretary of Defense certifies to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate, that each of the following reforms relating to that Office has been completed:

Appointment.

“(1) The appointment of a Senior Defense Official/Defense Attache to oversee the Office.

Staffing plan.

“(2) The development of a staffing plan to reorganize the Office in a manner similar to that of other security cooperation offices in the region that emphasizes the placement of personnel with regional or security cooperation expertise in key leadership positions and closes duplicative or extraneous sections.

Time period.

“(3) The initiation of bilateral engagement with the Government of Iraq with the objective of establishing a joint mechanism for security assistance planning, including a five-year security assistance roadmap for developing sustainable military capacity and capabilities and enabling defense institution building and reform.”

**SEC. 1224. ESTABLISHING A COORDINATOR FOR DETAINED ISIS MEMBERS AND RELEVANT DISPLACED POPULATIONS IN SYRIA.**

Deadline.  
President.  
Consultation.  
Reports.

(a) **IN GENERAL.**—Not later than 60 days after the date of the enactment of this Act, the President, in consultation with the Secretary of Defense, the Secretary of State, the Director of National

Intelligence, the Secretary of the Treasury, and the Attorney General, shall submit to the appropriate committees of Congress a report identifying whether a senior-level coordinator exists on all matters for the United States Government relating to ISIS members who are in Syrian Democratic Forces custody, including with respect to—

(1) the long-term disposition of such ISIS members, including in all matters in connection with—

(A) repatriation, transfer, prosecution, and intelligence-gathering;

(B) all multilateral and international engagements led by the Department of State and other agencies that are related to the current and future handling, detention, and prosecution of such ISIS members, including with the International Criminal Police Organization; and

(C) coordinating the provision of technical and evidentiary assistance to foreign countries to aid in the successful prosecution of such ISIS members, as appropriate, in accordance with international humanitarian law and other internationally recognized human rights and rule of law standards; and

(2) all multilateral and international engagements related to the humanitarian access, provision of basic services, freedom of movement, security and safe return of internally displaced persons and refugees at camps or facilities in Syria that hold family members of such ISIS members.

(b) DESIGNATION.—If the President is unable to identify a senior-level coordinator for all matters described in subsection (a), the President, in consultation with the Secretary of Defense, the Secretary of State, the Director of National Intelligence, the Secretary of the Treasury, and the Attorney General, shall designate an existing official within the executive branch to serve as senior-level coordinator to coordinate, in conjunction with other relevant agencies, all matters described in such subsection.

(c) RETENTION OF AUTHORITY.—The appointment of a senior-level coordinator pursuant to subsection (b) shall not deprive any agency of any authority to independently perform functions of that agency.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and not less frequently than once each year thereafter through January 31, 2021, the individual designated under subsection (b) shall submit to the appropriate committees of Congress a detailed report regarding the following detained ISIS members:

(A) Alexandra Kotey.

(B) El Shafee Elsheikh.

(C) Aine Lesley Davis.

(D) Umm Sayyaf.

(E) Any other high-value detained ISIS member that the coordinator reasonably determines to be subject to criminal prosecution.

(2) ELEMENTS.—The report under paragraph (1) shall include, at a minimum, the following:

(A) A detailed description of the facilities where detained ISIS members described in paragraph (1) are being held, including security and management of such

Coordination.

President.  
Consultation.

Alexandra Kotey.  
El Shafee  
Elsheikh.  
Aine Lesley  
Davis.  
Umm Sayyaf.  
Determination.

Analyses.

facilities and adherence to international humanitarian law standards.

(B) An analysis of all United States efforts to prosecute detained ISIS members described in paragraph (1) and the outcomes of such efforts. Any information, the disclosure of which may violate Department of Justice policy or law, relating to a prosecution or investigation may be withheld from a report under paragraph (1).

(C) A detailed description of any option to expedite prosecution of any detained ISIS member described in paragraph (1), including in a court of competent jurisdiction outside of the United States.

(D) An analysis of factors on the ground in Syria and Iraq that may result in the unintended release of detained ISIS members described in paragraph (1), and an assessment of any measures available to mitigate such releases.

(E) A detailed description of efforts to coordinate the disposition and security of detained ISIS members described in paragraph (1) with other countries and international organizations, including the International Criminal Police Organization, to ensure secure chains of custody and locations of such ISIS members.

(F) An analysis of the manner in which the United States Government communicates on such proposals and efforts to the families of United States citizens believed to be a victim of a criminal act by a detained ISIS member.

(G) An analysis of all efforts between the United States and partner countries within the Global Coalition to Defeat ISIS or other countries to share intelligence or evidence that may aid in the prosecution of ISIS members, and any legal obstacles that may hinder such efforts.

(H) A description of all multilateral and international engagements related to the humanitarian access and provision of basic services to and freedom of movement and security and safe return of internally displaced persons and refugees at camps or facilities in Iraq, Syria, or any other area affected by ISIS activity, including—

(i) any current or future potential threats to United States national security interests emanating from such individuals (including an analysis of the Al-Hol camp and annexes); and

(ii) United States Government plans and strategies to respond to any such threats.

(3) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(e) SUNSET.—The requirements under this section shall sunset on January 31, 2021.

(f) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on the Judiciary, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on the Judiciary, Committee on Financial Services, the Permanent Select Committee on Intelligence, and the Committee on Appropriations of the House of Representatives.

(2) **ISIS MEMBER.**—The term “ISIS member” means a person who was part of, or substantially supported, the Islamic State of Iraq and Syria.

Definition.

**SEC. 1225. REPORT ON LESSONS LEARNED FROM EFFORTS TO LIBERATE MOSUL AND RAQQAH FROM CONTROL OF THE ISLAMIC STATE OF IRAQ AND SYRIA.**

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on lessons learned from coalition operations to liberate Mosul, Iraq, and Raqqah, Syria, from control of the Islamic State of Iraq and Syria (ISIS).

(b) **ELEMENTS.**—The report required by subsection (a) shall include a description of lessons learned in connection with each of the following:

(1) Combat in densely populated urban environments.

(2) Enablement of partner forces, including unique aspects of conducting combined operations with regular and irregular forces.

(3) Advise, assist, and accompany efforts, including such efforts conducted remotely.

(4) Integration of United States general purpose and special operations forces.

(5) Integration of United States and international forces.

(6) Irregular and unconventional warfare approaches, including the application of training and doctrine by special operations and general purpose forces.

(7) Use of command, control, communications, computer, intelligence, surveillance, and reconnaissance systems and techniques.

(8) Logistics.

(9) Information operations.

(10) Targeting and weaponeering, including efforts to avoid civilian casualties and other collateral damage.

(11) Facilitation of flows of internally displaced people and humanitarian assistance.

(12) Such other matters as the Secretary considers appropriate and could benefit training, doctrine, and resourcing of future operations.

(c) **FORM.**—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 1226. EXPANSION OF AVAILABILITY OF FINANCIAL ASSETS OF IRAN TO VICTIMS OF TERRORISM.**

Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (22 U.S.C. 8772) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A), by striking “in the United States” and inserting “by or”;

(B) in subparagraph (B), by inserting “, or an asset that would be blocked if the asset were located in the United States,” after “unblocked”;

(C) in the flush text at the end—

(i) by inserting after “in aid of execution” the following: “, or to an order directing that the asset be brought to the State in which the court is located and subsequently to execution or attachment in aid of execution,”; and

(ii) by inserting “, without regard to concerns relating to international comity” after “resources for such an act”; and

(2) in subsection (b)—

(A) by striking “that are identified” and inserting the following: “that are—

“(1) identified”;

(B) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(2) identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 13 Civ. 9195 (LAP).”.

**SEC. 1227. REPORT ON THE STATUS OF DECONFLICTION CHANNELS WITH IRAN.**

President.

(a) **IN GENERAL.**—Not later than 30 days after the date of enactment of this Act, the President shall submit to Congress a report on the status of deconfliction channels with Iran.

(b) **MATTERS TO BE INCLUDED.**—The report required by subsection (a) shall include the following:

(1) The status of United States diplomatic deconfliction channels with Iran to prevent miscalculation, define ambiguities, and correct misunderstandings that could otherwise lead to unintended consequences, including unnecessary or harmful military activity.

(2) The status of United States military-to-military deconfliction channels with Iran to prevent military and diplomatic miscalculation.

Analysis.  
Assessment.

(3) An analysis of the need and rationale for bilateral and multilateral deconfliction channels, including an assessment of recent United States experience with such channels of communication with Iran.

**SEC. 1228. PROHIBITION ON PROVISION OF WEAPONS AND OTHER FORMS OF SUPPORT TO CERTAIN ORGANIZATIONS.**

None of the funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2020 may be used to knowingly provide weapons or any other form of support to Al Qaeda, the Islamic State of Iraq and Syria (ISIS), Jabhat Fateh al Sham, Hamas, Hizballah, Palestine Islamic Jihad, al-Shabaab, Islamic Revolutionary Guard Corps, or any individual or group affiliated with any such organization.

## Subtitle D—Matters Relating to the Russian Federation

### SEC. 1231. EXTENSION OF LIMITATION ON MILITARY COOPERATION BETWEEN THE UNITED STATES AND RUSSIA.

Section 1232(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2488), is amended by striking “or 2019” and inserting “, 2019, or 2020”.

### SEC. 1232. PROHIBITION ON AVAILABILITY OF FUNDS RELATING TO SOVEREIGNTY OF RUSSIA OVER CRIMEA.

(a) PROHIBITION.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense may be obligated or expended to implement any activity that recognizes the sovereignty of Russia over Crimea.

(b) WAIVER.—The Secretary of Defense, with the concurrence of the Secretary of State, may waive the prohibition under subsection (a) if the Secretary of Defense—

(1) determines that a waiver is in the national security interest of the United States; and

Determination.

(2) on the date on which the waiver is invoked, submits a notification of the waiver and a justification of the reason for seeking the waiver to—

Notification.

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

### SEC. 1233. SENSE OF CONGRESS ON UPDATING AND MODERNIZING EXISTING AGREEMENTS TO AVERT MISCALCULATION BETWEEN THE UNITED STATES AND RUSSIA.

It is the sense of Congress that—

(1) conventional arms control and confidence and security building measures have played an important role in helping to increase military transparency and reduce the risk of miscalculation;

(2) Russia’s violations of the sovereignty and territorial integrity of Georgia and Ukraine, and Russia’s ongoing destabilizing and aggressive behavior, has undermined peace, security, and stability in Europe and beyond;

(3) Russia’s unilateral suspension and violation of the Treaty on Conventional Armed Forces in Europe, done at Vienna November 19, 1990, and entered into force November 9, 1992, and selective implementation of the Vienna Document of the Organization for Security and Cooperation in Europe 2011 have contributed to a greater risk of miscalculation;

(4) Russia’s unsafe and unprofessional interactions with United States aircraft and vessels—

(A) are contrary to the spirit of—

(i) the Agreement Between the Government of the United States and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas, done at Moscow May 25, 1972, and entered into force May 25, 1972; and

(ii) the Agreement on the Prevention of Dangerous Military Activities Agreement, done at Moscow June 12, 1989, and entered into force January 1, 1990; and  
 (B) erode military transparency, predictability, and trust;

(5) the United States remains committed to upholding its current treaty obligations and commitments with respect to conventional arms control and confidence and security building measures; and

(6) the Secretary of Defense and the Secretary of State should explore options, as practicable, for updated or new frameworks for increasing military transparency, stability, and reducing the risk of miscalculation, including through enhanced diplomatic engagement and military-to-military dialogue.

**SEC. 1234. UNITED STATES PARTICIPATION IN OPEN SKIES TREATY.**

(a) **NOTIFICATION REQUIRED.**—Not later than 120 days before the provision of notice of intent to withdraw the United States from the Open Skies Treaty to either treaty depository pursuant to Article XV of the Treaty, the Secretary of Defense and the Secretary of State shall jointly submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a notification that—

(1) such withdrawal is in the best interests of the United States national security; and

(2) the other state parties to the Treaty have been consulted with respect to such withdrawal.

(b) **REPEAL OF LIMITATION ON USE OF FUNDS TO VOTE TO APPROVE OR OTHERWISE ADOPT ANY IMPLEMENTING DECISION OF THE OPEN SKIES CONSULTATIVE COMMISSION AND MODIFICATIONS TO REPORT.**—

(1) **IN GENERAL.**—Section 1236 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2491) is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c), (d), (e), and (f) as subsections (a), (b), (c), and (d), respectively.

(2) **MODIFICATIONS TO REPORT.**—Subsection (a) of such section, as so redesignated, is amended—

(A) in the heading, by striking “Quarterly” and inserting “Annual”;

(B) in paragraph (1)—

(i) by inserting “the Secretary of State,” before “the Secretary of Energy”;

(ii) by striking “quarterly basis” and inserting “annual basis”;

(iii) by striking “by the Russian Federation over the United States” and inserting “by all parties to the Open Skies Treaty, including the United States, under the Treaty”; and

(iv) by striking “calendar quarter” and inserting “preceding calendar year”; and

(C) in paragraph (2), by striking subparagraphs (B), (C), and (D) and inserting the following:

Deadline.  
 22 USC 2593a  
 note.



“(B) In the case of an observation flight by the United States, including an observation flight over the territory of Russia—

Data.

“(i) an analysis of data collected that supports United States intelligence and military collection goals; and

Analysis.

“(ii) an assessment of data collected regarding military activity that could not be collected through other means.

Assessment.

“(C) In the case of an observation flight over the territory of the United States—

“(i) an analysis of whether and the extent to which any United States critical infrastructure was the subject of image capture activities of such observation flight;

Analysis.

“(ii) an estimate for the mitigation costs imposed on the Department of Defense or other United States Government agencies by such observation flight; and

Estimate.

“(iii) an assessment of how such information is used by the parties conducting the observation flight, for what purpose, and how the information fits into the overall collection posture.”.

Assessment.

(3) FORM.—Subsection (c) of such section, as so redesignated, is amended by striking “certification, report, and notice” and inserting “report”.

(4) DEFINITIONS.—Subsection (d) of such section, as so redesignated, is amended—

(A) by striking paragraphs (3) and (6); and

(B) by redesignating paragraphs (4), (5), and (7) as paragraphs (3), (4), and (5), respectively.

(c) OPEN SKIES: IMPLEMENTATION PLAN.—Section 1235(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1660) is amended—

(1) in paragraph (1)—

(A) by striking “during such fiscal year” and inserting “during a calendar year”; and

(B) by striking “the President submits” and all that follows and inserting “the Secretary of Defense provides to the appropriate congressional committees a report on a plan described in paragraph (2) with respect to such calendar year.”;

(2) in paragraph (2), by striking “such fiscal year” and inserting “such calendar year”; and

(3) in paragraph (3), by striking “a fiscal year and submit the updated plan” and inserting “a calendar year and provide a report on the updated plan”.

(d) DEFINITION OF OPEN SKIES TREATY; TREATY.—In this section, the term “Open Skies Treaty” or “Treaty” means the Treaty on Open Skies, done at Helsinki March 24, 1992, and entered into force January 1, 2002.

22 USC 2593a  
note.

**SEC. 1235. MODIFICATIONS OF BRIEFING, NOTIFICATION, AND REPORTING REQUIREMENTS RELATING TO NON-COMPLIANCE BY THE RUSSIAN FEDERATION WITH ITS OBLIGATIONS UNDER THE INF TREATY.**

(a) BRIEFING REQUIREMENT.—Section 1244(d) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization

Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3565; 22 U.S.C. 2593a note) is amended—

(1) by striking “At the time” and inserting the following:

“(1) IN GENERAL.—At the time”; and

(2) by adding at the end the following new paragraph:

“(2) SUNSET.—The briefing requirement under paragraph (1) shall be in effect so long as the INF Treaty remains in force.”.

(b) NOTIFICATION REQUIREMENT RELATING TO COORDINATION WITH ALLIES.—Section 1243(c) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1601) is amended by adding at the end the following new paragraph:

“(3) SUNSET.—The notification requirement under paragraph (1) shall be in effect so long as the INF Treaty remains in force.”.

(c) NOTIFICATION REQUIREMENT RELATING TO DEVELOPMENT, DEPLOYMENT, OR TEST OF A SYSTEM INCONSISTENT WITH INF TREATY.—Section 1244(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1673; 22 U.S.C. 2593a note) is amended by adding at the end the following new paragraph:

“(3) SUNSET.—The notification requirement under paragraph (1) shall be in effect so long as the INF Treaty remains in force.”.

(d) REPORTING REQUIREMENT UNDER UKRAINE FREEDOM SUPPORT ACT OF 2014.—Section 10(c) of the Ukraine Freedom Support Act of 2014 (22 U.S.C. 8929) is amended by adding at the end the following new paragraph:

“(3) SUNSET.—The reporting requirement under paragraph (1) shall be in effect so long as the INF Treaty remains in force.”.

**SEC. 1236. REPORT ON TREATIES RELATING TO NUCLEAR ARMS CONTROL.**

(a) FINDINGS.—Congress finds the following:

(1) On October 24, 2018, the House Committee on Armed Services and House Committee on Foreign Affairs wrote to the Secretary of Defense requesting information regarding the Administration’s policies and strategies related to nuclear arms control.

(2) The Committees did not receive the requested information from the Secretary of Defense.

Consultation.

(b) ASSESSMENT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the Committee on Armed Services, the Permanent Select Committee on Intelligence, and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services, the Select Committee on Intelligence, and the Committee on Foreign Relations of the Senate an assessment that includes each of the following:

(1) The implications, in terms of military threat to the United States or its allies in Europe, of Russian deployment of intermediate-range cruise and ballistic missiles without restriction.

(2) What new capabilities the United States might need in order to pursue additional technologies or programs to offset

such Russian capabilities, and the costs associated with such capabilities, technologies, and programs.

(3) An assessment of the threat to the United States of Russia’s strategic nuclear force in the event the New START Treaty lapses.

(4) What measures could have been taken short of withdrawal, including economic, military, and diplomatic options, to increase pressure on Russia for violating the INF Treaty.

(5) The status of all consultations with allies pertaining to the INF Treaty and the threat posed by Russian forces that are noncompliant with the obligations of such treaty.

(6) The impact that Russian withdrawal from the INF Treaty and the expiration of the New START Treaty could have on long-term United States-Russia strategic stability.

(c) WITHHOLDING OF FUNDS.—Until the date of the submission of the assessment required by subsection (b), an amount that is equal to 20 percent of the total amount authorized to be appropriated to the Office of the Secretary of Defense under the Operations and Maintenance, Defense-Wide account for the travel of persons shall be withheld from obligation or expenditure.

(d) DEFINITIONS.—In this section:

(1) NEW START TREATY.—The term “New START Treaty” means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed at Prague April 8, 2010, and entered into force February 5, 2011.

(2) INF TREATY.—The term “INF Treaty” means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, signed at Washington December 8, 1987, and entered into force June 1, 1988.

#### SEC. 1237. REPORTS RELATING TO THE NEW START TREATY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that legally binding, verifiable limits on Russian strategic nuclear forces are in the national security interest of the United States.

(b) PRIOR NOTIFICATION FOR WITHDRAWAL.—Not later than 120 days before the provision to Russia, pursuant to Article XIV of the New Start Treaty, of notice of intent to withdraw the United States from the Treaty, the Secretary of Defense and the Secretary of State shall jointly submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a notification that includes a description of the extraordinary events jeopardizing the United States’ supreme interests accompanying such notice of intent to withdraw in accordance with the requirements of such Article XIV.

(c) ASSESSMENTS FROM DIRECTOR OF NATIONAL INTELLIGENCE.—

(1) RELATING TO EXPIRATION OF NEW START TREATY.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the appropriate congressional committees an assessment of the implications of the expiration of the New START Treaty without the United States and Russia having entered into a new arms control agreement. The assessment shall include the following elements:

Consultations.

(A) An assessment of possible changes to the Russian nuclear force structure through 2026, if the Treaty expires in 2021 without replacement, including Russia’s ability and intent to deploy strategic nuclear warheads and delivery vehicles above the central limits of the Treaty and with respect to possible future strategic nuclear weapons research and development programs.

(B) An assessment of the verification and transparency benefits of the Treaty and a description of the Treaty’s impact on the United States’ understanding of Russia’s nuclear forces.

(C) An assessment of what actions would be necessary for the United States to remediate the loss of the Treaty’s verification and transparency benefits if the Treaty is not extended and a new arms control agreement is not concluded, and an estimate of the remedial resources required to ensure no concomitant loss of understanding of Russia’s nuclear forces as practicable.

(2) RELATING TO RUSSIA’S WILLINGNESS TO ENGAGE IN NUCLEAR ARMS CONTROL NEGOTIATIONS.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the appropriate congressional committees an assessment of Russia’s willingness to engage in nuclear arms control negotiations and Russia’s priorities in these negotiations. The assessment shall include the following elements:

(A) An assessment of Russia’s willingness to extend the New START Treaty and its likely negotiating position to discuss such an extension with the United States.

(B) An assessment of Russia’s interest in negotiating a broader arms control agreement that would include nuclear weapons systems not accountable under the New START Treaty, including non-strategic nuclear weapons.

(C) An assessment of what concessions Russia would likely seek from the United States during such negotiations, including what additional United States’ military capabilities Russia would seek to limit, in any broader arms control negotiation.

(D) Any other matter the Director determines to be relevant.

(d) REPORTS AND BRIEFING FROM SECRETARY OF STATE.—

Consultation.

(1) RELATING TO NATO, NATO MEMBER COUNTRIES, AND OTHER UNITED STATES ALLIES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense, shall submit a report and provide a briefing to the appropriate congressional committees that includes—

Assessment.

(A) an assessment of the likely reactions of the North Atlantic Treaty Organization (NATO), NATO member countries, and other United States allies and partners to the expiration of the New START Treaty without the entry into force of a new nuclear arms control agreement between the United States and Russia; and

(B) a description of the consultations undertaken with allies relating to the Treaty.

Consultation.

(2) RELATING TO ONGOING IMPLEMENTATION OF THE NEW START TREATY.—Not later than 60 days after the date of the

enactment of this Act, and again not later than September 1, 2020, the Secretary of State, in consultation with the Secretary of Defense, shall submit a report to the appropriate congressional committees with an assessment of the following elements:

(A) Whether the Russian Federation remains in compliance with its obligations under the New START Treaty.

(B) Whether continuing implementation of the New START Treaty remains in the national security interest of the United States.

(3) RELATING TO OTHER MATTERS.—Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter until the New START Treaty is extended beyond February 2021 or expires, the Secretary of State, in consultation with the Secretary of Defense, shall provide a briefing to the appropriate congressional committees that includes the following elements:

Consultation.

(A) A description of any discussions with Russia on the Treaty or a multilateral arms control treaty with Russia and other countries on the reduction and limitation of strategic offensive arms, and discussions addressing the disparity between the non-strategic nuclear weapons stockpiles of Russia and of the United States, at the Assistant Secretary level, Ambassadorial level, or higher.

(B) The dates, locations, discussion topics, and Russian interlocutors involved in those discussions.

(C) An identification of the United States Government departments and agencies involved in the discussions.

(D) The types of systems, both nuclear and nonnuclear, discussed by either side in such discussions as the potential subjects of an agreement.

(E) Whether formal negotiations to extend the Treaty or negotiate a new agreement have occurred.

(e) REPORT AND BRIEFING FROM SECRETARY OF DEFENSE.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of Energy, shall submit a report to the congressional defense committees that includes an assessment of the manner and extent to which the United States nuclear force structure could change if the New START Treaty expires in 2021, including current and planned nuclear modernization programs, and associated costs.

Consultation.  
Assessment.

(2) ADDITIONAL REPORT UPON EXPIRATION.—Not later than April 5, 2021, the Secretary of Defense, in consultation with the Secretary of Energy, shall, if the New START Treaty has expired prior to such date, submit a plan describing the manner in which the United States nuclear force structure will change, including current and planned nuclear modernization programs and associated costs.

Consultation.  
Plan.

(f) FORM.—Each report, plan, or assessment required by this section shall be submitted in unclassified form, but may include a classified annex.

(g) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) **NEW START TREATY; TREATY.**—The terms “New START Treaty” and “Treaty” mean the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.

**SEC. 1238. REPORT ON MILITARY ACTIVITIES OF THE RUSSIAN FEDERATION AND THE PEOPLE’S REPUBLIC OF CHINA IN THE ARCTIC REGION.**

Consultation.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the appropriate committees of Congress the following:

(1) A report on any military activities of the Russian Federation in the Arctic region.

(2) A report on any military activities of the People’s Republic of China in the Arctic region.

(b) **MATTERS TO BE INCLUDED.**—The reports under subsection (a) shall include, with respect to the Russian Federation or the People’s Republic of China, as applicable, the following:

(1) A description of military activities of such country in the Arctic region, including—

(A) the emplacement of military infrastructure, equipment, or forces;

(B) any exercises or other military activities; and

(C) activities that are non-military in nature, but are considered to have military or other strategic implications.

(2) An assessment of—

(A) the intentions of such activities;

(B) the extent to which such activities affect or threaten the interests of the United States and allies in the Arctic region; and

(C) any response to such activities by the United States or allies.

(3) A description of future plans and requirements with respect to such activities.

(c) **FORM.**—Each report under subsection (a) shall be submitted in classified form, but may include an unclassified executive summary.

(d) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

Assessment.

**SEC. 1239. UPDATED STRATEGY TO COUNTER THE THREAT OF MALIGN INFLUENCE BY THE RUSSIAN FEDERATION AND OTHER COUNTRIES.**

(a) **IN GENERAL.**—The Secretary of Defense and the Secretary of State, in coordination with the appropriate United States Government officials, shall jointly update, with the additional elements described in subsection (b), the comprehensive strategy to counter the threat of malign influence developed pursuant to section 1239A of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1667).

Coordination.

(b) **ADDITIONAL ELEMENTS.**—The updated strategy required under subsection (a) shall include the following:

(1) With respect to each element specified in paragraphs (1) through (7) of subsection (b) of such section 1239A, actions to counter the threat of malign influence operations by the People’s Republic of China and any other country engaged in significant malign influence operations.

(2) A description of the interagency organizational structures and procedures for coordinating the implementation of the comprehensive strategy for countering malign influence by the Russian Federation, China, and any other country engaged in significant malign influence operations.

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of State shall jointly submit to the appropriate committees of Congress a report detailing the updated strategy required under subsection (a).

(d) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” has the meaning given the term in subsection (e) of such section 1239A.

## **Subtitle E—Matters Relating to Europe and NATO**

**SEC. 1241. SENSE OF CONGRESS ON SUPPORT FOR THE NORTH ATLANTIC TREATY ORGANIZATION.**

It is the sense of Congress that—

(1) the North Atlantic Treaty Organization (NATO) is critical to achieving United States national security interests and defense objectives around the world;

(2) NATO is the most successful military alliance in history, founded on the principles of democracy, individual liberty, and the rule of law, and its contributions to the collective defense are indispensable to the security, prosperity, and freedom of its members;

(3) membership in NATO is a cornerstone of the security and national defense of the United States;

(4) the United States commitment to the NATO alliance has been foundational to the rules-based international order for seven decades, helping to sustain a system of mutual security and shared values and enhance the United States security through common defense;

(5) the United States must remain ironclad in its commitment to uphold its obligations under the North Atlantic Treaty, including Article 5 of such Treaty;

(6) the United States should deepen strategic and defense cooperation with non-NATO European partners, and encourage NATO cooperation with such partners;

(7) the United States should encourage defense cooperation that complements and strengthens NATO collective defense, interoperability, and allies' commitment to Article 3 of the North Atlantic Treaty; and

(8) the United States should pursue a long-term policy to strengthen relationships with NATO allies, oppose efforts to undermine and divide the NATO alliance, invest in long-term efforts to deter aggression against NATO allies and counter campaigns aimed at eroding shared values of the alliance, and enhance interoperability and planning for collective defense.

Time period.

**SEC. 1242. PROHIBITION ON THE USE OF FUNDS TO SUSPEND, TERMINATE, OR PROVIDE NOTICE OF DENUNCIATION OF THE NORTH ATLANTIC TREATY.**

Notwithstanding any other provision of law, no funds may be obligated, expended, or otherwise made available during the period beginning on the date of the enactment of this Act and ending on December 31, 2020, to take any action to suspend, terminate, or provide notice of denunciation of the North Atlantic Treaty, done at Washington, D.C. on April 4, 1949.

**SEC. 1243. FUTURE YEARS PLANS AND PLANNING TRANSPARENCY FOR THE EUROPEAN DETERRENCE INITIATIVE.**

10 USC 221 note.

(a) AMENDMENTS.—Section 1273 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1696) is amended as follows:

(1) In the section heading, by striking “PLAN” and inserting “PLANS”.

(2) In subsection (a) to read as follows:

Deadline.  
Consultation.  
Time period.

“(a) INITIAL PLAN.—Not later than December 31, 2019, the Secretary of Defense, in consultation with the Commander of the United States European Command, shall submit to the congressional defense committees a future years plan on activities and resources of the European Deterrence Initiative (EDI) for fiscal year 2020 and not fewer than the four succeeding fiscal years.”.

(3) MATTERS TO BE INCLUDED.—In subsection (b)—

(A) in paragraph (1) to read as follows:

“(1) A description of the objectives of the EDI, including a description of—

“(A) the intended force structure and posture of the assigned and allocated forces within the area of responsibility of the United States European Command for the last fiscal year of the plan; and

“(B) the manner in which such force structure and posture support the implementation of the National Defense Strategy.”;

(B) in paragraph (5), by striking “required infrastructure investments” and inserting “required infrastructure and military construction investments”; and

(C) in paragraph (8)—

(i) in subparagraph (E), by striking “and” at the end;

(ii) in subparagraph (F), by striking the period at the end and inserting a semicolon; and



(iii) by adding at the end the following:

“(G) a detailed assessment of the resources necessary to achieve the requirements of the plan, including specific cost estimates for each project under the EDI to support increased presence, exercises and training, enhanced prepositioning, improved infrastructure, and building partnership capacity; Assessment.

“(H) a detailed timeline to achieve the force posture and capabilities, including permanent force posture requirements; and Timeline.

“(I) a detailed explanation of any significant modifications to activities and resources as compared to the future years plan on activities and resources of the EDI submitted for the previous year.”.

(4) By redesignating subsections (c) and (d) as subsections (d) and (e), respectively.

(5) By inserting after subsection (b) the following:

“(c) SUBSEQUENT PLANS.—

“(1) IN GENERAL.—Not later than the date on which the Secretary of Defense submits to Congress the budget request for the Department of Defense for fiscal year 2021 and each fiscal year thereafter, the Secretary, in consultation with the Commander of the United States European Command, shall submit to the congressional defense committees a future years plan on activities and resources of the European Deterrence Initiative for such fiscal year and not fewer than the four succeeding fiscal years. Deadline. Consultation. Time period.

“(2) MATTERS TO BE INCLUDED.—The plan required under paragraph (1) shall include—

“(A) the matters described in subsection (b); and

“(B) a detailed explanation of any significant modifications in requirements or resources, as compared to the plan submitted under such subsection (b).”.

(6) In subsection (d), as redesignated, by striking “The plan required under subsection (a)” and inserting “The plans required under subsections (a) and (c)”.

(7) In subsection (e), as redesignated, by striking “LIMITATIONS” and all that follows through “In the case of” and inserting “LIMITATIONS.—In the case of”.

(b) BUDGET DISPLAY INFORMATION.—The Secretary of Defense shall include in the materials submitted to Congress by the Secretary in support of the budget of the President for fiscal year 2021 and each fiscal year thereafter (as submitted under section 1105 of title 31, United States Code), a detailed budget display for the European Deterrence Initiative that includes the following information (regardless of whether the funding line is for overseas contingency operations): 10 USC 221 note.

(1) With respect to procurement accounts—

(A) amounts displayed by account, budget activity, line number, line item, and line item title; and

(B) a description of the requirements for each such amounts specific to the Initiative.

(2) With respect to research, development, test, and evaluation accounts—

(A) amounts displayed by account, budget activity, line number, program element, and program element title; and

(B) a description of the requirements for each such amounts specific to the Initiative.

(3) With respect to operation and maintenance accounts—

(A) amounts displayed by account title, budget activity title, line number, and subactivity group title; and

(B) a description of how such amounts will specifically be used.

(4) With respect to military personnel accounts—

(A) amounts displayed by account, budget activity, budget subactivity, and budget subactivity title; and

(B) a description of the requirements for each such amounts specific to the Initiative.

(5) With respect to each project under military construction accounts (including with respect to unspecified minor military construction and amounts for planning and design), the country, location, project title, and project amount by fiscal year.

10 USC 221 note.

(c) END OF FISCAL YEAR REPORT.—Not later than November 30, 2020, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees a report that contains—

Summary.

(1) a detailed summary of funds obligated for the European Deterrence Initiative for the preceding fiscal year; and

(2) a detailed comparison of funds obligated for the European Deterrence Initiative for the preceding fiscal year to amounts requested for the Initiative for that fiscal year in the materials submitted to Congress by the Secretary in support of the budget of the President for that fiscal year as required by subsection (c), including with respect to each of the accounts described in paragraphs (1), (2), (3), (4), and (5) of subsection (b) and the information required under each such paragraph.

Deadlines.

10 USC 221 note.

(d) INTERIM BRIEFING.—Not later than March 30, 2021, and annually thereafter, the Secretary of Defense shall provide the congressional defense committees with an interim briefing on the status of all matters covered by the end of fiscal year report required by section (c).

#### SEC. 1244. MODIFICATION AND EXTENSION OF UKRAINE SECURITY ASSISTANCE INITIATIVE.

Section 1250 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1068) is amended—

(1) in subsection (a), by striking “in coordination with the Secretary of State” and inserting “with the concurrence of the Secretary of State”;

(2) in subsection (b)—

(A) by amending paragraph (11) to read as follows: “(11) Air defense and coastal defense radars, and systems to support effective command and control and integration of air defense and coastal defense capabilities.”;

(B) by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively;

(C) by inserting after paragraph (13) the following: “(14) Coastal defense and anti-ship missile systems.”; and

(D) in paragraph (15), as so redesignated, by striking “paragraphs (1) through (13)” and inserting “paragraphs (1) through (14)”;

(3) in subsection (c)—

(A) in paragraph (1), by striking “50 percent of the funds available for fiscal year 2019 pursuant to subsection (f)(4)” and inserting “50 percent of the funds available for fiscal year 2020 pursuant to subsection (f)(5)”;

(B) in paragraph (3), by striking “fiscal year 2019” and inserting “fiscal year 2020”; and

(C) in paragraph (5), by striking “Of the funds available for fiscal year 2019 pursuant to subsection (f)(4)” and inserting “Of the funds available for fiscal year 2020 pursuant to subsection (f)(5)”;

(4) in subsection (f), by adding at the end the following: “(5) For fiscal year 2020, \$300,000,000.”; and

(5) in subsection (h), by striking “December 31, 2021” and inserting “December 31, 2022”.

**SEC. 1245. LIMITATION ON TRANSFER OF F-35 AIRCRAFT TO TURKEY.**

(a) **LIMITATION.**—None of the funds authorized to be appropriated or otherwise made available for the Department of Defense may be used to do the following, and the Department may not otherwise do the following:

(1) Transfer, facilitate the transfer, or authorize the transfer of, any F–35 aircraft or related support equipment or parts to Turkey.

(2) Transfer intellectual property, technical data, or material support necessary for, or related to, any maintenance or support of the F–35 aircraft necessary to establish Turkey’s indigenous F–35 capability.

(3) Construct a storage facility for, or otherwise facilitate the storage in Turkey of, any F–35 aircraft transferred to Turkey.

(b) **WAIVER.**—

(1) **CERTIFICATION.**—The Secretary of Defense, jointly with the Secretary of State, may waive the limitation under subsection (a) only if the Secretaries submit to the appropriate committees of Congress a written certification that contains a determination by the Secretaries, and any relevant documentation on which the determination is based, that the Government of Turkey, having previously accepted delivery of the S–400 air and missile defense system from the Russian Federation—

Determination.

(A) no longer possesses the S–400 air and missile defense system or any other equipment, materials, or personnel associated with such system;

(B) has provided credible assurances that the Government of Turkey will not in the future accept delivery of such system; and

(C) has not, since July 31, 2019, purchased or accepted delivery of defense equipment from the Russian Federation in addition to the S–400 air and missile defense system that would increase the risk of compromising the capabilities of the F–35 aircraft and its associated systems.

(2) **NOTICE AND WAIT REQUIREMENT.**—The Secretary of Defense and the Secretary of State may not waive the limitation under subsection (a) until 90 days after the date on which the Secretaries submit the certification under paragraph (1).

(c) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) Turkey’s possession of the S–400 air and missile defense system adversely affects the national security of Turkey, the United States, and all members of the North Atlantic Treaty Alliance;

(2) the United States offer of the Patriot air and missile defense system to Turkey constituted a viable alternative to Turkey’s acquisition of the S–400 air and missile defense system;

(3) acceptance of the S–400 air and missile defense system by Turkey constitutes a significant transaction within the meaning of section 231(a) of the Countering Russian Influence in Europe and Eurasia Act of 2017 (22 U.S.C. 9525(a)); and

(4) the President should implement the Countering Russian Influence in Europe and Eurasia Act of 2017 (Public Law 115–44; 131 Stat. 886) by imposing and applying sanctions under section 235 of that Act (22 U.S.C. 9529) with respect to any individual or entity determined to have engaged in such significant transaction as if such person were a sanctioned person for purposes of such section.

(d) AUTHORIZATION OF EXPENDITURE.—

(1) IN GENERAL.—The Secretary of Defense is authorized—

(A) to fly up to 6 Turkish F–35 aircraft (tail numbers AT–1 thru AT–6) to a storage location in the United States; and

(B) to induct these aircraft into a long-term storage condition.

(2) STORAGE, PLAN, AND DISPOSITION OF AIRCRAFT AND EQUIPMENT.—The Secretary of Defense may expend up to \$30,000,000 of funds authorized to be appropriated for fiscal year 2020 for the Department of Defense to conduct activities associated with storage, preservation, and developing a plan for the final disposition of such F–35 aircraft and Turkish F–35 aircraft equipment, including full mission simulators, helmet mounted display systems, air system maintenance trainer, and ancillary mission equipment, as a result of efforts taken by the United States to limit, reduce, or terminate Turkey’s status as a member of the F–35 Joint Strike Fighter cooperative program.

(3) REPORT REQUIRED.—Not later than 90 days after the enactment of this Act, the Secretary of Defense shall provide to the congressional defense committees a report outlining the long-term plan for the disposition of such assets, including options for recovery of costs from Turkey and for unilateral use of such assets by the Department of Defense.

(4) NOTIFICATION REQUIRED.—Not later than 15 days before any expenditure of funds in an amount of \$15,000,000 or more pursuant to the authority described in paragraph (1), the Secretary shall provide to the congressional defense committees a written notification describing the activities to be conducted.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the congressional defense committees; and

(2) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

Deadline.

**SEC. 1246. BALTIC DEFENSE ASSESSMENT; EXTENSION AND MODIFICATION OF SECURITY ASSISTANCE FOR BALTIC COUNTRIES FOR JOINT PROGRAM FOR INTEROPERABILITY AND DETERRENCE AGAINST AGGRESSION.**

(a) **BALTIC DEFENSE ASSESSMENT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense and the Secretary of State shall jointly conduct a comprehensive, multilateral assessment of the military requirements of Lithuania, Latvia, and Estonia to deter and resist aggression by Russia that—

Deadline.

(1) provides an assessment of past and current initiatives to improve the efficiency, effectiveness, readiness and interoperability of Lithuania, Latvia, and Estonia’s national defense capabilities; and

(2) assesses the manner in which to achieve such improvements, including future resource requirements and recommendations, by undertaking activities in the following areas:

(A) Activities to increase the rotational and forward presence, improve the capabilities, and enhance the posture and response readiness of the United States or NATO forces in the Baltic region.

(B) Activities to improve air defense systems, including modern air-surveillance capabilities.

(C) Activities to improve counter-unmanned aerial system capabilities.

(D) Activities to improve command and control capabilities through increasing communications, technology, and intelligence capacity and coordination, including secure and hardened communications.

(E) Activities to improve intelligence, surveillance, and reconnaissance capabilities.

(F) Activities to enhance maritime domain awareness.

(G) Activities to improve military and defense infrastructure, logistics, and access, particularly transport of military supplies and equipment.

(H) Investments to ammunition stocks and storage.

(I) Activities and training to enhance cyber security and electronic warfare capabilities.

(J) Bilateral and multilateral training and exercises.

(K) New and existing cost-sharing mechanisms with United States and NATO allies to reduce financial burden.

(b) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense and the Secretary of State jointly shall submit to the appropriate congressional committees a report, which shall be submitted in unclassified form but may include a classified annex, that includes each of the following:

(1) A report on the findings of the assessment conducted pursuant to subsection (a).

(2) A list of any recommendations resulting from such assessment.

List.  
Recommendations.

(3) An assessment of the resource requirements to achieve the objectives described in subsection (a)(1) with respect to the national defense capability of Baltic countries, including potential investments by host countries.

(4) A plan for the United States to use appropriate security cooperation authorities or other authorities to—

Plan.

(A) facilitate relevant recommendations included in the list described in paragraph (2);

- (B) expand joint training between the Armed Forces and the military of Lithuania, Latvia, or Estonia, including with the participation of other NATO allies; and
- (C) support United States foreign military sales and other equipment transfers to Baltic countries, especially for the activities described in subparagraphs (A) through (I) of subsection (a)(2).
- List. (5) A comprehensive list of authorities and funding sources used for security cooperation with the Baltic countries, including—
- (A) a description of the funds made available and used to provide assistance through each authority, if any, during the last two years;
- (B) whether the authority to provide assistance pursuant to section 1279D of the National Defense Authorization Act for Fiscal Year 2018 (22 U.S.C. 2753 note) was used, and whether any alternative authorities exist under which the Secretary can provide such assistance; and
- Determination. (C) a determination whether any new authorities or funds are needed to achieve the objectives described in subsection (a)(1).
- (c) MODIFICATION OF SECURITY ASSISTANCE AUTHORITIES.—Subsection (c) of section 1279D of the National Defense Authorization Act for Fiscal Year 2018 (22 U.S.C. 2753 note) is amended by inserting after paragraph (4) the following:
- “(5) Command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) equipment.”.
- (d) FUNDING.—Subsection (f) of such section 1279D is amended—
- (1) in paragraph (2), by striking “\$100,000,000” and inserting “\$125,000,000”; and
- (2) by adding at the end the following new paragraph:
- “(3) MATCHING AMOUNT.—The amount of assistance provided under subsection (a) for procurement described in subsection (b) may not exceed the aggregate amount contributed to such procurement by the Baltic nations.”.
- (e) EXTENSION.—Subsection (g) of such section 1279D is amended by striking “December 31, 2020” and inserting “December 31, 2021”.
- Definition. (f) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term “appropriate congressional committees” means—
- (1) the Committee on Armed Services, the Committee on Foreign Relations, the Select Committee on Intelligence, and the Committee on Appropriations of the Senate; and
- (2) the Committee on Armed Services, the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on Appropriations of the House of Representatives.
- SEC. 1247. EXTENSION OF AUTHORITY FOR AND REPORT ON TRAINING FOR EASTERN EUROPEAN NATIONAL SECURITY FORCES IN THE COURSE OF MULTILATERAL EXERCISES.**
- (a) EXTENSION.—Subsection (h) of section 1251 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 333 note) is amended—
- (1) in the first sentence, by striking “December 31, 2020” and inserting “December 31, 2021”; and

(2) in the second sentence, by striking “for for the period beginning on October 1, 2015, and ending on December 31, 2020” and inserting “for the period beginning on October 1, 2015, and ending on December 31, 2021”.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Commander of United States European Command, shall submit to the congressional defense committees a report on the authority for training Eastern European national security forces in the course of multilateral exercises under the authority of such section.

Consultation.

(2) MATTERS TO BE INCLUDED.—The report required by paragraph (1) shall include the following:

(A) For each recipient country, a description of—

(i) the training provided pursuant to such authority beginning in fiscal year 2016; and

(ii) payments of incremental expenses incurred by the country as the direct result of such training.

(B) A description of the elements of the U.S. European Command theater campaign plan advanced by such authority.

(C) An assessment whether the training and payment of the incremental expenses incurred by each recipient country as the direct result of participation in such training could be provided pursuant to other training or security cooperation authorities of the Department of Defense.

Assessment.

(D) Any recommendations of the Secretary of Defense regarding such authority.

Recommendations.

(E) Any other matter the Secretary of Defense considers appropriate.

**SEC. 1248. EXTENSION AND MODIFICATION OF NATO SPECIAL OPERATIONS HEADQUARTERS.**

(a) AUTHORIZATION.—Subsection (a) of section 1244 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2541) is amended by striking “2020” and inserting “2024”.

(b) REPEAL OF CERTIFICATION; LIMITATION.—Such section is amended—

(1) by striking subsection (c); and

(2) by inserting after subsection (b) the following new subsection:

“(c) LIMITATION.—Of the amounts made available under subsection (a) for fiscal year 2020, not more than 90 percent of such amounts may be obligated or expended until the Secretary of Defense, acting through the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, submits to the congressional defense committees a report on the decision to realign responsibilities for overseeing and supporting NSHQ from U.S. Special Operations Command to U.S. European Command, including—

Reports.

“(1) a justification and description of the impact of such realignment; and

“(2) a description of how such realignment will strengthen the role of the NSHQ in fostering special operations capabilities within NATO.”

(c) ANNUAL REPORT.—Such section, as so amended, is further amended by adding at the end the following new subsection:

“(d) ANNUAL REPORT.—Not later than March 1 of each year until 2024, the Secretary of Defense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report regarding support for the NSHQ. Each report shall include the following:

“(1) The total amount of funding provided by the United States and other NATO nations to the NSHQ for operating costs of the NSHQ.

“(2) A description of the activities carried out with such funding, including—

“(A) the amount of funding allocated for each such activity;

“(B) the extent to which other NATO nations participate in each such activity;

“(C) the extent to which each such activity is carried out in coordination or cooperation with the Joint Special Operations University;

“(D) the extent to which each such activity is carried out in relation to other security cooperation activities, exercises, or operations of the Department of Defense;

“(E) the extent to which each such activity is designed to meet the purposes set forth in paragraphs (1) through (5) of subsection (b); and

“(F) an assessment of the extent to which each such activity will promote the mission of the NSHQ.

“(3) Other contributions, financial or in kind, provided by the United States and other NATO nations in support of the NSHQ.

“(4) Any other matters that the Secretary of Defense considers appropriate.”.

Assessment.

**SEC. 1249. NORTH ATLANTIC TREATY ORGANIZATION JOINT FORCE COMMAND.**

(a) IN GENERAL.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 2350n.

**“§ 2350n North Atlantic Treaty Organization Joint Force Command**

“(a) AUTHORIZATION.—The Secretary of Defense shall authorize the establishment of, and the participation by members of the armed forces in, the North Atlantic Treaty Organization Joint Force Command (in this section referred to as the ‘Joint Force Command’), to be established in the United States.

“(b) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.—The Secretary may use facilities and equipment of the Department of Defense to support the Joint Force Command.

“(c) AVAILABILITY OF FUNDS.—Amounts authorized to be appropriated to the Department of Defense shall be available to carry out the purposes of this section.”.

10 USC 2350a prec.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new item:

“2350n. North Atlantic Treaty Organization Joint Force Command.”.



**SEC. 1250. REPORT ON NORTH ATLANTIC TREATY ORGANIZATION READINESS INITIATIVE.**

(a) **REPORT.**—Not later than October 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report on the North Atlantic Treaty Organization (NATO) Readiness Initiative, which shall include assessments of the following: Assessments.

(1) The number of units North Atlantic Treaty Organization allies have pledged against the benchmark to provide an additional 30 air attack squadrons, 30 naval combat vessels, and 30 mechanized battalions ready to fight in not more than 30 days.

(2) The procedure by which the North Atlantic Treaty Organization certifies, reports, and ensures that the Supreme Allied Commander Europe (SACEUR) maintains a detailed understanding of the readiness of the forces described in paragraph (1). Procedure.  
Certification.

(3) The North Atlantic Treaty Organization plan to maintain the readiness of such forces in future years. Plan.

(b) **FORM.**—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 1250A. REPEAL OF PROHIBITION ON TRANSFER OF ARTICLES ON THE UNITED STATES MUNITIONS LIST TO THE REPUBLIC OF CYPRUS.** 22 USC 2373  
note.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) allowing for the export, re-export or transfer of arms subject to the United States Munitions List (part 121 of title 22, Code of Federal Regulations) to the Republic of Cyprus would advance United States security interests in Europe by helping to reduce the dependence of the Government of the Republic of Cyprus on other countries, including countries that pose challenges to United States interests around the world, for defense-related materiel; and

(2) it is in the interest of the United States to continue to support United Nations-facilitated efforts toward a comprehensive solution to the division of Cyprus.

(b) **MODIFICATION OF PROHIBITION.**—Section 620C(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2373(e)) is amended—

(1) in paragraph (1), by striking “Any agreement” and inserting “Except as provided in paragraph (3), any agreement”; and

(2) by adding at the end the following new paragraph:

“(3) The requirement under paragraph (1) shall not apply to any sale or other provision of any defense article or defense service to Cyprus if the end-user of such defense article or defense service is the Government of the Republic of Cyprus.”

(c) **EXCLUSION OF THE GOVERNMENT OF THE REPUBLIC OF CYPRUS FROM CERTAIN RELATED REGULATIONS.**—

(1) **IN GENERAL.**—Subject to subsection (d) and except as provided in paragraph (2), beginning on the date of the enactment of this Act, the Secretary of State shall not apply a policy of denial for exports, re-exports, or transfers of defense articles and defense services destined for or originating in the Republic of Cyprus if—

(A) the request is made by or on behalf of the Government of the Republic of Cyprus; and

(B) the end-user of such defense articles or defense services is the Government of the Republic of Cyprus.

(2) EXCEPTION.—This exclusion shall not apply to any denial based upon credible human rights concerns.

(d) LIMITATIONS ON THE TRANSFER OF ARTICLES ON THE UNITED STATES MUNITIONS LIST TO THE REPUBLIC OF CYPRUS.—

(1) IN GENERAL.—The policy of denial for exports, re-exports, or transfers of defense articles on the United States Munitions List to the Republic of Cyprus shall remain in place unless the President determines and certifies to the appropriate congressional committees not less than annually that—

(A) the Government of the Republic of Cyprus is continuing to cooperate with the United States Government in efforts to implement reforms on anti-money laundering regulations and financial regulatory oversight; and

(B) the Government of the Republic of Cyprus has made and is continuing to take the steps necessary to deny Russian military vessels access to ports for refueling and servicing.

President.

(2) WAIVER.—The President may waive the limitations contained in this subsection for one fiscal year if the President determines that it is essential to the national security interests of the United States to do so.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on Armed Services of the Senate; and

(B) the Committee on Foreign Affairs and the Committee on Armed Services of the House of Representatives.

## Subtitle F—Matters Relating to the Indo-Pacific Region

### SEC. 1251. MODIFICATION OF INDO-PACIFIC MARITIME SECURITY INITIATIVE.

10 USC 333 note.

(a) TYPES OF ASSISTANCE AND TRAINING.—Subsection (c)(2)(A) of section 1263 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 2282 note) is amended by inserting “the law of armed conflict, the rule of law, and” after “respect for”.

(b) NOTICE TO CONGRESS ON ASSISTANCE AND TRAINING.—Subsection (g)(1) of such section is amended—

(1) in subparagraph (A), by inserting at the end before the period the following: “, the specific unit or units whose capacity to engage in activities under a program of assistance or training to be provided under subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided”;

(2) by redesignating subparagraph (F) as subparagraph (J); and

(3) by inserting after subparagraph (E) the following new subparagraphs:

“(F) Information, including the amount, type, and purpose, on assistance and training provided under subsection (a) during the three preceding fiscal years, if applicable.

“(G) A description of the elements of the theater campaign plan of the geographic combatant command concerned and the interagency integrated country strategy that will be advanced by the assistance and training provided under subsection (a).

“(H) A description of whether assistance and training provided under subsection (a) could be provided pursuant to—

“(i) section 333 of title 10, United States Code, or other security cooperation authorities of the Department of Defense; or

“(ii) security cooperation authorities of the Department of State.

“(I) An identification of each such authority described in subparagraph (H).”.

(c) ANNUAL MONITORING REPORTS.—Such section is amended—  
 (1) by redesignating subsection (h) as subsection (j); and  
 (2) by inserting after subsection (g) the following new subsection:

“(h) ANNUAL MONITORING REPORTS.—

“(1) IN GENERAL.—Not later than March 1, 2020, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth, for the preceding calendar year, the following:

“(A) An assessment, by recipient foreign country, of—

Assessment.

“(i) the country’s capabilities relating to maritime security and maritime domain awareness;

“(ii) the country’s capability enhancement priorities, including how such priorities relate to the theater campaign strategy, country plan, and theater campaign plan relating to maritime security and maritime domain awareness;

“(B) A discussion, by recipient foreign country, of—

“(i) priority capabilities that the Department of Defense plans to enhance under the authority under subsection (a) and priority capabilities the Department plans to enhance under separate United States security cooperation and security assistance authorities; and

“(ii) the anticipated timeline for assistance and training for each such capability.

“(C) Information, by recipient foreign country, on the status of funds allocated for assistance and training provided under subsection (a), including funds allocated but not yet obligated or expended.

“(D) Information, by recipient foreign country, on the delivery and use of assistance and training provided under subsection (a).

“(E) Information, by recipient foreign country, on the timeliness of the provision of assistance and training under subsection (a) as compared to the timeliness of the provision of assistance and training previously provided to the foreign country under subsection (a).

“(F) A description of the reasons the Department of Defense chose to utilize the authority for assistance and training under subsection (a) in the preceding calendar year.

“(G) An explanation of any impediments to timely obligation or expenditure of funds allocated for assistance and training under subsection (a) or any significant delay in the delivery of such assistance and training.

“(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term ‘appropriate committees of Congress’ has the meaning given the term in subsection (g)(2).”.

(d) LIMITATION.—Such section, as so amended, is further amended by inserting after subsection (h), as added by subsection (c)(2), the following:

“(i) LIMITATION.—The provision of assistance and training pursuant to a program under subsection (a) shall be subject to the provisions of section 383 of title 10, United States Code.”.

**SEC. 1252. EXPANSION OF INDO-PACIFIC MARITIME SECURITY INITIATIVE AND LIMITATION ON USE OF FUNDS.**

(a) EXPANSION OF RECIPIENT COUNTRIES.—Subsection (b) of section 1263 of the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 333 note) is amended by adding at the end the following new paragraphs:

“(8) The Federated States of Micronesia.

“(9) The Independent State of Samoa.

“(10) The Kingdom of Tonga.

“(11) Papua New Guinea.

“(12) The Republic of Fiji.

“(13) The Republic of Kiribati.

“(14) The Republic of the Marshall Islands.

“(15) The Republic of Nauru.

“(16) The Republic of Palau.

“(17) The Republic of Vanuatu.

“(18) The Solomon Islands.

“(19) Tuvalu.”.

(b) LIMITATION ON USE OF FUNDS.—

Reports.

(1) IN GENERAL.—None of the funds authorized to be appropriated for the Indo-Pacific Maritime Security Initiative under such section may be obligated or expended to provide training or assistance to a recipient country described in any of paragraphs (8) through (19) of subsection (b) of such section until the date on which the Secretary of Defense, with the concurrence of the Secretary of State, submits to the appropriate committees of Congress a report on security cooperation with and security assistance to such countries.

(2) REPORT.—The report referred to in paragraph (1) shall include the following:

(A) An identification of elements of the theater campaign plan of the geographic combatant command concerned and the interagency integrated country strategy that will be advanced by expansion of security cooperation and assistance programs and activities to such recipient countries.

Assessment.

(B) An assessment of the capabilities, and a description of the capability enhancement priorities, of each such country.

(C) A description of the manner in which United States security cooperation and assistance authorities, including assistance provided pursuant to other security cooperation

authorities of the Department of Defense or security assistance authorities of the Department of State, may be used to enhance the priority capabilities of each such country.

(D) A description, as appropriate, of the manner in which the Secretary of Defense, together with the Secretary of State, shall ensure that security cooperation with and security assistance to such countries complement regional engagement efforts undertaken by United States allies, including the Pacific Step-Up efforts of the Government of Australia and the “Pacific Reset” efforts of the Government of New Zealand.

(E) A description of absorption capacity and sustainability issues for each such country and a plan to resolve such issues.

(F) An identification of the estimated annual cost for such assistance and training for fiscal years 2020 through 2025.

(c) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the congressional defense committees;

(2) the Committee on Foreign Relations and the Subcommittee on State, Foreign Operations, and Related Programs of the Committee on Appropriations of the Senate; and

(3) the Committee on Foreign Affairs and the Subcommittee on State, Foreign Operations, and Related Programs of the Committee on Appropriations of the House of Representatives.

**SEC. 1253. REPORT ON RESOURCING UNITED STATES DEFENSE REQUIREMENTS FOR THE INDO-PACIFIC REGION AND STUDY ON COMPETITIVE STRATEGIES.**

Assessments.

(a) **REPORT REQUIRED.**—

(1) **IN GENERAL.**—Not later than March 15, 2020, the Commander of United States Indo-Pacific Command shall submit to the congressional defense committees a report containing the independent assessment of the Commander with respect to the activities and resources required, for fiscal years 2022 through 2026, to achieve the following objectives:

Time periods.

(A) The implementation of the National Defense Strategy with respect to the Indo-Pacific region.

(B) The maintenance or restoration of the comparative military advantage of the United States with respect to the People’s Republic of China.

(C) The reduction of the risk of executing contingency plans of the Department of Defense.

(2) **MATTERS TO BE INCLUDED.**—The report required under paragraph (1) shall include the following:

(A) A description of the intended force structure and posture of assigned and allocated forces within the area of responsibility of United States Indo-Pacific Command for fiscal year 2026 to achieve the objectives described in paragraph (1).

(B) An assessment of capabilities requirements to achieve such objectives.

(C) An assessment of logistics requirements, including personnel, equipment, supplies, storage, and maintenance needs to achieve such objectives.

- (D) An identification of required infrastructure and military construction investments to achieve such objectives.
- (E) An assessment of security cooperation activities or resources required to achieve such objectives.
- Plan. (F)(i) A plan to fully resource United States force posture and capabilities, including—
- Cost estimates. (I) a detailed assessment of the resources necessary to address the elements described in subparagraphs (A) through (E), including specific cost estimates for recommended investments or projects—
- (aa) to increase joint force lethality;
  - (bb) to enhance force design and posture;
  - (cc) to support a robust exercise, experimentation, and innovation program; and
  - (dd) to strengthen cooperation with allies and partners; and
- Timeline. (II) a detailed timeline to achieve the intended force structure and posture described in subparagraph (A).
- (ii) The specific cost estimates required by clause (i)(I) shall, to the maximum extent practicable, include the following:
- (I) With respect to procurement accounts—
    - (aa) amounts displayed by account, budget activity, line number, line item, and line item title; and
    - (bb) a description of the requirements for each such amount.
  - (II) With respect to research, development, test, and evaluation accounts—
    - (aa) amounts displayed by account, budget activity, line number, program element, and program element title; and
    - (bb) a description of the requirements for each such amount.
  - (III) With respect to operation and maintenance accounts—
    - (aa) amounts displayed by account title, budget activity title, line number, and subactivity group title; and
    - (bb) a description of the specific manner in which each such amount would be used.
  - (IV) With respect to military personnel accounts—
    - (aa) amounts displayed by account, budget activity, budget subactivity, and budget subactivity title; and
    - (bb) a description of the requirements for each such amount.
  - (V) With respect to each project under military construction accounts (including unspecified minor military construction and amounts for planning and design), the country, location, project title, and project amount for each fiscal year.
  - (VI) With respect to any expenditure or proposed appropriation not described in subclause (I) through (V), a level of detail equivalent or greater than the

level of detail provided in the future-years defense program submitted pursuant to section 221(a) of title 10, United States Code.

(3) **FORM.**—The report required under paragraph (1) may be submitted in classified form, but shall include an unclassified summary.

(4) **AVAILABILITY.**—Not later than March 15, 2020, the Commander of United States Indo-Pacific Command shall make the report available to the Secretary of Defense, the Under Secretary of Defense for Policy, the Under Secretary of Defense (Comptroller), the Director of Cost Assessment and Program Evaluation, the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the chiefs of staff of each military service.

(b) **BRIEFINGS REQUIRED.**—

(1) **INITIAL BRIEFING.**—Not later than April 15, 2020, the Secretary of Defense (acting through the Under Secretary of Defense for Policy, the Under Secretary of Defense (Comptroller), and the Director of Cost Assessment and Program Evaluation) and the Chairman of the Joint Chiefs of Staff shall provide to the congressional defense committees a joint briefing, and any written comments the Secretary of Defense and the Chairman of the Joint Chiefs of Staff consider necessary, with respect to their assessments of the report submitted under subsection (a), including their assessments of the feasibility and advisability of the plan required by paragraph (2)(F) of that subsection.

(2) **SUBSEQUENT BRIEFING.**—Not later than April 30, 2020, the Secretary of the Air Force, the Secretary of the Army, and the Secretary of the Navy shall provide to the congressional defense committees a joint briefing, and documents as appropriate, with respect to their assessments of the report submitted under subsection (a), including their assessments of the feasibility and advisability of the plan required by paragraph (2)(F) of that subsection.

(c) **STUDY ON COMPETITIVE STRATEGIES WITH RESPECT TO THE PEOPLE’S REPUBLIC OF CHINA.**—

(1) **IN GENERAL.**—The Secretary of Defense, acting through the Director of the Office of Net Assessment, shall conduct a study on not fewer than three possible long-term competitive strategies with respect to the People’s Republic of China that focuses on the identification of opportunities to shape strategic competition to the advantage of the United States.

(2) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees the results of the study required under paragraph (1).

**SEC. 1254. LIMITATION ON USE OF FUNDS TO REDUCE THE TOTAL NUMBER OF MEMBERS OF THE ARMED FORCES SERVING ON ACTIVE DUTY WHO ARE DEPLOYED TO SOUTH KOREA.**

Time period.  
Certification.

None of the funds authorized to be appropriated by this Act may be used to reduce the total number of members of the Armed Forces serving on active duty who are deployed to South Korea below 28,500 until 90 days after the date on which the Secretary of Defense certifies to the congressional defense committees the following:

Consultation.

(1) Such a reduction is in the national security interest of the United States and will not significantly undermine the security of United States allies in the region.

(2) The Secretary has appropriately consulted with allies of the United States, including South Korea and Japan, regarding such a reduction.

**SEC. 1255. REPORT ON DIRECT, INDIRECT, AND BURDEN-SHARING CONTRIBUTIONS OF JAPAN AND SOUTH KOREA.**

(a) **IN GENERAL.**—Not later than the date agreed to in accordance with subsection (e)(2), the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the direct, indirect, and burden-sharing contributions of Japan and South Korea to support overseas military installations of the United States and United States Armed Forces deployed to or permanently stationed in Japan and South Korea, respectively.

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following:

(1) The benefits to United States national security and regional security derived from the forward presence of the Armed Forces in the Indo-Pacific region, including Japan and South Korea.

(2) For calendar year 2016 and each subsequent calendar year, the overall cost for the presence of the Armed Forces in Japan and South Korea and the breakdown of such costs between the United States and the respective host nations.

(3) For calendar year 2016 and each subsequent calendar year, a description of the one-time and recurring costs associated with the presence of the Armed Forces in Japan and South Korea, including—

(A) costs to relocate the Armed Forces within Japan and South Korea and to realign the Armed Forces from Japan and South Korea;

(B) military personnel costs;

(C) operation and maintenance costs; and

(D) military construction costs.

(4) A description of direct, indirect, and burden-sharing contributions of Japan and South Korea, including—

(A) contributions for labor costs associated with the presence of the Armed Forces;

(B) contributions to military construction projects of the Department of Defense, including planning, design, environmental reviews, construction, construction management costs, rents on privately-owned land, facilities, labor, utilities, and vicinity improvements;

(C) contributions such as loan guarantees on public-private venture housing and payment-in-kind for facilities returned to Japan and South Korea;

(D) contributions accepted for labor, logistics, utilities, facilities, and any other purpose; and

(E) other contributions, such as Camp Humphreys and the Futenma Replacement Facility, as determined appropriate by the Comptroller General.

(5) The methodology and accounting procedures used to measure and track direct, indirect, and burden-sharing contributions made by Japan and South Korea.



(c) **DESCRIPTION OF CONTRIBUTIONS IN UNITED STATES DOLLARS.**—The report required by subsection (a) shall describe the direct, indirect, and burden-sharing contributions of Japan and South Korea in United States dollars and shall specify the exchange rates used to determine the United States dollar value of such contributions. Determination.

(d) **FORM.**—The report required by subsection (a) shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

(e) **BRIEFING.**—Not later than March 2, 2020, the Comptroller General shall provide to the appropriate congressional committees an interim briefing— Deadline.

(1) on the status of the report and initial findings; and

(2) to agree on the date on which to submit the report required by subsection (a).

(f) **SUPPORT FROM THE DEPARTMENT OF DEFENSE.**—The Secretary of Defense shall provide the Comptroller General with timely access to the appropriate information, data, and analyses necessary to fulfill the requirement under subsection (a) in a timely, thorough, and independent manner.

(g) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the congressional defense committees; and

(2) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1256. SENSE OF CONGRESS ON SECURITY COMMITMENTS TO THE GOVERNMENTS OF JAPAN AND THE REPUBLIC OF KOREA AND TRILATERAL COOPERATION AMONG THE UNITED STATES, JAPAN, AND THE REPUBLIC OF KOREA.**

It is the sense of Congress that—

(1) the United States remains committed to its alliances with Japan and the Republic of Korea, which are—

(A) essential to the peace and stability in the Indo-Pacific region; and

(B) based on the shared values of democracy, the rule of law, free and open markets, and respect for human rights;

(2) cooperation among the United States, Japan, and the Republic of Korea is essential for confronting regional and global challenges, including—

(A) preventing the proliferation of weapons of mass destruction;

(B) combating piracy;

(C) assisting victims of conflict and disaster worldwide;

(D) protecting maritime security; and

(E) ensuring freedom of navigation, commerce, and overflight in the Indo-Pacific region;

(3) the United States, Japan, and the Republic of Korea share deep concern that the nuclear and ballistic missile programs, the conventional military capabilities, and the chemical and biological weapons programs of the Democratic People’s Republic of Korea, together with the long history of aggression and provocation by the Democratic People’s Republic of Korea,

pose grave threats to peace and stability on the Korean Peninsula and in the Indo-Pacific region;

(4) the United States views security cooperation between Japan and the Republic of Korea as essential to maintaining peace and stability in the Indo-Pacific region, promoting mutual interests, and addressing shared concerns;

(5) the bilateral military intelligence-sharing pact between Japan and the Republic of Korea, signed on November 23, 2016, and the trilateral intelligence sharing agreement among the United States, Japan, and the Republic of Korea, signed on December 29, 2015, are critical to security in the Indo-Pacific region and should be maintained; and

(6) recognizing that the security of the United States, Japan, and the Republic of Korea are intertwined by common threats, including from the Democratic People’s Republic of Korea, the United States strongly encourages—

(A) strengthened bilateral security ties between Japan and the Republic of Korea; and

(B) deeper trilateral defense coordination and cooperation, including through expanded exercises, training, senior-level exchanges, and information sharing.

**SEC. 1257. SENSE OF CONGRESS ON NORTH KOREA.**

It is the sense of Congress that—

(1) diplomacy, economic sanctions, and credible deterrence are essential to address North Korea’s illicit weapons of mass destruction program and the conventional threat that North Korea poses to United States forces on the Korean Peninsula and to United States allies in the region;

(2) North Korea’s recent missile tests are destabilizing, increase regional tensions, and run counter to the spirit of diplomatic negotiations;

(3) every effort should be made to deter actions by North Korea that could lead to a military confrontation, which would pose extreme risks to—

(A) United States military personnel;

(B) noncombatants, including United States citizens and citizens of United States allies; and

(C) regional security;

(4) a sustained and credible diplomatic process based on concrete measures to achieve the denuclearization of North Korea and an eventual end to the Korean War should be pursued;

(5) continued actions by North Korea that run counter to diplomatic negotiations call into question North Korea’s intentions and commitment to a diplomatic solution; and

(6) until such time as North Korea no longer poses a threat to the United States or United States allies, the United States should, in concert with such allies, continue to deter North Korea through credible defense and deterrence posture.

22 USC 1971  
note prec.

**SEC. 1258. STATEMENT OF POLICY AND SENSE OF CONGRESS ON, AND STRATEGY TO FULFILL OBLIGATIONS UNDER, MUTUAL DEFENSE TREATY WITH THE REPUBLIC OF THE PHILIPPINES.**

(a) STATEMENT OF POLICY.—It is the policy of the United States that—

(1) while the United States has long adopted an approach that takes no position on the ultimate disposition of the disputed sovereignty claims in the South China Sea, disputing states should—

(A) resolve their disputes peacefully without the threat or use of force; and

(B) ensure that their maritime claims are consistent with international law; and

(2) an armed attack on the armed forces, public vessels, or aircraft of the Republic of the Philippines in the Pacific, including the South China Sea, would trigger the mutual defense obligations of the United States under Article IV of the Mutual Defense Treaty “to meet common dangers in accordance with its constitutional processes”.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of State and the Secretary of Defense should—

(1) affirm the commitment of the United States to the Mutual Defense Treaty;

(2) preserve and strengthen the military alliance of the United States with the Republic of the Philippines;

(3) prioritize efforts to develop a shared understanding of alliance commitments and defense planning; and

(4) provide appropriate support to the Republic of the Philippines to strengthen the self-defense capabilities of the Republic of the Philippines, particularly in the maritime domain.

(c) STRATEGY REQUIRED.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State, shall submit to the appropriate committees of Congress a report that sets forth the strategy of the Department of Defense for achieving the objectives described in subsection (b).

Consultation.  
Reports.

(2) ELEMENTS OF STRATEGY.—The strategy required by paragraph (1) shall include the following:

(A) A description of the national security interests and objectives of the United States furthered by the Mutual Defense Treaty.

(B) A description of the regional security environment, including—

(i) an assessment of threats to both the United States and the Republic of the Philippines national security interests in the region and the role of the Department in addressing such threats;

Assessment.

(ii) a description of the strategic security challenges that are detrimental to regional peace and global stability, including challenges posed by the People’s Republic of China, violent extremist organizations, and natural disasters; and

(iii) a description of each violent extremist organization that presents a threat to the Republic of the Philippines, including, with respect to each such organization—

(I) the primary objectives of the organization;

(II) an assessment of—

Assessment.

(aa) the capacity and capability of the organization;

(bb) the transnational threat posed by the organization;

(cc) recent trends in the capability and influence of the organization;

(dd) the potential for the organization to reconstitute, expand, or otherwise pose a significant transnational threat; and

(ee) the conditions that contribute to efforts of the organization to reconstitute, expand, or pose such a threat; and

(III) a description of the metrics used to assess the capability and influence of the organization.

(C) A description of Department objectives with the Republic of the Philippines, including—

(i) the benchmarks for assessing progress towards such objectives; and

(ii) the Department strategy to achieve such objectives, including through—

(I) defense cooperation;

(II) use of security cooperation authorities; and

(III) other support or activities in the Republic of the Philippines.

(D) An identification of all current and planned Department resources, programs, and activities to support the strategy required by paragraph (1), including a review of the necessity of an ongoing named operation and the criteria used to determine such necessity.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the congressional defense committees; and

(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(2) MUTUAL DEFENSE TREATY.—The term “Mutual Defense Treaty” means the Mutual Defense Treaty between the Republic of the Philippines and the United States of America, done at Washington August 30, 1951.

**SEC. 1259. REPORT ON SECURITY COOPERATION WITH THE PHILIPPINE NATIONAL POLICE.**

(a) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense, in concurrence with the Secretary of State, shall submit to the appropriate congressional committees a report concerning security sector assistance programs with the Philippine National Police.

(b) MATTERS TO BE INCLUDED.—The report required by subsection (a) shall include the following:

(1) A description of current and planned security sector assistance programs with the Philippine National Police.

(2) The purpose, objectives, and type of training, equipment, or assistance provided under each such program or activity.

(3) An identification of the lead agency responsible for each such program or activity.

(4) An identification of the authority or authorities under which each such program or activity is conducted.

Review.  
Criteria.  
Determination.

(5) A description of the process and criteria used to determine utilization of each such authority or authorities.

(6) A description of how each such program or activity advances United States national security interests as it relates to the Department’s strategy regarding the Philippines.

(7) An identification of the specific units of the Philippine National Police to receive training, equipment, or assistance under each such program.

(8) A description of the process and criteria by which specific units of the Philippine National Police are selected as recipients of such programs and activities, including an assessment of the comparative value of working with units of law enforcement and units of the military forces of the Philippines.

Assessment.

(9) An assessment of the current operational effectiveness of such units and a description of the metrics used to make such assessment.

Assessment.

(10) An identification of priority capabilities of such units to enhance through training, equipment, or assistance under each such program or activity.

(11) A plan to identify, monitor, track, and assess the ability of each such program or activity to meet each of the objectives described pursuant to paragraph (2) to enhance the capabilities of each such unit.

Plan.

(12) An identification of any units of the Philippine National Police that are determined or credibly alleged to have committed human rights abuses.

(13) A description of the relationship between any units of the Philippine National Police identified pursuant to paragraph (12) and any unit identified pursuant to paragraph (7).

(14) A description of the current or previous role, if any, of each unit identified pursuant to paragraph (7) in the anti-drug campaign.

(15) An assessment of the ability of the United States to identify the units described in paragraph (12).

Assessment.

(16) Any other matters the Secretary of Defense determines should be included.

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

- (1) the congressional defense committees; and
- (2) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1260. MODIFICATION OF ANNUAL REPORT ON MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE’S REPUBLIC OF CHINA.**

(a) MODIFICATION TO ANNUAL REPORT REQUIREMENTS.—Section 1202 of the National Defense Authorization Act for Fiscal Year 2000 (10 U.S.C. 113 note) is amended as follows:

(1) In subsection (a), by inserting “, in consultation with the heads of other Federal departments and agencies as appropriate,” after “the Secretary of Defense”.

Consultation.

(2) In subsection (b)—

- (A) by amending paragraph (26) to read as follows:
- Assessments. “(26) The relationship between Chinese overseas investment, including the Belt and Road Initiative, the Digital Silk Road, and any state-owned or controlled digital or physical infrastructure projects of China, and Chinese security and military strategy objectives, including—
- “(A) an assessment of the Chinese investments or projects likely, or with significant potential, to be converted into military assets of China;
- “(B) an assessment of the Chinese investments or projects of greatest concern with respect to United States national security interests;
- “(C) a description of any Chinese investment or project located in another country that is linked to military cooperation with such country, such as cooperation on satellite navigation or arms production;
- “(D) an assessment of any Chinese investment, project, or associated agreement in or with another country that presents significant financial risk for the country or may undermine the sovereignty of such country; and
- “(E) an assessment of the implications for United States military or governmental interests related to denial of access, compromised intelligence activities, and network advantages of Chinese investments or projects in other countries.”; and
- (B) by adding at the end the following:
- Assessment. “(29) Developments relating to the China Coast Guard, including an assessment of—
- “(A) how the change in the Guard’s command structure to report to China’s Central Military Commission affects the Guard’s status as a law enforcement entity;
- “(B) the implications of such command structure with respect to the use of the Guard as a coercive tool to conduct ‘gray zone’ activities in the East China Sea and the South China Sea; and
- “(C) how the change in such command structure may affect interactions between the Guard and the United States Navy.
- Assessment. “(30) An assessment of the military-to-military relations between China and Russia, including an identification of mutual and competing interests.
- Assessment. “(31) An assessment of China’s expansion of its surveillance state, including—
- “(A) any correlation of such expansion with its oppression of its citizens or its threat to United States national security interests around the world; and
- “(B) an overview of the extent to which such surveillance corresponds to an overall respect, or lack thereof, for human rights in China, especially for religious and ethnic minorities.”.
- (3) In subsection (c)—
- (A) by striking “and the” each place it appears and inserting “, the”;
- (B) in paragraph (1), by striking “of the Senate.” and inserting “, and the Select Committee on Intelligence of the Senate.”; and

(C) in paragraph (2), by striking “Committee on International Relations of the House of Representatives.” and inserting “Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.”

(b) ADDITIONAL DEFINED TERM.—Such section 1202, as so amended, is further amended by adding at the end the following:

“(d) STATE-OWNED OR CONTROLLED DIGITAL OR PHYSICAL INFRASTRUCTURE PROJECT OF CHINA.—

“(1) IN GENERAL.—For purposes of subsection (b)(26), the term ‘state-owned or controlled digital or physical infrastructure project of China’ means a transportation, energy, or information technology infrastructure project that is—

Definition.

“(A) owned, controlled, under the direct or indirect influence of, or subsidized by—

“(i) the Government of the People’s Republic of China, including any agency within such Government and any subdivision or other unit of government at any level of jurisdiction within China;

“(ii) any agent or instrumentality of such Government, including such agencies or subdivisions; or

“(iii) the Chinese Communist Party; or

“(B) a project of any Chinese company operating in a sector identified as a strategic industry in the Chinese Government’s ‘Made in China 2025’ strategy to make China a ‘manufacturing power’ as a core national interest.

“(2) OWNED; CONTROLLED.—For purposes paragraph (1)(A), with respect to a project—

Definition.

“(A) the term ‘owned’ means a majority or controlling interest, whether by value or voting interest, in that project, including through fiduciaries, agents, or other means; and

“(B) the term ‘controlled’ means the power by any means to determine or influence, directly or indirectly, important matters affecting the project, regardless of the level of ownership and whether or not that power is exercised.”

**SEC. 1260A. REPORT ON FOREIGN MILITARY ACTIVITIES IN PACIFIC ISLAND COUNTRIES.**

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense for Intelligence, in coordination with the Director of the Defense Intelligence Agency and the Director of National Intelligence, shall submit to the congressional defense committees a report specifying and analyzing—

Coordination.  
Analysis.

(1) strategic interests of foreign militaries in Pacific Island countries, known or emerging foreign partnerships or alliances with non-Pacific Island countries, and foreign military training, exercises, or operations in the region, excluding with countries who are members of the Southeast Asia Treaty Organization;

(2) gaps in intelligence collection capabilities and activities that prevent or may prevent a comprehensive understanding of current intelligence assessments for Pacific Island countries; and

(3) plans to overcome any current intelligence collection deficiencies, including an analysis of both United States and

Plans.

allied and partner intelligence collection capabilities and activities.

(b) **PACIFIC ISLAND COUNTRY DEFINED.**—In this section, the term “Pacific Island country” includes any of the following countries: The Republic of Fiji, the Republic Kiribati, the Marshall Islands, the Federated States of Micronesia, the Republic of Nauru, the Republic of Palau, the Independent State of Samoa, the Solomon Islands, the Kingdom of Tonga, Tuvalu, and the Republic of Vanuatu.

**SEC. 1260B. REPORT ON CYBERSECURITY ACTIVITIES WITH TAIWAN.**

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the following:

(1) The feasibility of establishing a high-level, interagency United States-Taiwan working group for coordinating responses to emerging issues related to cybersecurity.

(2) A discussion of the Department of Defense’s current and future plans to engage with Taiwan in cybersecurity activities.

(3) A discussion of obstacles encountered in forming, executing, or implementing agreements with Taiwan for cybersecurity activities.

(4) Any other matters the Secretary of Defense determines should be included.

**SEC. 1260C. REVIEW AND REPORT RELATED TO THE TAIWAN RELATIONS ACT.**

Coordination.

(a) **REVIEW.**—The Secretary of Defense, in coordination with the Secretary of State, shall conduct a review of—

(1) whether, and the means by which, as applicable, the Government of the People’s Republic of China or the Chinese Communist Party are affecting, including through military, economic, information, digital, diplomatic, or any other form of coercion—

(A) the security, or the social and economic system, of the people of Taiwan;

(B) the military balance of power between the People’s Republic of China and Taiwan; or

(C) the expectation that the future of Taiwan will continue to be determined by peaceful means; and

(2) the role of United States policy toward Taiwan with respect to the implementation of the 2017 National Security Strategy and the 2018 National Defense Strategy.

(b) **REPORT.**—

Coordination.

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall provide to the appropriate committees of Congress a report on the review under subsection (a).

(2) **MATTERS TO BE INCLUDED.**—The report under paragraph (1) shall include the following:

Assessments.  
Recommendations.

(A) The assessments resulting from the review.

(B) Recommendations on legislative changes or Department of Defense or Department of State policy changes necessary to ensure that the United States continues to meet its obligations to Taiwan under the Taiwan Relations Act (22 U.S.C. 3301 et seq.).



## (C) Guidelines for—

(i) new defense requirements, including requirements relating to information and digital space;

(ii) exchanges between senior-level civilian and military officials of the United States and Taiwan; and

(iii) the regular transfer of defense articles, especially defense articles that are mobile, survivable, and cost effective, to most effectively deter attacks and support the asymmetric defense strategy of Taiwan.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1260D. SENSE OF CONGRESS ON ENHANCEMENT OF THE UNITED STATES-TAIWAN DEFENSE RELATIONSHIP.**

It is the sense of Congress that—

(1) Taiwan is a vital partner of the United States and is critical to a free and open Indo-Pacific region;

(2) the Taiwan Relations Act (22 U.S.C. 3301 et seq.) and the “Six Assurances” are both cornerstones of United States relations with Taiwan;

(3) the United States should continue to strengthen defense and security cooperation with Taiwan to support the development of capable, ready, and modern defense forces necessary for Taiwan to maintain a sufficient self-defense capability;

(4) consistent with the Taiwan Relations Act (22 U.S.C. 3301 et seq.), the United States should strongly support the acquisition by Taiwan of defense articles and services through foreign military sales, direct commercial sales, and industrial cooperation, with an emphasis on anti-ship, coastal defense, anti-armor, air defense, defensive naval mining, and resilient command and control capabilities that support the asymmetric defense strategy of Taiwan;

(5) the President and Congress should determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, as required by the Taiwan Relations Act and in accordance with procedures established by law;

(6) the United States should continue efforts to improve the predictability of United States arms sales to Taiwan by ensuring timely review of and response to requests of Taiwan for defense articles and services;

(7) the Secretary of Defense should promote policies concerning exchanges that enhance the security of Taiwan, including—

(A) opportunities with Taiwan for practical training and military exercises that—

(i) enable Taiwan to maintain a sufficient self-defense capability, as described in section 3(a) of the Taiwan Relations Act (22 U.S.C. 3302(a)); and

(ii) emphasize capabilities consistent with the asymmetric defense strategy of Taiwan;

(B) exchanges between senior defense officials and general officers of the United States and Taiwan, consistent with the Taiwan Travel Act (Public Law 115–135), especially for the purpose of enhancing cooperation on defense planning and improving the interoperability of United States and Taiwan forces; and

(C) opportunities for exchanges between junior officers and senior enlisted personnel of the United States and Taiwan;

(8) the United States and Taiwan should expand cooperation in humanitarian assistance and disaster relief;

(9) the Secretary of Defense should consider options, including exercises and ship visits, as appropriate, to expand the scale and scope of humanitarian assistance and disaster response cooperation with Taiwan and other regional partners so as to improve disaster response planning and preparedness; and

(10) the Secretary of Defense should continue regular transits of United States Navy vessels through the Taiwan Strait, commend the armed forces of France for their April 6, 2019, legal transit of the Taiwan Strait, and encourage allies and partners to follow suit in conducting such transits, in order to demonstrate the commitment of the United States and its allies and partners to fly, sail, and operate anywhere international law allows.

**SEC. 1260E. CHINESE FOREIGN DIRECT INVESTMENT IN COUNTRIES OF THE ARCTIC REGION.**

(a) INDEPENDENT STUDY.—

(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary of Defense shall seek to enter into a contract with a federally-funded research and development center described in paragraph (2) to complete an independent study of Chinese foreign direct investment in countries of the Arctic region, with a focus on the effects of such foreign direct investment on United States national security and near-peer competition in the Arctic region.

(2) FEDERALLY-FUNDED RESEARCH AND DEVELOPMENT CENTER DESCRIBED.—A federally-funded research and development center described in this paragraph is a federally-funded research and development center that—

(A) has access to relevant data and demonstrated datasets regarding foreign direct investment in the Arctic region; and

(B) has access to policy experts throughout the United States and the Arctic region.

(b) ELEMENTS.—The study required by subsection (a) shall include the following:

(1) Projects in the Arctic that are directly or indirectly funded by public and private Chinese entities, to—

(A) build public infrastructure;

(B) finance infrastructure;

(C) lease mineral and oil and gas leases;

(D) purchase real estate;

(E) extract or process, including smelting, minerals and oil and gas;

Deadline.  
Contracts.

(F) engage in shipping or to own and operate or construct shipping infrastructure, including ship construction;

(G) lay undersea cables; and

(H) manufacture, own or operate telecommunications capabilities and infrastructure.

(2) An analysis of the legal environment in which Chinese foreign direct investment are occurring in the United States, Russia, Canada, Greenland, Norway, and Iceland. The analysis should include—

Analysis.  
Assessments.

(A) an assessment of the efficacy of mechanisms for screening foreign direct investment in the United States, Russia, Canada, Greenland, Norway, and Iceland;

(B) an assessment of the degree to which there is transparency in Chinese foreign direct investment in countries of the Arctic region;

(C) an assessment of the criteria used to assess potential Chinese foreign direct investment in countries of the Arctic region;

(D) an assessment of the efficacy of methods for monitoring approved Chinese foreign direct investment in countries of the Arctic region; and

(E) an assessment of public reporting of the decision to approve such Chinese foreign direct investment.

(3) A comparison of Chinese foreign direct investment in countries of the Arctic region to other countries with major investments in such countries, including India, Japan, South Korea, the Netherlands, and France.

(4) An assessment of the environmental impact of past Chinese investments in oil and gas, mineral, and infrastructure projects in the Arctic region, including the degree to which Chinese investors are required to comply with local environmental laws and post bonds to assure remediation if a project becomes bankrupt.

Assessment.

(5) A review of the 2018 Chinese Arctic Policy and other relevant public and nonpublic Chinese policy documents to determine the following:

Review.  
Determination.

(A) China's strategic objectives in the Arctic region from a military, economic, territorial, and political perspective.

(B) China's goals in the Arctic region with respect to its relations with the United States and Russia, including the degree to which activities of China in the region are an extension of China's strategic competition with the United States.

(C) Whether any active or planned infrastructure investments are likely to result in a regular presence of Chinese military vessels or the establishment of military bases in the Arctic region.

(D) The extent to which Chinese research activities in the Arctic region are a front for economic activities, including illegal economic espionage, intelligence gathering, and support for future Chinese military activities in the region.

(E) The degree to which Arctic littoral states are susceptible to the political and economic risks of unregulated foreign direct investment.

Recommendations.

(F) The vulnerability of semi-autonomous regions, such as tribal lands, to Chinese foreign direct investment, including the influence of legal controls and political or economic manipulation with respect to such vulnerability.

(G) The implications of China’s Arctic development and participation model with respect to forecasting China’s military, economy, territorial, and political activities.

(6) Policy and legislative recommendations to enhance the position of the United States in affairs of the Arctic region, including—

(A) recommendations for how the United States would best interact with nongovernmental organizations such as the World Bank, Arctic Council, United Nations General Assembly, and International Maritime Organization;

(B) recommendations to pursue or not pursue the formation of an Arctic Development Bank and, if pursued, how to organize, fund, and operate the bank;

(C) measures the United States can take to promote regional governance and eliminate the soft-power influence from Chinese foreign direct investment, in particular, steps where the United States and Russia should cooperate; and

(D) the possibility of negotiating a regional arrangement to regulate foreign direct investment in countries of the Arctic region.

(c) REPORT TO DEPARTMENT OF DEFENSE.—Not later than 720 days after the date of the enactment of this Act, the federally-funded research and development center with respect to which the Secretary of Defense has entered into a contract under subsection (a) shall submit to the Secretary a report containing the study under subsections (a) and (b).

(d) REPORT TO CONGRESS.—Not later than 750 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees the report under subsection (c), without change.

(e) APPROPRIATE CONGRESSIONAL COMMITTEE DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the congressional defense committees;

(2) the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate; and

(3) the Committee on Foreign Affairs and the Committee on Transportation and Infrastructure of the House of Representatives.

**SEC. 1260F. SENSE OF CONGRESS ON POLICY TOWARD HONG KONG.**

It is the sense of Congress that—

(1) Congress stands unequivocally with the people of Hong Kong as they defend their rights and freedoms and preserve their autonomy against the People’s Republic of China;

(2) the Government of the People’s Republic of China should—

(A) abide fully by its commitments in the Sino-British Joint Declaration of 1984 to allow the people of Hong Kong a high degree of autonomy to govern Hong Kong;

(B) adhere fully to Hong Kong’s Basic Law of 1997; and

(C) immediately cease and desist in its interference in the political and legal affairs of Hong Kong;

(3) the decision of authorities of the Hong Kong Special Autonomous Region in September 2019 to fully withdraw the proposed amendments to the Fugitive Offenders Ordinance of Hong Kong is a necessary first step and should be followed by efforts to resolve the remaining demands raised by protestors who represent a broad cross-section of Hong Kong, which are that authorities—

(A) drop all charges against individuals who have been arrested for participating in political protests;

(B) retract the proclamation that the protests were riots;

(C) establish a thorough and independent investigation into police brutality; and

(D) implement genuine universal suffrage for the election of the Chief Executive and all Legislative Council members of Hong Kong;

(4) the United States should—

(A) work with like-minded countries to stand with the people of Hong Kong;

(B) encourage more responsible behavior by the People's Republic of China; and

(C) impose consequences in the event that the authorities of the People's Republic of China and Hong Kong continue to violate fundamental agreements regarding the autonomy of Hong Kong;

(5) the People's Republic of China should refrain from use of any organization within the military, paramilitary, or law enforcement apparatus of the People's Republic of China to engage in violent suppression in Hong Kong;

(6) in the event of use of force by the Government of the People's Republic of China against protestors in Hong Kong, Congress will recommend swift action by the United States, including—

(A) a fundamental reevaluation of the special treatment of Hong Kong under the Hong Kong Policy Act of 1992 (Public Law 102–383; 106 Stat. 1448) and other United States law, particularly in areas of law in which the People's Republic of China is exploiting Hong Kong to the detriment of United States interests and values; and

(B) coordinated actions with like-minded countries to impose meaningful costs on the People's Republic of China, including the imposition of sanctions, travel restrictions, and other actions against responsible senior officials in the Chinese Communist Party, the People's Liberation Army, and the People's Armed Police; and

(7) if at any point the Government of Hong Kong implements legislation that affects, directly or indirectly, the interests of the United States with respect to an agreement the United States maintains with Hong Kong, including a future reconsideration of amendments to the Fugitive Offenders Ordinance of Hong Kong, the United States should conduct a full review of all relevant agreements between the United States and Hong Kong and make necessary adjustments to those agreements to safeguard United States interests.

**SEC. 1260G. SENSE OF CONGRESS ON ENHANCING DEFENSE AND SECURITY COOPERATION WITH THE REPUBLIC OF SINGAPORE.**

It is the sense of Congress that—

(1) the United States and the Republic of Singapore have built a strong, enduring, and forward-looking strategic partnership based on long-standing and mutually beneficial cooperation, including through security, defense, economic, and people-to-people ties;

(2) robust security cooperation between the United States and the Republic of Singapore is crucial to promoting peace and stability in the Indo-Pacific region;

(3) the status of the Republic of Singapore as a major security cooperation partner of the United States, as recognized in the 2005 Strategic Framework Agreement between the United States and the Republic of Singapore for a Closer Partnership in Defense and Security, plays an important role in the global network of strategic partnerships, especially in promoting maritime security and countering terrorism;

(4) the United States values the Republic of Singapore's provision of access to its military facilities, which supports the continued security presence of the United States in Southeast Asia and across the Indo-Pacific region;

(5) the United States should continue to welcome the presence of the military forces of the Republic of Singapore in the United States for exercises and training, and should consider opportunities to expand such activities at additional locations in the United States, as appropriate; and

(6) as the United States and the Republic of Singapore have renewed the 1990 Memorandum of Understanding Regarding the United States Use of Facilities in Singapore, the United States should—

(A) continue to enhance defense and security cooperation with the Republic of Singapore to promote peace and stability in the Indo-Pacific region based on common interests and shared values;

(B) reinforce the status of the Republic of Singapore as a major security cooperation partner of the United States; and

(C) explore additional steps to better facilitate interoperability between the United States Armed Forces and the military forces of the Republic of Singapore to promote peace and stability in the Indo-Pacific region.

Vietnam.

**SEC. 1260H. AUTHORITY TO TRANSFER FUNDS FOR BIEN HOA DIOXIN CLEANUP.**

(a) **TRANSFER AUTHORITY.**—Notwithstanding section 2215 of title 10, United States Code, the Secretary of Defense may transfer to the Secretary of State, for use by the United States Agency for International Development, amounts to be used for the Bien Hoa dioxin cleanup in Vietnam.

(b) **LIMITATION ON AMOUNT.**—Not more than \$15,000,000 may be transferred in fiscal year 2020 under the transfer authority in subsection (a).

(c) **ADDITIONAL TRANSFER AUTHORITY.**—The transfer authority in subsection (a) is in addition to any other transfer authority available to the Department of Defense.

(d) **NOTICE ON EXERCISE OF AUTHORITY.**—If the Secretary of Defense determines to use the transfer authority in subsection (a), the Secretary shall notify the congressional defense committees of that determination not later than 30 days before the Secretary uses the transfer authority.

Determination.  
Deadline.

**SEC. 1260I. LIMITATION ON REMOVAL OF HUAWEI TECHNOLOGIES CO. LTD. FROM ENTITY LIST OF BUREAU OF INDUSTRY AND SECURITY.**

(a) **IN GENERAL.**—The Secretary of Commerce may not remove Huawei Technologies Co. Ltd. or any of its affiliates (in this section collectively referred to as “Huawei”) from the entity list unless and until the Secretary certifies to the appropriate congressional committees that—

Certification.

(1) Huawei has sufficiently resolved or settled the charges that were the basis for the addition of Huawei to the entity list in a manner that is consistent with the standards for the removal of an entity from the entity list under the Export Administration Regulations;

(2) Huawei has sufficiently resolved or settled any other charges that Huawei violated sanctions imposed by the United States;

(3) regulations have been implemented that sufficiently restrict exporting to, and importing from, the United States items that would pose a national security threat to telecommunications systems in the United States; and

(4) the Department of Commerce has mitigated, to the maximum extent possible, other threats to the national security of the United States posed by Huawei.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 60 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report on licenses issued for exports to Huawei.

(2) **MATTERS TO BE INCLUDED.**—For each such license, the report required by paragraph (1) shall describe—

(A) the items authorized for export;

(B) the end-uses of the items;

(C) the identities of the companies granted the license;

and

(D) how the approval of the license is consistent with the national security licensing policy set forth in the Export Administration Regulations.

(3) **DISCLOSURE BY APPROPRIATE CONGRESSIONAL COMMITTEES.**—Subclause (ii) of section 1761(h)(2)(B) of the Export Control Reform Act of 2018 (50 U.S.C. 4820(h)(2)(B)) shall apply with respect to information in a report received by the appropriate congressional committees under paragraph (1) to the same extent and in the same manner as such subclause (ii) applies with respect to information made available under subclause (i) of such section 1761(h)(2)(B).

Applicability.

(c) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Banking, Housing, and Urban Affairs and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) ENTITY LIST.—The term “entity list” means the list maintained by the Bureau of Industry and Security and set forth in Supplement No. 4 to part 744 of title 15, Code of Federal Regulations.

(3) EXPORT ADMINISTRATION REGULATIONS.—The term “Export Administration Regulations” means subchapter C of chapter VII of title 15, Code of Federal Regulations.

**SEC. 1260J. REPORT ON ZTE COMPLIANCE WITH SUPERSEDING SETTLEMENT AGREEMENT AND SUPERSEDING ORDER.**

President.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the President shall submit to Congress a report on the compliance of Zhongxing Telecommunications Equipment Corporation (ZTE Corporation) and ZTE Kangxun Telecommunications Ltd. (ZTE Kangxun) (collectively, “ZTE”) with the Superseding Settlement Agreement and Superseding Order reached with the Department of Commerce on June 8, 2018.

Public information.

(b) FORM.—The report required by subsection (a) shall be submitted in unclassified form and publicly accessible, but may include a classified annex.

**SEC. 1260K. REPORT ON THE LAY-DOWN OF UNITED STATES MARINES IN THE INDO-PACIFIC REGION.**

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of the planned distributed lay-down of members of the United States Marine Corps in Okinawa, Guam, Hawaii, Australia, and other locations.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of the relationship between the planned distributed lay-down in the Indo-Pacific region and the implementation of the National Defense Strategy with respect to such region.

Assessment.

(2) An assessment of the impact of the planned distributed lay-down on the ability of the Armed Forces to respond to current and future contingencies in the area of responsibility of United States Indo-Pacific Command that reflects contingency plans of the Department of Defense.

(3) A description of—

(A) the implementation timeline for the planned distributed lay-down; and

(B) progress made on the planned distributed lay-down, as compared with such timeline.

(4) A description of the adequacy of current and expected training resources at each location associated with the planned distributed lay-down, including—

(A) the ability to train against the full spectrum of threats from near-peer or peer threats; and



(B) any projected limitation due to political, environmental, or other limiting factors.

(5) A description of sustainment concepts to support the planned distributed lay-down, including an assessment of the manner in which the planned distributed lay-down will impact logistics and sustainment requirements in support of contingency plans of the Department of Defense.

(6) An updated and detailed description of any military construction projects required to execute the distributed lay-down.

(7) A description of any recommended revision to the current implementation plan, including any recommended new investment associated with any such revision relating to basing, access, and repositioning in the Indo-Pacific region.

## Subtitle G—Other Matters

### SEC. 1261. MODIFICATION TO REPORT ON LEGAL AND POLICY FRAMEWORKS FOR THE USE OF MILITARY FORCE.

Section 1264 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1689) is amended— 50 USC 1549.

(1) in the heading for subsection (a), by striking “Initial” and inserting “Annual”;

(2) in subsection (a)(1), by striking “90 days after the date of the enactment of this Act” and inserting “March 1 of each year”;

(3) in subsection (a)(2), by striking “during the period” and all that follows to the end and inserting: “from the preceding year, including—

“(A) a list of all foreign forces, irregular forces, groups, or individuals for which a determination has been made that force could legally be used under the Authorization for Use of Military Force (Public Law 107–40), including—

“(i) the legal and factual basis for such determination; and

“(ii) a description of whether force has been used against each such foreign force, irregular force, group, or individual; and

“(B) the criteria and any changes to the criteria for designating a foreign force, irregular force, group, or individual as lawfully targetable, as a high value target, and as formally or functionally a member of a group covered under the Authorization for Use of Military Force.”; and

(4) in subsection (c), by adding at the end the following: “The unclassified portion of each report shall, at a minimum, include each change made to the legal and policy frameworks during the preceding year and the legal, factual, and policy justifications for such changes, and shall be made available to the public at the same time it is submitted to the appropriate congressional committees.”.

List.

Criteria.

Public information.

### SEC. 1262. INDEPENDENT REVIEW OF SUFFICIENCY OF RESOURCES AVAILABLE TO UNITED STATES SOUTHERN COMMAND AND UNITED STATES AFRICA COMMAND.

(a) IN GENERAL.—The Secretary of Defense shall seek to enter into a contract with a not-for-profit entity or federally funded

Contracts.

research and development center independent of the Department of Defense to conduct a review of the sufficiency of resources available to United States Southern Command and United States Africa Command to carry out their respective missions in support of United States national security objectives.

(b) **MATTERS TO BE INCLUDED.**—The review described in subsection (a) shall include—

(1) a review of current and emerging United States national security interests in the United States Southern Command and United States Africa Command areas of responsibilities;

(2) a review of the National Defense Strategy and its implications for United States presence and activities in the United States Southern Command and United States Africa Command areas of responsibilities;

Analysis. (3) a comparative analysis of the National Defense Strategy and the Theater Campaign Plans of United States Southern Command and United States Africa Command, which shall include a description of differences, if any, between the guidance and objectives outlined in the National Defense Strategy and those of the respective Theater Campaign Plans;

(4) a review of the sufficiency of the resources available to United States Southern Command and United States Africa Command, including personnel, human resources, and financial resources as well as other non-Department of Defense resources available to United States Southern Command and United States Africa Command, in promoting United States national security interests;

Assessment. (5) an assessment of the level of regional expertise and experience of the leadership of each such combatant command and their subordinate organizations, service components, and task forces, to include personnel from agencies other than the Department of Defense;

(6) a description of the strategic objectives and end states in the geographic region for which each such combatant command has responsibility and a comparison of the importance and priority of the resources available to each such combatant command to perform its mission; and

Assessment. (7) an assessment of the ability of each such combatant command to carry out their respective missions based on available resources, including non-Department of Defense resources.

(c) **ACCESS TO INFORMATION.**—The not-for-profit entity or federally funded research and development center with which the Secretary enters into the contract under subsection (a) shall have full and direct access to all information related to resources available to United States Southern Command and United States Africa Command.

(d) **REPORT.**—

Assessment. (1) **IN GENERAL.**—The Secretary of Defense shall require, as a term of the contract entered into under subsection (a), that not later than 240 days after the date of the enactment of this Act, the not-for-profit entity or federally funded research and development center with which the Secretary of Defense enters into the contract under subsection (a) shall submit to the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development a report that contains the assessment required by subsection (a).

(2) SUBMISSION TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees—

- (A) a copy of such report without change; and
- (B) any comments the Secretary of Defense considers appropriate.

Records.

**SEC. 1263. UNITED STATES CENTRAL COMMAND POSTURE ASSESSMENT AND REVIEW.**

(a) ASSESSMENT AND REVIEW REQUIRED.—

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center to conduct an independent assessment and comprehensive review of United States military force posture and capabilities in the United States Central Command area of responsibility for the purpose of clarifying and evolving United States military force posture and basing throughout such area of responsibility in accordance with the strategic guidance of the National Defense Strategy during the posture review period.

Deadline.  
Contracts.

(2) MATTERS TO BE INCLUDED.—The assessment and review conducted under paragraph (1) shall include, for the posture review period, the following:

(A) An assessment of the threats and challenges in the United States Central Command area of responsibility, including threats and challenges posed to United States interests by near-peer competitors.

(B) An explanation of the policy and strategic frameworks for addressing the threats and challenges identified under subparagraph (A).

(C) An identification of current and future United States military force posture and capabilities necessary to counter threats, deter conflict, and defend United States national security interests in the United States Central Command area of responsibility.

(D) An assessment of threats and vulnerabilities to current basing, posture, and readiness in the United States Central Command area of responsibility.

(E) An assessment of the basing, cooperative security locations, and other infrastructure necessary to support steady state operations in support of the theater campaign plan and potential contingencies that may arise in or affect the United States Central Command area of responsibility, including any potential efficiencies and risk mitigation measures to be taken.

(F) An assessment of the risks and tradeoffs to United States Central Command priorities resulting from the reorientation of resources toward National Defense Strategy priorities and a description of methods to mitigate any negative impact of such reorientation.

(G) An explanation of the manner in which a modernized global operating model or dynamic force employment approach may yield efficiencies and increase strategic flexibility while achieving United States military objectives in the United States Central Command area of responsibility.

(H) An articulation of the United States nonmilitary efforts and activities necessary to enable the achievement of United States national security interests in the United States Central Command area of responsibility.

(I) Any other matter considered relevant.

Recommendations.

(b) RESULTS.—The federally funded research and development center concerned shall submit to the Secretary the results of the assessment and review under subsection (a), which shall include the following:

(1) Considerations and recommendations for improving posture, basing, and readiness in the United States Central Command area of responsibility.

(2) Alternative basing and posture options to reduce costs, enhance readiness, improve posture, and align with National Defense Strategy priorities.

(3) Any legislative recommendations—

(A) to support and facilitate National Defense Strategy implementation with respect to United States Central Command; and

(B) to modernize or improve basing, posture, and readiness in the United States Central Command area of responsibility.

(c) SUBMITTAL TO CONGRESS.—

Deadline. Records.

(1) IN GENERAL.—Not later than July 1, 2020, the Secretary shall submit to the congressional defense committees an unaltered copy of the results under subsection (b), together with the written perspectives of the Secretary and the Chairman of the Joint Chiefs of Staff with respect to such results.

(2) FORM.—The submission under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(d) POSTURE REVIEW PERIOD DEFINED.—In this section, the term “posture review period” means the period beginning on the date that is five years after the date of the enactment of this Act and ending on the date that is 15 years after such date of enactment.

42 USC 2153 note.

**SEC. 1264. LIMITATION ON PRODUCTION OF NUCLEAR PROLIFERATION ASSESSMENT STATEMENTS.**

President.

(a) LIMITATION.—The Secretary of State may not provide to the President, and the President may not submit to Congress, a Nuclear Proliferation Assessment Statement described in subsection a. of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) with respect to a proposed cooperation agreement with any country that has not signed and implemented an Additional Protocol with the International Atomic Energy Agency, other than a country with which, as of June 19, 2019, there is in effect a civilian nuclear cooperation agreement pursuant to such section 123.

Effective date. President. Reports.

(b) WAIVER.—The limitation under subsection (a) shall be waived with respect to a particular country beginning on the date that is 90 days after the date on which the President submits to the appropriate congressional committees a report describing the manner in which such agreement would advance the national security and defense interests of the United States and not contribute to the proliferation of nuclear weapons.

(c) FORM.—The report described in subsection (b) shall be submitted in unclassified form but may include a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1265. WESTERN HEMISPHERE RESOURCE ASSESSMENT.**

(a) IN GENERAL.—The Secretary of Defense shall seek to enter into a contract with an independent, non-governmental institute described in section 501(c)(3) of the Internal Revenue Code of 1986, and exempt from tax under section 501(a) of such Code, that has recognized credentials and expertise in national security and military affairs to conduct an accounting of and an assessment of the sufficiency of resources available to the United States Southern Command (SOUTHCOM), United States Northern Command (NORTHCOM), Department of State, and United States Agency for International Development (USAID) to carry out their respective missions in the Western Hemisphere.

Contracts.

(b) MATTERS TO BE INCLUDED.—The assessment described in subsection (a) shall include each of the following:

(1) An accounting and description of the funds available to SOUTHCOM, NORTHCOM, the Department of State, and USAID.

(2) A list of bilateral and multilateral military training and exercises with allies and partner countries in the Western Hemisphere.

List.

(3) A description of the security force activities of the United States in the Western Hemisphere.

(4) A description of the activities of the Departments of State and Defense in addressing security challenges in the Western Hemisphere.

(5) Cyber domain activities of the United States and those actions in concert with allied and partner countries in the Western Hemisphere.

(6) A description of the funding for all international military education and training programs.

(7) An overview of all foreign military sales and foreign military financing programs with partner countries in the Western Hemisphere.

Overview.

(8) A list of investments, programs, or partnerships in the Western Hemisphere by China, Iran, Russia, or other adversarial groups or countries that threaten the national security of the United States.

List.

(9) Recommendations for actions the Department of Defense, the Department of State, and USAID could take to advance United States national security interests in the Western Hemisphere.

Recommendations.

(c) ACCESS TO INFORMATION.—The independent, non-governmental institute described in subsection (a) with which the Secretary enters into a contract pursuant to such subsection shall have full and direct access to all information related to resources available to SOUTHCOM, NORTHCOM, the Department of State, and USAID.

**(d) REPORTS REQUIRED.—**

(1) **REPORT OF ASSESSMENT.**—The Secretary of Defense shall include as a term in the contract entered into pursuant to subsection (a) that the independent, non-governmental institute shall submit to the Secretary of Defense, the Secretary of State, and the Administrator of the USAID a report containing the assessment described in such subsection not later than 240 days after the date of the enactment of this Act.

(2) **REPORT TO CONGRESS.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report that includes—

Records.

(A) an unedited copy of the report submitted in accordance to paragraph (1); and

Recommendations.

(B) any comments, changes, recommendations, or other information of the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development determine appropriate that relates to the assessment required by subsection (a) and contained in such report.

(3) **FORM.**—The report required by paragraph (2) shall be submitted in unclassified form but may include a classified annex.

(e) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—The term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1266. HUMAN RIGHTS IN BRAZIL.**

Coordination.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees a report that includes the following:

(1) A description of the security cooperation relationship between the United States and Brazil, including a description of United States objectives, any ongoing or planned security cooperation activities with the military forces of Brazil, and an identification of priority capabilities of the military forces of Brazil that the Department could enhance.

Assessment.

(2) An assessment of the capabilities of the military forces of Brazil.

(3) A description of the human rights climate in Brazil, an assessment of the Brazilian military forces’ adherence to human rights, and a description of any ongoing or planned cooperative activities between the United States and Brazil focused on human rights.

(4) An identification of any Brazilian military and security force units that are determined or credibly alleged to have engaged in human rights violations and have received or purchased United States equipment or training.

(5) A description of the manner and extent to which a security cooperation strategy between the United States and

Brazil could address any human rights abuses identified pursuant to paragraph (3) or (4), encourage accountability, and promote reform through training on human rights, rule of law, and rules of engagement.

(6) Any other matter the Secretary determines to be relevant.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1267. CERTIFICATION RELATING TO ASSISTANCE FOR GUATEMALA.**

(a) IN GENERAL.—Prior to the transfer of any vehicles by the Department of Defense to a joint task force of the Ministry of Defense or the Ministry of the Interior of Guatemala during fiscal year 2020, the Secretary of Defense shall certify to the appropriate congressional committees that such ministries have made a credible commitment to use such equipment only for the uses for which they were intended.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Affairs of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate.

**SEC. 1268. INDEPENDENT ANALYSIS OF HUMAN RIGHTS SITUATION IN HONDURAS.**

(a) ANALYSIS REQUIRED.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall select and enter into an agreement with an independent think tank or a federally funded research and development center to conduct an analysis of the compliance of the military and security forces of Honduras with international human rights laws and standards.

Deadline.  
Contracts.

(2) MATTERS TO BE INCLUDED.—The analysis under paragraph (1) shall include the following:

(A) A description of the military-to-military activities between the United States and Honduras, including the manner in which Department of Defense engagement with the military and security forces of Honduras supports the National Defense Strategy.

(B) An analysis of the activities of the military and security forces of Honduras with respect to human rights activists, including—

(i) a description of the processes and procedures of the Department to identify human rights violations; and

(ii) an analysis of whether such processes and procedures comply with Department policy on adherence to human rights and international law.

(C) With respect to United States national security interests, an analysis of the challenges posed by corruption within the military and security forces of Honduras, including—

(i) an analysis of participation, if any, by the military and security forces of Honduras in illegal narcotics trafficking activities; and

Procedures.

(ii) the processes and procedures within the military and security forces of Honduras to ensure accountability for such activities.

(D) An analysis of—

(i) the security cooperation provided to Honduras by the Department during the 3-year period preceding the date of the enactment of this Act; and

(ii) the extent to which such cooperation has improved accountability, transparency, and compliance to international human rights laws and standards in the security and military operations of the Government of Honduras.

(E)(i) An identification of the units of the military and security forces of Honduras trained by the Department.

(ii) An analysis of the role such units have had, if any, in the training, deployment, and command of the Military Police for Public Order (PMOP) in Honduras.

(F) An analysis of the security cooperation of the Department with military intelligence and special forces units of Honduras.

(G) An analysis of the relative importance of providing development assistance to Honduras to achieve United States national security objectives, including countering the proliferation of illegal narcotics flows through Honduras.

Recommendations.

(H) Recommendations on the development of future security cooperation with Honduras that prioritizes—

(i) compliance of the military and security forces of Honduras with human rights laws and standards;

(ii) citizen security; and

(iii) the advancement of United States national security interests with respect to countering the proliferation of illegal narcotics flows through Honduras.

(I) Any other matters the Secretary considers necessary and relevant to United States national security interests.

(b) REPORT.—Not later than 270 days after the date of the enactment of this Act, the entity selected under subsection (a) shall submit to the appropriate committees of Congress a report on the results of the analysis conducted under that subsection.

(c) DEPARTMENT OF DEFENSE SUPPORT.—The Secretary shall provide the entity selected under subsection (a) with timely access to appropriate information, data, and analyses necessary to carry out such analysis in a thorough and independent manner.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and



(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1269. BRIEFING ON STRATEGY TO IMPROVE THE EFFORTS OF THE NIGERIAN MILITARY TO PREVENT, MITIGATE, AND RESPOND TO CIVILIAN HARM.** Assessments.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of State shall jointly provide to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a briefing on— Deadline.

(1) the current strategy to improve defense institutions and security sector forces in Nigeria required by section 1279A of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1701);

(2) any efforts planned or under way to assist the Nigerian military to improve its efforts to prevent, mitigate, and respond to civilian harm;

(3) an assessment of the effectiveness of such training; and

(4) an overall assessment of efforts by the Government of Nigeria to improve civilian protection, accountability for human rights violations, and transparency in the defense institutions and security sector force.

**SEC. 1270. REPORT ON IMPLICATIONS OF CHINESE MILITARY PRESENCE IN DJIBOUTI.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report that contains a comprehensive strategy to address security concerns posed by the Chinese People’s Liberation Army Support Base in Djibouti to United States military installations and logistics chains in sub-Saharan Africa and the Middle East.

(b) MATTERS TO BE INCLUDED.—The report required by subsection (a) shall include the following:

(1) An assessment of the potential military, intelligence, and logistical threats facing regional United States military infrastructure, supply chains, and operations due to Chinese military presence in Djibouti and a description of any efforts to mitigate such threats. Assessment.

(2) An assessment of Djibouti’s Chinese-held public debt as well as any other potential means of Chinese economic coercion, and a description of the strategic vulnerabilities posed to the United States if China moves to claim the Port of Djibouti or other key logistical assets in repayment. Assessment.

(3) A description of the specific operational challenges facing the United States military in the Horn of Africa and the Middle East in the event that access to the Port of Djibouti becomes limited or lost in its entirety, as well as a description of any contingency plans in the event of such scenarios.

(4) An identification of the measures in place to mitigate risk of escalation between United States and Chinese military assets in Djibouti or any additional mechanisms that may be advisable.

(5) Any other matters the Secretary of Defense considers appropriate.

(c) **FORM.**—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

50 USC 1541  
note.

**SEC. 1271. RULE OF CONSTRUCTION ON THE PERMANENT STATIONING OF UNITED STATES ARMED FORCES IN SOMALIA.**

Nothing in this Act may be construed to authorize the permanent stationing of members of the Armed Forces in Somalia.

**SEC. 1272. DEFENSE AND DIPLOMATIC STRATEGY FOR LIBYA.**

(a) **REPORT REQUIRED.**—Not later than 270 days after the date of enactment of this Act, the Secretary of Defense and the Secretary of State shall jointly submit to the appropriate congressional committees a report that contains a description of the United States defense and diplomatic strategy for Libya.

(b) **ELEMENTS.**—The report required by subsection (a) shall include the following elements:

(1) An explanation of the defense and diplomatic strategy for Libya, including a description of the ends, ways, and means inherent to the strategy, and the role of the Armed Forces in supporting the strategy.

(2) An explanation of the policy and legal authorities of the Department of Defense and the Department of State required to support the strategy.

(3) A detailed description of Department of Defense security partnerships with Libyan actors.

(4) A detailed description of Libyan and external security actors and an assessment of how those actors advance or undermine stability in Libya and United States strategic interests in Libya, including United States interests in a political settlement to the conflict in Libya.

(5) A detailed description of the military activities of external actors in Libya, including assessments of whether those activities—

(A) have undermined progress towards stabilization of Libya, including the United Nations-led negotiations;

(B) involve United States-origin equipment and violate contractual conditions of acceptable use of such equipment; or

(C) violate or seek to violate the United Nations arms embargo on Libya imposed pursuant to United Nations Security Council Resolution 1970 (2011).

(6) A description of any plans to integrate the United States defense and diplomatic resources necessary to implement the strategy.

(7) Any other matters the Secretaries considers appropriate.

(c) **FORM.**—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

**SEC. 1273. PROHIBITION ON IN-FLIGHT REFUELING TO NON-UNITED STATES AIRCRAFT THAT ENGAGE IN HOSTILITIES IN THE ONGOING CIVIL WAR IN YEMEN.** Time period.

For the two-year period beginning on the date of the enactment of this Act, the Department of Defense may not provide in-flight refueling pursuant to section 2342 of title 10, United States Code, or any other applicable statutory authority, to non-United States aircraft that engage in hostilities in the ongoing civil war in Yemen unless and until a declaration of war or a specific statutory authorization for such use of United States Armed Forces has been enacted.

**SEC. 1274. REPORT ON SAUDI-LED COALITION STRIKES IN YEMEN.**

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, and annually thereafter for two years, the Secretary of Defense, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the appropriate congressional committees a report on civilian casualties caused by the Saudi-led coalition and by the Houthis as part of the civil war in Yemen.

(b) **MATTERS TO BE INCLUDED.**—Each such report shall contain the following: Assessments.

(1) An estimate of the number of civilian casualties resulting from operations by the Saudi-led coalition and by the Houthis during the preceding year.

(2) An assessment of whether members of the Saudi-led coalition and the Houthis followed the norms and practices the United States military employs to avoid civilian casualties and ensure proportionality.

(3) An assessment of whether operations executed by members of the Saudi-led coalition and by the Houthis are in compliance with the United States' interpretation of the laws governing armed conflict and proportionality.

(4) Any other matters the Secretary determines to be relevant.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEE DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the congressional defense committees; and

(2) the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate; and

(3) the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 1275. REPORTS ON EXPENSES INCURRED FOR IN-FLIGHT REFUELING OF SAUDI COALITION AIRCRAFT CONDUCTING MISSIONS RELATING TO CIVIL WAR IN YEMEN.**

(a) **REPORTS REQUIRED.**—

(1) **IN GENERAL.**—Not later than 30 days after the date of the enactment of this Act, and every 30 days thereafter, the Secretary of Defense shall submit a report to the appropriate committees of Congress detailing the expenses incurred by the United States in providing in-flight refueling services for Saudi or Saudi-led coalition non-United States aircraft conducting missions as part of the civil war in Yemen during the period of March 1, 2015, through November 11, 2018, Time period.

and the extent to which such expenses have been reimbursed by members of the Saudi-led coalition.

(2) ELEMENTS.—Each report required under paragraph (1) shall include the following:

(A) The total expenses incurred by the United States in providing in-flight refueling services, including fuel, flight hours, and other applicable expenses, to Saudi or Saudi-led coalition, non-United States aircraft conducting missions as part of the civil war in Yemen.

(B) The amount of the expenses described in subparagraph (A) that has been reimbursed by each member of the Saudi-led coalition.

Reimbursement.

(C) Any action taken by the United States to recoup the remaining expenses described in subparagraph (A), including any commitments by members of the Saudi-led coalition to reimburse the United States for such expenses.

Certification.  
Time period.

(3) SUNSET.—The reporting requirement under paragraph (1) shall cease to be effective on the date on which the Secretary certifies to the appropriate committees of Congress that all expenses incurred by the United States in providing in-flight refueling services for Saudi or Saudi-led coalition non-United States aircraft conducting missions as part of the civil war in Yemen during the period of March 1, 2015, through November 11, 2018, have been reimbursed.

(b) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services of the Senate;

(2) the Committee on Armed Services of the House of Representatives;

(3) the Committee on Foreign Relations of the Senate; and

(4) the Committee on Foreign Affairs of the House of Representatives.

#### SEC. 1276. REPORT ON SAUDI ARABIA’S HUMAN RIGHTS RECORD.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report in writing that—

(1) describes the extent to which officials of the Government of Saudi Arabia, including members of the military or security services, are responsible for or complicit in gross violations of internationally recognized human rights, including violations of the human rights of journalists, bloggers, human rights defenders, and those who support women’s rights or religious freedom;

(2) describes violations of human rights in Saudi Arabia by officials of the Government of Saudi Arabia, including against journalists, bloggers, human rights defenders, and civil society activists;

(3) describes United States actions to address Saudi violations of human rights, including against journalists, bloggers, human rights defenders, and civil society activists, including demands for clemency review of these cases;

(4) describes any intolerant content in educational materials published by Saudi Arabia’s Ministry of Education that

are used in schools both inside Saudi Arabia and at schools throughout the world; and

(5) describes United States actions to encourage Saudi Arabia to retrieve and destroy materials with intolerant material and revise teacher manuals and retrain teachers to reflect changes in educational materials and promote tolerance.

(b) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In the section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 1277. REPORT ON INTELLIGENCE COMMUNITY ASSESSMENT RELATING TO THE KILLING OF WASHINGTON POST COLUMNIST JAMAL KHASHOGGI.**

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the appropriate congressional committees a report consisting of—

(1) a determination and presentation of evidence with respect to the advance knowledge and role of any current or former official of the Government of Saudi Arabia or any current or former senior Saudi political figure over the directing, ordering, or tampering of evidence in the killing of Washington Post columnist Jamal Khashoggi; and

Determination.

(2) a list of foreign persons that the Director of National Intelligence has high confidence—

List.

(A) were responsible for, or complicit in, ordering, controlling, or otherwise directing an act or acts contributing to or causing the death of Jamal Khashoggi;

(B) knowingly and materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in subparagraph (A); or

(C) impeded the impartial investigation of the killing of Jamal Khashoggi, including through the tampering of evidence relating to the investigation.

(b) FORM.—

(1) IN GENERAL.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(2) NAMES OF FOREIGN PERSONS LISTED.—The name of each foreign person listed in the report described in subsection (a)(2) shall be included in the unclassified portion of the report unless the Director of National Intelligence determines that such disclosure would undermine United States intelligence sources and methods or threaten the national security interests of the United States.

Determination.

(c) DEFINED.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate.

(2) KNOWINGLY.—The term “knowingly”, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

22 USC 8606 note.

**SEC. 1278. UNITED STATES-ISRAEL COOPERATION TO COUNTER UNMANNED AERIAL SYSTEMS.**

**(a) AUTHORITY TO ESTABLISH CAPABILITIES TO COUNTER UNMANNED AERIAL SYSTEMS.—**

Consultation. Research and development. Evaluation.

(1) IN GENERAL.—The Secretary of Defense, upon request of the Ministry of Defense of Israel and in consultation with the Secretary of State and the Director of National Intelligence, is authorized to carry out research, development, test, and evaluation activities, on a joint basis with Israel, to establish capabilities for countering unmanned aerial systems that threaten the United States or Israel. Any activities carried out pursuant to such authority shall be conducted in a manner that appropriately protects sensitive technology and information and the national security interests of the United States and Israel.

(2) REPORT.—The activities described in paragraph (1) and subsection (b) may not be carried out until after the Secretary of Defense submits to the appropriate committees of Congress a report setting forth the following:

Memorandums.

(A) A memorandum of agreement between the United States and Israel regarding sharing of research and development costs for the capabilities described in paragraph (1), and any supporting documents.

Certification.

(B) A certification that the memorandum of agreement—

(i) requires sharing of costs of projects, including in-kind support, between the United States and Israel;

(ii) establishes a framework to negotiate the rights to any intellectual property developed under the memorandum of agreement; and

(iii) requires the United States Government to receive semiannual reports on expenditure of funds, if any, by the Government of Israel, including a description of what the funds have been used for, when funds were expended, and an identification of entities that expended the funds.

**(b) SUPPORT IN CONNECTION WITH THE PROGRAM.—**

(1) IN GENERAL.—The Secretary of Defense is authorized to provide maintenance and sustainment support to Israel for the research, development, test, and evaluation activities authorized in subsection (a)(1). Such authority includes authority to install equipment necessary to carry out such research, development, test, and evaluation activities.

Time period.

(2) REPORT.—Support may not be provided under paragraph (1) until 15 days after the Secretary submits to the appropriate committees of Congress a report setting forth a detailed description of the support to be provided.

**(3) MATCHING CONTRIBUTION.—**

(A) **IN GENERAL.**—Except as provided in subparagraph (B), support may not be provided under this subsection unless the Government of Israel contributes an amount not less than the amount of support to be so provided to the program, project, or activity for which the support is to be so provided in the calendar year in which the support is provided.

(B) **EXCEPTION.**—Subject to paragraph (4), the Secretary may use amounts available to the Secretary in excess of the amount contributed by the Government of Israel to provide support under this subsection for costs associated with any unique national requirement identified by the United States with respect to countering unmanned aerial systems.

(4) **ANNUAL LIMITATION ON AMOUNT.**—The amount of support provided under this subsection in any year may not exceed \$25,000,000.

(5) **USE OF CERTAIN AMOUNTS FOR RDT&E ACTIVITIES IN THE UNITED STATES.**—Of the amount provided by the United States in support under paragraph (1), not less than 50 percent of such amount shall be used for research, development, test, and evaluation activities in the United States in connection with such support.

(c) **LEAD AGENCY.**—The Secretary of Defense shall designate an appropriate research and development entity of a military department as the lead agency of the Department of Defense in carrying out this section.

(d) **SEMIANNUAL REPORTS.**—The Secretary of Defense shall submit to the appropriate committees of Congress on a semiannual basis a report that contains a copy of the most recent semiannual report provided by the Government of Israel to the Department of Defense pursuant to subsection (a)(2)(B)(iii).

Records.

(e) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Homeland Security, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(f) **SUNSET.**—The authority in this section to carry out activities described in subsection (a), and to provide support described in subsection (b), shall expire on December 31, 2024.

**SEC. 1279. EXTENSION AND MODIFICATION OF AUTHORITY FOR UNITED STATES-ISRAEL ANTI-TUNNEL COOPERATION ACTIVITIES.**

(a) **MODIFICATION OF AUTHORITY.**—Subsection (a) of section 1279 of the National Defense Authorization Act for Fiscal Year 2016 (22 U.S.C. 8606 note) is amended, in the first sentence, by striking “and to establish capabilities for countering unmanned aerial systems”.

(b) **EXCEPTION TO MATCHING CONTRIBUTION REQUIREMENT.**—Subsection (b)(3) of such section is amended—

(1) by striking “Support” and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), support”; and

(2) by adding at the end the following:

“(B) EXCEPTION.—Subject to paragraph (4), the Secretary may use amounts available to the Secretary in excess of the amount contributed by the Government of Israel to provide support under this subsection for costs associated with any unique national requirement identified by the United States with respect to anti-tunnel capabilities.”.

(c) EXTENSION.—Subsection (f) of such section is amended by striking “December 31, 2020” and inserting “December 31, 2024”.

**SEC. 1280. REPORT ON COST IMPOSITION STRATEGY.**

Consultation.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the heads of other Federal departments and agencies, as appropriate, shall submit to the congressional defense committees a report describing the cost imposition strategies of the Department of Defense with respect to the People’s Republic of China and the Russian Federation.

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) A description of the manner in which the future-years defense program and current operational concepts of the Department are designed to impose costs on the People’s Republic of China and the Russian Federation, including—

(A) political, economic, budgetary, human capital, and technology costs; and

(B) costs associated with military efficiency and effectiveness.

(2) A description of the policies and processes of the Department relating to the development and execution of cost imposition strategies.

(c) FORM.—The report under subsection (a) shall be submitted in classified form, and shall include an unclassified summary.

**SEC. 1281. MODIFICATION OF INITIATIVE TO SUPPORT PROTECTION OF NATIONAL SECURITY ACADEMIC RESEARCHERS FROM UNDUE INFLUENCE AND OTHER SECURITY THREATS.**

10 USC 2358  
note.

(a) IN GENERAL.—Subsection (a) of section 1286 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended, in the matter preceding paragraph (1), by striking “academic institutions” and inserting “institutions of higher education”.

(b) ADDITIONAL REQUIREMENTS.—Subsection (c) of such section is amended—

(1) by amending paragraph (2) to read as follows:

Consultation.

“(2) Training developed and delivered in consultation with institutions of higher education and appropriate Government agencies, and other support to institutions of higher education, to promote security and limit undue influence on institutions of higher education and personnel, including Department of Defense financial support to carry out such activities, that—

“(A) emphasizes best practices for protection of sensitive national security information; and

“(B) includes the dissemination of unclassified materials and resources for identifying and protecting against



emerging threats to institutions of higher education, including specific counterintelligence information and advice developed specifically for faculty and academic researchers based on actual identified threats.”;

(2) in paragraph (3), by striking “and academic institutions”;

(3) in paragraph (7), by striking “academic institution” and inserting “institution of higher education”; and

(4) by adding at the end the following new paragraph:

“(8) A list, developed and continuously updated in consultation with the Bureau of Industry and Security of the Department of Commerce, the Director of National Intelligence, United States institutions of higher education that conduct significant Department of Defense research or engineering activities, and other appropriate individuals and organizations, of academic institutions of the People’s Republic of China, the Russian Federation, and other countries, that—

“(A) have a history of improper technology transfer, intellectual property theft, or cyber or human espionage;

“(B) operate under the direction of the military forces or intelligence agency of the applicable country;

“(C) are known—

“(i) to recruit foreign individuals for the purpose of transferring knowledge to advance military or intelligence efforts; or

“(ii) to provide misleading information or otherwise attempt to conceal the connections of an individual or institution to a defense or an intelligence agency of the applicable country; or

“(D) pose a serious risk of improper technology transfer of data, technology, or research that is not published or publicly available.”.

(c) PROCEDURES FOR ENHANCED INFORMATION SHARING.—Subsection (d) of such section is amended to read as follows:

“(d) PROCEDURES FOR ENHANCED INFORMATION SHARING.—

“(1) IN GENERAL.—Not later than October 1, 2020, for the purpose of maintaining appropriate security controls over research activities, technical information, and intellectual property, the Secretary, in conjunction with appropriate public and private entities, shall establish streamlined procedures to collect appropriate information relating to individuals, including United States citizens and foreign nationals, who participate in defense research and development activities (other than basic research).

“(2) PROTECTION FROM RELEASE.—The procedures required by paragraph (1) shall include procedures to protect such information from release, consistent with applicable regulations.

“(3) REPORTING TO GOVERNMENT INFORMATION SYSTEMS AND REPOSITORIES.—The procedures required by paragraph (1) may include procedures developed, in coordination with appropriate public and private entities, to report such information to existing Government information systems and repositories.”.

(d) ANNUAL REPORT.—Subsection (e) of such section is amended—

(1) in the subsection heading, by inserting “ANNUAL” before “REPORT”;

List.  
Consultation.

Deadline.

Coordination.

(2) in paragraph (1), by striking “one year after the date of the enactment” and all that follows through “the Secretary” and inserting “April 30, 2020, and annually thereafter, the Secretary, acting through appropriate Government officials (including the Under Secretary for Research and Engineering),”; and

(3) in paragraph (2), by adding at the end the following new subparagraph:

“(F) Identification of any incident relating to undue influence to security threats to academic research activities funded by the Department of Defense, including theft of property or intellectual property relating to a project funded by the Department at an institution of higher education.”.

**SEC. 1282. MODIFICATION OF RESPONSIBILITY FOR POLICY ON CIVILIAN CASUALTY MATTERS.**

Section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 134 note) is amended—

(1) in subsection (b)—

(A) in paragraph (3), by inserting “appropriate to the specific regional circumstances” after “publicly available means”;

(B) in paragraph (5)—

(i) in subparagraph (A), by inserting “, including for acknowledging the status of any individuals killed or injured who were believed to be enemy combatants, but subsequently determined to be non-combatants” after “operations”; and

(ii) in subparagraph (B)—

(I) by inserting “or other assistance” after “payments”; and

(II) by striking “necessary” and inserting “reasonable and culturally appropriate”; and

(C) in paragraph (7), by striking “and” at the end;

(D) by redesignating paragraph (8) as paragraph (9);

and

(E) by inserting after paragraph (7) the following:

“(8) cultivating, developing, retaining, and disseminating—

“(A) lessons learned for integrating civilian protection into operational planning and identifying the proximate cause or causes of civilian casualties; and

“(B) practices developed to prevent, mitigate, or respond to such casualties;”;

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting after subsection (b) the following:

“(c) COORDINATION.—The senior civilian official designated under subsection (a) shall develop and implement steps to increase coordination with the relevant Chiefs of Mission and other appropriate positions in the Department of State with respect to the policies required pursuant to subsection (a) and other matters or assistance related to civilian harm, resulting from military operations.”; and

(4) by inserting after subsection (d), as so redesignated, the following:

“(e) BRIEFING.—Not later than 180 days after the date of the enactment of this subsection, the senior civilian official designated

Deadline.

under subsection (a) shall provide to the congressional defense committees a briefing on—

“(1) the updates made to the policy developed by the senior civilian official pursuant to this section; and

“(2) the efforts of the Department to implement such updates.”.

**SEC. 1283. REPORT ON EXPORT OF CERTAIN SATELLITES TO ENTITIES WITH CERTAIN BENEFICIAL OWNERSHIP STRUCTURES.**

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the heads of appropriate agencies, shall submit to the appropriate congressional committees a report on addressing the threat or potential threat posed by the export, reexport, or in-country transfer of satellites described in section 1261(c)(1) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 22 U.S.C. 2778 note) to entities described in subsection (b). Consultation.

(b) **ENTITIES DESCRIBED.**—

(1) **IN GENERAL.**—An entity described in this subsection is an entity the beneficial owner of which is—

(A) an individual who is a citizen or national of a country described in section 1261(c)(2) of the National Defense Authorization Act for Fiscal Year 2013;

(B) an entity organized under the laws of or otherwise subject to the jurisdiction of such a country;

(C) the government of such a country; or

(D) any other individual or entity the Secretary determines would detrimentally affect the national security of the United States.

(2) **DETERMINATION OF BENEFICIAL OWNERSHIP.**—For purposes of paragraph (1), the Secretary shall identify a person as the beneficial owner of an entity—

(A) in a manner that is not less stringent than the manner set forth in section 240.13d–3 of title 17, Code of Federal Regulations (as in effect on the date of the enactment of this Act); and

(B) based on a threshold, to be determined by the Secretary, based on an assessment of whether the person’s position would give the person an opportunity to control the use of a satellite described in section 1261(c)(1) of the National Defense Authorization Act for Fiscal Year 2013 and exported, reexported, or transferred in country to the entity. Assessment.

(c) **ELEMENTS.**—The report required by subsection (a) shall include the following:

(1) An evaluation of whether satellites described in section 1261(c)(1) of the National Defense Authorization Act for Fiscal Year 2013 have been exported, reexported, or transferred in-country, directly or indirectly, to entities described in subsection (b). Evaluation.

(2) An examination of the effect on national security of the potential export, reexport, or in-country transfer of satellites in compliance with section 1261(c) of the National Defense Authorization Act for Fiscal Year 2013 in circumstances in which the services, bandwidth, or functions of the satellites Examination.

could subsequently be leased or sold to, or otherwise used by, an entity described in subsection (b).

Examination.

(3) An examination of the effect on national security of not limiting the export, reexport, or in-country transfer of such satellites to entities described in subsection (b).

Recommendations.  
Assessment.

(4) Recommendations for, and an assessment of the effectiveness of, a licensing condition that would prohibit or limit the export, reexport, or in-country transfer of such satellites to, or the use of such satellites by, entities described in subsection (b).

Assessment.

(5) An assessment, based on realistic and justifiable assumptions and forecasts, of the economic implications of and potential harm caused by a licensing condition described in paragraph (4) on the United States industries that develop or produce satellites and commercial telecommunications equipment that do not have direct national security ties.

Evaluation.

(6) An evaluation of the resources necessary to ensure the ability of the Bureau of Industry and Security of the Department of Commerce—

(A) to adequately identify and analyze the beneficial owners of entities in decisions relating to—

(i) issuing licenses for the export, reexport, or in-country transfer of such satellites to such entities; or

(ii) the ultimate end uses and end-users of such satellites; and

(B) when evaluating such a decision—

(i) to have full knowledge of the potential end-user of the satellite and the current beneficial owner of the entity; and

(ii) to be able to determine whether issuing the license would be inconsistent with the goal of preventing entities described in subsection (b) from accessing or using such satellites.

(d) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services, the Committee on Financial Services, the Committee on Energy and Commerce, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

22 USC 8784  
note.

**SEC. 1284. RULE OF CONSTRUCTION RELATING TO THE USE OF MILITARY FORCE.**

Nothing in this Act, or any amendment made by this Act, may be construed to authorize the use of military force, including the use of military force against Iran or any other country.

**SEC. 1285. REPORTS AND BRIEFINGS ON USE OF MILITARY FORCE AND SUPPORT OF PARTNER FORCES.** 50 USC 1550.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report on actions taken pursuant to the Authorization for Use of Military Force (Public Law 107–40) against those countries or organizations described in such law, as well as any actions taken to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such forces are engaged in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, during the preceding 180-day period. Time period.

(b) **MATTERS TO BE INCLUDED.**—The report required by subsection (a) shall include, with respect to the time period for which the report was submitted, the following: Lists.

(1) A list of each country or organization with respect to which force has been used pursuant to the Authorization for Use of Military Force, including the legal and factual basis for the determination that authority under such law applies with respect to each such country or organization.

(2) An intelligence assessment of the risk to the United States posed by each such country or organization. Assessment.

(3) A list of each country in which operations were conducted pursuant to such law and a description of the circumstances necessitating the use of force pursuant to such law, including whether the country is designated as an area of active hostilities.

(4) A general description of the status of operations conducted pursuant to such law as well as a description of the expected scope and duration of such operations.

(5) A list of each partner force and country with respect to which United States Armed Forces have commanded, coordinated, participated in the movement of, or accompanied the regular or irregular forces of any foreign country or government that have engaged in hostilities or there existed an imminent threat that such forces would become engaged in hostilities, including—

(A) a delineation of any such instances in which such United States Armed Forces were or were not operating under the Authorization for Use of Military Force; and

(B) a determination of whether the foreign forces, irregular forces, groups, or individuals against which such hostilities occurred are covered by such law. Determination.

(6) A description of the actual and proposed contributions, including financing, equipment, training, troops, and logistical support, provided by each foreign country that participates in any international coalition with the United States to combat a country or organization described in the Authorization for Use of Military Force.

(c) **FORM.**—The information required under paragraphs (1) and (2) of subsection (b) shall be submitted in unclassified form.

(d) **OTHER REPORTS.**—If United States Armed Forces are introduced into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, against President.  
Compliance.

any country, organization, or person pursuant to statutory or constitutional authorities other than Authorization for Use of Military Force, the President shall comply with the reporting requirements under—

(1) this section to the same extent and in the same manner as if such actions had been taken under Authorization for Use of Military Force;

(2) the War Powers Resolution (50 U.S.C. 1541 et seq.); and

(3) any other applicable provision of law.

Time period.  
President.

(e) BRIEFINGS.—At least once during each 180-day period described in subsection (a), the President shall provide to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a briefing on the matters covered by the report required under this section for such period.

## TITLE XIII—COOPERATIVE THREAT REDUCTION

Sec. 1301. Funding allocations; specification of cooperative threat reduction funds.

### SECTION 1301. FUNDING ALLOCATIONS; SPECIFICATION OF COOPERATIVE THREAT REDUCTION FUNDS.

(a) FUNDING ALLOCATIONS.—Of the \$338,700,000 authorized to be appropriated to the Department of Defense for fiscal year 2010 in section 301 and made available by the funding table in division D for the Department of Defense Cooperative Threat Reduction Program established under section 1321 of the Department of Defense Cooperative Threat Reduction Act (50 U.S.C. 3711), the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination, \$492,000.

(2) For chemical weapons destruction, \$12,856,000.

(3) For global nuclear security, \$33,919,000.

(4) For cooperative biological engagement, \$183,642,000.

(5) For proliferation prevention, \$79,869,000.

(6) For activities designated as Other Assessments/Administrative Costs, \$27,922,000.

(b) SPECIFICATION OF COOPERATIVE THREAT REDUCTION FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 and made available by the funding table in division D for the Department of Defense Cooperative Threat Reduction Program shall be available for obligation for fiscal years 2020, 2021, and 2022.

## TITLE XIV—OTHER AUTHORIZATIONS

### Subtitle A—Military Programs

Sec. 1401. Working capital funds.

Sec. 1402. Chemical agents and munitions destruction, defense.

Sec. 1403. Drug interdiction and counter-drug activities, defense-wide.

Sec. 1404. Defense inspector general.

Sec. 1405. Defense health program.

## Subtitle B—Other Matters

- Sec. 1411. Authority for transfer of funds to joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund for Captain James A. Lovell Health Care Center, Illinois.
- Sec. 1412. Authorization of appropriations for Armed Forces Retirement Home.

**Subtitle A—Military Programs****SEC. 1401. WORKING CAPITAL FUNDS.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds, as specified in the funding table in section 4501.

**SEC. 1402. CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2020 for expenses, not otherwise provided for, for Chemical Agents and Munitions Destruction, Defense, as specified in the funding table in section 4501.

(b) USE.—Amounts authorized to be appropriated under subsection (a) are authorized for—

(1) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521); and

(2) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

**SEC. 1403. DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE-WIDE.**

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2020 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-wide, as specified in the funding table in section 4501.

**SEC. 1404. DEFENSE INSPECTOR GENERAL.**

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2020 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense, as specified in the funding table in section 4501.

**SEC. 1405. DEFENSE HEALTH PROGRAM.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the Defense Health Program for use of the Armed Forces and other activities and agencies of the Department of Defense for providing for the health of eligible beneficiaries, as specified in the funding table in section 4501.

## Subtitle B—Other Matters

### SEC. 1411. AUTHORITY FOR TRANSFER OF FUNDS TO JOINT DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITY DEMONSTRATION FUND FOR CAPTAIN JAMES A. LOVELL HEALTH CARE CENTER, ILLINOIS.

(a) **AUTHORITY FOR TRANSFER OF FUNDS.**—Of the funds authorized to be appropriated by section 1405 and available for the Defense Health Program for operation and maintenance, \$127,000,000 may be transferred by the Secretary of Defense to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by subsection (a)(1) of section 1704 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2571). For purposes of subsection (a)(2) of such section 1704, any funds so transferred shall be treated as amounts authorized and appropriated specifically for the purpose of such a transfer.

(b) **USE OF TRANSFERRED FUNDS.**—For the purposes of subsection (b) of such section 1704, facility operations for which funds transferred under subsection (a) may be used are operations of the Captain James A. Lovell Federal Health Care Center, consisting of the North Chicago Veterans Affairs Medical Center, the Navy Ambulatory Care Center, and supporting facilities designated as a combined Federal medical facility under an operational agreement covered by section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4500).

### SEC. 1412. AUTHORIZATION OF APPROPRIATIONS FOR ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2020 from the Armed Forces Retirement Home Trust Fund the sum of \$64,300,000 for the operation of the Armed Forces Retirement Home.

State listing.

## TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

Sec. 1501. Purpose.

Sec. 1502. Treatment as additional authorizations.

### Subtitle A—Authorization of Appropriations for Overseas Contingency Operations

Sec. 1511. Overseas contingency operations.

Sec. 1512. Procurement.

Sec. 1513. Research, development, test, and evaluation.

Sec. 1514. Operation and maintenance.

Sec. 1515. Military personnel.

Sec. 1516. Working capital funds.

Sec. 1517. Drug interdiction and counter-drug activities, defense-wide.

Sec. 1518. Defense inspector general.

Sec. 1519. Defense health program.

Sec. 1520. Afghanistan security forces fund.

Sec. 1520A. Special transfer authority.

### Subtitle B—Authorization of Appropriations for Emergency Funds for Recovery and Restoration

Sec. 1521. Procurement.



Sec. 1522. Research, development, test, and evaluation.

Sec. 1523. Operation and maintenance.

Sec. 1524. Restriction on transfer of funds authorized by this subtitle.

**SEC. 1501. PURPOSE.**

The purposes of this title are to authorize appropriations for the Department of Defense for fiscal year 2020—

(1) to provide additional funds for overseas contingency operations being carried out by the Armed Forces; and

(2) to provide additional emergency funds for the recovery and restoration of military missions and activities at military installations in California, Florida, North Carolina, and Nebraska that were impacted by natural disasters.

**SEC. 1502. TREATMENT AS ADDITIONAL AUTHORIZATIONS.**

The amounts authorized to be appropriated by this title are in addition to amounts otherwise authorized to be appropriated by this Act.

## **Subtitle A—Authorization of Appropriations for Overseas Contingency Operations**

**SEC. 1511. OVERSEAS CONTINGENCY OPERATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the Department of Defense for overseas contingency operations in such amounts as may be designated as provided in section 251(b)(2)(A)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(ii)).

**SEC. 1512. PROCUREMENT.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for procurement accounts for the Army, the Navy and the Marine Corps, the Air Force, and Defense-wide activities, as specified in the funding table in section 4102.

**SEC. 1513. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Department of Defense for research, development, test, and evaluation, as specified in the funding table in section 4202.

**SEC. 1514. OPERATION AND MAINTENANCE.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, as specified in the funding table in section 4302.

**SEC. 1515. MILITARY PERSONNEL.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, military personnel accounts, as specified in the funding table in section 4402.

**SEC. 1516. WORKING CAPITAL FUNDS.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds, as specified in the funding table in section 4502.

**SEC. 1517. DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE-WIDE.**

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2020 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-wide, as specified in the funding table in section 4502.

**SEC. 1518. DEFENSE INSPECTOR GENERAL.**

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2020 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense, as specified in the funding table in section 4502.

**SEC. 1519. DEFENSE HEALTH PROGRAM.**

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2020 for expenses, not otherwise provided for, for the Defense Health Program, as specified in the funding table in section 4502.

**SEC. 1520. AFGHANISTAN SECURITY FORCES FUND.**

(a) CONTINUATION OF PRIOR AUTHORITIES AND NOTICE AND REPORTING REQUIREMENTS.—Funds available to the Department of Defense for the Afghanistan Security Forces Fund for fiscal year 2020 shall be subject to the conditions contained in—

(1) subsections (b) through (f) of section 1513 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 428); and

(2) section 1521(d)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2577).

(b) EQUIPMENT DISPOSITION.—

(1) ACCEPTANCE OF CERTAIN EQUIPMENT.—Subject to paragraph (2), the Secretary of Defense may accept equipment that is procured using amounts authorized to be appropriated for the Afghanistan Security Forces Fund by this Act and is intended for transfer to the security forces of the Ministry of Defense and the Ministry of the Interior of the Government of Afghanistan, but is not accepted by such security forces.

Determination.

(2) CONDITIONS ON ACCEPTANCE OF EQUIPMENT.—Before accepting any equipment under the authority provided by paragraph (1), the Commander of United States forces in Afghanistan shall make a determination that such equipment was procured for the purpose of meeting requirements of the security forces of the Ministry of Defense and the Ministry of the Interior of the Government of Afghanistan, as agreed to by both the Government of Afghanistan and the Government of the United States, but is no longer required by such security forces or was damaged before transfer to such security forces.

(3) ELEMENTS OF DETERMINATION.—In making a determination under paragraph (2) regarding equipment, the Commander of United States forces in Afghanistan shall consider alternatives to the acceptance of such equipment by the Secretary.

An explanation of each determination, including the basis for the determination and the alternatives considered, shall be included in the relevant quarterly report required under paragraph (5).

(4) TREATMENT AS DEPARTMENT OF DEFENSE STOCKS.— Notification.  
Equipment accepted under the authority provided by paragraph (1) may be treated as stocks of the Department of Defense upon notification to the congressional defense committees of such treatment.

(5) QUARTERLY REPORTS ON EQUIPMENT DISPOSITION.—

(A) IN GENERAL.—Not later than 90 days after the Time period.  
date of the enactment of this Act and every 90-day period thereafter during which the authority provided by paragraph (1) is exercised, the Secretary shall submit to the congressional defense committees a report describing the equipment accepted during the period covered by such report under the following:

(i) This subsection.

(ii) Section 1521(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2575).

(iii) Section 1531(b) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1088).

(iv) Section 1532(b) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3613).

(v) Section 1531(d) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 938; 10 U.S.C. 2302 note).

(B) ELEMENTS.—Each report under subparagraph (A) shall include a list of all equipment that was accepted during the period covered by such report and treated as stocks of the Department of Defense and copies of the determinations made under paragraph (2), as required by paragraph (3). List.  
Records.

(c) SECURITY OF AFGHAN WOMEN.—

(1) IN GENERAL.—Of the funds available to the Department of Defense for the Afghan Security Forces Fund for fiscal year 2020, it is the goal that \$45,500,000, but in no event less than \$10,000,000, shall be used for—

(A) the recruitment, integration, retention, training, and treatment of women in the Afghan National Defense and Security Forces; and

(B) the recruitment, training, and contracting of female security personnel for future elections.

(2) TYPES OF PROGRAMS AND ACTIVITIES.—Such programs and activities may include—

(A) efforts to recruit and retain women into the Afghan National Defense and Security Forces, including the special operations forces;

(B) programs and activities of the Directorate of Human Rights and Gender Integration of the Ministry of Defense of Afghanistan and the Office of Human Rights, Gender and Child Rights of the Ministry of Interior of Afghanistan;

(C) development and dissemination of gender and human rights educational and training materials and programs within the Ministry of Defense and the Ministry of Interior of Afghanistan;

(D) efforts to address harassment and violence against women within the Afghan National Defense and Security Forces;

(E) improvements to infrastructure that address the requirements of women serving in the Afghan National Defense and Security Forces, including appropriate equipment for female security and police forces, and transportation for policewomen to their station;

(F) support for Afghanistan National Police Family Response Units;

(G) security provisions for high-profile female police and military officers;

(H) programs to promote conflict prevention, management, and resolution through the meaningful participation of Afghan women in the Afghan National Defense and Security Forces, by exposing Afghan women and girls to the activities of and careers available with such forces, encouraging their interest in such careers, or developing their interest and skills necessary for service in such forces; and

(I) enhancements to Afghan National Defense and Security Forces recruitment programs for targeted advertising with the goal of increasing the number of female recruits.

(d) ASSESSMENT OF AFGHANISTAN PROGRESS ON OBJECTIVES.—

(1) ASSESSMENT REQUIRED.—Not later than June 1, 2020, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate an assessment describing—

(A) the progress of the Government of the Islamic Republic of Afghanistan toward meeting shared security objectives; and

(B) the efforts of the Government of the Islamic Republic of Afghanistan to manage, employ, and sustain the equipment and inventory provided under subsection (a).

(2) MATTERS TO BE INCLUDED.—In conducting the assessment required by paragraph (1), the Secretary of Defense shall include each of the following:

(A) The extent to which the Government of Afghanistan has a strategy for, and has taken steps toward, increased accountability and the reduction of corruption within the Ministry of Defense and the Ministry of Interior of Afghanistan.

(B) The extent to which the capability and capacity of the Afghan National Defense and Security Forces have improved as a result of Afghanistan Security Forces Fund investment, including through training, and an articulation of the metrics used to assess such improvements.

Deadline.  
Consultation.

(C) The extent to which the Afghan National Defense and Security Forces have been able to increase pressure on the Taliban, al-Qaeda, the Haqqani network, the Islamic State of Iraq and Syria-Khorasan, and other terrorist organizations, including by re-taking territory, defending territory, and disrupting attacks.

(D) The distribution practices of the Afghan National Defense and Security Forces and whether the Government of Afghanistan is ensuring that supplies, equipment, and weaponry supplied by the United States are appropriately distributed to, and employed by, security forces charged with fighting the Taliban and other terrorist organizations.

(E) A description of—

(i) the policy governing the use of Acquisition and Cross Servicing Agreements (ACSA) in Afghanistan;

(ii) each ACSA transaction by type, amount, and recipient for the period beginning on October 1, 2018, and ending December 31, 2019; and

(iii) for any transactions from the United States to Afghan military forces, an explanation for why such transaction was not carried out under the authorities of the Afghanistan Security Forces Fund.

(F) The extent to which the Government of Afghanistan has designated the appropriate staff, prioritized the development of relevant processes, and provided or requested the allocation of resources necessary to support a peace and reconciliation process in Afghanistan.

(G) A description of the ability of the Ministry of Defense and the Ministry of Interior of Afghanistan to manage and account for previously divested equipment, including a description of any vulnerabilities or weaknesses of the internal controls of such Ministry of Defense and Ministry of Interior and any plan in place to address shortfalls.

(H) A description of any significant irregularities in the divestment of equipment to the Afghan National Defense and Security Forces during the period beginning on May 1, 2019, and ending on May 1, 2020, including any major losses of such equipment or any inability on the part of the Afghan National Defense and Security Forces to account for equipment so procured.

Time period.

(I) A description of the sustainment and maintenance costs required during the 5-year period beginning on the date of the enactment of this Act, for major weapons platforms previously divested, and a description of the plan for the Afghan National Defense and Security Forces to maintain such platforms in the future.

(J) The extent to which the Government of Afghanistan is adhering to conditions for receiving assistance established in annual financial commitment letters or any other bilateral agreements with the United States.

(K) The extent to which the Government of Afghanistan has made progress in achieving security sector benchmarks as outlined by the United States-Afghan Compact (commonly known as the “Kabul Compact”) and a description of any other documents, plans, or agreements used by the United States to measure security sector progress.

(L) Such other factors as the Secretaries consider appropriate.

(3) FORM.—The assessment required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

Determinations.  
Coordination.  
Certifications.  
Deadlines.

(4) WITHHOLDING OF ASSISTANCE FOR INSUFFICIENT PROGRESS.—

(A) IN GENERAL.—If the Secretary of Defense determines, in coordination with the Secretary of State and pursuant to the assessment under paragraph (1), that the Government of Afghanistan has made insufficient progress in the areas described in paragraph (2), the Secretary of Defense shall—

(i) withhold \$480,000,000, to be derived from amounts made available for assistance for the Afghan National Defense and Security Forces, from expenditure or obligation until the date on which the Secretary certifies to the congressional defense committees that the Government of Afghanistan has made sufficient progress; and

Notification.

(ii) notify the congressional defense committees not later than 30 days before withholding such funds.

(B) WAIVER.—If the Secretary of Defense determines that withholding such assistance would impede the national security objectives of the United States by prohibiting, restricting, delaying, or otherwise limiting the provision of assistance, the Secretary may waive the withholding requirement under subparagraph (A) if the Secretary, in coordination with the Secretary of State, certifies such determination to the congressional defense committees not later than 30 days before the effective date of the waiver.

(e) ADDITIONAL REPORTING REQUIREMENTS.—The Secretary of Defense shall include in the materials submitted in support of the budget for fiscal year 2021 that is submitted by the President under section 1105(a) of title 31, United States Code, each of the following:

(1) The amount of funding provided in fiscal year 2019 through the Afghanistan Security Forces Fund to the Government of Afghanistan in the form of direct government-to-government assistance or on-budget assistance for the purposes of supporting any entity of such government, including the Afghan National Defense and Security Forces, the Afghan Ministry of Interior, or the Afghan Ministry of Defense.

(2) The amount of funding provided and anticipated to be provided, as of the date of the submission of the materials, in fiscal year 2020 through such Fund in such form.

(3) To the extent the amount described in paragraph (2) exceeds the amount described in paragraph (1), an explanation as to the reason why the such amount is greater and the specific entities and purposes that were supported by such increase.

**SEC. 1520A. SPECIAL TRANSFER AUTHORITY.**

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—

Determination.

(1) AUTHORITY.—Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made

available to the Department of Defense in this subtitle for fiscal year 2020 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) LIMITATION.—The total amount of authorizations that the Secretary may transfer under the authority of this subsection may not exceed \$2,000,000,000.

(b) TERMS AND CONDITIONS.—Transfers under this section shall be subject to the same terms and conditions as transfers under section 1001.

(c) ADDITIONAL AUTHORITY.—The transfer authority provided by this section is in addition to the transfer authority provided under section 1001.

## **Subtitle B—Authorization of Appropriations for Emergency Funds for Recovery and Restoration**

### **SEC. 1521. PROCUREMENT.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for procurement accounts for the Army, the Navy and the Marine Corps, the Air Force, and Defense-wide activities, as specified in the funding table in section 4103.

### **SEC. 1522. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Department of Defense for research, development, test, and evaluation, as specified in the funding table in section 4203.

### **SEC. 1523. OPERATION AND MAINTENANCE.**

Funds are hereby authorized to be appropriated for fiscal year 2020 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, as specified in the funding table in section 4303.

### **SEC. 1524. RESTRICTION ON TRANSFER OF FUNDS AUTHORIZED BY THIS SUBTITLE.**

(a) AUTHORITY.—Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this subtitle for fiscal year 2020 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with the authorization to which transferred and shall be available for the recovery and restoration of military missions and activities at military installations in California, Florida, North Carolina, and Nebraska impacted by natural disasters.

Determination.

State listing.

(b) ADDITIONAL AUTHORITY.—The transfer authority provided by this section is in addition to the transfer authority provided under sections 1001 and 1520A.

(c) TERMS AND CONDITIONS.—Transfers under this section shall be subject to the same terms and conditions as transfers under section 1001.

## TITLE XVI—STRATEGIC PROGRAMS, CYBER, AND INTELLIGENCE MATTERS

### Subtitle A—Space Activities

- Sec. 1601. Repeal of requirement to establish United States Space Command as a subordinate unified command of the United States Strategic Command.
- Sec. 1602. Coordination of modernization efforts relating to military-code capable GPS receiver cards.
- Sec. 1603. Demonstration of backup and complementary positioning, navigation, and timing capabilities of Global Positioning System.
- Sec. 1604. Annual determination on plan on full integration and exploitation of overhead persistent infrared capability.
- Sec. 1605. Space-based environmental monitoring mission requirements.
- Sec. 1606. Resilient enterprise ground architecture.
- Sec. 1607. Prototype program for multi-global navigation satellite system receiver development.
- Sec. 1608. Commercial space situational awareness capabilities.
- Sec. 1609. Program to enhance and improve launch support and infrastructure.
- Sec. 1610. Preparation to implement plan for use of allied launch vehicles.
- Sec. 1611. Independent study on plan for deterrence in space.
- Sec. 1612. Study on leveraging diverse commercial satellite remote sensing capabilities.
- Sec. 1613. Annual report on Space Command and Control program.
- Sec. 1614. Report on space debris.

### Subtitle B—Defense Intelligence and Intelligence-Related Activities

- Sec. 1621. Redesignation of Under Secretary of Defense for Intelligence as Under Secretary of Defense for Intelligence and Security.
- Sec. 1622. Modifications to ISR Integration Council and annual briefing requirements.
- Sec. 1623. Modification of annual authorization of appropriations for National Flagship Language Initiative.
- Sec. 1624. Improving the onboarding methodology for intelligence personnel.
- Sec. 1625. Defense Counterintelligence and Security Agency activities on facilitating access to local criminal records historical data.
- Sec. 1626. Survey and report on alignment of intelligence collections capabilities and activities with Department of Defense requirements.
- Sec. 1627. Reports on Consolidated Adjudication Facility of the Defense Counterintelligence and Security Agency.
- Sec. 1628. Report on the expanded purview of the Defense Counterintelligence and Security Agency.
- Sec. 1629. Termination of requirement for Department of Defense facility access clearances for joint ventures composed of previously-cleared entities.

### Subtitle C—Cyberspace-Related Matters

- Sec. 1631. Matters relating to military operations in the information environment.
- Sec. 1632. Notification requirements for sensitive military cyber operations.
- Sec. 1633. Evaluation of cyber vulnerabilities of major weapon systems of the Department of Defense.
- Sec. 1634. Quarterly assessments of the readiness of Cyber Mission Forces.
- Sec. 1635. Cyber posture review.
- Sec. 1636. Modification of elements of assessment required for termination of dual-hat arrangement for Commander of the United States Cyber Command.
- Sec. 1637. Modification of cyber scholarship program.
- Sec. 1638. Tier 1 exercise of support to civil authorities for a cyber incident.
- Sec. 1639. Extension of the Cyberspace Solarium Commission.
- Sec. 1640. Authority to use operation and maintenance funds for cyber operations-peculiar capability development projects.
- Sec. 1641. Role of Chief Information Officer in improving enterprise-wide cybersecurity.
- Sec. 1642. Notification of delegation of authorities to the Secretary of Defense for military operations in cyberspace.
- Sec. 1643. Limitation of funding for Consolidated Afloat Networks and Enterprise Services.
- Sec. 1644. Annual military cyberspace operations report.
- Sec. 1645. Annual report on cyber attacks and intrusions against the Department of Defense by certain foreign entities.
- Sec. 1646. Control and analysis of Department of Defense data stolen through cyberspace.



- Sec. 1647. Use of National Security Agency cybersecurity expertise to support evaluation of commercial cybersecurity products.
- Sec. 1648. Framework to enhance cybersecurity of the United States defense industrial base.
- Sec. 1649. Report on cybersecurity training programs.
- Sec. 1650. National Security Presidential Memorandums relating to Department of Defense operations in cyberspace.
- Sec. 1651. Reorientation of Big Data Platform program.
- Sec. 1652. Zero-based review of Department of Defense cyber and information technology personnel.
- Sec. 1653. Study on improving cyber career paths in the Navy.
- Sec. 1654. Accreditation standards and processes for cybersecurity and information technology products and services.
- Sec. 1655. Study on future cyber warfighting capabilities of Department of Defense.
- Sec. 1656. Study to determine the optimal strategy for structuring and manning elements of the Joint Force Headquarters–Cyber Organizations, Joint Mission Operations Centers, and Cyber Operations–Integrated Planning Elements.
- Sec. 1657. Cyber governance structures and Principal Cyber Advisors on military cyber force matters.
- Sec. 1658. Designation of test networks for testing and accreditation of cybersecurity products and services.
- Sec. 1659. Consortia of universities to advise Secretary of Defense on cybersecurity matters.
- Sec. 1660. Joint assessment of Department of Defense cyber red team capabilities, capacity, demand, and requirements.

#### Subtitle D—Nuclear Forces

- Sec. 1661. Conforming amendment to Council on Oversight of the National Leadership Command, Control, and Communications System.
- Sec. 1662. Modification of authorities relating to nuclear command, control, and communications system.
- Sec. 1663. Briefings on meetings held by Nuclear Weapons Council.
- Sec. 1664. Consideration of budget matters at meetings of Nuclear Weapons Council.
- Sec. 1665. Improvement to annual report on the modernization of the nuclear weapons enterprise.
- Sec. 1666. Expansion of officials required to conduct biennial assessments of delivery platforms for nuclear weapons and nuclear command and control system.
- Sec. 1667. Extension of annual briefing on costs of forward-deploying nuclear weapons in Europe.
- Sec. 1668. Elimination of conventional requirement for long-range standoff weapon.
- Sec. 1669. Briefing on long-range standoff weapon and sea-launched cruise missile.
- Sec. 1670. Extension of prohibition on availability of funds for mobile variant of ground-based strategic deterrent missile.
- Sec. 1671. Reports on development of ground-based strategic deterrent weapon.
- Sec. 1672. Prohibition on reduction of the intercontinental ballistic missiles of the United States.
- Sec. 1673. Independent study on policy of no-first-use of nuclear weapons.
- Sec. 1674. Independent study on risks of nuclear terrorism and nuclear war.
- Sec. 1675. Report on military-to-military dialogue to reduce risks of miscalculation leading to nuclear war.
- Sec. 1676. Report on nuclear forces of the United States and near-peer countries.
- Sec. 1677. Report on operation of conventional forces of military departments under employment or threat of employment of nuclear weapons.
- Sec. 1678. Report on operation of conventional forces of certain combatant commands under employment or threat of employment of nuclear weapons.
- Sec. 1679. Briefings on plan for future-systems-level architecture of nuclear command, control, and communications systems.
- Sec. 1680. Sense of Congress on nuclear deterrence commitments of the United States.

#### Subtitle E—Missile Defense Programs

- Sec. 1681. National missile defense policy.
- Sec. 1682. Development of space-based ballistic missile intercept layer.
- Sec. 1683. Development of hypersonic and ballistic missile tracking space sensor payload.
- Sec. 1684. Modifications to required testing by Missile Defense Agency of ground-based midcourse defense element of ballistic missile defense system.
- Sec. 1685. Iron Dome short-range rocket defense system and Israeli cooperative missile defense program co-development and co-production.

- Sec. 1686. Limitation on availability of funds for lower tier air and missile defense sensor.
- Sec. 1687. Plan for the redesigned kill vehicle replacement.
- Sec. 1688. Organization, authorities, and billets of the Missile Defense Agency.
- Sec. 1689. Annual assessment of ballistic missile defense system.
- Sec. 1690. Command and control, battle management, and communications program.
- Sec. 1691. Missile defense interceptor site in contiguous United States.
- Sec. 1692. Independent study on impacts of missile defense development and deployment.
- Sec. 1693. Report and briefing on multi-volume kill capability.

Subtitle F—Other Matters

- Sec. 1694. Extension of authorization for protection of certain facilities and assets from unmanned aircraft.
- Sec. 1695. Repeal of requirement for commission on electromagnetic pulse attacks and similar events.
- Sec. 1696. Repeal of review requirement for ammonium perchlorate report.
- Sec. 1697. Transferability of conventional prompt global strike weapon system technologies to surface-launched platforms.
- Sec. 1698. Prohibition on availability of funds for certain offensive ground-launched ballistic or cruise missile systems.
- Sec. 1699. Hard and deeply buried targets.

## Subtitle A—Space Activities

**SEC. 1601. REPEAL OF REQUIREMENT TO ESTABLISH UNITED STATES SPACE COMMAND AS A SUBORDINATE UNIFIED COMMAND OF THE UNITED STATES STRATEGIC COMMAND.**

(a) IN GENERAL.—Section 169 of title 10, United States Code, is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

10 USC 161 prec.

(1) The table of sections for chapter 6 of title 10, United States Code, is amended by striking the item relating to section 169.

(2) Section 2273a(d)(3) of title 10, United States Code, is amended by striking “The Commander of the United States Strategic Command, acting through the United States Space Command,” and inserting “The Commander of the United States Space Command, or, if no such command exists, the Commander of the United States Strategic Command,”.

**SEC. 1602. COORDINATION OF MODERNIZATION EFFORTS RELATING TO MILITARY-CODE CAPABLE GPS RECEIVER CARDS.**

Section 1610 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2111; 10 U.S.C. 2281 note) is amended—

(1) in subsection (b)(2), by striking the period at the end and inserting “, including with respect to each program of the Department that requires M-code capable receiver cards.”; and

(2) in subsection (c), by striking the period at the end and inserting “, and shall clarify the roles of the Chief Information Officer and the Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise with respect to M-code modernization efforts.”.

**SEC. 1603. DEMONSTRATION OF BACKUP AND COMPLEMENTARY POSITIONING, NAVIGATION, AND TIMING CAPABILITIES OF GLOBAL POSITIONING SYSTEM.**

Effective on June 1, 2019, section 1606 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1725) is amended—

Effective date.

(1) in subsection (c)(2), by striking “the date that is 18 months after the date of the enactment of this Act” and inserting “December 31, 2020”; and

(2) in subsection (d), by striking “18 months after the date of the enactment of this Act” and inserting “December 31, 2020”.

**SEC. 1604. ANNUAL DETERMINATION ON PLAN ON FULL INTEGRATION AND EXPLOITATION OF OVERHEAD PERSISTENT INFRARED CAPABILITY.**

Section 1618(c) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2431 note) is amended by striking “for a fiscal year” and inserting “for each of fiscal years 2021 through 2028”.

**SEC. 1605. SPACE-BASED ENVIRONMENTAL MONITORING MISSION REQUIREMENTS.**

10 USC 2271 note.

(a) **PROCUREMENT OF MODERNIZED PATHFINDER PROGRAM SATELLITE.**—

(1) **IN GENERAL.**—The Secretary of the Air Force shall procure a modernized pathfinder program satellite that—

(A) addresses space-based environmental monitoring mission requirements;

(B) reduces the risk that the Department of Defense experiences a gap in meeting such requirements during the period beginning January 1, 2023, and ending December 31, 2025; and

(C) is launched not later than January 1, 2023.

(2) **TYPE OF SATELLITE.**—The satellite described in paragraph (1) may be a free-flyer or a hosted payload satellite.

(3) **PLAN.**—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the appropriate congressional committees a plan to procure and launch the satellite described in paragraph (1), including with respect to—

(A) the requirements for such satellite, including operational requirements;

(B) timelines for such procurement and launch;

(C) costs for such procurement and launch; and

(D) the launch plan.

(4) **PROCEDURES.**—The Secretary of the Air Force shall ensure that the satellite described in paragraph (1) is procured using full and open competition through the use of competitive procedures.

(5) **WITHHOLDING OF FUNDS.**—The amount equal to 10 percent of the total amount authorized to be appropriated to the Office of the Secretary of Air Force for the travel of persons under the Operations and Maintenance, Defense-Wide account shall be withheld from obligation or expenditure until the date on which a contract is awarded for the procurement of the satellite described in paragraph (1).

Time period.

Deadline.

Deadline.

Timelines.

(b) **WEATHER SYSTEM SATELLITE.**—The Secretary of the Air Force shall ensure that the electro-optical/infrared weather system satellite—

(1) meets space-based environmental monitoring mission requirements;

(2) is procured using full and open competition through the use of competitive procedures; and

(3) is launched not later than September 30, 2025.

Deadline.

(c) **DEFINITIONS.**—In this section:

(1) The term “appropriate congressional committees” means—

(A) the congressional defense committees; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) The term “space-based environmental monitoring mission requirements” means the national security requirements for cloud characterization and theater weather imagery.

10 USC 2271  
note.

**SEC. 1606. RESILIENT ENTERPRISE GROUND ARCHITECTURE.**

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that the Secretary of the Air Force, to advance the security of the space assets of the Department of Defense, should—

(1) expand on complementary efforts within the Air Force that promote the adoption of a resilient enterprise ground architecture that is responsive to new and changing threats and can rapidly integrate new capabilities to make the warfighting force of the United States more resilient in a contested battlespace; and

(2) prioritize the swift transition of space ground architecture to a common platform and leverage commercial capabilities in concurrence with the 2015 intent memorandum of the Commander of the Air Force Space Command.

(b) **FUTURE ARCHITECTURE.**—The Secretary of Defense shall, to the extent practicable—

(1) develop future satellite ground architectures of the Department of Defense to be compatible with complementary commercial systems that can support uplink and downlink capabilities with dual-band spacecraft; and

(2) emphasize that future ground architecture transition away from stove-piped systems to a service-based platform that provides members of the Armed Forces with flexible and adaptable capabilities that—

(A) use, as applicable, commercially available capabilities and technologies for increased resiliency and cost savings; and

(B) build commercial opportunity and integration across the range of resilient space systems.

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the future architecture described in subsection (b).

10 USC 2281  
note.

**SEC. 1607. PROTOTYPE PROGRAM FOR MULTI-GLOBAL NAVIGATION SATELLITE SYSTEM RECEIVER DEVELOPMENT.**

(a) **PROTOTYPE MULTI-GNSS PROGRAM.**—The Secretary of the Air Force shall carry out a program to prototype an M-code based, multi-global navigation satellite system receiver that is capable

of receiving covered signals to increase the resilience and capability of military position, navigation, and timing equipment against threats to the Global Positioning System and to deter the likelihood of attack on the worldwide Global Positioning System by reducing the benefits of such an attack.

(b) ELEMENTS.—In carrying out the program under subsection (a), the Secretary shall—

Assessments.

(1) with respect to each covered signal that could be received by the prototype receiver under such program, conduct an assessment of the relative benefits and risks of using that signal, including with respect to any existing or needed monitoring infrastructure that would alert users of the Department of Defense of potentially corrupted signal information, and the cyber risks and challenges of incorporating such signals into a properly designed receiver;

(2) ensure that monitoring systems are able to include any monitoring network of the United States or allies of the United States;

(3) conduct an assessment of the benefits and risks, including with respect to the compatibility of non-United States global navigation satellite system signals with existing position, navigation, and timing equipment of the United States, and the extent to which the capability to receive such signals would impact current receiver or antenna design; and

(4) conduct an assessment of the desirability of establishing a program for the development and deployment of the receiver system described in subsection (a) in a manner that—

Coordination.

(A) is a cooperative effort, coordinated with the Secretary of State, between the United States and the allies of the United States that may also have interest in funding a multi-global navigation satellite system and M-code program; and

(B) the Secretary of Defense, in coordination with the Secretary of State, ensures that the United States has access to sufficient insight into trusted signals of allied systems to assure potential reliance by the United States on such signals.

(c) BRIEFING.—Not later than 120 days after the date of the enactment of this Act, the Secretary, in coordination with the Air Force GPS User Equipment Program office, shall provide to the congressional defense committees a briefing on a plan to carry out the program under subsection (a) that includes—

Deadline.  
Coordination.  
Plans.

(1) the estimated cost, including total cost and out-year funding requirements for a program to develop and deploy the receiver system described in subsection (a);

Cost estimate.

(2) the schedule for such program;

Schedule.

(3) a plan for how the results of the program could be incorporated into future blocks of the Global Positioning System military user equipment program; and

(4) the recommendations and analysis contained in the study sponsored by the Department of Defense conducted by the MITRE Corporation on the risks, benefits, and approaches to adding multi-global navigation satellite system capabilities to military user equipment.

Recommendations.  
Analysis.

(d) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing—

Assessments.

Compliance.

(1) an explanation of how the Secretary intends to comply with section 1609 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2281 note);

(2) an outline of any potential cooperative efforts acting in accordance with the North Atlantic Treaty Organization, the European Union, or Japan that would support such compliance;

(3) an assessment of the potential to host, or incorporate through software-defined payloads, Global Positioning System M-code functionality onto allied global navigation satellite system systems; and

(4) an assessment of new or enhanced monitoring capabilities that would be needed to incorporate global navigation satellite system functionality into weapon systems of the Department.

(e) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for increment 2 of the acquisition of military Global Positioning System user equipment terminals, not more than 90 percent may be obligated or expended until the date on which the briefing has been provided under subsection (c) and the report has been submitted under subsection (d).

(f) WAIVER AUTHORITY FOR TRUSTED SIGNALS CAPABILITIES.—Section 1609(a)(2)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2281 note) is amended by striking “such capability” and inserting “the capability to add multi-Global Navigation Satellite System signals to provide substantive military utility”.

(g) DEFINITIONS.—In this section:

(1) The term “allied systems” means—

(A) the Galileo system of the European Union;

(B) the QZSS system of Japan; and

(C) upon designation by the Secretary of Defense, in consultation with the Director of National Intelligence—

(i) the NAVIC system of India; and

(ii) any similarly associated wide area augmentation systems.

(2) The term “covered signals”—

(A) means global navigation satellite system signals from—

(i) allied systems; and

(ii) non-allied systems; and

(B) includes both encrypted signals and open signals.

(3) The term “encrypted signals” means global navigation satellite system signals that incorporate encryption or other internal methods to authenticate signal information.

(4) The term “M-code” means, with respect to global navigation satellite system signals, military code that provides enhanced positioning, navigation, and timing capabilities and improved resistance to existing and emerging threats, such as jamming.

(5) The term “non-allied systems” means—

(A) the Russian GLONASS system; and

(B) the Chinese Beidou system.

Consultation.

(6) The term “open signals” means global navigation satellite system that do not include encryption or other internal methods to authenticate signal information.

**SEC. 1608. COMMERCIAL SPACE SITUATIONAL AWARENESS CAPABILITIES.**

(a) **CERTIFICATION.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Air Force, without delegation, shall certify to the congressional defense committees that the Air Force is using commercial space situational awareness services.

Deadline.

(b) **LIMITATION.**—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the enterprise space battle management command and control, not more than 85 percent may be obligated or expended until the date on which the Secretary of the Air Force makes the certification under subsection (a).

(c) **REPORT.**—Not later than March 1, 2020, the Secretary of the Air Force shall submit to the congressional defense committees a report on using commercial space situational awareness services to fill the space situational awareness requirements that were not filled in the Joint Space Operations Center Mission Center. The report shall include the following:

(1) A description of current domestic commercial capabilities to detect and track space objects in low-Earth orbit below the 10 centimeter threshold of legacy systems.

(2) A description of current domestic best-in-breed commercial capabilities that can meet such requirements.

(3) Estimates of the timelines, milestones, and funding requirements to procure a near-term solution to meet such requirements until the development programs of the Air Force are projected to be operationally fielded.

Estimates.

(d) **COMMERCIAL SPACE SITUATIONAL AWARENESS SERVICES DEFINED.**—In this section, the term “commercial space situational awareness services” means commercial space situational awareness processing software and data from commercial sensors to address warfighter requirements and fill gaps in current space situational capabilities of the Air Force.

**SEC. 1609. PROGRAM TO ENHANCE AND IMPROVE LAUNCH SUPPORT AND INFRASTRUCTURE.**

10 USC 2273 note.

(a) **IN GENERAL.**—In support of the policy described in section 2273(a) of title 10, United States Code, the Secretary of Defense, in coordination with the Administrator of the Federal Aviation Administration, may carry out a program to enhance infrastructure and improve support activities for the processing and launch of Department of Defense small-class and medium-class payloads.

Coordination.

(b) **PROGRAM.**—The program under subsection (a) shall include improvements to operations at launch ranges and Federal Aviation Administration-licensed spaceports that are consistent with, and necessary to permit, the use of such launch ranges and spaceports by the Department.

(c) **CONSULTATION.**—In carrying out the program under subsection (a), the Secretary may consult with current and anticipated users of launch ranges and Federal Aviation Administration-licensed spaceports, including the Space Rapid Capabilities Office.

(d) COOPERATION.—In carrying out the program under subsection (a), the Secretary may enter into a contract or agreement under section 2276 of title 10, United States Code.

(e) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report describing a plan for the program under subsection (a).

(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

- (1) the congressional defense committees;
- (2) the Committee on Commerce, Science, and Transportation and the Select Committee on Intelligence of the Senate; and
- (3) the Committee on Transportation and Infrastructure, the Committee on Science, Space, and Technology, and the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 1610. PREPARATION TO IMPLEMENT PLAN FOR USE OF ALLIED LAUNCH VEHICLES.**

Coordination.

(a) PREPARATION.—The Secretary of Defense, in coordination with the Director of National Intelligence, shall take actions necessary to prepare to implement the plan developed pursuant to section 1603 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2584) regarding using allied launch vehicles to meet the requirements for achieving the policy relating to assured access to space set forth in section 2273 of title 10, United States Code.

(b) ACTIONS REQUIRED.—In carrying out subsection (a), the Secretary shall—

Assessment.  
Determination.

(1) identify the satellites of the United States that would be appropriate to be launched on an allied launch vehicle;

(2) assess the relevant provisions of Federal law, regulations, and policies governing the launch of national security satellites and determine whether any legislative, regulatory, or policy actions (including with respect to waivers) would be necessary to allow for the launch of a national security satellite on an allied launch vehicle; and

Certification.  
Estimates.

(3) address any certification requirements necessary for such use of allied launch vehicles and the estimated cost, schedule, and actions necessary to certify allied launch vehicles for such use.

Reports.

(c) SUBMISSION TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on preparing to implement the plan described in subsection (a), including information regarding each action required by paragraphs (1), (2), and (3) of subsection (b).

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

- (1) the congressional defense committees; and
- (2) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.



**SEC. 1611. INDEPENDENT STUDY ON PLAN FOR DETERRENCE IN SPACE.****(a) INDEPENDENT STUDY.—**

(1) **IN GENERAL.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into a contract with a federally funded research and development center or other independent entity to conduct a study on deterrence in space.

Deadline.  
Contracts.

(2) **MATTERS INCLUDED.**—The study under paragraph (1) shall include, at a minimum, the following:

Assessment.

(A) An assessment of the existing range of major studies and writings on space deterrence and a comprehensive comparative analysis of the conclusions of such studies and writings.

(B) An examination, using appropriate analytical tools, of the approaches proposed by such studies and writings with respect to creating conditions of deterrence suitable for use in the space domain, including, at a minimum, an assessment of all aspects of deterrence in space, including varying classification, strategies to deny benefit or impose cost, and space mission assurance (including resilience, active defense, and reconstitution).

Examination.

(C) A determination, made either by extending such studies and writings or through new analysis, of a holistic and comprehensive theory of deterrence in space appropriate for use in defense planning.

Determination.

(D) An evaluation of existing policies, programs, and plans of the Department of Defense to provide an assessment of the likely effectiveness of those policies, programs, and plans to achieve effective space deterrence.

Evaluation.

**(b) ASSESSMENT BY DEFENSE POLICY BOARD.**—Not later than 180 days after the date of the enactment of this Act, the Defense Policy Board shall submit to the Secretary of Defense an assessment of the study under subsection (a)(1), including, at a minimum—

Deadline.

(1) a determination of the soundness of the study;

(2) a description of any disagreements the Board has with the conclusions of such study, including recommended changes or clarifications to such conclusions the Board determines appropriate; and

(3) changes to the policies, programs, and plans of the Department of Defense that the Board recommends based on such study and the changes and clarifications described in paragraph (2).

Determination.

**(c) REPORT.**—Not later than 270 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report that contains the following:

(1) The study under subsection (a)(1), without change.

(2) The assessment under subsection (b), without change.

(3) Based on such study and assessment, a description of any changes to the policies, programs, and plans of the Department of Defense that the Secretary recommends to enhance deterrence in space, including with respect to—

Recommendations.

(A) considerations and decision on reducing the opportunities and incentives for adversaries to attack space systems of the United States or allies of the United States;

(B) new architectures, including proliferated systems, hosted payloads, nontraditional orbits, and reconstitution among others;

(C) appropriate uses of partnering with both commercial entities and allies to improve deterrence in space;

(D) necessary capabilities to enhance the protection of space systems to achieve improved deterrence;

(E) bilateral, multilateral, and unilateral measures, including confidence-building measures, that could be taken to reduce the risk of miscalculation that would lead to an attack in space;

(F) policies and capability requirements with regard to attribution of an attack in space;

(G) policies with regard to retaliatory measures either in space or on the ground;

(H) authorities with regard to decisions and actions to defend assets of the United States in space; and

(I) changes to current war plans, routine operations (including information sharing), and demonstration and test procedures that could enhance the capability of the United States to signal the intentions and capabilities of the United States in an effective manner.

Deadline.

(d) BRIEFING.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall provide to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a briefing on the study under subsection (a)(1) and the assessment under subsection (b).

**SEC. 1612. STUDY ON LEVERAGING DIVERSE COMMERCIAL SATELLITE REMOTE SENSING CAPABILITIES.**

Consultation.

(a) STUDY.—The Secretary of Defense, in consultation with the Director of National Intelligence, shall conduct a study on the status of the transition from the National Geospatial-Intelligence Agency to the National Reconnaissance Office of the leadership role in acquiring commercial satellite remote sensing data on behalf of the Department of Defense and the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)).

(b) ELEMENTS.—In conducting the study under subsection (a), the Secretary shall study—

(1) commercial geospatial intelligence requirements for the National Geospatial-Intelligence Agency and the combatant commands;

(2) plans of the National Reconnaissance Office to meet the requirements specified in paragraph (1) through the acquisition of all levels of resolution data from multiple commercial providers; and

(3) plans of the National Reconnaissance Office to further develop such programs with commercial companies to continue to support, while also expanding, adoption by the geospatial intelligence user community of the Department of Defense.

Reports.

(c) SUBMISSION.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees, the Permanent Select Committee on

Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a report on the study conducted under subsection (a).

**SEC. 1613. ANNUAL REPORT ON SPACE COMMAND AND CONTROL PROGRAM.**

(a) **REPORTS REQUIRED.**—

(1) **INITIAL REPORT.**—Not later than May 1, 2020, the Secretary of the Air Force shall submit to the Under Secretary of Defense for Acquisition and Sustainment, the congressional defense committees, and the Comptroller General of the United States, a report on the Space Command and Control program for fiscal year 2021.

(2) **SUBSEQUENT REPORTS.**—For each of fiscal years 2022 through 2025, concurrent with the submittal to Congress of the budget of the Department of Defense with the budget of the President for the subsequent fiscal year under section 1105(a) of title 31, United States Code, the Secretary of the Air Force shall submit to the Under Secretary of Defense for Acquisition and Sustainment, the congressional defense committees, and the Comptroller General of the United States, an annual report on the Space Command and Control program.

(b) **MATTERS TO BE INCLUDED.**—Each report required by subsection (a) shall include the following:

(1) A description of any modification to the metrics established by the Secretary in the acquisition strategy for the program.

(2) The short-term objectives for the subsequent fiscal year.

(3) For the preceding fiscal year—

(A) a description of—

(i) the ongoing, achieved, and deferred objectives;

(ii) the challenges encountered and the lessons learned;

(iii) the modifications made or planned so as to incorporate such lessons learned into subsequent efforts to address challenges; and

(iv) the cost, schedule, and performance effects of such modifications; and

(B) a full survey of combatant command requirements, including Commanders' Integrated Priorities Lists, and impacts with respect to the program.

Survey.

(4) A description of potential future combatant command requirements being considered with respect to the program.

(c) **REVIEW OF REPORTS AND BRIEFING BY COMPTROLLER GENERAL.**—With respect to each report submitted under this section, the Comptroller General shall review and provide to the congressional defense committees a briefing on a date mutually agreed on by the Comptroller General and the congressional defense committees.

**SEC. 1614. REPORT ON SPACE DEBRIS.**

(a) **IN GENERAL.**—Not later than 240 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the risks posed by man-made space debris in low-Earth orbit, including—

(1) recommendations with respect to the remediation of such risks; and

Recommendations.

(2) outlines of plans to reduce the incidence of such space debris.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Science, Space, and Technology of the House of Representatives; and

(2) the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate.

## **Subtitle B—Defense Intelligence and Intelligence-Related Activities**

### **SEC. 1621. REDESIGNATION OF UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AS UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY.**

10 USC 137 note.

(a) REDESIGNATION OF UNDER SECRETARY.—

(1) IN GENERAL.—The Under Secretary of Defense for Intelligence is hereby redesignated as the Under Secretary of Defense for Intelligence and Security.

(2) SERVICE OF INCUMBENT IN POSITION.—The individual serving as Under Secretary of Defense for Intelligence as of the date of the enactment of this Act may serve as Under Secretary of Defense for Intelligence and Security commencing as of that date without further appointment under section 137 of title 10, United States Code (as amended by subsection (c)(1)(A)(ii)).

(3) REFERENCE.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the Under Secretary of Defense for Intelligence shall be deemed to be a reference to the Under Secretary of Defense for Intelligence and Security.

10 USC 137 note.

(b) REDESIGNATION OF RELATED DEPUTY UNDER SECRETARY.—

(1) IN GENERAL.—The Deputy Under Secretary of Defense for Intelligence is hereby redesignated as the Deputy Under Secretary of Defense for Intelligence and Security.

(2) SERVICE OF INCUMBENT IN POSITION.—The individual serving as Deputy Under Secretary of Defense for Intelligence as of the date of the enactment of this Act may serve as Deputy Under Secretary of Defense for Intelligence and Security commencing as of that date without further appointment under section 137a of title 10, United States Code (as amended by subsection (c)(1)(B)).

(3) REFERENCE.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the Deputy Under Secretary of Defense for Intelligence shall be deemed to be a reference to the Deputy Under Secretary of Defense for Intelligence and Security.

10 USC 137 note.

(c) RULE OF CONSTRUCTION REGARDING EFFECTS OF REDESIGNATION.—Nothing in this section shall be construed to modify or expand the authorities, resources, responsibilities, roles, or missions of the Under Secretary of Defense for Intelligence and Security, as redesignated by this section.

(d) PROTECTION OF PRIVACY AND CIVIL LIBERTIES.—Section 137 of title 10, United States Code, is amended—

- (1) by redesignating subsection (c) as subsection (d); and
- (2) by inserting after subsection (b) the following new subsection (c):

“(c) The protection of privacy and civil liberties in accordance with Federal law and the regulations and directives of the Department of Defense shall be a top priority for the Under Secretary of Defense for Intelligence and Security.”.

(e) CONFORMING AMENDMENTS.—

(1) TITLE 10.—Title 10, United States Code, is amended as follows:

(A) In each provision as follows, by striking “Under Secretary of Defense for Intelligence” and inserting “Under Secretary of Defense for Intelligence and Security”:

- (i) Section 131(b)(3)(F).
- (ii) Section 137, each place it appears.
- (iii) Section 139a(d)(6).
- (iv) Section 139b(c)(2)(E).
- (v) Section 181(d)(1)(B).
- (vi) Section 393(b)(2)(C).
- (vii) Section 426, each place it appears.
- (viii) Section 430(a).

(B) In section 137a(c)(6), by striking “Deputy Under Secretary of Defense for Intelligence” and inserting “Deputy Under Secretary of Defense for Intelligence and Security”.

(C) The heading of section 137 is amended to read as follows:

**“§ 137. Under Secretary of Defense for Intelligence and Security”.**

(D) The table of sections at the beginning of chapter 4 is amended by striking the item relating to section 137 and inserting the following new item:

10 USC 131 prec.

“137. Under Secretary of Defense for Intelligence and Security.”.

(2) TITLE 5.—Title 5, United States Code, is amended as follows:

(A) In section 5314, by striking “Under Secretary of Defense for Intelligence” and inserting “Under Secretary of Defense for Intelligence and Security”.

(B) In section 5315, by striking “Deputy Under Secretary of Defense for Intelligence” and inserting “Deputy Under Secretary of Defense for Intelligence and Security”.

**SEC. 1622. MODIFICATIONS TO ISR INTEGRATION COUNCIL AND ANNUAL BRIEFING REQUIREMENTS.**

(a) ISR INTEGRATION COUNCIL.—Subsection (a) of section 426 of title 10, United States Code, is amended to read as follows:

“(a) ISR INTEGRATION COUNCIL.—(1) The Under Secretary of Defense for Intelligence and Security shall establish an Intelligence, Surveillance, and Reconnaissance Integration Council—

“(A) to assist the Secretary of Defense in carrying out the responsibilities of the Secretary under section 105(a) of the National Security Act of 1947 (50 U.S.C. 3038(a));

“(B) to assist the Under Secretary with respect to matters relating to—

“(i) integration of intelligence and counterintelligence capabilities and activities under section 137(b) of this title

of the military departments, intelligence agencies of the Department of Defense, and relevant combatant commands; and

“(ii) coordination of related developmental activities of such departments, agencies, and combatant commands; and

“(C) to otherwise provide a means to facilitate such integration and coordination.

“(2) The Council shall be composed of—

“(A) the Under Secretary, who shall chair the Council;

“(B) the directors of the intelligence agencies of the Department of Defense;

“(C) the senior intelligence officers of the armed forces and the regional and functional combatant commands;

“(D) the Director for Intelligence of the Joint Chiefs of Staff; and

“(E) the Director for Operations of the Joint Chiefs of Staff.

“(3) The Under Secretary shall invite the participation of the Director of National Intelligence (or a representative of the Director) in the proceedings of the Council.

“(4) The Under Secretary may designate additional participants to attend the proceedings of the Council, as the Under Secretary determines appropriate.”

(b) ANNUAL BRIEFINGS.—Such section is further amended by striking subsections (b) and (c) and inserting the following new subsection (b):

“(b) ANNUAL BRIEFINGS ON THE INTELLIGENCE AND COUNTER-INTELLIGENCE REQUIREMENTS OF THE COMBATANT COMMANDS.—(1) The Chairman of the Joint Chiefs of Staff shall provide to the congressional defense committees and the congressional intelligence committees a briefing on the following:

“(A) The intelligence and counterintelligence requirements, by specific intelligence capability type, of each of the relevant combatant commands.

“(B) For the year preceding the year in which the briefing is provided, the fulfillment rate for each of the relevant combatant commands of the validated intelligence and counterintelligence requirements, by specific intelligence capability type, of such combatant command.

“(C) A risk analysis identifying the critical gaps and shortfalls in efforts to address operational and strategic requirements of the Department of Defense that would result from the failure to fulfill the validated intelligence and counterintelligence requirements of the relevant combatant commands.

“(D) A mitigation plan to balance and offset the gaps and shortfalls identified under subparagraph (C), including with respect to spaceborne, airborne, ground, maritime, and cyber intelligence, surveillance, and reconnaissance capabilities.

“(E) For the year preceding the year in which the briefing is provided—

“(i) the number of intelligence and counterintelligence requests of each commander of a relevant combatant command determined by the Joint Chiefs of Staff to be a validated requirement, and the total of capacity of such requests provided to each such commander;

“(ii) with respect to such validated requirements—

“(I) the quantity of intelligence and counterintelligence capabilities or activities, by specific intelligence capability type, that the Joint Chiefs of Staff requested each military department to provide; and

“(II) the total of capacity of such requests so provided by each such military department; and

“(iii) a qualitative assessment of the alignment of intelligence and counterintelligence capabilities and activities with the program of analysis for each combat support agency and intelligence center of a military service that is part of—

“(I) the Defense Intelligence Enterprise; and

“(II) the intelligence community.

“(2) The Under Secretary of Defense for Intelligence and Security shall provide to the congressional defense committees and the congressional intelligence committees a briefing on short-, mid-, and long-term strategies to address the validated intelligence and counterintelligence requirements of the relevant combatant commands, including with respect to spaceborne, airborne, ground, maritime, and cyber intelligence, surveillance, and reconnaissance capabilities.

“(3) The briefings required by paragraphs (1) and (2) shall be provided at the same time that the President’s budget is submitted pursuant to section 1105(a) of title 31 for each of fiscal years 2021 through 2025.

“(4) In this subsection:

“(A) The term ‘congressional intelligence committees’ has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

“(B) The term ‘Defense Intelligence Enterprise’ means the organizations, infrastructure, and measures, including policies, processes, procedures, and products, of the intelligence, counterintelligence, and security components of each of the following:

“(i) The Department of Defense.

“(ii) The Joint Staff.

“(iii) The combatant commands.

“(iv) The military departments.

“(v) Other elements of the Department of Defense that perform national intelligence, defense intelligence, intelligence-related, counterintelligence, or security functions.

“(C) The term ‘fulfillment rate’ means the percentage of combatant command intelligence and counterintelligence requirements satisfied by available, acquired, or realigned intelligence and counterintelligence capabilities or activities.

“(D) The term ‘intelligence community’ has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).”.

Definitions.

**SEC. 1623. MODIFICATION OF ANNUAL AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL FLAGSHIP LANGUAGE INITIATIVE.**

Section 811(a) of the Fair Chance Act (50 U.S.C. 1911(a)) is amended—

(1) by striking “fiscal year 2003” and inserting “fiscal year 2020”; and

(2) by striking “\$10,000,000” and inserting “\$16,000,000”.

**SEC. 1624. IMPROVING THE ONBOARDING METHODOLOGY FOR INTELLIGENCE PERSONNEL.**

- Reports. (a) **IN GENERAL.**—The Secretary of Defense and the Director of National Intelligence shall, consistent with Department of Defense Instruction 1400.25, as in effect on the day before the date of the enactment of this Act—
- (1) not later than 180 days after the date of the enactment of this Act, submit to the appropriate committees of Congress a report that outlines a common methodology for measuring onboarding in elements of the intelligence community, including human resources and security processes;
- Deadline. Assessment. Time period. (2) not later than one year after the date of the enactment of this Act, issue metrics for assessing key phases in the onboarding described in paragraph (1) for which results will be reported by the date that is 90 days after the date of such issuance;
- (3) not later than 180 days after the date of the enactment of this Act, submit to the appropriate committees of Congress a report on collaboration among elements of the intelligence community on their onboarding processes;
- (4) not later than 180 days after the date of the enactment of this Act, submit to the appropriate committees of Congress a report on employment of automated mechanisms in elements of the intelligence community, including for tracking personnel as they pass through each phase of the onboarding process; and
- Survey. (5) not later than December 31, 2020, distribute surveys to human resources offices and applicants about their experiences with the onboarding process in elements of the intelligence community.
- (b) **DEFINITIONS.**—In this section:
- (1) The term “appropriate committees of Congress” means—
- (A) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and
- (B) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.
- (2) The term “intelligence community” has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

10 USC 1564  
note.

**SEC. 1625. DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY ACTIVITIES ON FACILITATING ACCESS TO LOCAL CRIMINAL RECORDS HISTORICAL DATA.**

- (a) **ACTIVITY AUTHORIZED.**—Subject to subsection (c), the Director of the Defense Counterintelligence and Security Agency may carry out a set of activities to reduce the time and cost of accessing State, local, and tribal law enforcement records for the background investigations required for current and prospective Federal Government employees and contractors.
- (b) **ACTIVITIES CHARACTERIZED.**—The activities carried out under subsection (a) shall include only that training, education, and direct assistance to State, local, and tribal communities needed for the purpose of streamlining access to historical criminal record data.
- (c) **LIMITATIONS.**—



(1) **COMMENCEMENT OF ACTIVITIES.**—The Director may not commence carrying out any activities under subsection (a) until the date that is 90 days after the date on which the Director submits the report required by subsection (d)(1). Time period.

(2) **LEGAL AND REPORTING OBLIGATIONS.**—The Director shall ensure that no activity carried out under subsection (a) obligates a State, local, or tribal entity to any additional legal or reporting obligation to the Defense Counterintelligence and Security Agency.

(3) **SCOPE.**—No activity may be carried out under subsection (a) that applies to any matter outside the limited purpose of conducting background investigations for current and prospective Federal Government employees and contractors.

(4) **CONSISTENCY WITH ACCESS PROVIDED.**—The Director shall ensure that the activities carried out under subsection (a) are carried out in a manner that is consistent with the access provided by Federal law enforcement entities to the Defense Counterintelligence and Security Agency.

(d) **REPORTS.**—

(1) **INITIAL REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Director shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report that details a concept of operation for the set of activities authorized by subsection (a).

(2) **ANNUAL REPORTS.**—Not later than one year after the date on which the Director submits a report pursuant to paragraph (1) and not less frequently than once each year thereafter, the Director shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a detailed report on the activities carried out by the Director under subsection (a). Time period.

**SEC. 1626. SURVEY AND REPORT ON ALIGNMENT OF INTELLIGENCE COLLECTIONS CAPABILITIES AND ACTIVITIES WITH DEPARTMENT OF DEFENSE REQUIREMENTS.**

(a) **SURVEY AND REVIEW.**—

(1) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense for Intelligence and Security, in coordination with the Chairman of the Joint Chiefs of Staff and the Director of National Intelligence, shall— Coordination.

(A) review the organization, posture, current and planned investments, and processes of the intelligence collections capabilities and activities, for the purpose of assessing the sufficiency, integration, and interoperability of such capabilities and activities to support the current and future requirements of the Department of Defense; and

(B) conduct a survey of each geographic and functional combatant command, with respect to intelligence collections capabilities and activities, to assess— Assessment.

(i) the current state of the support of such capabilities and activities to military operations;

(ii) whether the posture of such capabilities and activities is sufficient to address the requirements of the Department of Defense;

(iii) the extent to which such capabilities and activities address gaps and deficiencies with respect to the operational requirements of the Global Campaign Plans, as identified in the most recent readiness reviews conducted by the Joint Staff; and

(iv) whether current and planned investments in such capabilities and activities are sufficient to address near-, mid-, and long-term spaceborne, airborne, terrestrial, and human collection capability requirements.

(2) ELEMENTS.—The survey and review under paragraph (1) shall include the following:

Assessment.

(A) A comprehensive assessment of intelligence collections capabilities and activities, and whether such capabilities and activities—

(i) are appropriately postured and sufficiently resourced to meet current and future requirements of the Department of Defense;

(ii) are appropriately balanced to address operational and strategic defense intelligence requirements; and

(iii) are sufficiently integrated and interoperable between activities of the Military Intelligence Program and the National Intelligence Program to respond to emerging requirements of the Department of Defense.

(B) With respect to each geographic and functional combatant command—

(i) information on the gaps and deficiencies, by specific intelligence capability type, described in paragraph (1)(B)(iii);

Time period.

(ii) a review of the alignment of such gaps and deficiencies with the intelligence, surveillance, and reconnaissance submissions to the integrated priorities list for the period beginning with the completion of the most recent readiness reviews conducted by the Joint Staff and ending on the date of the commencement of the survey and review under subsection (a); and

(iii) detailed information on the allocation and realignment of intelligence collections capabilities and activities to address—

(I) such gaps and deficiencies; and

(II) such intelligence, surveillance, and reconnaissance submissions.

(b) REPORT.—

(1) SUBMISSION.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Intelligence and Security shall submit to the appropriate congressional committees a report on the findings of the Under Secretary with respect to the survey and review under subsection (a)(1).

(2) CONTENT.—The report under paragraph (1) shall include—

Evaluation.

(A) an evaluation of—

(i) the organization, posture, current and planned investments, and processes of the intelligence collections capabilities and activities, including the extent to which such capabilities and activities enable the geographic and functional combatant commands to meet the operational and strategic requirements of the Department of Defense;

(ii) the use or planned use by each geographic and functional combatant command of intelligence collections capabilities and activities available to such command to address operational and strategic requirements of the Department of Defense;

(iii) the gaps and deficiencies described in subsection (a)(1)(B)(iii), if any, that prohibit each geographic and functional combatant command from the most effective use of the intelligence collections capabilities and activities to address priority requirements of the Department of Defense;

(iv) the accepted risk by the Secretary of Defense from the prioritization of certain Department of Defense requirements with respect to the allocation of intelligence collections capabilities and activities; and

(v) the alignment and responsiveness of intelligence collections capabilities and activities with respect to the planning requirements for the Program of Analysis of each combat support agency that is part of—

(I) the Defense Intelligence Enterprise; and

(II) the intelligence community; and

(B) recommendations, if any, to improve the sufficiency, responsiveness, and interoperability of intelligence collections capabilities and activities to fulfill the operational and strategic requirements of the Department of Defense.

(3) FORM.—The report under paragraph (1) shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

(c) DEFINITIONS.—In this section:

(1) The term “appropriate congressional committees” means—

(A) the congressional defense committees; and

(B) the congressional intelligence committees.

(2) The term “combat support agency” has the meaning given that term in section 193(f) of title 10, United States Code.

(3) The term “Defense Intelligence Enterprise” has the meaning given that term in section 1633(c)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2600).

(4) The term “intelligence collections capabilities and activities” means the totality of intelligence collections systems and processes which enable the tasking, processing, exploitation, and dissemination capabilities, capacity, and activities of the Defense Intelligence Enterprise.

(5) The term “intelligence community” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

Recommendations.

(6) The term “congressional intelligence committees” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

10 USC 1564  
note.

**SEC. 1627. REPORTS ON CONSOLIDATED ADJUDICATION FACILITY OF THE DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY.**

Time period.

(a) **REPORTS.**—On a semiannual basis during the period beginning on the date of the enactment of this Act and ending on the date specified in subsection (b), and annually thereafter, the Director of the Defense Counterintelligence and Security Agency shall submit to the congressional defense committees a report on the processes in place for adjudicating security clearances and the progress made to address the backlog of security clearance applications, including—

(1) metrics used by the Director to evaluate the inventory and timeliness of adjudicating security clearance cases; and

(2) details on the resources used by the Director in carrying out the security clearance mission of the Consolidated Adjudication Facility.

(b) **DETERMINATION AND BRIEFING.**—Upon the date on which the Director of the Defense Counterintelligence and Security Agency determines both that the backlog of security clearance adjudications has been substantially eliminated and that the timeline to conduct background investigations reflects the type of investigation being conducted and the level of clearance required, the Director shall—

Notification.

(1) notify the congressional defense committees of such determination; and

(2) provide to such committees a briefing on the progress made by the Director with respect to security clearance adjudications.

**SEC. 1628. REPORT ON THE EXPANDED PURVIEW OF THE DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY.**

(a) **REPORT REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the Defense Counterintelligence and Security Agency.

Assessments.

(b) **CONTENTS.**—The report submitted under subsection (a) shall include the following:

(1) Identification of the resources and authorities appropriate for the inspector general for the expanded purview of the Defense Counterintelligence and Security Agency.

(2) Identification of the resources and authorities needed to perform the civil liberties and privacy officer function of the Defense Counterintelligence and Security Agency.

(3) An assessment of the security protocols in effect for personally identifiable information held by the Defense Counterintelligence and Security Agency.

(4) An assessment of the governance structure of the Defense Counterintelligence and Security Agency as it relates to the Department of Defense, including with respect to status, authorities, and leadership.

(5) An assessment of the governance structure of the Defense Counterintelligence and Security Agency as it relates to interagency partners, including the Office of Management and Budget, the Office of the Director of National Intelligence, and the Office of Personnel Management.

(6) The methodology the Defense Counterintelligence and Security Agency will prioritize requests for background investigation requests from government agencies and industry.

**SEC. 1629. TERMINATION OF REQUIREMENT FOR DEPARTMENT OF DEFENSE FACILITY ACCESS CLEARANCES FOR JOINT VENTURES COMPOSED OF PREVIOUSLY-CLEARED ENTITIES.**

10 USC 1564  
note.

A clearance for access to a Department of Defense installation or facility may not be required for a joint venture if that joint venture is composed entirely of entities that are currently cleared for access to such installation or facility.

## Subtitle C—Cyberspace-Related Matters

**SEC. 1631. MATTERS RELATING TO MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT.**

(a) PRINCIPAL INFORMATION OPERATIONS ADVISOR.—

(1) IN GENERAL.—Chapter 19 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 397. Principal Information Operations Advisor**

10 USC 397.

“(a) DESIGNATION.—Not later than 30 days after the enactment of this Act, the Secretary of Defense shall designate, from among officials appointed to a position in the Department of Defense by and with the advice and consent of the Senate, a Principal Information Operations Advisor to act as the principal advisor to the Secretary on all aspects of information operations conducted by the Department.

Deadline.

“(b) RESPONSIBILITIES.—The Principal Information Operations Advisor shall have the following responsibilities:

“(1) Oversight of policy, strategy, planning, resource management, operational considerations, personnel, and technology development across all the elements of information operations of the Department.

“(2) Overall integration and supervision of the deterrence of, conduct of, and defense against information operations.

“(3) Promulgation of policies to ensure adequate coordination and deconfliction with the Department of State, the intelligence community (as such term is defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)), and other relevant agencies and departments of the Federal Government.

“(4) Coordination with the head of the Global Engagement Center to support the purpose of the Center (as set forth by section 1287(a)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 22 U.S.C. 2656 note)) and liaison with the Center and other relevant Federal Government entities to support such purpose.

Coordination.

“(5) Establishing and supervising a rigorous risk management process to mitigate the risk of potential exposure of United States Persons to information intended exclusively for foreign audiences.

“(6) Promulgation of standards for the attribution or public acknowledgment, if any, of operations in the information environment.

Standards.

Guidance.

“(7) Development of guidance for, and promotion of, the capability of the Department to liaison with the private sector and academia on matters relating to the influence activities of malign actors.

“(8) Such other matters relating to information operations as the Secretary shall specify for purposes of this subsection.”.

(2) CLERICAL AMENDMENTS.—

(A) CHAPTER 19.—

10 USC 391 prec.

(i) CHAPTER HEADING.—The heading of chapter 19 of such title is amended to read as follows:

**“CHAPTER 19—CYBER AND INFORMATION OPERATIONS MATTERS”.**

(ii) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 19 of such title is amended by inserting at the end the following new item:

“397. Principal Information Operations Advisor.”.

10 USC 101 prec.

(B) TABLE OF CHAPTERS.—The table of chapters for part I of subtitle A of such title is amended by striking the item relating to chapter 19 and inserting the following new item:

**“19. Cyber and Information Operations Matters ..... 391”.**

10 USC 397 note.

(b) AFFIRMING THE AUTHORITY OF THE SECRETARY OF DEFENSE TO CONDUCT MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT.—(1) Congress affirms that the Secretary of Defense is authorized to conduct military operations, including clandestine operations, in the information environment to defend the United States, allies of the United States, and interests of the United States, including in response to malicious influence activities carried out against the United States or a United States person by a foreign power.

(2) The military operations referred to in paragraph (1), when appropriately authorized include the conduct of military operations short of hostilities and in areas outside of areas of active hostilities for the purpose of preparation of the environment, influence, force protection, and deterrence of hostilities.

10 USC 397 note.

(c) TREATMENT OF CLANDESTINE MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT AS TRADITIONAL MILITARY ACTIVITIES.—A clandestine military operation in the information environment shall be considered a traditional military activity for the purposes of section 503(e)(2) of the National Security Act of 1947 (50 U.S.C. 3093(e)(2)).

10 USC 397 note.

(d) QUARTERLY INFORMATION OPERATIONS BRIEFINGS.—(1) Not less frequently than once each quarter, the Secretary of Defense shall provide the congressional defense committees a briefing on significant military operations, including all clandestine operations in the information environment, carried out by the Department of Defense during the immediately preceding quarter.

(2) Each briefing under paragraph (1) shall include, with respect to the military operations in the information environment described in such paragraph, the following:

Updates.

(A) An update, disaggregated by geographic and functional command, that describes the operations carried out by the commands.

(B) An overview of authorities and legal issues applicable to the operations, including any relevant legal limitations.

(C) An outline of any interagency activities and initiatives relating to the operations.

(D) Such other matters as the Secretary considers appropriate.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to limit, expand, or otherwise alter the authority of the Secretary to conduct military operations, including clandestine operations, in the information environment, to authorize specific military operations, or to limit, expand, or otherwise alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.) or an authorization for use of military force that was in effect on the day before the date of the enactment of this Act. 10 USC 397 note.

(f) **CROSS-FUNCTIONAL TEAM.**—

(1) **ESTABLISHMENT.**—The Principal Information Operations Advisor shall integrate the expertise in all elements of information operations and perspectives of appropriate organizations within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands by establishing and maintaining a full-time cross-functional team composed of subject-matter experts selected from those organizations. 10 USC 397 note.

(2) **SELECTION AND ORGANIZATION.**—The cross-functional team established under paragraph (1) shall be selected, organized, and managed in a manner consistent with section 911 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 111 note).

(g) **STRATEGY AND POSTURE REVIEW.**—

(1) **STRATEGY AND POSTURE REVIEW REQUIRED.**—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense, acting through the Principal Information Operations Advisor under section 397 of title 10, United States Code (as added by subsection (a)) and the cross-functional team established under subsection (f)(1), shall— 10 USC 397 note. Deadline.

(A) develop or update, as appropriate, a strategy for operations in the information environment, including how such operations will be synchronized across the Department of Defense and the global, regional, and functional interests of the combatant commands; Updates.

(B) conduct an information operations posture review, including an analysis of capability gaps that inhibit the Department’s ability to successfully execute the strategy developed or updated pursuant to subparagraph (A); Analysis.

(C) designate Information Operations Force Providers and Information Operations Joint Force Trainers for the Department of Defense; Designation.

(D) develop and persistently manage a joint lexicon for terms related to information operations, including “information operations”, “information environment”, “operations in the information environment”, and “information related capabilities”; and

(E) determine the collective set of combat capabilities that will be treated as part of operations in the information environment, including cyber warfare, space warfare, military information support operations, electronic warfare, public affairs, and civil affairs. Determination.

(2) COORDINATION ON CERTAIN CYBER MATTERS.—For any matters in the strategy and posture review under paragraph (1) that involve or relate to Department of Defense cyber capabilities, the Principal Information Operations Advisor shall fully collaborate with the Principal Cyber Advisor to the Secretary of Defense.

(3) ELEMENTS.—At a minimum, the strategy developed or updated pursuant to paragraph (1)(A) shall include the following:

(A) The establishment of lines of effort, objectives, and tasks that are necessary to implement such strategy and eliminate the capability gaps identified under paragraph (1)(B).

Coordination.  
Evaluation.

(B) In partnership with the Principal Cyber Advisor to the Secretary of Defense and in coordination with any other component or Department of Defense entity as selected by the Secretary of Defense, an evaluation of any organizational changes that may be required within the Office of the Secretary of Defense, including potential changes to Under Secretary or Assistant Secretary-level positions to comprehensively conduct oversight of policy development, capabilities, and other aspects of operations in the information environment as determined pursuant to the information operations posture review under paragraph (1)(B).

Assessment.

(C) An assessment of various models for operationalizing information operations, including the feasibility and advisability of establishing an Army Information Warfare Command.

Review.

(D) A review of the role of information operations in combatant commander operational planning, the ability of combatant commanders to respond to hostile acts by adversaries, and the ability of combatant commanders to engage and build capacity with allies.

Review.

(E) A review of the law, policies, and authorities relating to, and necessary for, the United States to conduct military operations, including clandestine military operations, in the information environment.

(4) SUBMISSION TO CONGRESS.—Upon completion, the Secretary of Defense shall present the strategy for operations in the information environment and the information operations posture review under subparagraphs (A) and (B), respectively, of paragraph (1) to the Committees on Armed Services of the House of Representatives and the Senate.

10 USC 397 note.  
Plan.

(h) REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall provide the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report for the structuring and manning of information operations capabilities and forces across the Department of Defense. The Secretary shall provide such Committees with quarterly updates on such plan.

(2) ELEMENTS.—The plan required under paragraph (1) shall address the following:



(A) How the Department of Defense will organize to develop a combined information operations strategy and posture review under subsection (g).

(B) How the Department will fulfill the roles and responsibilities of the Principal Information Operations Advisor under section 397 of title 10, United States Code (as added by subsection (a)).

(C) How the Department will establish the information operations cross-functional team under subsection (f)(1).

(D) How the Department will utilize boards and working groups involving senior-level Department representatives on information operations.

(E) Such other matters as the Secretary of Defense considers appropriate.

(i) DEFINITIONS.—In this section:

10 USC 397 note.

(1) The terms “foreign person” and “United States person” have the meanings given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(2) The term “hostilities” has the same meaning as such term is used in the War Powers Resolution (50 U.S.C. 1541 et seq.).

(3) The term “clandestine military operation in the information environment” means an operation or activity, or associated preparatory actions, authorized by the President or the Secretary of Defense, that—

(A) is marked by, held in, or conducted with secrecy, where the intent is that the operation or activity will not be apparent or acknowledged publicly; and

(B) is to be carried out—

(i) as part of a military operation plan approved by the President or the Secretary of Defense;

(ii) to deter, safeguard, or defend against attacks or malicious influence activities against the United States, allies of the United States, and interests of the United States;

(iii) in support of hostilities or military operations involving the United States armed forces; or

(iv) in support of military operations short of hostilities and in areas where hostilities are not occurring for the purpose of preparation of the environment, influence, force protection, and deterrence.

**SEC. 1632. NOTIFICATION REQUIREMENTS FOR SENSITIVE MILITARY CYBER OPERATIONS.**

Section 395 of title 10, United States Code, is amended—

(1) in subsection (b)(3), by inserting “, signed by the Secretary, or the Secretary’s designee,” after “written notification”; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “and” after the semicolon at the end;

(ii) by redesignating subparagraph (B) as subparagraph (C); and

(iii) by inserting after subparagraph (A) the following new subparagraph:

“(B) is determined to—

“(i) have a medium or high collateral effects estimate;

“(ii) have a medium or high intelligence gain or loss;

“(iii) have a medium or high probability of political retaliation, as determined by the political military assessment contained within the associated concept of operations;

“(iv) have a medium or high probability of detection when detection is not intended; or

“(v) result in medium or high collateral effects; and”;

(B) in paragraph (2)(B), by striking “outside the Department of Defense Information Networks to defeat an ongoing or imminent threat”.

**SEC. 1633. EVALUATION OF CYBER VULNERABILITIES OF MAJOR WEAPON SYSTEMS OF THE DEPARTMENT OF DEFENSE.**

Section 1647 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) is amended by adding at the end the following new subsections:

“(f) WRITTEN NOTIFICATION.—If the Secretary determines that the Department will not complete an evaluation of the cyber vulnerabilities of each major weapon system of the Department by the date specified in subsection (a)(1), the Secretary shall provide to the congressional defense committees written notification relating to each such incomplete evaluation. Such a written notification shall include the following:

“(1) An identification of each major weapon system for which an evaluation will not be complete by the date specified in subsection (a)(1), the anticipated date of completion of the evaluation of each such weapon system, and a description of the remaining work to be done for the evaluation of each such weapon system.

“(2) A justification for the inability to complete such an evaluation by the date specified in subsection (a)(1).

“(g) REPORT.—The Secretary, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall provide a report to the congressional defense committees upon completion of the requirement for an evaluation of the cyber vulnerabilities of each major weapon system of the Department under this section. Such report shall include the following:

“(1) An identification of cyber vulnerabilities of each major weapon system requiring mitigation.

“(2) An identification of current and planned efforts to address the cyber vulnerabilities of each major weapon system requiring mitigation, including efforts across the doctrine, organization, training, materiel, leadership and education, personnel, and facilities of the Department.

“(3) A description of joint and common cyber vulnerability mitigation solutions and efforts, including solutions and efforts across the doctrine, organization, training, materiel, leadership and education, personnel, and facilities of the Department.

“(4) A description of lessons learned and best practices regarding evaluations of the cyber vulnerabilities and cyber vulnerability mitigation efforts relating to major weapon systems, including an identification of useful tools and technologies

10 USC 2224  
note.  
Determination.

for discovering and mitigating vulnerabilities, such as those specified in section 1657 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), and steps taken to institutionalize the use of these tools and technologies.

“(5) A description of efforts to share lessons learned and best practices regarding evaluations of the cyber vulnerabilities and cyber vulnerability mitigation efforts of major weapon systems across the Department.

“(6) An identification of measures taken to institutionalize evaluations of cyber vulnerabilities of major weapon systems, including an identification of which major weapon systems evaluated under this section will be reevaluated in the future, when these evaluations will occur, and how evaluations will occur for future major weapon systems.

“(7) Information relating to guidance, processes, procedures, or other activities established to mitigate or address the likelihood of cyber vulnerabilities of major weapon systems by incorporation of lessons learned in the research, development, test, evaluation, and acquisition cycle, including promotion of cyber education of the acquisition workforce.

“(8) An identification of systems to be incorporated into or that have been incorporated into the National Security Agency’s Strategic Cybersecurity Program and the status of these systems in the Program.

“(9) Any other matters the Secretary determines relevant.”.

**SEC. 1634. QUARTERLY ASSESSMENTS OF THE READINESS OF CYBER MISSION FORCES.**

(a) **IN GENERAL.**—Section 484(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (4) as paragraph (5); and  
(2) by inserting after paragraph (3) the following new paragraph (4):

“(4) An overview of the readiness of the Cyber Mission Forces to perform assigned missions that—

“(A) address all of the abilities of such Forces to conduct cyberspace operations based on capability and capacity of personnel, equipment, training, and equipment condition—

“(i) using both quantitative and qualitative metrics; and

“(ii) in a way that is common to all military departments; and

“(B) is consistent with readiness reporting pursuant to section 482 of this title.”.

(b) **METRICS.**—

(1) **ESTABLISHMENT REQUIRED.**—The Secretary of Defense shall establish metrics for the assessment of the readiness of the Cyber Mission Forces of the Department of Defense.

(2) **BRIEFINGS REQUIRED.**—Not later than 90 days after the date of the enactment of this Act and quarterly thereafter until completion of the establishment of the metrics under paragraph (1), the Secretary shall provide a briefing to the congressional defense committees on such metrics, including progress as required pursuant to subsection (c).

(c) **MODIFICATION OF READINESS REPORTING SYSTEM.**—Not later than 180 days after the date of the enactment of this Act, the

10 USC 117 note.  
Assessment.

Deadline.  
Time period.

10 USC 117 note.

Secretary shall take such actions as the Secretary considers appropriate to ensure that the comprehensive readiness reporting system established pursuant to section 117(a) of title 10, United States Code, covers matters relating to the readiness of the Cyber Mission Forces—

(1) using the metrics established pursuant to subsection (b)(1); and

(2) in a manner that is consistent with sections 117 and 482 of such title.

Effective date.  
10 USC 484 note.

(d) **FIRST QUARTERLY BRIEFING ASSESSING CYBER READINESS.**—The amendments made by subsection (a) shall take effect on the date that is 180 days after the date of the enactment of this Act.

**SEC. 1635. CYBER POSTURE REVIEW.**

10 USC 394 note.

Section 1644 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) is amended—

(1) in subsection (a), by inserting “, not later than December 31, 2022, and quadrennially thereafter,” before “conduct”;

(2) in subsection (b), by striking “the review” and inserting “each review”;

(3) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking “The review” and inserting “Each review”;

(B) by redesignating paragraph (9) as paragraph (11); and

(C) by inserting after paragraph (8) the following new paragraphs:

“(9) An assessment of the potential costs, benefits, and value, if any, of establishing a cyber force as a separate uniformed service.

“(10) Any recurrent problems or capability gaps that remain unaddressed since the previous posture review.”;

(4) in subsection (d)—

(A) in paragraph (1), by striking “the cyber” and inserting “each cyber”;

(B) in paragraph (2), by striking “The report” and inserting “Each report”; and

(C) by striking paragraph (3); and

(5) in subsection (e), by striking “period beginning on the date that is five years after the date of the enactment of this Act and ending on the date that is 10 years after such date of enactment” and inserting “eight-year period that begins on the date of each review conducted under subsection (a)”.

**SEC. 1636. MODIFICATION OF ELEMENTS OF ASSESSMENT REQUIRED FOR TERMINATION OF DUAL-HAT ARRANGEMENT FOR COMMANDER OF THE UNITED STATES CYBER COMMAND.**

Section 1642 of the National Defense Authorization Act for Fiscal Year 2017 (130 Stat. 2601; Public Law 114–328) is amended—

(1) in subsection (b)(2)(C)—

(A) in clause (ii), by inserting “and national intelligence operations” after “operations”;

(B) by amending clause (iii) to read as follows:

“(iii) The tools, weapons, and accesses used in and available for military cyber operations are sufficient for achieving required effects and United States Cyber

Command is capable of acquiring or developing such tools, weapons, and accesses.”; and

(C) by amending clause (vi) to read as follows:

“(vi) The Cyber Mission Force has achieved full operational capability and has demonstrated the capacity to execute the cyber missions of the Department, including the following:

“(I) Execution of national-level missions through cyberspace, including deterrence and disruption of adversary cyber activity.

“(II) Defense of the Department of Defense Information Network.

“(III) Support for other combatant commands, including targeting of adversary military assets.”;

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

section:

“(c) BIENNIAL BRIEFING.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this subsection and biennially thereafter, the Secretary of Defense and the Director of National Intelligence shall provide to the appropriate committees of Congress briefings on the nature of the National Security Agency and United States Cyber Command’s current and future partnership. Briefings under this subsection shall not terminate until the certification specified in subsection (a) is issued.

Deadline.

“(2) ELEMENTS.—Each briefing under this subsection shall include status updates on the current and future National Security Agency–United States Cyber Command partnership efforts, including relating to the following:

Termination date.

“(A) Common infrastructure and capability acquisition.

“(B) Operational priorities and partnership.

“(C) Research and development partnership.

“(D) Executed documents, written memoranda of agreements or understandings, and policies issued governing such current and future partnership.

“(E) Projected long-term efforts.”.

#### **SEC. 1637. MODIFICATION OF CYBER SCHOLARSHIP PROGRAM.**

Section 2200a(a)(1) of title 10, United States Code, is amended by striking “or advanced degree, or a certification,” and inserting “advanced degree, or certificate”.

#### **SEC. 1638. TIER 1 EXERCISE OF SUPPORT TO CIVIL AUTHORITIES FOR A CYBER INCIDENT.**

Section 1648 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

132 Stat. 2137.

(1) in subsection (a), by striking “The” and inserting “Not later than May 1, 2020, the”; and

(2) by adding at the end the following new subsection:

“(c) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense for the White House Communications Agency, not more than 90 percent of such funds may be obligated or expended until the initiation of the tier 1 exercise required under subsection (a).”.

**SEC. 1639. EXTENSION OF THE CYBERSPACE SOLARIUM COMMISSION.**

132 Stat. 2146. Paragraph (1) of section 1652(k) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) is amended by striking “September 1, 2019” and inserting “April 30, 2020”.

**SEC. 1640. AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CYBER OPERATIONS-PECULIAR CAPABILITY DEVELOPMENT PROJECTS.**

(a) IN GENERAL.—The Secretary of Defense and each Secretary of the military departments concerned may obligate and expend not more than \$3,000,000 of amounts authorized to be appropriated for operation and maintenance per service in each of fiscal years 2020 through 2022 to carry out cyber operations-peculiar capability development projects.

Deadline. (b) NOTIFICATION.—Not later than 15 days after exercising the authority provided for in subsection (a), the Secretary of Defense, or his designee, and each Secretary of the military departments concerned, or their designees, shall notify the congressional defense committees of such exercise for projects exceeding \$500,000.

Time period. (c) REPORT.—Not later than December 31 of each year through 2022, the Secretary of Defense shall submit to the congressional defense committees a report on obligations and expenditures made pursuant to the authority provided for in subsection (a). Each such report shall include a full description and evaluation of each of the cyber operations-peculiar capability development projects that is the subject of each such obligation or expenditure, definitions and standards for cyber operations-peculiar requirements, transition plans, and any other matters the Secretary determines relevant.

10 USC 2224 note.

**SEC. 1641. ROLE OF CHIEF INFORMATION OFFICER IN IMPROVING ENTERPRISE-WIDE CYBERSECURITY.**

(a) IN GENERAL.—In carrying out the responsibilities established in section 142 of title 10, United States Code, the Chief Information Officer of the Department of Defense shall, to the maximum extent practicable, ensure that the cybersecurity programs and capabilities of the Department—

- (1) fit into an enterprise-wide cybersecurity architecture;
- (2) are maximally interoperable with each other, including those programs and capabilities deployed by the components of the Department;
- (3) enhance enterprise-level visibility and responsiveness to threats; and
- (4) are developed, procured, instituted, and managed in a cost-efficient manner, exploiting economies of scale and enterprise-wide services and discouraging unnecessary customization and piecemeal acquisition.

(b) REQUIREMENTS.—In carrying out subsection (a), the Chief Information Officer shall—

- (1) manage and modernize the cybersecurity architecture of the Department, including—
  - (A) ensuring the cybersecurity architecture of the Department maximizes cybersecurity capability, network, and endpoint activity data sharing across Department components;

(B) ensuring the cybersecurity architecture of the Department supports improved automaticity of cybersecurity detection and response; and

(C) modernizing and configuring the Department's standardized deployed perimeter, network-level, and endpoint capabilities to improve interoperability, meet pressing capability needs, and negate common adversary tactics, techniques, and procedures;

(2) establish mechanisms to enable and mandate, as necessary, cybersecurity capability and network and endpoint activity data-sharing across Department components;

(3) make mission data, through data tagging, automatic transmission, and other means, accessible and discoverable by Department components other than owners of such mission data;

(4) incorporate into the cybersecurity architecture of the Department emerging cybersecurity technologies from the Defense Advanced Research Projects Agency, the Strategic Capabilities Office, the Defense Innovation Unit, the laboratories of the military departments, and the commercial sector;

(5) ensure that the Department possesses the necessary computing infrastructure, through technology refresh, installation or acquisition of bandwidth, and the use of cloud computing power, to host and enable necessary cybersecurity capabilities; and

(6) utilize the Department's cybersecurity expertise to improve cybersecurity performance, operations, and acquisition, including—

(A) the cybersecurity testing, architecting, and engineering expertise of the National Security Agency; and

(B) the technology policy, workforce, and engineering expertise of the Defense Digital Service.

**SEC. 1642. NOTIFICATION OF DELEGATION OF AUTHORITIES TO THE SECRETARY OF DEFENSE FOR MILITARY OPERATIONS IN CYBERSPACE.**

Deadlines.  
10 USC 394 note.

(a) **IN GENERAL.**—The Secretary of Defense shall provide written notification to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate of the following:

(1) Authorities delegated to the Secretary by the President for military operations in cyberspace that are otherwise held by the National Command Authority, not later than 15 days after any such delegation. A notification under this paragraph shall include a description of the authorities delegated to the Secretary.

(2) Concepts of operations approved by the Secretary pursuant to delegated authorities described in paragraph (1), not later than 15 days after any such approval. A notification under this paragraph shall include the following:

(A) A description of authorized activities to be conducted or planned to be conducted pursuant to such authorities.

(B) The defined military objectives relating to such authorities.

(C) A list of countries in which such authorities may be exercised. List.

(D) A description of relevant orders issued by the Secretary in accordance with such authorities.

(b) PROCEDURES.—

Notification.

(1) IN GENERAL.—The Secretary of Defense shall establish and submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate procedures for complying with the requirements of subsection (a), consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify such committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

(2) SUFFICIENCY.—The Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to such committees pursuant to this section.

(3) NOTIFICATION IN EVENT OF UNAUTHORIZED DISCLOSURE.—In the event of an unauthorized disclosure of authorities covered by this section, the Secretary of Defense shall ensure, to the maximum extent practicable, that the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate are notified immediately. Notification under this paragraph may be verbal or written, but in the event of a verbal notification, a written notification signed by the Secretary shall be provided by not later than 48 hours after the provision of such verbal notification.

Certification.

**SEC. 1643. LIMITATION OF FUNDING FOR CONSOLIDATED AFLOAT NETWORKS AND ENTERPRISE SERVICES.**

Of the funds authorized to be appropriated by this Act for fiscal year 2020 for the Consolidated Afloat Networks and Enterprise Services, not more than 85 percent of such funds may be obligated or expended until the Secretary of the Navy and the Chief Information Officer of the Department of Defense independently certify to the congressional defense committees, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate that recommendations in the Audit of Consolidated Afloat Networks and Enterprise Services Security Safeguards (DODIG-2019-072) have been implemented.

10 USC 394 note.

**SEC. 1644. ANNUAL MILITARY CYBERSPACE OPERATIONS REPORT.**

(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Defense shall provide to the congressional defense committees a written report summarizing all named military cyberspace operations conducted in the previous calendar year, including cyber effects, operations, cyber effects enabling operations, and cyber operations conducted as defensive operations. Each such summary should be organized by adversarial country and should include the following for each named operation:

(1) An identification of the objective and purpose.

(2) Descriptions of the impacted countries, organizations, or forces, and nature of the impact.



(3) A description of methodologies used for the cyber effects operation or cyber effects enabling operation.

(4) An identification of the Cyber Mission Force teams, or other Department of Defense entity or units, that conducted such operation, and supporting teams, entities, or units.

(5) An identification of the infrastructures on which such operations occurred.

(6) A description of relevant legal, operational, and funding authorities.

(7) Additional costs beyond baseline operations and maintenance and personnel costs directly associated with the conduct of the cyber effects operation or cyber effects enabling operation.

(8) Any other matters the Secretary determines relevant.

(b) CLASSIFICATION.—The Secretary of Defense shall provide each report required under subsection (a) at a classification level the Secretary determines appropriate.

(c) LIMITATION.—This section does not apply to cyber-enabled military information support operations or military deception operations.

**SEC. 1645. ANNUAL REPORT ON CYBER ATTACKS AND INTRUSIONS AGAINST THE DEPARTMENT OF DEFENSE BY CERTAIN FOREIGN ENTITIES.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and each fiscal year thereafter through fiscal year 2023, the Principal Cyber Advisor to the Secretary of Defense and Chief Information Officer of the Department of Defense shall submit to the congressional defense committees a report on cyber attacks and intrusions in the previous 12 months by agents or associates of the Governments of the Russian Federation, the People’s Republic of China, the Islamic Republic of Iran, and the Democratic People’s Republic of Korea against or into the information systems (as such term is defined in section 3502 of title 44, United States Code) of—

Time period.

(1) the Department of Defense; and

(2) any contractor of the Department of Defense that works on sensitive United States military technology.

(b) FORM.—The report required by subsection (a) shall be submitted in classified form. The data in such report shall be aggregated from U.S. Cyber Command, the Defense Information Systems Agency, the military services and Department of Defense agencies, the Joint Staff, and the Office of the Secretary of Defense.

**SEC. 1646. CONTROL AND ANALYSIS OF DEPARTMENT OF DEFENSE DATA STOLEN THROUGH CYBERSPACE.**

10 USC 2224 note.

(a) REQUIREMENTS.—If the Secretary of Defense determines that significant Department of Defense data may have been stolen through cyberspace and evidence of theft of the data in question—

Determination.

(1) is in the possession of a component of the Department, the Secretary shall—

(A) either transfer or replicate and transfer such Department data in a prompt and secure manner to a secure repository with access by Department personnel appropriately limited on a need-to-know basis or otherwise ensure such consistent access to the relevant data by other means;

(B) ensure the Department applies such automated analytic tools and capabilities to the repository of potentially compromised data as are necessary to rapidly understand the scope and effect of the potential compromise;

(C) for high priority and mission critical Department systems, develop analytic products that characterize the scope of data compromised;

(D) ensure that relevant mission-affected entities in the Department are made aware of the theft or possible theft and, as damage assessment and mitigation proceeds, are kept apprised of the extent of the data stolen; and

(E) ensure that Department counterintelligence organizations are—

(i) fully integrated with any damage assessment team assigned to the breach;

(ii) fully informed of the data that have or potentially have been stolen and the effect of such theft; and

(iii) provided resources and tasked, in conjunction with subject matter experts and responsible authorities, to immediately and appropriately respond, including through the development and execution of relevant countermeasures, to any breach involving espionage and data theft; or

(2) is in the possession of or under controls or restrictions imposed by the Federal Bureau of Investigation, or a national counterintelligence or intelligence organization, the Secretary shall determine, jointly with the Director of the Federal Bureau of Investigation or the Director of National Intelligence, as appropriate, the most expeditious process, means, and conditions for carrying out the activities otherwise required by paragraph (1).

Deadline.

(b) RECOMMENDATIONS.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees such recommendations as the Secretary may have for legislative or administrative action to address such barriers that may be inhibiting the implementation of this section.

10 USC 2224  
note.

**SEC. 1647. USE OF NATIONAL SECURITY AGENCY CYBERSECURITY EXPERTISE TO SUPPORT EVALUATION OF COMMERCIAL CYBERSECURITY PRODUCTS.**

(a) ADVISORY MISSION.—The National Security Agency shall, as a mission in its role in securing the information systems of the Department of Defense, advise and assist the Department of Defense in its evaluation and adoption of cybersecurity products and services from industry, especially the commercial cybersecurity sector.

(b) PROGRAM TO IMPROVE ACQUISITION OF CYBERSECURITY PRODUCTS AND SERVICES.—

(1) ESTABLISHMENT.—Consistent with subsection (a), the Director of the National Security Agency shall establish a permanent program consisting of market research, testing, and expertise transmission, or augments to existing programs, to improve the evaluation by the Department of Defense of cybersecurity products and services.

(2) **REQUIREMENTS.**—Under the program established pursuant to paragraph (1), the Director shall, independently and at the request of the components of the Department of Defense—

(A) test and evaluate commercially available cybersecurity products and services using—

Test.

(i) generally known cyber operations techniques; and

(ii) tools and cyber operations techniques and advanced tools and techniques available to the National Security Agency;

(B) develop and establish standard procedures, techniques, and threat-informed metrics to perform the testing and evaluation required by subparagraph (A); and

Procedures.

(C) advise the Chief Information Officer and the components of the Department of Defense on the merits and disadvantages of evaluated cybersecurity products, including with respect to—

(i) any synergies between products;

(ii) value;

(iii) matters relating to operation and maintenance; and

(iv) matters relating to customization requirements.

(3) **LIMITATIONS.**—The program established under paragraph (1) may not—

(A) be used to accredit cybersecurity products and services for use by the Department;

(B) create approved products lists; or

(C) be used for the procurement and fielding of cybersecurity products on behalf of the Department.

**SEC. 1648. FRAMEWORK TO ENHANCE CYBERSECURITY OF THE UNITED STATES DEFENSE INDUSTRIAL BASE.**

Contracts.  
10 USC 2224  
note.  
Deadline.

(a) **FRAMEWORK REQUIRED.**—Not later than February 1, 2020, the Secretary of Defense shall develop a consistent, comprehensive framework to enhance cybersecurity for the United States defense industrial base.

(b) **ELEMENTS.**—The framework developed pursuant to subsection (a) shall include the following:

(1) Identification of unified cybersecurity standards, regulations, metrics, ratings, third-party certifications, or requirements to be imposed on the defense industrial base for the purpose of assessing the cybersecurity of individual contractors.

Assessment.

(2) Roles and responsibilities of the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Intelligence and Security, the Chief Information Officer, the Director of the Protecting Critical Technologies Task Force, and the Secretaries of the military departments relating to the following:

(A) Establishing and ensuring compliance with cybersecurity standards, regulations, and policies.

(B) Deconflicting existing cybersecurity standards, regulations, and policies.

Coordination.

(C) Coordinating with and providing assistance to the defense industrial base for cybersecurity matters, particularly as relates to the programs and processes described in paragraphs (8) and (9).

(D) Management and oversight of the acquisition process, including responsibility determination, solicitation, award, and contractor management, relating to cybersecurity standards, regulations, metrics, ratings, third-party certifications, or requirements.

(3) The responsibilities of the prime contractors, and all subcontractors in the supply chain, for implementing the required cybersecurity standards, regulations, metrics, ratings, third-party certifications, and requirements identified under paragraph (1).

(4) Definitions for “Controlled Unclassified Information” (CUI) and “For Official Use Only” (FOUO), as well as policies regarding protecting information designated as either of such.

(5) Methods and programs for managing controlled unclassified information, and for limiting the presence of unnecessary sensitive information on contractor networks.

Plan.

(6) A plan to provide implementation guidance, education, manuals, and, as necessary, direct technical support or assistance, to contractors on matters relating to cybersecurity.

Assessment.

(7) Quantitative metrics for assessing the effectiveness of the overall framework over time, with respect to the exfiltration of controlled unclassified information from the defense industrial base.

Lists.

(8) A comprehensive list of current and planned Department of Defense programs to assist the defense industrial base with cybersecurity compliance requirements of the Department, including those programs that provide training, expertise, and funding, and maintain approved security products lists and approved providers lists.

(9) Processes for enhanced threat information sharing between the Department of Defense and the defense industrial base.

(c) MATTERS FOR CONSIDERATION.—In developing the framework pursuant to subsection (a), the Secretary shall consider the following:

(1) Designating an official to be responsible for the cybersecurity of the defense industrial base.

(2) Risk-based methodologies, standards, metrics, and tiered cybersecurity requirements for the defense industrial base, including third-party certifications such as the Cybersecurity Maturity Model Certification pilot program, as the basis for a mandatory Department standard.

(3) Tailoring cybersecurity requirements for small- and medium-sized contractors based on a risk-based approach.

(4) Ensuring a consistent approach across the Department to cybersecurity standards, regulations, metrics, ratings, third-party certifications, or requirements of the defense industrial base.

(5) Ensuring the Department’s traceability and visibility of cybersecurity compliance of suppliers to all levels of the supply chain.

(6) Evaluating incentives and penalties for cybersecurity performance of suppliers.

(7) Integrating cybersecurity and traditional counterintelligence measures, requirements, and programs.

(8) Establishing a secure software development environment (DevSecOps) in a cloud environment inside the perimeter of the Department for contractors to perform their development work.

(9) Establishing a secure cloud environment through which contractors may access the data of the Department needed for their contract work.

(10) An evaluation of the resources and utilization of Department programs to assist the defense industrial base in complying with cybersecurity compliance requirements referred to in subsection (b)(1).

(11) Technological means, operational concepts, reference architectures, offensive counterintelligence operation concepts, and plans for operationalization to complicate adversary espionage, including honeypotting and data obfuscation.

(12) Implementing enhanced security vulnerability assessments for contractors working on critical acquisition programs, technologies, manufacturing capabilities, and research areas.

(13) Identifying ways to better leverage technology and employ machine learning or artificial intelligence capabilities, such as Internet Protocol monitoring and data integrity capabilities, to be applied to contractor information systems that host, receive, or transmit controlled unclassified information.

(14) Developing tools to easily segregate program data to only allow subcontractors access to their specific information.

(15) Appropriate communications of threat assessments of the defense industrial base to the acquisition workforce at all classification levels.

(16) A single Sector Coordinating Council for the defense industrial base.

(17) Appropriate communications with the defense industrial base on the impact of cybersecurity requirements in contracting and procurement decisions.

(d) CONSULTATION.—In developing the framework required pursuant to subsection (a), the Secretary shall consult with the following:

(1) Industry groups representing the defense industrial base.

(2) Contractors in the defense industrial base.

(3) The Director of the National Institute of Standards and Technology.

(4) The Secretary of Energy.

(5) The Director of National Intelligence.

(6) Relevant Federal regulatory agencies.

(e) BRIEFING.—

(1) IN GENERAL.—Not later than March 11, 2020, the Secretary of Defense shall provide the congressional defense committees with a briefing on the framework developed pursuant to subsection (a).

Deadline.

(2) CONTENTS.—The briefing required by paragraph (1) shall include the following:

(A) An overview of the framework developed pursuant to subsection (a).

(B) Identification of such pilot programs as the Secretary considers may be required to improve the cybersecurity of the defense industrial base.

Timelines. (C) Implementation timelines and identification of costs.

Recommendations. (D) Such recommendations as the Secretary may have for legislative action to improve the cybersecurity of the defense industrial base.

Termination date. (f) QUARTERLY BRIEFINGS.—

(1) IN GENERAL.—Not less frequently than once each quarter after the briefing provided pursuant to subsection (e) until February 1, 2022, the Secretary of Defense shall brief the congressional defense committees on the status of development and implementation of the framework developed pursuant to subsection (a).

(2) COORDINATION WITH OTHER BRIEFINGS.—Each briefing under paragraph (1) shall be conducted in conjunction with a quarterly briefing under section 484(a) of title 10, United States Code.

(3) ELEMENTS.—Each briefing under paragraph (1) shall include the following:

(A) The current status of the development and implementation of the framework developed pursuant to subsection (a).

(B) A description of the efforts undertaken by the Secretary to evaluate the matters for consideration set forth in subsection (c).

(C) The current status of any pilot programs the Secretary is carrying out to develop the framework.

**SEC. 1649. REPORT ON CYBERSECURITY TRAINING PROGRAMS.**

Not later than 240 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report that accounts for all of the efforts, programs, initiatives, and investments of the Department of Defense to train elementary, secondary, and postsecondary students in fields related to cybersecurity, cyber defense, and cyber operations. The report shall—

- (1) include information on the metrics used to evaluate such efforts, programs, initiatives, and investments, and identify overlaps or redundancies across the such efforts, programs, initiatives, and investments; and
- (2) address how the Department leverages such efforts, programs, initiatives, and investments in the recruitment and retention of both the civilian and military cyber workforces.

Deadline.  
President.  
Records.

**SEC. 1650. NATIONAL SECURITY PRESIDENTIAL MEMORANDUMS RELATING TO DEPARTMENT OF DEFENSE OPERATIONS IN CYBERSPACE.**

Not later than 30 days after the date of the enactment of this Act, upon request of the congressional defense committees, the President shall allow for such committees to read a copy of all National Security Presidential Memorandums relating to Department of Defense operations in cyberspace at an appropriately cleared facility of the requesting committee's choosing. At the conclusion of such reading, such documents shall be collected and returned to the President.

**SEC. 1651. REORIENTATION OF BIG DATA PLATFORM PROGRAM.**

Deadlines.  
10 USC 2223a  
note.

**(a) REORIENTATION OF PROGRAM.—**

(1) **IN GENERAL.**—Not later than January 1, 2021, the Secretary of Defense shall—

(A) reorient the Big Data Platform program as specified in this section; and

(B) align the reorientation effort under an existing line of effort of the Cyber Strategy of the Department of Defense.

(2) **OVERSIGHT OF IMPLEMENTATION.**—The Secretary shall act through the Principal Cyber Advisor and the supporting Cross Functional Team in the oversight of the implementation of paragraph (1).

**(b) COMMON BASELINE AND SECURITY CLASSIFICATION SCHEME.—**

(1) **IN GENERAL.**—Not later than January 1, 2021, the Secretary shall establish a common baseline and security classification scheme for the collection, storage, processing, querying, analysis, and accessibility of a common and comprehensive set of metadata from sensors, applications, appliances, products, and systems deployed across the Department of Defense Information Network (DODIN) to enable the discovery, tracking, and remediation of cybersecurity threats.

(2) **REQUIREMENTS.**—In carrying out paragraph (1), the Secretary shall—

(A) take such actions as the Secretary considers necessary to standardize deployed infrastructure, including the Department of Defense’s perimeter capabilities at the Internet Access Points, the Joint Regional Security Stacks, or other approved solutions, and the routing of data laterally and vertically from Department of Defense Information Network segments and tiers, to enable standard and comprehensive metadata collection;

(B) take such actions as the Secretary considers necessary to standardize deployed cybersecurity applications, products, and sensors and the routing of data laterally and vertically from Department of Defense Information Network segments and tiers, to enable standard and comprehensive metadata collection;

(C) develop an enterprise-wide architecture and strategy for—

Strategy.

(i) where to place sensors or extract data from network information technology, operational technology, and cybersecurity appliances, applications, products, and systems for cybersecurity purposes;

(ii) which metadata data records should be universally sent to Big Data Platform instances and which metadata data records, if any, should be locally retained; and

(iii) expeditiously and efficiently transmitting metadata records to the Big Data Platform instances, including the acquisition and installation of further data bandwidth;

(D) determine the appropriate number, organization, and functions of separate Big Data Platform instances, and whether the Big Data Platform instances that are currently managed by Department of Defense components,

Determination.

Determination.

including the military services, should instead be jointly and regionally organized, or terminated;

(E) determine the appropriate roles of the Defense Information Systems Agency's Acropolis, United States Cyber Command's Scarif, and any similar Big Data Platforms as enterprise-wide real-time cybersecurity situational awareness capabilities or as complements or replacements for component level Big Data Platform instances;

(F) ensure that all Big Data Platform instances are engineered and approved to enable standard access and expeditious query capabilities by the Unified Platform, the network defense service providers, and the Cyber Mission Forces, with centrally managed authentication and authorization services;

(G) prohibit and remove barriers to information sharing, distributed query, data analysis, and collaboration across Big Data Platform instances, such as incompatible interfaces, interconnection service agreements, and the imposition of accreditation boundaries;

(H) transition all Big Data Platform instances to a cloud computing environment in alignment with the cloud strategy of the Chief Information Officer of the Department of Defense;

(I) consider whether packet capture databases should continue to be maintained separately from the Big Data Platform instances, managed at the secret level of classification, and treated as malware-infected when the packet data are copies of packets extant in the Department of Defense Information Network;

(J) in the case that the Secretary decides to sustain the status quo on packet capture databases, ensure that analysts operating on or from the Unified Platform, the Big Data Platform instances, the network defense services providers, and the Cyber Mission Forces can directly access packets and query the database; and

(K) consider whether the Joint Artificial Intelligence Center's cybersecurity artificial intelligence national mission initiative, and any other similar initiatives, should include an application for the metadata residing in the Big Data Platform instances.

(c) **LIMIT ON DATA AND DATA INDEXING SCHEMA.**—The Secretary shall ensure that the Unified Platform and the Big Data Platform programs achieve data and data indexing schema standardization and integration to ensure interoperability, access, and sharing by and between Big Data Platform and other data sources and stores.

(d) **ANALYTICS AND APPLICATION SOURCING AND COLLABORATION.**—The Secretary shall ensure that the services, U.S. Cyber Command, and Defense Information Systems Agency—

(1) seek advanced analytics and applications from Government and commercial sources that can be executed on the deployed Big Data Platform architecture; and

(2) collaborate with vendors offering commercial analytics and applications, including support to refactoring commercial capabilities to the Government platform where industry can still own the intellectual property embedded in the analytics and applications.



(e) BRIEFING REQUIRED.—Not later than 180 days after the date of the enactment of this Act and not less frequently than once every 180 days thereafter until the activities required by subsection (a)(1) are completed, the Secretary shall brief the congressional defense committees on the activities of the Secretary in carrying out subsection (b).

**SEC. 1652. ZERO-BASED REVIEW OF DEPARTMENT OF DEFENSE CYBER AND INFORMATION TECHNOLOGY PERSONNEL.**

Assessment.  
10 USC 1599f  
note.  
Deadline.

(a) REVIEW REQUIRED.—Not later than January 1, 2021, each head of a covered department, component, or agency shall—

(1) complete a zero-based review of the cyber and information technology personnel of the head's covered department, component, or agency; and

(2) provide the Principal Cyber Advisor, the Chief Information Officer of the Department of Defense, and the Under Secretary of Defense for Personnel and Readiness the findings of the head with respect to the head's covered department, component, or agency.

(b) COVERED DEPARTMENTS, COMPONENTS, AND AGENCIES.—For purposes of this section, a covered department, component, or agency is—

(1) an independent Department of Defense component or agency;

(2) the Office of the Secretary of Defense;

(3) a component of the Joint Staff;

(4) a military department or an armed force; or

(5) a reserve component of the Armed Forces.

(c) SCOPE OF REVIEW.—As part of a review conducted pursuant to subsection (a)(1), the head of a covered department, component, or agency shall, with respect to the covered department, component, or agency of the head—

(1) assess military, civilian, and contractor positions and personnel performing cyber and information technology missions;

(2) determine the roles and functions assigned by reviewing existing position descriptions and conducting interviews to quantify the current workload performed by military, civilian, and contractor workforce;

(3) compare the Department's manning with the manning of comparable industry organizations;

(4) include evaluation of the utility of cyber- and information technology-focused missions, positions, and personnel within such components—

(A) to assess the effectiveness and efficiency of current activities;

(B) to assess the necessity of increasing, reducing, or eliminating resources; and

(C) to guide prioritization of investment and funding;

(5) develop recommendations and objectives for organizational, manning, and equipping change, taking into account anticipated developments in information technologies, workload projections, automation and process enhancements, and Department requirements;

(6) develop a gap analysis, contrasting the current organization and the objectives developed pursuant to paragraph (5); and

Determination.

Evaluation.

Recommendations.

Analysis.

Timeline.

(7) develop roadmaps of prioritized activities and a timeline for implementing the activities to close the gaps identified pursuant to paragraph (6).

(d) ELEMENTS.—In carrying out a review pursuant to subsection (a)(1), the head of a covered department, component, or agency shall consider the following:

(1) Whether position descriptions and coding designators for given cybersecurity and information technology roles are accurate indicators of the work being performed.

(2) Whether the function of any cybersecurity or information technology position or personnel can be replaced by acquisition of cybersecurity or information technology products or automation.

(3) Whether a given component or subcomponent is over- or under-resourced in terms of personnel, using industry standards as a benchmark where applicable.

(4) Whether cybersecurity service provider positions and personnel fit coherently into the enterprise-wide cybersecurity architecture and with the Department's cyber protection teams.

(5) Whether the function of any cybersecurity or information technology position or personnel could be conducted more efficiently or effectively by enterprise-level cyber or information technology personnel.

(e) FURNISHING DATA AND ANALYSIS.—

(1) DATA AND ANALYSIS.—In carrying out subsection (a)(2), each head of a covered department, component, or agency, shall furnish to the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary a description of the analysis that led to the findings submitted under such subsection and the data used in such analysis.

(2) CERTIFICATION.—The Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary of Defense shall jointly review each submittal under subsection (a)(2) and certify whether the findings and analysis are in compliance with the requirements of this section.

(f) RECOMMENDATIONS.—After receiving findings submitted by a head of a covered department, component, or agency pursuant to paragraph (2) of subsection (a) with respect to a review conducted by the head pursuant to paragraph (1) of such subsection, the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly provide to such head such recommendations as the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary may have for changes in manning or acquisition that proceed from such review.

(g) IMPLEMENTATION.—The Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly oversee and assist in the implementation of the roadmaps developed pursuant to subsection (c)(7) and the recommendations developed pursuant to subsection (f).

Deadline.  
Time period.

(h) IN-PROGRESS REVIEWS.—Not later than six months after the date of the enactment of this Act and not less frequently than once every six months thereafter until the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary give the briefing required by subsection (i), the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly—

(1) conduct in-progress reviews of the status of the reviews required by subsection (a)(1); and

(2) provide the congressional defense committees with a briefing on such in-progress reviews.

(i) FINAL BRIEFING.—After all of the reviews have been completed under paragraph (1) of subsection (a), after receiving all of the findings pursuant to paragraph (2) of such subsection, and not later than June 1, 2021, the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly provide to the congressional defense committees a briefing on the findings of the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary with respect to such reviews, including such recommendations as the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary may have for changes to the budget of the Department as a result of such reviews.

(j) DEFINITION OF ZERO-BASED REVIEW.—In this section, the term “zero-based review” means a review in which an assessment is conducted with each item, position, or person costed anew, rather than in relation to its size or status in any previous budget.

**SEC. 1653. STUDY ON IMPROVING CYBER CAREER PATHS IN THE NAVY.**

(a) STUDY REQUIRED.—Not later than October 1, 2020, the Secretary of the Navy and the Chief of Naval Operations shall jointly—

(1) complete a study on methods to improve military and civilian cyber career paths within the Navy; and

(2) submit to the congressional defense committees a report on the findings of the Secretary and Chief with respect to the study completed pursuant to paragraph (1), including all of the data used in such study.

(b) ELEMENTS.—The report submitted pursuant to subsection (a)(2) shall include the following:

(1) A plan for implementing career paths for civilian and military personnel tailored to develop expertise in cyber skill sets, including skill sets appropriate for offensive and defensive military cyber operations. Such plan should also evaluate the current Cyber Warfare Engineer career field for officers, including options for expanding the career field beyond current plans.

(2) Suggested changes to the processes that govern the identification of talent and career progression of the civilian and military workforce.

(3) A methodology for a cyber workforce assignment policy that deliberately builds depth and breadth of knowledge regarding the conduct of cyber operations throughout an entire career.

(4) Possible enhancements to identifying, recruiting, training, and retaining the civilian and military cyber workforce, especially for Interactive On-Net operators and tool developers.

(5) Recommendations for legislative and administrative actions to address the findings and recommendations of the Secretary and the Chief with respect to the study completed pursuant to subsection (a)(1).

(c) **CONSULTATION.**—In conducting the study required by subsection (a)(1), the Secretary and the Chief shall consult with the following:

- (1) The Principal Cyber Advisor of the Department of Defense.
- (2) The Secretary of the Air Force.
- (3) The Commander of the United States Cyber Command.
- (4) The Air Force Chief of Staff.
- (5) The Secretary of the Army.
- (6) The Army Chief of Staff.
- (7) The Commandant of the Marine Corps.
- (8) The Under Secretary of Defense for Personnel and Readiness.
- (9) The Chief Information Officer of the Department of Defense.

**SEC. 1654. ACCREDITATION STANDARDS AND PROCESSES FOR CYBER-SECURITY AND INFORMATION TECHNOLOGY PRODUCTS AND SERVICES.**

(a) **ASSESSMENT.**—Consistent with the responsibilities and duties outlined in section 142 of title 10, United States Code, the Chief Information Officer of the Department of Defense shall conduct an enterprise assessment of accreditation standards and processes for cybersecurity and information technology products and services.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than April 1, 2020, the Chief Information Officer shall submit to the congressional defense committees a report on the assessment conducted under subsection (a).

(2) **CONTENTS.**—The report submitted under paragraph (1) shall include the following:

(A) The findings of the Chief Information Officer with respect to the assessment conducted under subsection (a).

(B) A description of the modifications proposed or implemented to accreditation standards and processes arising out of the assessment.

(C) A description of how the Department will increasingly automate accreditation processes, pursue agile development, incorporate machine learning, and foster reciprocity across authorizing officials.

**SEC. 1655. STUDY ON FUTURE CYBER WARFIGHTING CAPABILITIES OF DEPARTMENT OF DEFENSE.**

Deadline.

(a) **STUDY REQUIRED.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall direct the Defense Science Board to carry out a study on the future cyber warfighting capabilities of the Department of Defense.

(b) **PARTICIPATION.**—Participants in the study shall include the following:

(1) Such members of the Board, including members of the Task Force on Cyber Deterrence of the Board, as the Chairman of the Board considers appropriate for the study.

(2) Such additional temporary members or contracted support as the Secretary—

(A) selects from those recommended by the Chairman for purposes of the study; and

(B) considers to have significant technical, policy, or military expertise.

(c) ELEMENTS.—The study conducted pursuant to subsection (a) shall include the following: Evaluations.

(1) A technical evaluation of the Joint Cyber Warfighting Architecture of the Department, especially the Unified Platform, Joint Cyber Command and Control, and Persistent Cyber Training Environment, including with respect to the following:

(A) The suitability of the requirements and, as relevant, the delivered capability of such architecture to modern cyber warfighting.

(B) Such requirements or capabilities as may be absent or underemphasized in such architecture.

(C) The speed of development and acquisition as compared to mission need.

(D) Identification of potential duplication of efforts among the programs and concepts evaluated.

(E) The coherence of such architecture with the National Mission Teams and Combat Mission Teams of the Cyber Mission Force, as constituted and organized on the day before the date of the enactment of this Act.

(F) The coherence of such architecture with the Cyber Protection Teams of the Cyber Mission Force and the cybersecurity service providers of the Department, as constituted and organized on the day before the date of the enactment of this Act.

(G) The coherence of such architecture with the concepts of persistent engagement and defending forward as incorporated in the 2018 Department of Defense Cyber Strategy, including with respect to operational concepts such as consistent spy-on-spy engagement, securing adversary operating pictures, and preemptively feeding indicators and warning to defensive operators.

(2) A technical evaluation of the tool development and acquisition programs of the Department, including with respect to the following:

(A) The suitability of planned tool suite and cyber armory constructs of the United States Cyber Command to modern cyber warfighting.

(B) The speed of development and acquisition as compared to mission need.

(C) The resourcing and effectiveness of the internal tool development of the United States Cyber Command as compared to the tool development of the National Security Agency.

(D) The resourcing and effectiveness of the internal tool development of the United States Cyber Command as compared to its acquisition.

(E) The coherence of such programs with the concepts of persistent engagement and defending forward as incorporated in the 2018 Department of Defense Cyber Strategy, including with respect to operational concepts such as consistent spy-on-spy engagement, securing adversary operating pictures, and preemptively feeding indicators and warning to defensive operators.

(3) An evaluation of the operational planning and targeting of the United States Cyber Command, including support for

regional combatant commands, and suitability for modern cyber warfighting.

Recommendations.

(4) Development of such recommendations as the Board may have for legislative or administrative action relating to the future cyber warfighting capabilities of the Department.

Analysis.

(d) ACCESS TO INFORMATION.—The Secretary shall provide the Board with timely access to appropriate information, data, resources, and analysis so that the Board may conduct a thorough and independent analysis as required under this section.

(e) REPORT.—

(1) TRANSMITTAL TO SECRETARY.—Not later than November 1, 2021, the Board shall transmit to the Secretary a final report on the study conducted pursuant to subsection (a).

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after the date on which the Secretary receives the final report under paragraph (1), the Secretary shall submit to the congressional defense committees such report and such comments as the Secretary considers appropriate.

**SEC. 1656. STUDY TO DETERMINE THE OPTIMAL STRATEGY FOR STRUCTURING AND MANNING ELEMENTS OF THE JOINT FORCE HEADQUARTERS-CYBER ORGANIZATIONS, JOINT MISSION OPERATIONS CENTERS, AND CYBER OPERATIONS-INTEGRATED PLANNING ELEMENTS.**

(a) STUDY.—

(1) IN GENERAL.—The Principal Cyber Advisor of the Department of Defense shall conduct a study to determine the optimal strategy for structuring and manning elements of the following:

- (A) Joint Force Headquarters–Cyber organizations.
- (B) Joint Mission Operations Centers.
- (C) Cyber Operations–Integrated Planning Elements.
- (D) Joint Cyber Centers.

Assessment.

(2) ELEMENTS.—The study conducted under subsection (a) shall include assessment of the following:

(A) Operational effects on the military services if the entities listed in subparagraphs (A) through (C) of paragraph (1) are restructured from organizations that are service component organizations to joint organizations.

(B) Organizational effects on the military services if the billets associated with the entities listed in subparagraphs (A) through (C) of paragraph (1) are transferred to United States Cyber Command and designated as joint billets for joint qualification purposes.

(C) Operational and organizational effects on the military services, United States Cyber Command, other combatant commands, and the Joint Staff if the entities listed in subparagraphs (A) through (D) of paragraph (1) are realigned, restructured, or consolidated.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Principal Cyber Advisor shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the study conducted under subsection (a).

(2) CONTENTS.—The report submitted under paragraph (1) shall contain the following:

(A) The findings of the Principal Cyber Advisor with respect to the study conducted under subsection (a).

(B) Details of the operational and organizational effects assessed under subsection (a)(2).

(C) A plan to carry out the transfer described in subsection (a)(2)(B) and the associated costs, as appropriate. Plan.

(D) A plan to realign, restructure, or consolidate the entities listed in subparagraphs (A) through (D) of subsection (a)(1). Plan.

(E) Such other matters as the Principal Cyber Advisor considers appropriate.

**SEC. 1657. CYBER GOVERNANCE STRUCTURES AND PRINCIPAL CYBER ADVISORS ON MILITARY CYBER FORCE MATTERS.** 10 USC 391 note.

(a) DESIGNATION.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, each of the secretaries of the military departments, in consultation with the service chiefs, shall appoint an independent Principal Cyber Advisor for each service to act as the principal advisor to the relevant secretary on all cyber matters affecting that military service. Deadline. Consultation.

(2) NATURE OF POSITION.—Each Principal Cyber Advisor position under paragraph (1) shall—

(A) be a senior civilian leadership position, filled by a senior member of the Senior Executive Service, not lower than the equivalent of a 3-star general officer, or by exception a comparable military officer with extensive cyber experience;

(B) exclusively occupy the Principal Cyber Advisor position and not assume any other position or responsibility in the relevant military department;

(C) be independent of the relevant service’s chief information officer; and

(D) report directly to and advise the secretary of the relevant military department and advise the relevant service’s senior uniformed officer.

(3) NOTIFICATION.—Each of the secretaries of the military departments shall notify the Committees on Armed Services of the Senate and House of Representatives of his or her Principal Cyber Advisor appointment. In the case that the appointee is a military officer, the notification shall include a justification for the selection and an explanation of the appointee’s ability to execute the responsibilities of the Principal Cyber Advisor.

(b) RESPONSIBILITIES OF PRINCIPAL CYBER ADVISORS.—Each Principal Cyber Advisor under subsection (a) shall be responsible for advising both the secretary of the relevant military department and the senior uniformed military officer of the relevant military service and implementing the Department of Defense Cyber Strategy within the service by coordinating and overseeing the execution of the service’s policies and programs relevant to the following: Coordination.

(1) The recruitment, resourcing, and training of military cyberspace operations forces, assessment of these forces against standardized readiness metrics, and maintenance of these forces at standardized readiness levels. Assessment.

(2) Acquisition of offensive, defensive, and Department of Defense Information Networks cyber capabilities for military cyberspace operations.

(3) Cybersecurity management and operations.

(4) Acquisition of cybersecurity tools and capabilities, including those used by cybersecurity service providers.

Evaluation.

(5) Evaluating, improving, and enforcing a culture of cybersecurity warfighting and accountability for cybersecurity and cyberspace operations.

(6) Cybersecurity and related supply chain risk management of the industrial base.

(7) Cybersecurity of Department of Defense information systems, information technology services, and weapon systems, including the incorporation of cybersecurity threat information as part of secure development processes, cybersecurity testing, and the mitigation of cybersecurity risks.

(c) COORDINATION.—To ensure service compliance with the Department of Defense Cyber Strategy, each Principal Cyber Advisor under subsection (a) shall work in close coordination with the following:

(1) Service chief information officers.

(2) Service cyber component commanders.

(3) Principal Cyber Advisor to the Secretary of Defense.

(4) Department of Defense Chief Information Officer.

(5) Defense Digital Service.

(d) BUDGET CERTIFICATION AUTHORITY.—

Requirement.

(1) IN GENERAL.—Each of the secretaries of the military departments shall require service components with responsibilities associated with cyberspace operations forces, offensive or defensive cyberspace operations and capabilities, and cyberspace issues relevant to the duties specified in subsection (b) to transmit the proposed budget for such responsibilities for a fiscal year and for the period covered by the future-years defense program submitted to Congress under section 221 of title 10, United States Code, for that fiscal year to the relevant service's Principal Cyber Advisor for review under subparagraph (B) before submitting the proposed budget to the department's comptroller.

Reports.

(2) REVIEW.—Each Principal Cyber Advisor under subsection (a)(1) shall review each proposed budget transmitted under paragraph (1) and submit to the secretary of the relevant military department a report containing the comments of the Principal Cyber Advisor with respect to all such proposed budgets, together with the certification of the Principal Cyber Advisor regarding whether each proposed budget is adequate.

(3) REPORT.—Not later than March 31 of each year, each of the secretaries of the military departments shall submit to the congressional defense committees a report specifying each proposed budget for the subsequent fiscal year contained in the most-recent report submitted under paragraph (2) that the Principal Cyber Advisor did not certify to be adequate. The report of the secretary shall include a discussion of the actions that the secretary took or proposes to take, together with any additional comments that the Secretary considers appropriate regarding the adequacy or inadequacy of the proposed budgets.



(e) **PRINCIPAL CYBER ADVISORS’ BRIEFING TO CONGRESS.**—Not later than February 1, 2021, and biannually thereafter, each Principal Cyber Advisor under subsection (a) shall brief the Committees on Armed Services of the Senate and House of Representatives on that Advisor’s activities and ability to perform the functions specified in subsection (b). Deadline.

(f) **REVIEW OF CURRENT RESPONSIBILITIES.**—

(1) **IN GENERAL.**—Not later than January 1, 2021, each of the secretaries of the military departments shall review the relevant military department’s current governance model for cybersecurity with respect to current authorities and responsibilities. Deadline.

(2) **ELEMENTS.**—Each review under paragraph (1) shall include the following:

(A) An assessment of whether additional changes beyond the appointment of a Principal Cyber Advisor pursuant to subsection (a) are required. Assessment.

(B) Consideration of whether the current governance structure and assignment of authorities—

(i) enable effective governance;

(ii) enable effective Chief Information Officer and Chief Information Security Officer action;

(iii) are adequately consolidated so that the authority and responsibility for cybersecurity risk management are clear and at an appropriate level of seniority;

(iv) provide authority to a single individual to certify compliance of Department of Defense information systems and information technology services with all current cybersecurity standards; and

(v) support efficient coordination across the military services, the Office of the Secretary of Defense, the Defense Information Systems Agency, and United States Cyber Command.

(3) **BRIEFING.**—Not later than October 1, 2020, each of the secretaries of the military departments shall brief the Committees on Armed Services of the Senate and House of Representatives on the findings of the Secretary with respect to the review conducted by the Secretary pursuant to paragraph (1). Deadline.

**SEC. 1658. DESIGNATION OF TEST NETWORKS FOR TESTING AND ACCREDITATION OF CYBERSECURITY PRODUCTS AND SERVICES.** 10 USC 2224 note.

(a) **DESIGNATION.**—Not later than April 1, 2020, the Secretary of Defense shall designate, for use by the Defense Information Systems Agency and such other components of the Department of Defense as the Secretary considers appropriate, three test networks for the testing and accreditation of cybersecurity products and services. Deadline.

(b) **REQUIREMENTS.**—The networks designated under subsection (a) shall—

(1) be of sufficient scale to realistically test cybersecurity products and services;

(2) feature substantially different architectures and configurations;

(3) be live, operational networks; and

(4) feature cybersecurity processes, tools, and technologies that are appropriate for test purposes and representative of the processes, tools, and technologies that are widely used throughout the Department.

(c) ACCESS.—Upon request, information generated in the testing and accreditation of cybersecurity products and services shall be made available to the Office of the Director, Operational Test and Evaluation.

10 USC 391 note.

**SEC. 1659. CONSORTIA OF UNIVERSITIES TO ADVISE SECRETARY OF DEFENSE ON CYBERSECURITY MATTERS.**

(a) ESTABLISHMENT AND FUNCTION.—The Secretary of Defense shall establish one or more consortia of universities to assist the Secretary on cybersecurity matters relating to the following:

(1) To provide the Secretary a formal mechanism to communicate with consortium or consortia members regarding the Department of Defense’s cybersecurity strategic plans, cybersecurity requirements, and priorities for basic and applied cybersecurity research.

(2) To advise the Secretary on the needs of academic institutions related to cybersecurity and research conducted on behalf of the Department and provide feedback to the Secretary from members of the consortium or consortia.

(3) To serve as a focal point or focal points for the Secretary and the Department for the academic community on matters related to cybersecurity, cybersecurity research, conceptual and academic developments in cybersecurity, and opportunities for closer collaboration between academia and the Department.

(4) To provide to the Secretary access to the expertise of the institutions of the consortium or consortia on matters relating to cybersecurity.

(5) To align the efforts of such members in support of the Department.

(b) MEMBERSHIP.—The consortium or consortia established under subsection (a) shall be open to all universities that have been designated as centers of academic excellence by the Director of the National Security Agency or the Secretary of Homeland Security.

(c) ORGANIZATION.—

(1) DESIGNATION OF ADMINISTRATIVE CHAIR AND TERMS.—For each consortium established under subsection (a), the Secretary of Defense, based on recommendations from the members of the consortium, shall designate one member of the consortium to function as an administrative chair of the consortium for a term with a specific duration specified by the Secretary.

(2) SUBSEQUENT TERMS.—No member of a consortium designated under paragraph (1) may serve as the administrative chair of that consortium for two consecutive terms.

(3) DUTIES OF ADMINISTRATIVE CHAIR.—Each administrative chair designated under paragraph (1) for a consortium shall—

(A) act as the leader of the consortium for the term specified by the Secretary under paragraph (1);

(B) be the liaison between the consortium and the Secretary;

(C) distribute requests from the Secretary for advice and assistance to appropriate members of the consortium and coordinate responses back to the Secretary; and

Recommendations.

(D) act as a clearinghouse for Department of Defense requests relating to assistance on matters relating to cybersecurity and to provide feedback to the Secretary from members of the consortium.

(4) EXECUTIVE COMMITTEE.—For each consortium, the Secretary, in consultation with the administrative chair, may form an executive committee comprised of university representatives to assist the chair with the management and functions of the consortia. Executive committee institutions may not serve consecutive terms before all other consortium institutions have been afforded the opportunity to hold the position.

Consultation.

(d) CONSULTATION.—The Secretary, or a senior level designee, shall meet with each consortium not less frequently than twice per year, or at a periodicity agreed to between the Department and each such consortium.

(e) PROCEDURES.—The Secretary shall establish procedures for organizations within the Department to access the work product produced by and the research, capabilities, and expertise of a consortium established under subsection (a) and the universities that constitute such consortium.

**SEC. 1660. JOINT ASSESSMENT OF DEPARTMENT OF DEFENSE CYBER RED TEAM CAPABILITIES, CAPACITY, DEMAND, AND REQUIREMENTS.**

(a) JOINT ASSESSMENT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in coordination with the Chief Information Officer of the Department of Defense, Principal Cyber Advisor, and the Director of Operational Test and Evaluation—

Deadline.  
Coordination.

(1) conduct a joint assessment of Department cyber red team capabilities, capacity, demand, and future requirements that affect the Department’s ability to develop, test, and maintain secure systems in a cyber environment; and

(2) brief the congressional defense committees on the results of the joint assessment.

Briefing.

(b) ELEMENTS.—The joint assessment required by subsection (a)(1) shall—

(1) specify demand for cyber red team support for acquisition and operations;

(2) specify shortfalls in meeting demand and future requirements, disaggregated by the Department of Defense component or agency and by military department;

(3) examine funding and retention initiatives to increase cyber red team capacity to meet demand and future requirements identified to support the testing, training, and development communities;

Examination.

(4) examine the feasibility and benefit of developing and procuring a common Red Team Integrated Capabilities Stack that better utilizes increased capacity of cyber ranges and better models the capabilities and tactics, techniques, and procedures of adversaries;

Examination.

(5) examine the establishment of oversight and assessment metrics for Department cyber red teams;

Examination.

(6) assess the implementation of common development efforts for tools, techniques, and training;

(7) assess potential industry and academic partnerships and services;

(8) assess the mechanisms and procedures in place to deconflict red-team activities and defensive cyber operations on active networks;

(9) assess the use of Department cyber personnel in training as red team support;

(10) assess the use of industry and academic partners and contractors as red team support and the cost- and resource-effectiveness of such support; and

(11) assess the need for permanent, high-end dedicated red-teaming activities to model sophisticated adversaries' attacking critical Department systems and infrastructure.

## Subtitle D—Nuclear Forces

### SEC. 1661. CONFORMING AMENDMENT TO COUNCIL ON OVERSIGHT OF THE NATIONAL LEADERSHIP COMMAND, CONTROL, AND COMMUNICATIONS SYSTEM.

Section 171a of title 10, United States Code, is amended by striking “, Technology, and Logistics” each place it appears and inserting “and Sustainment”.

### SEC. 1662. MODIFICATION OF AUTHORITIES RELATING TO NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS SYSTEM.

(a) DUTIES AND POWERS OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT.—Section 133b(b) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(2) by inserting after paragraph (3) the following new paragraph (4):

“(4) establishing policies for, and providing oversight, guidance, and coordination with respect to, the nuclear command, control, and communications system;” and

(3) in paragraph (6), as redesignated by paragraph (1), by inserting after “overseeing the modernization of nuclear forces” the following: “, including the nuclear command, control, and communications system.”

(b) DUTIES AND RESPONSIBILITIES OF CHIEF INFORMATION OFFICER.—Section 142(b)(1) of such title is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

### SEC. 1663. BRIEFINGS ON MEETINGS HELD BY NUCLEAR WEAPONS COUNCIL.

Section 179 of title 10, United States Code, is amended by adding at the end the following new subsection:

Deadlines.

“(g) SEMIANNUAL BRIEFINGS.—(1) Not later than February 1 and August 1 of each year, the Council shall provide to the congressional defense committees a briefing on, with respect to the six-month period preceding the briefing—

Summary.

“(A) the dates on which the Council met; and

“(B) except as provided by paragraph (2), a summary of any decisions made by the Council pursuant to subsection (d) at each such meeting and the rationale for and options that informed such decisions.

“(2) The Council shall not be required to include in a briefing under paragraph (1) the matters described in subparagraph (B) of that paragraph with respect to decisions of the Council relating to the budget of the President for a fiscal year if the budget for that fiscal year has not been submitted to Congress under section 1105 of title 31 as of the date of the briefing.”.

**SEC. 1664. CONSIDERATION OF BUDGET MATTERS AT MEETINGS OF NUCLEAR WEAPONS COUNCIL.** 10 USC 179 note.

(a) ATTENDANCE.—

(1) REQUIREMENT.—Except as provided by subsection (b), each official described in paragraph (2) shall attend the meetings of the Nuclear Weapons Council established by section 179 of title 10, United States Code, and the meetings of the Standing and Safety Committee of the Council, or such a successor committee. Each such official shall attend such meetings as advisors on matters within the authority and expertise of the official.

(2) OFFICIALS DESCRIBED.—The officials described in this paragraph are each of the following officials (or the designees of the officials):

(A) The Director of Cost Assessment and Program Evaluation of the Department of Defense.

(B) The Director of the Office of Management and Budget of the National Nuclear Security Administration.

(C) The Director for Cost Estimating and Program Evaluation of the National Nuclear Security Administration.

(D) The Director of the Office of Management and Budget.

(b) EXCEPTION.—On a case-by-case basis, the Chairman of the Nuclear Weapons Council, without delegation, may exclude the attendance of an official at a meeting pursuant to subsection (a) because of specific requirements relating to classified information or other exigent circumstances as determined by the Chairman. Determination.

**SEC. 1665. IMPROVEMENT TO ANNUAL REPORT ON THE MODERNIZATION OF THE NUCLEAR WEAPONS ENTERPRISE.**

(a) EXTENSION.—Subsection (a) of section 1043 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576), as most recently amended by section 1670 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2157), is further amended in paragraph (1) by striking “2023” and inserting “2024”.

(b) ACQUISITION COSTS.—Subsection (b)(1) of such section is amended—

(1) in subparagraph (B), by striking “; and” and inserting the following: “, including an estimate of the acquisition costs during such period for programs relating to such life extension, modernization, or replacement;”;

(2) in subparagraph (C), by striking the end period and inserting “; and”; and

(3) by adding at the end the following:

“(D) an estimate of the relative percentage of total acquisition costs of the military departments and of the Department of Defense during such period represented by the acquisition costs estimated under subparagraph (B).”.

Cost estimate.

(c) TRANSFER OF PROVISION.—

10 USC 492a.

(1) CODIFICATION.—Such section 1043, as amended by subsections (a) and (b), is—

(A) transferred to chapter 24 of title 10, United States Code;

(B) inserted after section 492;

(C) redesignated as section 492a; and

(D) amended—

(i) in the enumerator, by striking “SEC.” and inserting “§”; and

(ii) in the section heading—

(I) by striking the period at the end; and

(II) by conforming the typeface and typestyle, including capitalization, to the typeface and typestyle as used in the section heading of section 491 of such title.

10 USC 491 prec.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 24 of title 10, United States Code, is amended by inserting after the item relating to section 492 the following new item:

“492a. Annual report on the plan for the nuclear weapons stockpile, nuclear weapons complex, nuclear weapons delivery systems, and nuclear weapons command and control system.”.

**SEC. 1666. EXPANSION OF OFFICIALS REQUIRED TO CONDUCT BIENNIAL ASSESSMENTS OF DELIVERY PLATFORMS FOR NUCLEAR WEAPONS AND NUCLEAR COMMAND AND CONTROL SYSTEM.**

Section 492(d) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking “; and” and inserting a semicolon;

(2) in paragraph (3), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(4) the Commander of the United States Air Forces in Europe.”.

**SEC. 1667. EXTENSION OF ANNUAL BRIEFING ON COSTS OF FORWARD-DEPLOYING NUCLEAR WEAPONS IN EUROPE.**

Section 1656(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1124) is amended by striking “2021” and inserting “2024”.

**SEC. 1668. ELIMINATION OF CONVENTIONAL REQUIREMENT FOR LONG-RANGE STANDOFF WEAPON.**

Subsection (a) of section 217 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 706), as amended by section 1662 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2152), is amended to read as follows:

“(a) LONG-RANGE STANDOFF WEAPON.—The Secretary of the Air Force shall develop a follow-on air-launched cruise missile to the AGM–86 that—

“(1) achieves initial operating capability for nuclear missions prior to the retirement of the nuclear-armed AGM–86; and

“(2) is capable of internal carriage and employment for nuclear missions on the next-generation long-range strike bomber.”.

**SEC. 1669. BRIEFING ON LONG-RANGE STANDOFF WEAPON AND SEA-LAUNCHED CRUISE MISSILE.**Deadline.  
Consultation.

Not later than 90 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Administrator for Nuclear Security, shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on potential opportunities—

(1) to increase commonality between the long-range stand-off weapon and the sea-launched cruise missile; and

(2) to leverage, in the development of the sea-launched cruise missile, technologies developed, or under development as of the date of the briefing, as part of the long-range standoff weapon program.

**SEC. 1670. EXTENSION OF PROHIBITION ON AVAILABILITY OF FUNDS FOR MOBILE VARIANT OF GROUND-BASED STRATEGIC DETERRENT MISSILE.**

Section 1664 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2615), as most recently amended by section 1666 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2155), is further amended by striking “for any of fiscal years 2017 through 2020” and inserting “for any of fiscal years 2017 through 2024”.

**SEC. 1671. REPORTS ON DEVELOPMENT OF GROUND-BASED STRATEGIC DETERRENT WEAPON.**

(a) ANNUAL REPORT REQUIRED.—Not later than February 15, 2020, and annually thereafter until the date on which the ground-based strategic deterrent weapon receives Milestone C approval (as defined in section 2366 of title 10, United States Code), the Secretary of the Air Force, in coordination with the Administrator for Nuclear Security and the Chairman of the Nuclear Weapons Council established by section 179 of title 10, United States Code, shall submit to the congressional defense committees a report describing the joint development of the ground-based strategic deterrent weapon, including the missile developed by the Air Force and the W87–1 warhead modification program conducted by the National Nuclear Security Administration.

Coordination.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) An estimate of the date on which the ground-based strategic deterrent weapon will reach initial operating capability.

Estimate.

(2) A description of any development milestones for the missile developed by the Air Force or the warhead developed by the National Nuclear Security Administration that depend on corresponding progress at the other agency.

(3) A description of coordination efforts between the Air Force and the National Nuclear Security Administration during the year preceding submission of the report.

(4) A description of any schedule delays projected by the Air Force or the National Nuclear Security Administration, including delays related to infrastructure capacity and sub-component production, associated costs, and the anticipated

effect such delays would have on the schedule of work of the other agency.

Plans.

(5) Plans to mitigate the effects of any delays described in paragraph (4).

Contracts.  
Assessment.

(c) **ADDITIONAL REPORT.**—If the Air Force receives only one bid for the engineering and manufacturing development phase of the ground-based strategic deterrent program, the Secretary shall, not later than 60 days after awarding a contract for that phase, submit to the congressional defense committees a report assessing the risks and costs resulting from receiving only one bid for that phase and plans to mitigate such risks and costs.

(d) **FORM.**—Each report required by subsection (a) or (c) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 1672. PROHIBITION ON REDUCTION OF THE INTERCONTINENTAL BALLISTIC MISSILES OF THE UNITED STATES.**

(a) **PROHIBITION.**—Except as provided in subsection (b), none of the funds authorized to be appropriated by this Act for fiscal year 2020 for the Department of Defense may be obligated or expended for the following, and the Department may not otherwise take any action to do the following:

(1) Reduce, or prepare to reduce, the responsiveness or alert level of the intercontinental ballistic missiles of the United States.

(2) Reduce, or prepare to reduce, the quantity of deployed intercontinental ballistic missiles of the United States to a number less than 400.

(b) **EXCEPTION.**—The prohibition in subsection (a) shall not apply to any of the following activities:

(1) The maintenance or sustainment of intercontinental ballistic missiles.

(2) Ensuring the safety, security, or reliability of intercontinental ballistic missiles.

Deadlines.

**SEC. 1673. INDEPENDENT STUDY ON POLICY OF NO-FIRST-USE OF NUCLEAR WEAPONS.**

Contracts.

(a) **STUDY.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into a contract with a federally funded research and development center to conduct a study on the United States adopting a policy to not use nuclear weapons first.

Assessments.

(b) **MATTERS INCLUDED.**—The study under subsection (a) shall include the following:

(1) An assessment of the benefits and risks of adopting a policy to not use nuclear weapons first to reduce the risk of miscalculation in a crisis.

(2) An assessment of the views of the allies of the United States with respect to the United States adopting such a policy, including whether, and if so how, any concerns regarding such a policy could be mitigated, including the value of engaging such allies to offer credible extended deterrence assurances.

(3) An assessment of which foreign countries have stated or adopted such a policy, including the credibility of any such policies and how they affect planning and operations.

(4) An assessment of how adversaries of the United States might view a declaration of such a policy.



(5) An assessment of the benefits and risks of such a policy with respect to nuclear nonproliferation.

(6) An assessment of changes in force posture and force requirements, if any, and costs or savings, that such a policy would require or allow.

(7) Any other matters the Secretary determines appropriate.

(c) SUBMISSION TO DOD.—Not later than 240 days after the date of the enactment of this Act, the federally funded research and development center shall submit to the Secretary the study under subsection (a).

(d) SUBMISSION TO CONGRESS.—

(1) INTERIM BRIEFING.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall provide to the appropriate congressional committees an interim briefing on the study under subsection (a).

(2) STUDY.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees the study under subsection (a), without change.

(e) FORM.—The study under subsection (a) shall be submitted under subsections (c) and (d)(2) in unclassified form, but may include a classified annex.

(f) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

- (1) the congressional defense committees; and
- (2) the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

**SEC. 1674. INDEPENDENT STUDY ON RISKS OF NUCLEAR TERRORISM AND NUCLEAR WAR.**

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall enter into an agreement with the National Academy of Sciences to conduct a study on—

Deadline.  
Contracts.

(1) whether a risk assessment framework is applicable to determining the potential risks of nuclear terrorism and nuclear war; and

Assessment.

(2) the implications for national security of assumptions in nuclear policy and doctrine.

(b) MATTERS INCLUDED.—The study under subsection (a) shall—

(1) identify risks described in paragraph (1) of that subsection;

(2) assess prior literature on such risks;

Assessment.

(3) assess the role that quantitative and nonquantitative analytical methods can play in assessing such risks, including the limitations of such analysis;

Assessment.

(4) identify and examine the assumptions about nuclear risks that underlie the national security strategy of the United States; and

Examination.

(5) describe the consequences of the methods and assumptions that have been, are, or could be used in developing the nuclear security strategy of the United States.

(c) RECOMMENDATIONS.—Based on findings under subsection (b), the study may provide recommendations with respect to

- improving the use of a risk assessment framework described in subsection (a)(1).
- Deadline. (d) **SUBMISSION.**—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees the study under subsection (a), without change.
- (e) **FORM.**—The study shall be submitted in unclassified form, but may include a classified annex.

**SEC. 1675. REPORT ON MILITARY-TO-MILITARY DIALOGUE TO REDUCE RISKS OF MISCALCULATION LEADING TO NUCLEAR WAR.**

- Coordination. Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report containing the following:

- (1) A description of—
- (A) current discussions between the United States Armed Forces and military counterparts from governments of foreign countries to reduce the risks of miscalculation, unintended consequences, or accidents that could precipitate the use of one or more nuclear weapons; and
- (B) bilateral and multilateral agreements to which the United States is a party that provide for or facilitate military-to-military dialogue to address such risks.
- (2) An assessment of the extent to which, if any, that military-to-military dialogue to reduce such risks is consistent with or supportive of other efforts conducted between the United States Government and foreign governments, or between nongovernmental organizations and foreign counterparts, to reduce such risks.
- Consultation. (3) An assessment conducted jointly by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, and in consultation with the Director of National Intelligence—
- (A) on the risks and benefits of establishing, in addition to the discussions described in paragraph (1)(A), military-to-military discussions with the Russian Federation, Iran, the People’s Republic of China, and North Korea to address the risks described in that paragraph, including with respect to policy, cost, and operational matters; and
- (B) of the willingness of the governments of those countries to engage in such discussions.

**SEC. 1676. REPORT ON NUCLEAR FORCES OF THE UNITED STATES AND NEAR-PEER COUNTRIES.**

- Coordination. (a) **REPORT.**—Not later than February 15, 2020, the Secretary of Defense, in coordination with the Director of National Intelligence, shall submit to the appropriate committees of Congress a report on the nuclear forces of the United States and near-peer countries.
- Assessments. (b) **ELEMENTS.**—The report under subsection (a) shall include the following:
- (1) An assessment of the current and planned nuclear systems of the United States, including with respect to research and development timelines, deployment timelines, and force size.

(2) An assessment of the current and planned nuclear systems of the People’s Republic of China, including with respect to research and development timelines, deployment timelines, and force size.

(3) An assessment of the current and planned nuclear systems of the Russian Federation, including with respect to research and development timelines, deployment timelines, and force size, including—

(A) deployed nuclear weapons not covered by the New START Treaty;

(B) nuclear weapons in development that would not be covered by the New START Treaty; and

(C) strategic nuclear weapons that are not deployed.

(c) FORM.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) NEW START TREATY.—The term “New START Treaty” means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed at Prague April 8, 2010, and entered into force February 5, 2011.

**SEC. 1677. REPORT ON OPERATION OF CONVENTIONAL FORCES OF MILITARY DEPARTMENTS UNDER EMPLOYMENT OR THREAT OF EMPLOYMENT OF NUCLEAR WEAPONS.**

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of the Air Force, the Secretary of the Army, and the Secretary of the Navy, shall submit to the congressional defense committees a report detailing the views of each such Secretary on the ability of conventional forces under the authority of that Secretary to operate effectively under employment or threat of employment of nuclear weapons by the United States, an ally of the United States, or an adversary of the United States, including with respect to—

Coordination.

(1) measures taken to maximize the likelihood that such forces could continue to operate;

(2) risks or gaps in the capabilities of such forces that would result from the employment or threat of employment of nuclear weapons; and

(3) how the capabilities and limitations of such forces would impact decisions to continue or terminate operations.

(b) FORM OF REPORT.—The report required by subsection (a) shall be submitted in classified form but shall be accompanied by an unclassified summary appropriate for release to the public.

**SEC. 1678. REPORT ON OPERATION OF CONVENTIONAL FORCES OF CERTAIN COMBATANT COMMANDS UNDER EMPLOYMENT OR THREAT OF EMPLOYMENT OF NUCLEAR WEAPONS.**

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Chairman of the Joint Chiefs of

Coordination.

Staff, in coordination with the Commander of the United States European Command, the Commander of the United States Indo-Pacific Command, and the Commander of the United States Strategic Command, shall submit to the congressional defense committees a report detailing the views of the Chairman and each such Commander on the ability of conventional forces under the authority of that Commander to execute contingency plans under employment or threat of employment of nuclear weapons by the United States, an ally of the United States, or an adversary of the United States, including with respect to—

(1) measures taken to maximize the likelihood that such forces could continue to operate;

(2) risks or gaps in the capabilities of such forces that would result from the employment or threat of employment of nuclear weapons; and

(3) how the capabilities and limitations of such forces would impact decisions to continue or terminate operations.

(b) FORM OF REPORT.—The report required by subsection (a) shall be submitted in classified form but shall be accompanied by an unclassified summary appropriate for release to the public.

Classified information. Summary. Public information.

**SEC. 1679. BRIEFINGS ON PLAN FOR FUTURE-SYSTEMS-LEVEL ARCHITECTURE OF NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS SYSTEMS.**

Deadline. Time periods. Coordination.

(a) IN GENERAL.—Not later than February 15, 2020, and every 180 days thereafter through fiscal year 2025, the Commander of the United States Strategic Command, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, shall provide to the congressional defense committees a briefing on the plan of the Department of Defense for the future-systems-level architecture of the nuclear command, control, and communications systems.

(b) ELEMENTS.—Each briefing required by subsection (a) shall address the following:

Plans. Determination.

(1) Near- and long-term plans and options considered as of the date of the briefing in determining the future-systems-level architecture of the nuclear command, control, and communications systems, including options to maximize resilience of such systems.

Requirements.

(2) Requirements, including with respect to cybersecurity, survivability, and reliability, including levels of redundancy.

(3) The risks and benefits of replicating the legacy architecture for such systems.

(4) The risks and benefits of using different architectures for such systems, including using hosted payloads in space payloads.

(5) Security considerations for such systems, including classification and requirements and plans to ensure supply chain security.

Timelines. Cost estimates.

(6) Classification options and decisions with respect to such architecture and systems to deter attacks on such systems.

(7) Timelines and general cost estimates for long-term investments in such systems, to the extent possible at the time of the briefing.

(8) Risks and benefits of pursuing agreements with adversaries of the United States, including potential agreements

not to target nuclear command, control, and communications systems through kinetic, nonkinetic, or cyber attacks.

(9) Required levels of civilian and military staffing within the United States Strategic Command, the Office of the Secretary of Defense, and any other relevant component of the Department of Defense to evaluate or execute such architecture, and an estimate of when such levels of staffing will be achieved.

Evaluation.  
Estimate.

(10) Any other matters the Secretary considers appropriate.

**SEC. 1680. SENSE OF CONGRESS ON NUCLEAR DETERRENCE COMMITMENTS OF THE UNITED STATES.**

It is the sense of Congress that—

(1) credible extended deterrence commitments make key contributions to the security of the United States, international stability, and the nonproliferation objectives of the United States;

(2) the nuclear forces of the United States, as well as the independent nuclear forces of other members of the North Atlantic Treaty Organization (in this section referred to as “NATO”), continue to play a critical role in the security of the NATO alliance;

(3) United States forward-deployed nuclear weapons and dual-capable aircraft in Europe contribute to the assurance of allies of the United States of the commitment of the United States to their security and to the deterrence and defense posture of NATO; and

(4) nuclear-certified F–35A aircraft will provide the most advanced nuclear fighter capability in the current and future anti-access area denial environments.

## Subtitle E—Missile Defense Programs

**SEC. 1681. NATIONAL MISSILE DEFENSE POLICY.**

(a) POLICY.—Subsection (a) of section 1681 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2431 note) is amended to read as follows:

“(a) POLICY.—It is the policy of the United States to—

“(1) maintain and improve, with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense—

“(A) an effective, layered missile defense system capable of defending the territory of the United States against the developing and increasingly complex missile threat posed by rogue states; and

“(B) an effective regional missile defense system capable of defending the allies, partners, and deployed forces of the United States against increasingly complex missile threats; and

“(2) rely on nuclear deterrence to address more sophisticated and larger quantity near-peer intercontinental missile threats to the homeland of the United States.”

(b) REDESIGNATION REQUIREMENT.—Not later than the date on which the President submits to Congress the annual budget request of the President for fiscal year 2021 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense

Deadline.  
10 USC 2431  
note.

shall, as the Secretary considers appropriate, redesignate all strategies, policies, programs, and systems under the jurisdiction of the Secretary to reflect that missile defense programs of the United States defend against ballistic, cruise, and hypersonic missiles in all phases of flight.

**SEC. 1682. DEVELOPMENT OF SPACE-BASED BALLISTIC MISSILE INTERCEPT LAYER.**

Section 1688 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2431 note) is amended—

- (1) by striking subsection (c); and
- (2) by redesignating subsection (d) as subsection (c).

**SEC. 1683. DEVELOPMENT OF HYPERSONIC AND BALLISTIC MISSILE TRACKING SPACE SENSOR PAYLOAD.**

(a) DEVELOPMENT.—Section 1683 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2431 note) is amended—

- (1) by redesignating subsections (d), (e), (f), (g), and (h), as subsections (e), (f), (g), (h), and (j), respectively; and
- (2) by inserting after subsection (c) the following new subsection (d):

“(d) HYPERSONIC AND BALLISTIC MISSILE TRACKING SPACE SENSOR PAYLOAD.—

Coordination.

“(1) DEVELOPMENT.—The Director of the Missile Defense Agency, in coordination with the Director of the Space Development Agency and the Secretary of the Air Force, as appropriate, shall—

“(A) develop a hypersonic and ballistic missile tracking space sensor payload; and

“(B) include such payload as a component of the sensor architecture developed under subsection (a).

Deadline.

“(2) ASSIGNMENT OF PRIMARY RESPONSIBILITY.—Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall—

“(A) assign the Director of the Missile Defense Agency with the principal responsibility for the development and deployment of a hypersonic and ballistic tracking space sensor payload; and

Certification.

“(B) submit to the congressional defense committees a certification of such assignment.”.

(b) UPDATED PLAN.—Such section is further amended by inserting after subsection (h), as redesignated by subsection (a), the following new subsection:

Deadline.

“(i) UPDATED PLAN.—Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall submit to the appropriate congressional committees an update to the plan under subsection (h), including with respect to the following:

“(1) How the Director of the Missile Defense Agency, the Director of the Defense Advanced Research Projects Agency, the Secretary of the Air Force, and the Director of the Space Development Agency, will each participate in the development of the sensor architecture under subsection (a) and the inclusion of the hypersonic and ballistic missile tracking space sensor

payload as a component of such architecture pursuant to subsection (d), with respect to both prototype and operational capabilities, including how each such official will work together to avoid duplication of efforts.

“(2) How such payload will address the requirement of the United States Strategic Command for a hypersonic and ballistic missile tracking space sensing capability.

“(3) The estimated costs (in accordance with subsection (e)) to develop, acquire, and deploy, and the lifecycle costs to operate and sustain, the payload under subsection (d) and include such payload in the sensor architecture developed under subsection (a).”

Cost estimates.

(c) CONFORMING AMENDMENT.—Subsection (h)(1) of such section, as redesignated by subsection (a), is amended by striking “with subsection (d)” and inserting “with subsection (e)”.

**SEC. 1684. MODIFICATIONS TO REQUIRED TESTING BY MISSILE DEFENSE AGENCY OF GROUND-BASED MIDCOURSE DEFENSE ELEMENT OF BALLISTIC MISSILE DEFENSE SYSTEM.**

Section 1689(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2631; 10 U.S.C. 2431 note) is amended—

(1) in the matter preceding paragraph (1), by striking “, when possible,”; and

(2) in paragraph (3), by inserting “, including the use of threat-representative countermeasures” before the period.

**SEC. 1685. IRON DOME SHORT-RANGE ROCKET DEFENSE SYSTEM AND ISRAELI COOPERATIVE MISSILE DEFENSE PROGRAM CO-DEVELOPMENT AND CO-PRODUCTION.**

(a) IRON DOME SHORT-RANGE ROCKET DEFENSE SYSTEM.—

(1) AVAILABILITY OF FUNDS.—Of the funds authorized to be appropriated by this Act for fiscal year 2020 for procurement, Defense-wide, and available for the Missile Defense Agency, not more than \$95,000,000 may be provided to the Government of Israel to procure components for the Iron Dome short-range rocket defense system through co-production of such components in the United States by industry of the United States.

(2) CONDITIONS.—

(A) AGREEMENT.—Funds described in paragraph (1) for the Iron Dome short-range rocket defense program shall be available subject to the terms and conditions in the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the State of Israel Concerning Iron Dome Defense System Procurement, signed on March 5, 2014, as amended to include co-production for Tamir interceptors.

(B) CERTIFICATION.—Not later than 30 days prior to the initial obligation of funds described in paragraph (1), the Director of the Missile Defense Agency and the Under Secretary of Defense for Acquisition and Sustainment shall jointly submit to the appropriate congressional committees—

Deadline.

(i) a certification that the amended bilateral international agreement specified in subparagraph (A) is being implemented as provided in such agreement; and

Assessment.

(ii) an assessment detailing any risks relating to the implementation of such agreement.

(b) ISRAELI COOPERATIVE MISSILE DEFENSE PROGRAM, DAVID'S SLING WEAPON SYSTEM CO-PRODUCTION.—

(1) IN GENERAL.—Subject to paragraph (3), of the funds authorized to be appropriated for fiscal year 2020 for procurement, Defense-wide, and available for the Missile Defense Agency not more than \$50,000,000 may be provided to the Government of Israel to procure the David's Sling Weapon System, including for co-production of parts and components in the United States by United States industry.

(2) AGREEMENT.—Provision of funds specified in paragraph (1) shall be subject to the terms and conditions in the bilateral co-production agreement, including—

(A) a one-for-one cash match is made by Israel or in another matching amount that otherwise meets best efforts (as mutually agreed to by the United States and Israel); and

(B) co-production of parts, components, and all-up rounds (if appropriate) in the United States by United States industry for the David's Sling Weapon System is not less than 50 percent.

(3) CERTIFICATION AND ASSESSMENT.—The Under Secretary of Defense for Acquisition and Sustainment shall submit to the appropriate congressional committees—

(A) a certification that the Government of Israel has demonstrated the successful completion of the knowledge points, technical milestones, and production readiness reviews required by the research, development, and technology agreement and the bilateral co-production agreement for the David's Sling Weapon System; and

(B) an assessment detailing any risks relating to the implementation of such agreement.

(c) ISRAELI COOPERATIVE MISSILE DEFENSE PROGRAM, ARROW 3 UPPER TIER INTERCEPTOR PROGRAM CO-PRODUCTION.—

(1) IN GENERAL.—Subject to paragraph (2), of the funds authorized to be appropriated for fiscal year 2020 for procurement, Defense-wide, and available for the Missile Defense Agency not more than \$55,000,000 may be provided to the Government of Israel for the Arrow 3 Upper Tier Interceptor Program, including for co-production of parts and components in the United States by United States industry.

(2) CERTIFICATION.—The Under Secretary of Defense for Acquisition and Sustainment shall submit to the appropriate congressional committees a certification that—

(A) the Government of Israel has demonstrated the successful completion of the knowledge points, technical milestones, and production readiness reviews required by the research, development, and technology agreement for the Arrow 3 Upper Tier Interceptor Program;

(B) funds specified in paragraph (1) will be provided on the basis of a one-for-one cash match made by Israel or in another matching amount that otherwise meets best efforts (as mutually agreed to by the United States and Israel);



(C) the United States has entered into a bilateral international agreement with Israel that establishes, with respect to the use of such funds—

(i) in accordance with subparagraph (D), the terms of co-production of parts and components on the basis of the greatest practicable co-production of parts, components, and all-up rounds (if appropriate) by United States industry and minimizes nonrecurring engineering and facilitization expenses to the costs needed for co-production;

(ii) complete transparency on the requirement of Israel for the number of interceptors and batteries that will be procured, including with respect to the procurement plans, acquisition strategy, and funding profiles of Israel;

(iii) technical milestones for co-production of parts and components and procurement;

(iv) a joint affordability working group to consider cost reduction initiatives; and

(v) joint approval processes for third-party sales; and

(D) the level of co-production described in subparagraph (C)(i) for the Arrow 3 Upper Tier Interceptor Program is not less than 50 percent.

(d) **NUMBER.**—In carrying out paragraph (2) of subsection (b) and paragraph (2) of subsection (c), the Under Secretary may submit—

Certifications.

(1) one certification covering both the David’s Sling Weapon System and the Arrow 3 Upper Tier Interceptor Program; or

(2) separate certifications for each respective system.

(e) **TIMING.**—The Under Secretary shall submit to the congressional defense committees the certification and assessment under subsection (b)(3) and the certification under subsection (c)(2) by not later than 30 days before the funds specified in paragraph (1) of subsections (b) and (c) for the respective system covered by the certification are provided to the Government of Israel.

Deadline.

(f) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional defense committees.

(2) The Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1686. LIMITATION ON AVAILABILITY OF FUNDS FOR LOWER TIER AIR AND MISSILE DEFENSE SENSOR.**

(a) **LIMITATION.**—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Army for the lower tier air and missile defense sensor, not more than 75 percent may be obligated or expended until the Secretary of the Army submits the report under subsection (b).

(b) **REPORT.**—The Secretary of the Army shall submit to the congressional defense committees a report on the test and demonstration of lower tier air and missile defense sensors that occurred during the third quarter of fiscal year 2019. Such report shall include the following:

Time period.

(1) An explanation of how the test and demonstration was conducted and what the test and demonstration set out to achieve, including—

(A) an explanation of the performance specifications used; and

(B) a description of the emulated threats used in the test and demonstration and how such threats compare to emerging regional air and missile threats.

(2) An explanation of the capability of the sensor system that the Secretary determined to be the winner of the test and demonstration, including with respect to—

(A) the capability of such sensor system against key threats and requirements, including whether such sensor system will be delivered with full 360-degree coverage and the ability of such sensor system to detect, track, and surveil targets;

(B) the estimated procurement and life-cycle costs of operating such sensor system; and

(C) the cost, timeline, and approach that will be used to integrate the lower tier air and missile defense sensor with other sensors using the Integrated Air and Missile Defense Battle Command System.

(3) An explanation of whether future performance improvements to the lower tier air and missile defense sensor are conditional on intellectual property and how such improvements will be made if the United States does not own such intellectual property.

Alaska.

**SEC. 1687. PLAN FOR THE REDESIGNED KILL VEHICLE REPLACEMENT.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the decision by the Department of Defense to terminate the redesigned kill vehicle contract on August 22, 2019, due to technological problems encountered during development will result in a delay to the fielding of an additional 20 ground-based interceptors at Fort Greely, Alaska, which had been planned to be emplaced by the end of calendar year 2023;

(2) to ensure that the future next-generation improved homeland defense interceptor program will deliver the required capability, have rigorous technical and acquisition oversight, and maintain schedule milestones, thereby mitigating the risk of similar issues as experienced with the redesigned kill vehicle, the acquisition strategy for such program should be reviewed and jointly approved by both the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment, with input by stakeholders across the Department of Defense prior to proceeding with development efforts and awarding a contract; and

(3) the Department, including the Missile Defense Agency, should uphold “fly before you buy” principles in such new acquisition strategy to ensure the overall system and components have been rigorously flight-tested prior to making procurement decisions.

(b) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Missile Defense Agency for the next-generation improved homeland defense interceptor, not more than 50 percent may be obligated

or expended until the date on which the Secretary of Defense submits the report under subsection (c).

(c) REPORT.—The Secretary of Defense shall submit to the congressional defense committees a report on the next-generation improved homeland defense interceptor program to replace the redesigned kill vehicle. The report shall include the following:

- (1) Updated threat assessments by the intelligence community informing system threshold and objective requirements. Assessments.
- (2) Updated requirements to address current and emerging threats. Requirements.
- (3) Technical, programmatic, and cost analyses conducted on courses of action and alternatives to meet capability requirements, including—
  - (A) an independent cost estimate for each course of action considered; and Cost estimate.
  - (B) an evaluation of the technical readiness level of the overall system and the components for each course of action considered. Evaluation.
- (4) Options considered to address reliability efforts of the current fleet, understanding known deficiencies, and the impact of not addressing such efforts and deficiencies until the delivery of the next-generation improved homeland defense interceptors.
- (5) An obsolescence, refurbishment, and sustainment plan for all ground-based interceptor silos, including any impacts to the construction, delivery, and sustainment of missile field 4 located at Fort Greely, Alaska, taking into account the delay to emplacing additional interceptors. Plan.
- (6) Possible opportunities as a result of the impacts described in paragraph (4) for improvements to missile fields located at Fort Greely other than missile field 4, including additional infrastructure or components required, and estimated schedules and costs for such opportunities.
- (7) A determination of the appropriate fleet mix of ground-based interceptor kill vehicles and boosters to maximize overall system effectiveness and increase capacity and capability, including the costs and benefits of continued inclusion of capability enhancement II block 1 interceptors after the fielding of the next-generation improved homeland defense interceptor. Determination.

**SEC. 1688. ORGANIZATION, AUTHORITIES, AND BILLETS OF THE MISSILE DEFENSE AGENCY.**

(a) INDEPENDENT STUDY.—

(1) ASSESSMENT.—In accordance with paragraph (2), the Secretary of Defense shall seek to enter into a contract with a federally funded research and development center to conduct a study assessing—

(A) the organization of the Missile Defense Agency under the Under Secretary of Defense for Research and Engineering pursuant to section 205(b) of title 10, United States Code;

(B) alternative ways to organize the Agency under other officials of the Department of Defense, including the Under Secretary for Acquisition and Sustainment and any other official of the Department the federally funded research and development center determines appropriate; and

- (C) transitioning the Agency to the standard acquisition process pursuant to Department of Defense Instruction 5000, including both the risks and benefits of making such a transition.
- Update. (2) SCOPE OF STUDY.—Before entering into the contract with a federally funded research and development center to conduct the study under paragraph (1), the Secretary shall provide to the congressional defense committees an update on the scope of such study.
- Deadline. (3) SUBMISSION TO DOD.—Not later than 180 days after the date of the enactment of this Act, the federally funded research and development center shall submit to the Secretary the study conducted under paragraph (1).
- Deadline. (4) SUBMISSION TO CONGRESS.—Not later than 30 days after the date on which the federally funded research and development center submits to the Secretary the study under paragraph (1), the Secretary shall submit to the congressional defense committees the study, without change.
- (b) NOTIFICATION ON CHANGES TO NON-STANDARD ACQUISITION PROCESSES AND RESPONSIBILITIES.—
- (1) REQUIREMENTS.—The Secretary may not make any changes to the missile defense non-standard acquisition processes and responsibilities described in paragraph (2) until the Secretary, without delegation—
- Consultation. (A) has consulted with the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Policy, the secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, the Commander of United States Strategic Command, the Commander of United States Northern Command, and the Director of the Missile Defense Agency;
- Certification. (B) certifies to the congressional defense committees that the Secretary has coordinated the changes with and received the views of the individuals referred to in subparagraph (A);
- Reports. (C) submits to the congressional defense committees a report describing the changes, the rationale for the changes, and the views of the individuals referred to in subparagraph (A) with respect to such changes; and
- Time period. (D) a period of 120 days has elapsed following the date on which the Secretary submits such report.
- (2) NON-STANDARD ACQUISITION PROCESSES AND RESPONSIBILITIES DESCRIBED.—The non-standard acquisition processes and responsibilities described in this paragraph are such processes and responsibilities described in—
- (A) the memorandum of the Secretary of Defense titled “Missile Defense Program Direction” signed on January 2, 2002;
- (B) Department of Defense Directive 5134.09, as in effect on the date of the enactment of this Act; and
- (C) United States Strategic Command Instruction 583–3.
- (c) LIMITATION ON CERTAIN TRANSFERS OF BILLETS.—During fiscal year 2020, the Secretary of Defense may not transfer civilian or military billets from the Missile Defense Agency to any element

of the Department under the Under Secretary of Defense for Research and Engineering until, for each such transfer—

- (1) the Secretary notifies the congressional defense committees of such proposed transfer; and Notification.
- (2) a period of 90 days has elapsed following the date of such notification. Time period.

**SEC. 1689. ANNUAL ASSESSMENT OF BALLISTIC MISSILE DEFENSE SYSTEM.** 10 USC 139 note.

(a) ANNUAL ASSESSMENT.—As part of the annual report of the Director of Operational Test and Evaluation submitted to Congress under section 139 of title 10, United States Code, the Director shall include an assessment of the ballistic missile defense system and all of the elements of the system that have been fielded or are planned, as of the date of the assessment, including—

- (1) the operational effectiveness, suitability, and survivability of the ballistic missile defense system and the elements of the system that have been fielded or tested; and
- (2) the adequacy and sufficiency of the test program of such system as of the date of the assessment, including with respect to the operational realism of the tests.

(b) FORM.—Each assessment under subsection (a) may be submitted in unclassified form, and may include a classified annex.

**SEC. 1690. COMMAND AND CONTROL, BATTLE MANAGEMENT, AND COMMUNICATIONS PROGRAM.**

(a) LIMITATION ON SALE.—The Director of the Missile Defense Agency may not release the command and control, battle management, and communications program for export until the date on which the Director submits the report under subsection (b).

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director shall submit to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report containing the following:

- (1) An explanation of the rationale of the Director for considering to export the command and control, battle management, and communications program (or any variants thereof) in light of the critical role of the program in the strategic national defense of the United States and the allies of the United States against ballistic missile attack.
- (2) The findings of the market research and analysis conducted by the Director regarding exportable command and control solutions for ballistic missile defense, including such solutions that are internationally available.

**SEC. 1691. MISSILE DEFENSE INTERCEPTOR SITE IN CONTIGUOUS UNITED STATES.**

(a) REPORT.—Not later than January 31, 2020, the Secretary of Defense shall submit to the congressional defense committees a report on the designation made on June 26, 2019, of a preferred potential future missile field site in the contiguous United States from the sites evaluated pursuant to section 227 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1678). The report shall address the following:

- (1) The environmental impact statement prepared pursuant to such section 227.

(2) The strategic and operational effectiveness of the site, including with respect to the location that is the most advantageous site in providing coverage to the entire contiguous United States, including having the capability to provide shoot-assess-shoot coverage to the entire contiguous United States.

(3) Construction remediation efforts and impacts to the existing environment at the site.

(4) The existing infrastructure at the site.

(5) The costs to construct, equip, and operate the site.

(b) FORM.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed—

(1) as requiring the Secretary of Defense to begin a military construction project relating to the missile defense site in the contiguous United States; or

(2) as a statement that there is any current military requirement for such a site.

(d) CONFORMING REPEAL.—Section 1681 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1776) is repealed.

**SEC. 1692. INDEPENDENT STUDY ON IMPACTS OF MISSILE DEFENSE DEVELOPMENT AND DEPLOYMENT.**

Deadline.  
Contracts.

(a) STUDY.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center to conduct a study on the impacts of the development and deployment of homeland missile defenses of the United States on the security of the United States as a whole.

(b) MATTERS INCLUDED.—The study under subsection (a) shall—

(1) consider whether security benefits obtained by the deployment of homeland missile defenses of the United States are undermined or counterbalanced by adverse reactions of potential adversaries, including both rogue states and near-peer adversaries; and

(2) consider the effectiveness of the homeland missile defense efforts of the United States to deter the development of ballistic missiles, in particular by both rogue states and near-peer adversaries.

(c) SUBMISSION.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees the study under subsection (a), without change.

(d) FORM.—The study shall be submitted under subsection (c) in unclassified form, but may include a classified annex.

**SEC. 1693. REPORT AND BRIEFING ON MULTI-VOLUME KILL CAPABILITY.**

Coordination.

Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense for Research and Engineering, in coordination with the Director of the Missile Defense Agency, the Under Secretary of Defense for Acquisition and Sustainment, and the Director of Cost Assessment and Program Evaluation, shall submit to the congressional defense committees a report, and shall provide to such committees a briefing, on an assessment of potential roles for a multi-volume kill capability

in a future architecture of the ballistic missile defense system. Such report and briefing shall include the following:

Assessments.

(1) An assessment of the current technology readiness level of necessary components and the technology readiness levels needed for an operational system.

(2) An assessment of the costs and a comprehensive development and testing schedule to deploy a multi-volume kill capability.

(3) A concept of operations with respect to how a multi-volume kill capability could be employed and how such a capability compares to single-kill ground-based midcourse defense system interceptors.

## Subtitle F—Other Matters

### SEC. 1694. EXTENSION OF AUTHORIZATION FOR PROTECTION OF CERTAIN FACILITIES AND ASSETS FROM UNMANNED AIRCRAFT.

(a) IN GENERAL.—Subsection (i) of section 130i of title 10, United States Code, is amended by striking “2020” both places it appears and inserting “2023”.

(b) TECHNICAL CORRECTIONS.—Such section is amended—

(1) in subsection (i)(1), as amended by subsection (a), by striking “of subsection (j)(3)” and inserting “of subsection (j)(3)(C)”; and

(2) in subsection (j)(6), by striking “in” and all that follows through the period at the end and inserting “in section 44801 of title 49”.

### SEC. 1695. REPEAL OF REQUIREMENT FOR COMMISSION ON ELECTROMAGNETIC PULSE ATTACKS AND SIMILAR EVENTS.

Section 1691 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1786) is repealed.

### SEC. 1696. REPEAL OF REVIEW REQUIREMENT FOR AMMONIUM PERCHLORATE REPORT.

Section 1694 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1792) is amended by striking subsection (d).

### SEC. 1697. TRANSFERABILITY OF CONVENTIONAL PROMPT GLOBAL STRIKE WEAPON SYSTEM TECHNOLOGIES TO SURFACE-LAUNCHED PLATFORMS.

(a) SURFACE-LAUNCHED TECHNOLOGIES.—The Secretary of the Navy shall ensure that the technologies developed for the conventional prompt global strike weapon system are transferrable to a surface-launched platform.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to the congressional defense committees a report on the programmatic changes required to integrate the conventional prompt global strike weapon system into current or future surface combatant ships.

**SEC. 1698. PROHIBITION ON AVAILABILITY OF FUNDS FOR CERTAIN OFFENSIVE GROUND-LAUNCHED BALLISTIC OR CRUISE MISSILE SYSTEMS.**

(a) **PROHIBITION.**—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense may be obligated or expended for the procurement or deployment of an offensive ground-launched ballistic or cruise missile system with a range between 500 and 5,500 kilometers.

Briefing.  
Evaluations.

(b) **REPORT.**—Not later than January 31, 2020, the Secretary of Defense shall submit to the congressional defense committees a report, and provide a briefing, that includes the following:

(1) An evaluation of the capabilities required to execute contingency plans in the areas of responsibility of the United States European Command and the United States Indo-Pacific Command using offensive ground-launched missile systems of ranges in excess of 500 kilometers.

(2) An evaluation of what types of systems (including the range and flight profile of such systems), if any, could be used to meet the required capabilities identified under paragraph (1).

Analysis.

(3) The results of an analysis of alternatives conducted by the Chairman of the Joint Chiefs of Staff and the Director of Cost Assessment and Program Evaluation that considers—

(A) conventional missile systems, including ground-, sea-, and air-launched missiles, that could be deployed to meet the required capabilities identified under paragraph (1);

(B) the cost, schedule, and feasibility of tailored acquisition strategies for each such system considered;

(C) simulations and games that were performed to inform the analysis of alternatives;

(D) benefits and risks of such different types of systems, including operational considerations in contested environments; and

(E) any other operational or programmatic considerations determined relevant by the Chairman or the Director.

(4) Options for basing any such missile system in, or deploying any such missile system to, Europe or the Indo-Pacific region, including any agreements required for such options and potential timelines to implement such options.

List.

(5) A list of any governments of a foreign country consulted about such possible deployments, and a summary of the reaction of each such government.

(6) A discussion of whether deploying such missile systems on the territory of a NATO ally would require a consensus decision by NATO.

(c) **FORM.**—The report under subsection (b) shall be submitted in unclassified form, but may contain a classified annex.

**SEC. 1699. HARD AND DEEPLY BURIED TARGETS.**

Deadline.  
Consultation.  
Classified  
information.

(a) **BRIEFING REQUIRED.**—

(1) **IN GENERAL.**—Not later than December 1, 2019, the Chairman of the Joint Chiefs of Staff shall, in consultation with the Commander of the United States Strategic Command,



provide to the congressional defense committees a classified briefing on hard and deeply buried targets.

(2) ELEMENTS.—The briefing required by paragraph (1) shall include the following: Assessments.

(A) An estimate of the total number of high-value hard and deeply buried targets associated with United States military operations plans. Estimate.

(B) A description of the contents, functions, and hardening characteristics of the targets described in subparagraph (A), as well as their level of protection by anti-access and area denial capabilities.

(C) An assessment of the current ability of, and requirement, cost, and implications for deterrence and strategic stability for, the United States to hold such targets at risk using existing conventional and nuclear capabilities.

(D) An assessment of the potential ability of, and requirement, cost, and implications for deterrence and strategic stability for, the United States to hold such targets at risk using projected conventional and nuclear capabilities as of 2030.

(b) PLAN REQUIRED.—Not later than February 15, 2020, the Secretary of Defense shall develop a plan detailing the requirement, cost, and implications for deterrence and strategic stability for the United States to possess by 2025 the capabilities to pose a credible threat against targets described in the briefing required by subsection (a). Deadlines.

## TITLE XVII—REPORTS AND OTHER MATTERS

### Subtitle A—Studies and Reports

- Sec. 1701. Modification of annual reporting requirements on defense manpower.
- Sec. 1702. Termination of requirement for submittal to Congress of certain recurring reports.
- Sec. 1703. Modification of annual report on civilian casualties in connection with United States military operations.
- Sec. 1704. Extension of requirement for briefings on the national biodefense strategy.
- Sec. 1705. Authorization of appropriations for title III of the Defense Production Act of 1950.
- Sec. 1706. Report on the Department of Defense plan for mass-casualty disaster response operations in the Arctic.
- Sec. 1707. Transmittal to Congress of requests for assistance from other departments of the Federal Government that are approved by the Department of Defense.
- Sec. 1708. Report and briefing on implementation of national defense strategy.
- Sec. 1709. Actions to increase analytic support.
- Sec. 1710. Inclusion of certain individuals investigated by Inspectors General in the semiannual report.
- Sec. 1711. Annual report on Joint Military Information Support Operations Web Operations Center.
- Sec. 1712. Mobility capability requirements study.
- Sec. 1713. Assessment of special operations force structure.
- Sec. 1714. Army aviation strategic plan and modernization roadmap.
- Sec. 1715. Report on ground-based long-range artillery to counter land and maritime threats.
- Sec. 1716. Independent review of transportation working-capital fund.
- Sec. 1717. Geographic command risk assessment of proposed use of certain aircraft capabilities.
- Sec. 1718. Report on backlog of personnel security clearance adjudications.
- Sec. 1719. Report regarding outstanding Government Accountability Office recommendations.

- Sec. 1720. Report on National Guard and United States Northern Command capacity to meet homeland defense and security incidents.
- Sec. 1721. Assessment of standards, processes, procedures, and policy relating to civilian casualties.
- Sec. 1722. Report on transfers of equipment to prohibited entities.
- Sec. 1723. Annual report on strikes undertaken by the United States against terrorist targets outside areas of active hostilities.
- Sec. 1724. Review and assessment of mitigation of military helicopter noise.

#### Subtitle B—Other Matters

- Sec. 1731. Technical, conforming, and clerical amendments.
- Sec. 1732. Establishment of lead Inspector General for an overseas contingency operation based on Secretary of Defense notification.
- Sec. 1733. Clarification of authority of Inspectors General for overseas contingency operations.
- Sec. 1734. Employment status of annuitants for Inspectors General for overseas contingency operations.
- Sec. 1735. Extension of National Security Commission on Artificial Intelligence.
- Sec. 1736. Exemption from calculation of monthly income, for purposes of bankruptcy laws, of certain payments from the Department of Veterans Affairs and the Department of Defense.
- Sec. 1737. Extension of postage stamp for breast cancer research.
- Sec. 1738. National Commission on Military Aviation Safety.
- Sec. 1739. Guarantee of residency for spouses of members of the uniformed services.
- Sec. 1740. Electromagnetic pulses and geomagnetic disturbances.
- Sec. 1741. Improvements to Manufacturing USA Program.
- Sec. 1742. Regional innovation program.
- Sec. 1743. Aviation workforce development.
- Sec. 1744. Oversight of Department of Defense execute orders.
- Sec. 1745. Processes and procedures for notifications regarding special operations forces.
- Sec. 1746. Securing American science and technology.
- Sec. 1747. Standardized policy guidance for calculating aircraft operation and sustainment costs.
- Sec. 1748. Special Federal Aviation Regulation Working Group.
- Sec. 1749. Prohibition on names related to the Confederacy.
- Sec. 1750. Support for National Maritime Heritage Grants program.
- Sec. 1751. Support for world language advancement and readiness.
- Sec. 1752. Designation of Department of Defense strategic Arctic ports.
- Sec. 1753. Independent studies regarding potential cost savings with respect to the nuclear security enterprise and force structure .
- Sec. 1754. Comprehensive Department of Defense policy on collective self-defense.
- Sec. 1755. Policy regarding the transition of data and applications to the cloud.
- Sec. 1756. Integrated public alert and warning system.
- Sec. 1757. Improving quality of information in background investigation request packages.
- Sec. 1758. Parole in place for members of the Armed Forces and certain military dependents.
- Sec. 1759. Report on reducing the backlog in legally required historical declassification obligations of the Department of Defense.
- Sec. 1760. Military type certification for light attack experimentation aircraft.

## Subtitle A—Studies and Reports

### SEC. 1701. MODIFICATION OF ANNUAL REPORTING REQUIREMENTS ON DEFENSE MANPOWER.

(a) CONVERSION OF ANNUAL REQUIREMENTS REPORT INTO ANNUAL PROFILE REPORT.—Section 115a of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking the first two sentences and inserting the following new sentence: “Not later than April 1 each year, the Secretary of Defense shall submit to Congress a defense manpower profile report.”;

(B) in paragraph (1), by adding “and” at the end;

(C) in paragraph (2), by striking “; and” and inserting a period; and

(D) by striking paragraph (3);

(2) in subsection (b)—

(A) by striking “(1)”; and

(B) by striking paragraphs (2) and (3); and

(3) in subsection (c), by striking “the following:” and all that follows and inserting “the manpower required for support and overhead functions within the armed forces and the Department of Defense.”

(b) CONVERSION OF CERTAIN CURRENT REPORT ELEMENTS INTO SEPARATE, MODIFIED REPORTS.—Such section is further amended—

(1) in subsection (d), by striking “The Secretary shall also include in each such report” and inserting “Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth”; and

(2) in subsection (e)(1), by striking “In each such report, the Secretary shall also include” and inserting “Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth”; and

(3) in subsection (f)—

(A) in the matter preceding paragraph (1), by striking “The Secretary shall also include in each such report” and inserting “Not later than June 1 each year, the Secretary shall submit to Congress a report that sets forth”; and

(B) in paragraph (1), by striking “and estimates of such numbers for the current fiscal year and subsequent fiscal years”;

(4) in subsection (g)—

(A) in the matter preceding paragraph (1), by striking “In each report submitted under subsection (a), the Secretary shall also include a detailed discussion” and inserting “Not later than September 1 each year, the Secretary shall submit to Congress a report that sets forth a detailed discussion, current as of the preceding fiscal year,”; and

(B) by striking “the year” each place it appears and inserting “the fiscal year”; and

(5) in subsection (h), by striking “In each such report, the Secretary shall include a separate report” and inserting “Not later than April 1 each year, the Secretary shall submit to Congress a report”.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of such section is amended to read as follows:

**“§ 115a. Annual defense manpower profile report and related reports”.**

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by striking the item relating to section 115a and inserting the following new item:

“115a. Annual defense manpower profile report and related reports.”

**SEC. 1702. TERMINATION OF REQUIREMENT FOR SUBMITTAL TO CONGRESS OF CERTAIN RECURRING REPORTS.**

Effective date.  
10 USC 111 note. (a) **TERMINATION.**—Effective on December 30, 2021, each report described in subsection (b) that is still required to be submitted to Congress as of such effective date shall no longer be required to be submitted to Congress.

10 USC 111 note. (b) **COVERED REPORTS.**—A report described in this subsection is any of the following:

(1) The report required by section 1696(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232).

(2) The report required by section 1071(b)(1) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91).

(3) The report required by section 1788a(d) of title 10, United States Code, as added by section 555 of such Act.

(4) The report required under section 709(g) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1071 note).

(5) The report required by section 1292(a)(2) of such Act (22 U.S.C. 2751 note).

(6) The quarterly report required by section 1236(c) of such Act.

(7) The annual certification required by section 1666 of such Act (10 U.S.C. 2431 note).

(8) The updates required under paragraph (3) of subsection (a) of section 1694 of such Act to the report required under paragraph (1) of such subsection.

(9) The notifications required by section 1695 of such Act.

(10) The report required under section 522(g) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92).

(c) **CONFORMING REPEAL.**—

(1) **IN GENERAL.**—Section 1788a of title 10, United States Code, is amended by striking subsection (d).

10 USC 1788a  
note. (2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect on December 30, 2021.

10 USC 111 note. (d) **REQUIREMENT FOR PREPARATION OF CERTAIN REPORTS TO CONGRESS BY CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT AND MEMBERS OF THE ARMED FORCES.**—

(1) **REQUIREMENT.**—Except as expressly otherwise provided in the provision of law requiring such report, any report submitted to Congress pursuant to a provision of a national defense authorization Act that is enacted on or after the date that is three years after the date of the enactment of this Act shall be written by civilian employees of the Federal Government, members of the Armed Forces, or both, and not by contractor employees of the Federal Government.

Deadline. (2) **BRIEFING.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall brief the Committees on Armed Services of the Senate and the House of Representatives on the actions to be taken to ensure compliance with the requirement in paragraph (1), including on any impediments to compliance with the requirement.

**SEC. 1703. MODIFICATION OF ANNUAL REPORT ON CIVILIAN CASUALTIES IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS.**

(a) **IN GENERAL.**—Section 1057 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91), as amended by section 1062 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (5) and (6) as paragraphs (8) and (9), respectively; and

(B) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

“(3) A description of the process by which the Department of Defense investigates allegations of civilian casualties resulting from United States military operations, including how the Department incorporates information from interviews with witnesses, civilian survivors of United States operations, and public reports or other nongovernmental sources.

“(4) A description of—

“(A) steps taken by the Department to mitigate harm to civilians in conducting such operations; and

“(B) in the case of harm caused by such an operation to a civilian, any ex gratia payment or other assistance provided to the civilian or the family of the civilian.

“(5) A description of any allegations of civilian casualties made by public or non-governmental sources formally investigated by the Department of Defense.

“(6) A description of the general reasons for any discrepancies between the assessments of the United States and reporting from nongovernmental organizations regarding non-combatant deaths resulting from strikes and operations undertaken by the United States.

“(7) The definitions of ‘combatant’ and ‘non-combatant’ used in the preparation of the report, which shall be consistent with the laws of armed conflict.”; and

(2) in subsection (e), by striking “five years” and inserting “seven years”.

(b) **CLASSIFICATION.**—The Law Revision Counsel is directed to place such section 1057 in a note following section 113 of title 10, United States Code.

**SEC. 1704. EXTENSION OF REQUIREMENT FOR BRIEFINGS ON THE NATIONAL BIODEFENSE STRATEGY.**

Section 1086(d) of the National Defense Authorization Act for Fiscal year 2017 (Public Law 114–328; 130 Stat. 2423; 6 U.S.C. 104(d)) is amended by striking “March 1, 2019” and inserting “March 1, 2025”.

**SEC. 1705. AUTHORIZATION OF APPROPRIATIONS FOR TITLE III OF THE DEFENSE PRODUCTION ACT OF 1950.**

(a) **IN GENERAL.**—Section 711 of the Defense Production Act of 1950 (50 U.S.C. 4561) is amended by adding at the end the following: “In addition to the appropriations authorized by the previous sentence, there is authorized to be appropriated \$117,000,000 for each of fiscal years 2020 through 2024 to carry out title III.”.

Deadline.  
Time period.

(b) **ANNUAL BRIEFING REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, and annually thereafter for five years, the Secretary of Defense, or the designee of the Secretary, shall brief the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on activities undertaken in the preceding year with respect to title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.).

**SEC. 1706. REPORT ON THE DEPARTMENT OF DEFENSE PLAN FOR MASS-CASUALTY DISASTER RESPONSE OPERATIONS IN THE ARCTIC.**

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the Department of Defense may be called upon to support the Coast Guard and other agencies of the Department of Homeland Security in responding to any mass-casualty disaster response operations in the Arctic;

(2) coordination between the Department of Defense and the Coast Guard might be necessary for responding to a mass-casualty event in the Arctic; and

(3) prior planning for Arctic mass-casualty disaster response operations will bolster the response of the Federal Government to a mass-casualty disaster in the Arctic environment.

Coordination.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in coordination with the Secretary of Homeland Security, submit to the appropriate committees of Congress a report on the plan of the Department of Defense for assisting mass-casualty disaster response operations in the Arctic.

(c) **ELEMENTS.**—The report required by subsection (b) shall include the following:

(1) A description of the assets that could be made available to support other agencies and departments of the Federal Government for mass-casualty disaster response operations in the Arctic.

Assessment.

(2) A description and assessment of the command, control, and coordination relationships that would be useful to integrate rescue forces for such operations from multiple agencies and departments of the Federal Government.

Assessment.

(3) A description and assessment of the communications assets that could be made available in support of other agencies and departments of the Federal Government for communication and coordination in such operations.

(4) A description of any cooperative arrangements with Canada and other regional partners in providing rescue assets and infrastructure in connection with such operations.

(5) A description of available medical infrastructure and assets that could be made available in support of other agencies and departments of the Federal Government for aeromedical evacuation in connection with such operations.

(6) A description of available shelter locations that could be made available in support of other agencies and departments of the Federal Government for use in connection with such operations, including the number of people that can be sheltered per location.

(7) An assessment of logistical challenges that evacuations from the Arctic in connection with such operations entail, including potential rotary and fixed-wing aircraft trans-load locations and onward movement requirements.

Assessment.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on Homeland Security, and the Committee on Appropriations of the House of Representatives.

**SEC. 1707. TRANSMITTAL TO CONGRESS OF REQUESTS FOR ASSISTANCE FROM OTHER DEPARTMENTS OF THE FEDERAL GOVERNMENT THAT ARE APPROVED BY THE DEPARTMENT OF DEFENSE.**

10 USC 113 note.

(a) REQUESTS FOLLOWING APPROVAL.—Not later than seven calendar days after the Department of Defense approves a Request for Assistance from the Department of Homeland Security or the Department of Health and Human Services, the Secretary of Defense shall electronically transmit to the Committees on Armed Services of the Senate and the House of Representatives a copy of such Request for Assistance.

Deadline.  
Records.

(b) OFFICIAL RESPONSES TO APPROVED REQUESTS.—At the same time the Secretary of Defense submits to the Secretary of Homeland Security or the Secretary of Health and Human Services an official response of the Department of Defense approving a Request for Assistance from the Department of Homeland Security or the Department of Health and Human Services, as applicable, the Secretary of Defense shall electronically transmit to the Committees on Armed Services of the Senate and the House of Representatives a copy of such official response.

**SEC. 1708. REPORT AND BRIEFING ON IMPLEMENTATION OF NATIONAL DEFENSE STRATEGY.**

(a) REPORT AND BRIEFING.—In addition to the assessment required under section 113(g)(1)(F) of title 10, United States Code, by not later than April 30, 2020, the Secretary of Defense shall submit to the congressional defense committees a report, and provide an accompanying briefing, on the implementation of the national defense strategy required under section 113(g) of title 10, United States Code. Such report and briefing shall include each of the following:

Assessment.

(1) An explanation of the joint operational concepts to deter and, if necessary, to defeat strategic competitors, including—

Evaluations.

(A) an evaluation of the risks associated with the employment of such joint operational concepts;

(B) the ways of adapting innovative joint operational concepts to strategically significant scenarios;

(C) the ways that such joint operational concepts address operational challenges to achieve advantages against strategic competitors in the nuclear, space, and cyber domains; and

(D) the employment of the force in peacetime to dissuade strategic competitors from conducting malign activities below the threshold of open warfare, including an

	evaluation of the use of Dynamic Force Employment and the Global Operating Model.
	(2) The force posture changes and the United States defense investments required to implement the national defense strategy.
	(3) Adjustments to research and development projects and programs of record, including any additions, deletions, or modifications intended to align force management, including Joint Force development and design, required to implement the national defense strategy.
Assessment.	(4) An assessment of the personnel and organizational changes required to implement the national defense strategy.
	(5) The resources and defense investments necessary to support the operational concepts and their implementation.
	(b) INDEPENDENT STUDIES.—
	(1) STUDIES REQUIRED.—
	(A) IN GENERAL.—The Secretary of Defense shall provide for the performance of two independent studies on the development of joint operational concepts within the Department of Defense in accordance with this subsection.
Deadline.	(B) SUBMITTAL TO CONGRESS.—Not later than October 1, 2020, the Secretary shall submit to the congressional defense committees the results of each study required under subparagraph (A).
	(C) FORM.—Each study required under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.
	(2) ENTITIES TO PERFORM STUDIES.—The Secretary shall provide for the studies under paragraph (1) to be performed as follows:
	(A) One study shall be performed by a federally funded research and development center.
	(B) One study shall be performed by an independent, non-governmental institute, which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and which is exempt from taxation under section 501(a) of such Code, and which has recognized credentials and expertise in national security and military affairs.
	(3) PERFORMANCE OF STUDIES.—
	(A) INDEPENDENT PERFORMANCE.—The Secretary shall require the studies required under this subsection to be conducted independently of one another.
	(B) MATTERS TO BE CONSIDERED.—In performing a study under this subsection, the organization performing the study shall consider the following matters:
Assessment.	(i) An assessment of the Department of Defense Capstone Concept of Joint Operations process to define, develop, and improve joint operational concepts.
Evaluation.	(ii) An evaluation of how the Department is validating new joint operational concepts through experimentation and military exercises.
Evaluation.	(iii) The effectiveness of joint operational concepts to accomplish the objective of deterring and defeating strategic competitors, including an evaluation of the risks associated with each joint operational concept.



(iv) The ability of joint operational concepts to promote or to effectuate strategic objectives, defense policies, and budgetary priorities.

(v) Recommendations to alter or improve joint operational concepts.

(vi) Such other matters as the Secretary of Defense determines to be appropriate.

Recommendations.

**SEC. 1709. ACTIONS TO INCREASE ANALYTIC SUPPORT.**

10 USC 113 note.

(a) **IN GENERAL.**—The Secretary of Defense shall direct the Under Secretary of Defense for Policy, the Director of the Joint Staff, and the Director of Cost Assessment and Program Evaluation, in consultation with the Secretary of each of the military services, to jointly develop and implement a plan to strengthen the analytic capabilities, expertise, and processes necessary to implement the national defense strategy, as required under section 113(g) of title 10, United States Code.

Plan.  
Consultation.

(b) **ELEMENTS.**—The plan under subsection (a) shall include—

(1) an assessment of the decision support capability of the Department of Defense to support decision-making, specifically the analytic expertise available to inform senior leader decisions that link national defense strategy objectives with approaches to competing effectively across the full spectrum of engagement against strategic competitors;

Assessment.

(2) an analytic approach to force structure development, including an assessment of the major elements, products, and milestones of the force planning process of the Department;

Assessment.

(3) the conclusions and recommendations of the Defense Planning and Analysis Community initiative;

Recommendations.

(4) the progress of the Department in implementing the recommendations of the Comptroller General of the United States set forth in Government Accountability Office Report (GAO-19-40C);

(5) the progress of the Under Secretary, the Chairman of the Joint Chiefs of Staff, and the Director of Cost Assessment and Program Evaluation in implementing paragraph (5) of section 134(b) of title 10, United States Code, as added by section 902(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232); and

(6) such other matters as the Secretary of Defense determines to be appropriate.

(c) **BRIEFING REQUIRED.**—Not later than March 1, 2020, the Secretary of Defense shall provide to the congressional defense committees a briefing on the plan under subsection (a).

Deadline.

**SEC. 1710. INCLUSION OF CERTAIN INDIVIDUALS INVESTIGATED BY INSPECTORS GENERAL IN THE SEMIANNUAL REPORT.**

Section 5(a)(19) of the Inspector General Act of 1978 (Public Law 95–452; 5 U.S.C. App.) is amended by inserting “the name of the senior government official (as defined by the department or agency) if already made public by the Office, and” after “including”.

**SEC. 1711. ANNUAL REPORT ON JOINT MILITARY INFORMATION SUPPORT OPERATIONS WEB OPERATIONS CENTER.**

(a) **IN GENERAL.**—Not later than March 1 of 2020, and each subsequent year until the termination date specified in subsection (c), the Assistant Secretary of Defense for Special Operations and

Low-Intensity Conflict and the Commander of United States Special Operations Command shall jointly submit to the congressional defense committees a report on the activities of the Joint Military Information Support Operations Web Operations Center (hereinafter referred to as the “JMWC”) during the most recently concluded fiscal year.

(b) ELEMENTS.—The report required by subsection (a) shall include each of the following, for the fiscal year covered by the report:

- (1) Definitions of initial operating capability and full operational capability as such terms relate to the JMWC.
- (2) A detailed description of all activities conducted or planned to be conducted toward achieving initial operating capability and full operational capability of the JMWC.
- List. (3) A list of all associated funding requested for each program element for achieving initial operating capability and full operational capability.
- (4) A detailed description of validated doctrine, organization, training, materiel, leadership and education, personnel, facilities, and policy requirements relating to establishment and operation of the JMWC.
- (5) A description of current JMWC capabilities, including information technology infrastructure and contractual arrangements.
- List. (6) A list of all physical locations hosting JMWC capabilities.
- (7) The number of military, contractor, and civilian personnel associated with the JMWC and any affiliated agency, service, or other Department of Defense entity.
- (8) A description of the JMWC personnel organizational structure.
- (9) An identification of inherently governmental functions relating to administration of the JMWC and execution of Military Information Support Operations (hereinafter referred to as “MISO”) programs enabled by the JMWC.
- (10) A detailed description of frameworks, metrics, and capabilities to measure the effectiveness of MISO programs enabled by the JMWC.
- List. (11) A list of all associated funding requested by program element from each of the geographic combatant commanders for MISO programs enabled by the JMWC and a description of such MISO activities.
- Assessment. (12) An assessment of the effectiveness of MISO programs enabled by the JMWC.
- (13) A description of efforts and activities conducted to share best practices and leverage lessons learned across the Department of Defense relating to MISO programs enabled by the JMWC, as well as a description of such best practices and lessons learned.
- (14) An identification of liaisons and detailees to the JMWC from agencies and elements of the Department of Defense and other elements of the Federal Government.
- (15) Activities and efforts conducted to synchronize and deconflict MISO programs within the Department of Defense and with interagency and international partners related to strategic communications, as appropriate.

(16) Such other information as the Assistant Secretary and the Commander determine appropriate.

(c) **TERMINATION.**—The requirement to submit a report under this section shall terminate on January 1, 2025.

**SEC. 1712. MOBILITY CAPABILITY REQUIREMENTS STUDY.**

(a) **IN GENERAL.**—The Commander of the United States Transportation Command, in coordination with the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the commanders of the combatant commands, shall conduct a study of the end-to-end, full-spectrum mobility requirements to fulfill the national defense strategy required by section 113(g) of title 10, United States Code, for 2018. Such study shall be completed not later than January 1, 2021.

(b) **ELEMENTS OF STUDY.**—The study required under subsection (a) shall include each of the following:

(1) An assessment of the ability of the programmed airlift aircraft, tanker aircraft, sealift ships, and key mobility enablers to meet the integrated mobility requirements in expected strategic environments, as defined by the guidance in such national defense strategy.

(2) An identification, quantification, and description of the associated risk-to-mission (as defined by Chairman of the Joint Chiefs of Staff Manual 3105.01, Joint Risk Analysis) required to fulfill such strategy, including—

(A) as assessment of risk-to-mission associated with achieving strategic and operational objectives using the programmed airlift aircraft, tanker aircraft, sealift ships, and key mobility enablers; and

(B) a description of the combinations of airlift aircraft, tanker aircraft, sealift ships, and key mobility enabler requirements and capabilities that provide low, moderate, significant, and high levels of risk-to-mission to fulfill such strategy.

(3) An identification of any mobility capability gaps, shortfalls, overlaps, or excesses, including—

(A) an assessment of associated risks with respect to the ability to conduct operations; and

(B) recommended mitigation strategies where possible.

(4) The articulation of all key assumptions and decisions made and excursions examined in conducting the study with respect to—

(A) risk;

(B) programmed forces and infrastructure;

(C) the availability of commercial airlift and commercial United States sealift capabilities and resources, when applicable;

(D) aircraft usage rates, aircraft mission availability rates, aircraft mission capability rates, aircrew ratios, aircrew production, and aircrew readiness rates;

(E) readiness, crewing, and activation rates for sealift ships;

(F) prepositioning, forward stationing, seabasing, engineering, and infrastructure;

(G) demand signals used to represent missions described in the national defense strategy for 2018, in competition and wartime;

Coordination.

Deadline.

Assessment.

Assessment.

Assessment.

Recommendations.

(H) concurrency and global integration of demand signals;

(I) integrated global presence and basing strategy;

(J) host nation or third-country support;

(K) adversary actions to degrade and disrupt United States mobility operations;

(L) adversary actions that threaten freedom of navigation on international waterways, including attacks on foreign ships and crews;

(M) aircraft being used for training or undergoing depot maintenance or modernization or ships undergoing depot maintenance;

(N) mobility enabling forces availability, readiness, and use;

(O) logistics concept of operations, including any support concepts, methods, combat support forces, and combat service support forces, that are required to enable the projection and enduring support to forces both deployed and in combat for each analytic scenario;

(P) anticipated attrition rates for the assessed force structure; and

(Q) such other matters as the Commander determines appropriate.

(5) Such other elements as the Commander determines appropriate.

Coordination.

(c) REPORTS AND BRIEFINGS.—

(1) INTERIM REPORT AND BRIEFING.—Not later than June 1, 2020, the Commander of the United States Transportation Command, in coordination with the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the commanders of the combatant commands, shall—

(A) submit to the congressional defense committees an interim report on the study; and

(B) provide to such committees a briefing on the report.

(2) FINAL REPORT AND BRIEFING.—Not later than January 1, 2021, the Commander of the United States Transportation Command, in coordination with the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the commanders of the combatant commands, shall—

(A) submit to the congressional defense committees a final report on the study; and

(B) provide to such committees a briefing on the report.

(3) FORM OF REPORTS.—The reports required by paragraphs (1) and (2) shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITION OF SEALIFT SHIP.—In this section, the term “sealift ship” includes surge sealift vessels, tanker vessels, and non-governmental vessels incorporated as part of the maritime logistics enterprise.

Deadline.  
Contracts.

**SEC. 1713. ASSESSMENT OF SPECIAL OPERATIONS FORCE STRUCTURE.**

(a) ASSESSMENT.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center for the conduct of an independent assessment of the force structure and roles and responsibilities of special operations forces.

(b) **MATTERS TO BE CONSIDERED.**—In performing the assessment under this section, the federally funded research and development center shall consider the following matters:

(1) The most recent national defense strategy under section 113(g) of title 10, United States Code.

(2) Special operations activities, as described in section 167(k) of title 10, United States Code.

(3) Potential future national security threats to the United States.

(4) Ongoing counterterrorism and contingency operations of the United States.

(5) The demand for special operations forces by geographic combatant commanders for security cooperation, exercises, and other missions that could be executed by conventional forces.

(6) Other government and non-government analyses that would contribute to the assessment through variations in study assumptions or potential scenarios.

(7) The role of emerging technology on special operations forces.

(8) Opportunities for reduced operation and sustainment costs of special operations.

(9) Current and projected capabilities of other United States Armed Forces that could affect force structure capability and capacity requirements of special operations forces.

(10) The process by which United States Special Operations Command determines force size and structure.

(11) The size, composition, and organizational structure of United States Special Operations Command headquarters and subordinate headquarters elements.

(12) The readiness of special operations forces for assigned missions and future conflicts.

(13) The adequacy of special operations force structure for meeting the goals of the National Military Strategy under section 153(b) of title 10, United States Code.

(14) Any other matters deemed relevant.

(c) **ASSESSMENT RESULTS.**—The results of the assessment under this section shall include each of the following:

(1) Considerations and recommendations for improving the readiness of special operations forces.

(2) Alternative headquarters and force structure options to reduce administrative costs and enhance operational effectiveness.

(3) Legislative recommendations with respect to section 167 of title 10, United States Code, and other relevant provisions of law.

(d) **SUBMISSION TO CONGRESS.**—Not later than July 1, 2020, the Secretary shall submit to the congressional defense committees an unaltered copy of the assessment required under subsection (a) together with the views of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict and the Commander of United States Special Operations Command on the assessment and the recommendations included in the assessment.

Recommendations.

Deadline.  
Records.

**SEC. 1714. ARMY AVIATION STRATEGIC PLAN AND MODERNIZATION ROADMAP.**

(a) **STRATEGIC PLAN AND MODERNIZATION ROADMAP.**—

(1) **IN GENERAL.**—The Secretary of the Army shall develop a comprehensive strategic plan for Army aviation, which shall—

(A) ensure the alignment between requirements, both current and future, and Army budget submissions to meet such requirements; and

(B) inform the preparation of future defense program and budget requests by the Secretary, and the consideration of such requests by Congress.

Analyses.

(2) **ELEMENTS.**—The plan required by paragraph (1) shall include the following:

Assessment.

(A) An assessment of all missions for Army aviation, both current missions and those missions necessary to support the national defense strategy and the U.S. Army in Multi-Domain Operations 2028 concept.

(B) An analysis of platforms, capabilities, and capacities necessary to fulfill such current and future Army aviation missions.

(C) The anticipated life cycle budget associated with each platform, capability, and capacity requirement for both current and future requirements.

(D) An analysis showing operational, budget, and schedule trade-offs between sustainment of currently fielded capabilities, modernization of currently fielded capabilities, and development and production of new capabilities.

(b) **REPORT TO CONGRESS.**—Not later than March 30, 2020, the Secretary of the Army shall submit to the congressional defense committees a report containing—

(1) the comprehensive strategic plan required by subsection (a); and

(2) a sustainment and modernization plan for carrying out such strategic plan through fiscal year 2028.

**SEC. 1715. REPORT ON GROUND-BASED LONG-RANGE ARTILLERY TO COUNTER LAND AND MARITIME THREATS.**

(a) **IN GENERAL.**—Not later than March 1, 2020, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the efforts by the Army and Marine Corps to develop and deploy ground-based long-range rocket and cannon artillery to counter land and maritime threats.

Assessments.

(b) **ELEMENTS.**—The report required by subsection (a) shall include each of the following:

(1) An assessment of ongoing and future Army and Marine Corps efforts to develop and deploy ground-based long-range rocket and cannon artillery to counter land and maritime fires in the areas of operations of United States Indo-Pacific Command and United States European Command.

(2) An assessment of and recommendations for how the Department of Defense can improve the development and deployment of such artillery.

Analysis.  
Determination.

(3) An analysis, assessment, and determination of how such artillery employed in support of the United States and allied forces will be stationed, deployed, operationally positioned, and controlled to operate effectively against potential adversaries throughout the depth of their tactical, operational, and strategic formations, including any recommendations of

the Secretary regarding how such capabilities and support could be enhanced.

(c) **FORM OF REPORT.**—The report required by subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

**SEC. 1716. INDEPENDENT REVIEW OF TRANSPORTATION WORKING-CAPITAL FUND.**

(a) **IN GENERAL.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of each of the military departments, shall enter into a contract with a federally funded research and development center for the conduct of an independent review of the transportation working-capital fund (hereinafter referred to as the “TWCF”) of the United States Transportation Command.

Deadline.  
Coordination.  
Contracts.

(b) **MATTERS FOR INCLUSION.**—The review conducted under subsection (a) shall include each of the following:

(1) The viability of the TWCF as it is structured as of the date of the enactment of this Act.

(2) An assessment of any instances in which excess TWCF funds were used for procurement or modernization efforts that would not otherwise have been funded using amounts made available for operation and maintenance.

Assessment.

(3) Recommendations for how the TWCF could be restructured in order to make the fund more effective and efficient.

Recommendations.

(4) Potential alternative funding mechanisms for certain components of the TWCF, including the channel system.

(5) Any other matters the Secretaries jointly determine appropriate.

(c) **REPORT.**—Not later than March 1, 2021, the Secretary of Defense and the Secretary of each of the military departments shall jointly submit the to the congressional defense committees a copy of the review conducted under subsection (a).

Records.

**SEC. 1717. GEOGRAPHIC COMMAND RISK ASSESSMENT OF PROPOSED USE OF CERTAIN AIRCRAFT CAPABILITIES.**

(a) **IN GENERAL.**—Not later than March 31, 2020, each commander of a geographic combatant command shall submit to the congressional defense committees a report containing an assessment of the level of operational risk to that command posed by the plans of the Department of the Navy and Department of the Air Force to provide a mix of fifth generation and advanced fourth generation tactical aircraft capabilities to meet near-, mid-, and far-term contingency and steady-state operational requirements against adversaries in support of the objectives of the 2018 national defense strategy.

(b) **ASSESSMENT OF RISK.**—In assessing levels of operational risk under subsection (a), a commander shall use the military risk matrix of the Chairman of the Joint Chiefs of Staff, as described in CJCS Instruction 3401.01E.

(c) **GEOGRAPHIC COMBATANT COMMAND.**—In this section, the term “geographic combatant command” means each of the following:

- (1) United States European Command.
- (2) United States Indo-Pacific Command.
- (3) United States Africa Command.
- (4) United States Southern Command.
- (5) United States Northern Command.
- (6) United States Central Command.

**SEC. 1718. REPORT ON BACKLOG OF PERSONNEL SECURITY CLEARANCE ADJUDICATIONS.**

Time period.  
Coordination.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, and quarterly thereafter for three years, the Security Executive Agent, in coordination with members of the Performance Accountability Council established pursuant to Executive Order 13467, shall submit to Congress a report on the backlog of personnel security clearance adjudications conducted by all Government agencies that adjudicate decisions for security clearances. Such report shall include—

(1) the size of the backlog of personnel security clearance adjudications, by agency, for the fiscal quarter preceding the quarter during which the report is submitted;

(2) the average length of time, for each security clearance sensitivity level, to carry out an initial adjudication and an adjudication following a periodic reinvestigation, by agency;

(3) the number of cases referred to the Consolidated Adjudication Facility of the Department of Defense;

(4) the number of initial investigations adjudicated by the Consolidated Adjudication Facility;

(5) the number of periodic reinvestigations adjudicated by the Consolidated Adjudication Facility;

(6) the number of cases adjudicated by the Consolidated Adjudication Facility stemming from participation in a continuous evaluation program;

(7) the number of personnel enrolled in a continuous evaluation program as opposed to subject to a periodic reinvestigation;

(8) the number of adjudicators by agency; and

(9) a backlog mitigation plan, which shall include—

(A) the identification of the cause of, and recommendations to remedy, the adjudication backlog at Federal agencies; and

(B) the steps the Security Executive Agent, established pursuant to Executive Order 13467, shall take to reduce the adjudication backlog.

(b) **PUBLIC AVAILABILITY.**—Each report required under subsection (a) shall be made publicly available.

**SEC. 1719. REPORT REGARDING OUTSTANDING GOVERNMENT ACCOUNTABILITY OFFICE RECOMMENDATIONS.**

Not later than September 30, 2020, the Secretary of Defense shall submit to the congressional defense committees a report that includes—

List.

(1) a list of the priority recommendations identified by the Comptroller General of the United States regarding matters of the Department of Defense that the Secretary has not implemented due to funding limitations.

Cost estimate.

(2) the estimated cost associated with implementing such recommendations.

**SEC. 1720. REPORT ON NATIONAL GUARD AND UNITED STATES NORTHERN COMMAND CAPACITY TO MEET HOMELAND DEFENSE AND SECURITY INCIDENTS.**

Consultation.

Not later than September 30, 2020, the Chief of the National Guard Bureau shall, in consultation with the Commander of United



States Northern Command, submit to the congressional defense committees a report setting forth the following:

(1) A clarification of the roles and missions, structure, capabilities, and training of the National Guard and the United States Northern Command, and an identification of emerging gaps and shortfalls in light of current homeland security threats to our country.

(2) A list of the resources that each State and Territory National Guard has at its disposal that are available to respond to a homeland defense or security incident, with particular focus on a multi-State electromagnetic pulse event. List.

(3) The readiness and resourcing status of forces listed pursuant to paragraph (2).

(4) The current strengths and areas of improvement in working with State and Federal interagency partners.

(5) The current assessments that address National Guard readiness and resourcing of regular United States Northern Command forces postured to respond to homeland defense and security incidents. Assessments.

(6) A roadmap to 2040 that addresses readiness across the spectrum of long-range emerging threats facing the United States.

**SEC. 1721. ASSESSMENT OF STANDARDS, PROCESSES, PROCEDURES, AND POLICY RELATING TO CIVILIAN CASUALTIES.**

(a) **ASSESSMENT.**—The Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center for the conduct of an independent assessment of Department of Defense standards, processes, procedures, and policy relating to civilian casualties resulting from United States military operations. Contracts.

(b) **MATTERS TO BE CONSIDERED.**—In conducting the assessment under this section, the federally funded research and development center shall consider the following matters:

(1) Department of Defense policy relating to civilian casualties resulting from United States military operations.

(2) Standards, processes, and procedures for internal assessments and investigations of civilian casualties resulting from United States military operations.

(3) Standards, processes, and procedures for identifying, assessing, investigating, and responding to reports of civilian casualties resulting from United States military operations from the public and non-governmental entities and sources.

(4) Combatant command resourcing and organizational constructs for assessing and investigating civilian casualties resulting from United States military operations.

(5) Mechanisms for public and non-governmental entities to report civilian casualties that may have resulted from United States military operations to the Department of Defense.

(6) Standards and processes for accurately recording kinetic strikes, including raids, strikes, and other missions, and civilian casualties resulting from United States military operations.

(7) An analysis of general reasons for any disparity between third party public estimates and official United States Government estimates of civilian casualties resulting from United States or joint military operations. Analysis.

(8) The standardization of dissemination and institutionalization across the Department of Defense and the combatant commands of lessons learned from United States military operations as a means of reducing the likelihood of civilian casualties from United States military operations.

(9) Any other matters the Secretary of Defense determines appropriate.

(c) **RECOMMENDATIONS FOR IMPROVEMENTS.**—The results of the assessment under this section shall include recommendations for improvements to standards, processes, procedures, policy, and organizational constructs relating to civilian casualties resulting from United States military operations.

(d) **SUBMISSION OF REPORT.**—

(1) **IN GENERAL.**—Not later than July 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report setting forth an unaltered copy of the assessment under this section, together with the views of the Secretary on the assessment and on the recommendations included pursuant to subsection (c).

(2) **FORM OF REPORT.**—The report under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

(3) **PUBLIC AVAILABILITY.**—The Secretary shall make the unclassified form of the report under paragraph (1) available to the public.

**SEC. 1722. REPORT ON TRANSFERS OF EQUIPMENT TO PROHIBITED ENTITIES.**

Coordination.

(a) **ANNUAL REPORT.**—Not later than March 1, 2021, and each subsequent year through 2025, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate committees of Congress a report on the transfer of defense articles during the year preceding the year during which the report is submitted to any of the following:

(1) Any security force unit that has committed a gross violation of human rights in violation of section 362 of title 10, United States Code, or section 620M of the Foreign Assistance Act of 1961 (22 U.S.C. 2378d).

(2) Any group or organization prohibited by law from receiving assistance from the United States.

(b) **MATTERS TO BE INCLUDED.**—The report required by subsection (a) shall include the following:

Determination.

(1) A description of any confirmed instance in which the government of a foreign state that has received defense articles pursuant to a Department of Defense assistance authority subsequently transferred any such articles to a unit of that foreign state that is prohibited from receiving assistance from the United States by reason of a determination by the Secretary of Defense or the Secretary of State that there is credible evidence that such unit has committed a gross violation of human rights.

(2) A description of any instance, confirmed or under investigation, in which the government of a foreign state that has received defense articles pursuant to a Department of Defense assistance authority subsequently transferred any such articles to a group or organization that is prohibited by law from receiving assistance from the United States.

(c) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

- (1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and
- (2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 1723. ANNUAL REPORT ON STRIKES UNDERTAKEN BY THE UNITED STATES AGAINST TERRORIST TARGETS OUTSIDE AREAS OF ACTIVE HOSTILITIES.**

(a) **ANNUAL REPORT.**—Not later than May 1 2020, and annually thereafter until 2022, the Director of National Intelligence and the Secretary of Defense shall jointly submit to Congress a report on the number of strikes undertaken by the United States against terrorist targets outside areas of active hostilities during the preceding calendar year, as well as assessments of combatant and non-combatant deaths resulting from those strikes.

Assessment.

(b) **CONTENTS OF REPORT.**—The report required by subsection (a) shall include—

- (1) information obtained from relevant agencies regarding the general sources of information and methodology used to conduct the assessments of combatant and non-combatant deaths;
- (2) to the extent feasible and appropriate, the general reasons for discrepancies between post-strike assessments from the United States and credible reporting from nongovernmental organizations regarding non-combatant deaths resulting from strikes undertaken by the United States against terrorist targets outside areas of active hostilities.

(c) **REVIEW OF POST-STRIKE REPORTING.**—In preparing a report under this section, the Director and the Secretary shall, to the maximum extent practicable, review relevant and credible post-strike all-source reporting, including such information from nongovernmental sources, for the purpose of ensuring that this reporting is available to and considered by relevant agencies in their assessment of deaths.

(d) **FORM OF REPORT.**—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 1724. REVIEW AND ASSESSMENT OF MITIGATION OF MILITARY HELICOPTER NOISE.**

(a) **IN GENERAL.**—The Secretary of Defense, in coordination with the Chairman of the Joint Chiefs of Staff, shall conduct a review and assessment of military helicopter noise in the National Capital Region. Such review and assessment shall include—

Coordination.

(1) a study on the causes and effects of military helicopter noise on communities and individuals in the National Capital Region;

(2) recommendations to mitigate the effects of military helicopter noise on individuals, structures, and property values in the National Capital Region; and

Recommendations.

(3) the extent to which the Department has processes in place for collecting, analyzing, and managing military helicopter noise complaints from the general public across the National Capital Region.

(b) **FOCUS.**—In conducting the review under subsection (a), the Secretary and the Chairman of the Joint Chiefs of Staff shall

focus on all military helicopter flights in the National Capital Region, including helicopters from the Army, Air Force, and Marine Corps.

(c) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the review conducted under subsection (a). Such report shall include a description of the policies and procedures currently being used by the Army, Air Force, and Marine Corps in the National Capital Region to mitigate the impact of helicopter noise as well as the means to track compliance with these internal practices to ensure compliance.

(d) DEFINITION OF NATIONAL CAPITAL REGION.—In this section, the term “National Capital Region” has the meaning given the term in section 2574 of title 10, United States Code.

### Subtitle B—Other Matters

Effective dates.	<b>SEC. 1731. TECHNICAL, CONFORMING, AND CLERICAL AMENDMENTS.</b>
10 USC 101 prec.	(a) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:
10 USC 101 prec.	(1) The table of chapters at the beginning of subtitle A, and at the beginning of part I of such subtitle, are each amended by striking the item relating to chapter 9A and inserting the following:
	<b>“9A. Audit ..... 240a”.</b>
10 USC 101 prec., 2001 prec.	(2) The table of chapters at the beginning of subtitle A, and at the beginning of part I of such subtitle, are each amended by striking the item relating to chapter 112 and inserting the following:
	<b>“112. Cyber Scholarship Program ..... 2200”.</b>
	(3) Section 113(j)(1) is amended by inserting “the” before “congressional defense committees”.
	(4) Section 119a is amended in each of the subsection headings for subsections (a) and (b) by striking “AACMS” and inserting “ACCMS”.
	(5) Section 127(c)(1) is amended by inserting “the” before “congressional defense committees”.
	(6) Section 130i is amended—
	(A) in subsection (i)(1), by inserting “(C)” after “(j)(3)”; and
	(B) in subsection (j)(6), by striking “40101” and inserting “44802”.
	(7) Section 131(b)(8) is amended by redesignating subparagraph (I) as subparagraph (F).
	(8) Section 132 is amended by redesignating subsection (e) as subsection (d).
10 USC 161 prec.	(9) The item relating to section 169 in the table of sections at the beginning of chapter 6 is amended by inserting a period after “Command”.

(10) The item relating to section 183a in the table of sections at the beginning of chapter 7 is amended to read as follows: 10 USC 171 prec.

“183a. Military Aviation and Installation Assurance Clearinghouse for review of mission obstructions.”.

(11) Section 187(a)(2)(C) is amended by striking “Assistant Secretary of the Army for Acquisition, Technology, and Logistics” and inserting “Assistant Secretary of the Army for Acquisition, Logistics, and Technology”.

(12) Section 222a(d)(3)(A) is amended by inserting “had” before “been”.

(13) Section 222b(a) is amended by striking “United States Code,”.

(14) Section 284 is amended—

(A) by striking “section 376” both places it appears and inserting “section 276”;

(B) in subsection (f), by inserting “)” after “Stat. 1564”;

(C) in subsection (g)(2), by striking “section 375” and inserting “section 275”; and

(D) in subsection (h)(1)(A)(vi)(VI) by striking “section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) and”.

(15) The table of sections at the beginning of subchapter V of chapter 16 is amended by striking “Sec.” after the item relating to section 350. 10 USC 341 prec.

(16) Section 341(e)(2)(A) is amended by adding a period at the end.

(17) Section 526(k) is amended by inserting “the” before “number of general officers”.

(18) Section 649j is amended by striking “(a) IN GENERAL.—The” and inserting “The”.

(19) Section 651(a) is amended by inserting “shall serve” after “(50 U.S.C. 3806(d)(1))”.

(20) The heading of section 928b (article 128b of the Uniform Code of Military Justice) is amended to read as follows:

**“§ 928b. Art. 128b. Domestic violence”.**

(21) Section 1034(b)(1)(B)(ii) is amended by striking “subsection (i)” and inserting “subsection (j)”;

(22) Section 1073c(a) is amended by redesignating the second paragraph (4) as paragraph (6).

(23) Section 1075(d)(1) is amended in the table by striking “25% of out of network” and inserting “25% out of network”.

(24) Section 1076d(d)(1) is amended by striking “section 1075 of this section” and inserting “section 1075 of this title”.

(25) Section 1076e(d)(1) is amended by striking “section 1075 of this section” and inserting “section 1075 of this title”.

(26) Section 1142(c)(3) is amended by striking “paragraph (2)(B)” and inserting “paragraph (2)(C)”.

(27) Section 1762(c) is amended by striking “in at any one time” and inserting “at any one time in”.

(28) Section 1788a is amended in subsection (d)(1) by striking “Not later than March 1, 2019, and each March 1 thereafter” and inserting “Not later than March 1 each year”.

(29) Section 2208(u) is amended by inserting “of this title” after “2805” each place it appears.

(30) Section 2216(b)(1) is amended by striking “subsection (c)(1)(B)(iii)” and inserting “subsection (c)(1)(B)(ii)”.

(31) Section 2222(i)(11) is amended by striking “subsection (a)(6)(A)” and inserting “subsection (e)(6)(A)”.

(32) Section 2228(a)(2) is amended by striking the second period at the end.

10 USC 2201  
prec.

(33) The item relating to section 2229b in the table of sections at the beginning of chapter 131 is amended to read as follows:

“2229b. Comptroller General assessment of acquisition programs and initiatives.”

(34) Section 2273(b)(1) is amended by inserting a semicolon at the end.

(35) The heading for section 2279d is amended by striking the period at the end.

(36) The heading of section 2284, as added by section 311(a) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1708), is amended to read as follows:

**“§ 2284. Explosive Ordnance Disposal Defense Program”.**

(37) Section 2304(f)(1)(B) is amended—

(A) in clause (ii), by striking “paragraph (6)(A)” and inserting “paragraph (5)(A)”; and

(B) in clause (iii), by striking “paragraph (6)(B)” and inserting “paragraph (5)(B)”.

(38) Section 2305a(d)(1) is amended by striking “a indefinite” and inserting “an indefinite”.

(39)(A) Section 2304e is amended by striking the last four words of the section heading.

(B) Section 2323a is amended—

(i) in the section heading, by striking the last six words; and

(ii) in subsection (e)—

(I) in paragraph (1), by striking “102 Stat. 2468;”;

(II) in paragraph (2), by striking “(25 U.S.C. 450b(d))” and inserting “(25 U.S.C. 5304(d))”; and

(III) in paragraph (3), by striking “(25 U.S.C. 450b(e))” and inserting “(25 U.S.C. 5304(e))”.

10 USC 2301  
prec.

(C) The table of sections at the beginning of chapter 137 is amended by striking the last four words of the item relating to section 2304e and the last six words of the item relating to section 2323a.

(40) Section 2307(a)(1) is amended by striking “may” and inserting “may—”.

(41) Section 2313b(d) is amended by striking “an task order” both places it appears and inserting “a task order”.

(42) Section 2329(g)(1) is amended by striking “‘bridge contact’” and inserting “‘bridge contract’”.

(43) Section 2339a(e)(5) is amended by striking “section 3542(b)” and inserting “section 3552(b)(6)”.

(44) Section 2366a(c)(1)(F) is amended by striking “section 2366a(b)(6) of this title” and inserting “subsection (b)(6)”.

(45) Section 2368(f)(1) is amended by striking “transition” and inserting “transaction”.

(46) Section 2371b(d)(1)(C) is amended by striking “other than” after “sources”.

(47) Section 2380B is amended—

(A) by inserting “section” before “2376(1) of this title”;

and

(B) by striking “purposed of” and inserting “purposes of”.

(48) Section 2401(e)(2) is amended by striking “subsection (f)” and inserting “subsection (g)”.

(49) The item relating to section 2439 in the table of sections at the beginning of chapter 144 is amended to read as follows:

10 USC 230 prec.

“2439. Negotiation of price for technical data before development, production, or sustainment of major weapon systems.”.

(50) The item relating to subchapter II in the table of subchapters for chapter 144B is amended to read as follows:

10 USC 2446a prec.

**“II. Development, Prototyping, and Deployment of Weapon System Components or Technology .....2447a”.**

(51) Section 2447a(a) is amended by striking “after fiscal year 2017”.

(52) Section 2547(b)(2) is amended—

(A) by striking “material” and inserting “materiel”;

and

(B) by striking “Material” both places it appears and inserting “Materiel”.

(53) Section 2802(e)(1) is amended by striking “shall comply with” and inserting “shall—

“(A) comply with”.

(54) Section 2804(b) is amended, in the second sentence—

(A) by striking “(1)” and “(2)”; and

(B) by striking “project and” and inserting “project,”.

(55) Section 2805(d)(1)(B) is amended by inserting “under” after “made available”.

(56) Section 2835a(c) is amended by striking “(1) The Secretary” and inserting “The Secretary”.

(57) Section 2879(a)(2)(A) is amended by striking the comma after “2017”.

(58) Section 2913(c) is amended by striking “government a gas or electric utility” and inserting “government gas or electric utility”.

(59) The item relating to section 2914 in the table of sections at the beginning of chapter 173 is amended to read as follows:

10 USC 2911 prec.

“2914. Energy resilience and conservation construction projects.”.

(60)(A) The heading of section 8749, as amended by section 1114(b)(2) and redesignated by section 807(d)(6) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is amended by capitalizing the initial letter of the fifth, sixth, and seventh words and the initial letter of the last two words.

132 Stat. 1836.

(B) The heading of section 8749a, as added by section 1114(a) and redesignated by section 8(d)(6) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), is amended by capitalizing the initial letter of the fifth, sixth, and seventh words.

132 Stat. 1836.

(61) Section 9069(a) is amended by striking “are” and inserting “is”.

(62) Section 10217(e)(4) is amended by striking “shall an individual” and inserting “shall be an individual”.

10 USC 2551  
prec.

(63) The item relating to section 2568a in the table of sections at the beginning of chapter 152 is amended to read as follows:

“2568a. Damaged personal protective equipment: award to members separating from the armed forces and veterans.”.

10 USC 111 note  
prec.

(64) Section 7016(b)(5)(A) is amended by striking “Assistant Secretary of the Army for Acquisition, Technology, and Logistics” and inserting “Assistant Secretary of the Army for Acquisition, Logistics, and Technology”.

(b) NDAA FOR FISCAL YEAR 2019.—Effective as of August 13, 2018, and as if included therein as enacted, the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended as follows:

10 USC 111 prec.

(1) Section 331(g)(2) (132 Stat. 1724) is amended by inserting “of such title” after “chapter 2”.

10 USC 2534  
note.

(2) Section 844(b) (132 Stat. 1881) is amended by striking “This section and the amendments made by this section” and inserting “The amendment made by subsection (a)”.

(3) Section 1246(1)(B) (132 Stat. 2049) is amended by adding at the end before the semicolon the following: “and transferring it to appear after paragraph (15)”.

10 USC 2273  
note.

(4) Section 2805(c) (132 Stat. 2262; 10 U.S.C. 2864 note) is amended by striking “United Facilities Criteria” and inserting “Unified Facilities Criteria”.

(c) NDAA FOR FISCAL YEAR 2018.—Effective as of December 12, 2017, and as if included therein as enacted, section 1609(b)(3) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1728; 10 U.S.C. 2273 note) is amended by striking “, and,” and inserting “, and”.

10 USC 2358  
note.

(d) NDAA FOR FISCAL YEAR 2017.—Effective as of December 23, 2016, and as if included therein as enacted, section 233(c)(2)(C)(ii) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 114–328; 130 Stat. 2061; 10 U.S.C. 2358 note) is amended by striking “Assistant Secretary of the Army for Acquisition, Technology, and Logistics” and inserting “Assistant Secretary of the Army for Acquisition, Logistics, and Technology”.

10 USC 2911  
note.

(e) NDAA FOR FISCAL YEAR 2012.—Effective as of December 31, 2011, and as if included therein as enacted, section 315 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1358; 10 U.S.C. 2911 note) is amended by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

Applicability.  
10 USC 101 note.

(f) COORDINATION WITH OTHER AMENDMENTS MADE BY THIS ACT.—For purposes of applying amendments made by provisions of this Act other than this section, the amendments made by this section shall be treated as having been enacted immediately before any such amendments by other provisions of this Act.

Time periods.

**SEC. 1732. ESTABLISHMENT OF LEAD INSPECTOR GENERAL FOR AN OVERSEAS CONTINGENCY OPERATION BASED ON SECRETARY OF DEFENSE NOTIFICATION.**

(a) NOTIFICATION ON COMMENCEMENT OF OCO.—Section 113 of title 10, United States Code, is amended by adding at the end the following new subsection:



“(n) NOTIFICATION OF CERTAIN OVERSEAS CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR GENERAL ACT OF 1978.—The Secretary of Defense shall provide the Chair of the Council of Inspectors General on Integrity and Efficiency written notification of the commencement or designation of a military operation as an overseas contingency operation upon the earlier of—

“(1) a determination by the Secretary that the overseas contingency operation is expected to exceed 60 days; or

Determination.

“(2) the date on which the overseas contingency operation exceeds 60 days.”.

(b) ESTABLISHMENT OF LEAD INSPECTOR GENERAL BASED ON NOTIFICATION.—Section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)—

(A) by striking “Upon the commencement” and all that follows through “the Chair” and inserting “The Chair”; and

(B) by inserting before the period at the end the following: “upon the earlier of—

“(1) the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days; or

“(2) receipt of a notification under section 113(n) of title 10, United States Code, with respect to an overseas contingency operation”; and

(2) in subsection (d)(1), by striking “the commencement or designation of the military operation concerned as an overseas contingency operation that exceeds 60 days” and inserting “the earlier of—

“(A) the commencement or designation of the military operation concerned as an overseas contingency operation that exceeds 60 days; or

“(B) receipt of a notification under section 113(n) of title 10, United States Code, with respect to an overseas contingency operation”.

**SEC. 1733. CLARIFICATION OF AUTHORITY OF INSPECTORS GENERAL FOR OVERSEAS CONTINGENCY OPERATIONS.**

Section 8L(d)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subparagraph (D)—

(A) in clause (i), by striking “to exercise” and all that follows through “such matter” and inserting “to identify and coordinate with the Inspector General who has principal jurisdiction over the matter to ensure effective oversight”; and

(B) by adding at the end the following:

“(iii)(I) Upon written request by the Inspector General with principal jurisdiction over a matter with respect to the contingency operation, and with the approval of the lead Inspector General, an Inspector General specified in subsection (c) may provide investigative support or conduct an independent investigation of an allegation of criminal activity by any United States personnel, contractor, subcontractor, grantee, or vendor in the applicable theater of operations.

Determination.

“(II) In the case of a determination by the lead Inspector General that no Inspector General has principal jurisdiction over a matter with respect to the contingency operation, the lead Inspector General may—

“(aa) conduct an independent investigation of an allegation described in subclause (I); or

“(bb) request that an Inspector General specified in subsection (c) conduct such investigation.”; and

(2) by adding at the end the following:

“(I) To enhance cooperation among Inspectors General and encourage comprehensive oversight of the contingency operation, any Inspector General responsible for conducting oversight of any program or operation performed in support of the contingency operation may, to the maximum extent practicable and consistent with the duties, responsibilities, policies, and procedures of such Inspector General—

Coordination.

“(i) coordinate such oversight activities with the lead Inspector General; and

“(ii) provide information requested by the lead Inspector General relating to the responsibilities of the lead Inspector General described in subparagraphs (B), (C), and (G).”.

**SEC. 1734. EMPLOYMENT STATUS OF ANNUITANTS FOR INSPECTORS GENERAL FOR OVERSEAS CONTINGENCY OPERATIONS.**

Section 8L(d) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (2)(E), by inserting “(without regard to subsection (b)(2) of such section)” after “United States Code,”;

(2) in paragraph (3), by amending subparagraph (C) to read as follows:

“(C)(i) An annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection—

“(I) shall continue to receive the annuity; and

“(II) shall not be considered a participant for purposes of chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

“(ii) An annuitant described in clause (i) may elect in writing for the reemployment of the annuitant under this subsection to be subject to section 824 of the Foreign Service Act of 1980 (22 U.S.C. 4064). A reemployed annuitant shall make an election under this clause not later than 90 days after the date of the reemployment of the annuitant.”; and

(3) by adding at the end the following:

Time period.

“(5)(A) A person employed by a lead Inspector General for an overseas contingency operation under this section shall acquire competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications upon the completion of 2 years of continuous service as an employee under this section.

“(B) No person who is first employed as described in subparagraph (A) more than 2 years after the date of the enactment

of the National Defense Authorization Act for Fiscal Year 2020 may acquire competitive status under subparagraph (A).”.

**SEC. 1735. EXTENSION OF NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE.**

(a) **EXTENSION.**—Subsection (e) of section 1051 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1962) is amended by striking “October 1, 2020” and inserting “October 1, 2021”.

(b) **AUTHORITY TO ACCEPT GIFTS.**—Subsection (a) of such section is amended by adding at the end the following new paragraph:

“(8) **AUTHORITY TO ACCEPT GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services, goods, and property from non-Federal entities for the purposes of aiding and facilitating the work of the Commission. The authority in this paragraph does not extend to gifts of money.”.

(c) **REPORTS.**—Subsection (c) of such section is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (1) the following new paragraphs:

“(2) **INTERIM REPORTS.**—Not later than each of December 1, 2019, and December 1, 2020, the Commission shall submit as described in that paragraph an interim report on the review required under subsection (b).

“(3) **FINAL REPORT.**—Not later than March 1, 2021, the Commission shall submit as described in paragraph (1) a comprehensive final report on the review required under subsection (b).”.

**SEC. 1736. EXEMPTION FROM CALCULATION OF MONTHLY INCOME, FOR PURPOSES OF BANKRUPTCY LAWS, OF CERTAIN PAYMENTS FROM THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE.**

Section 101(10A) of title 11, United States Code, is amended by striking subparagraph (B) and inserting the following:

“(B)(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and, in a joint case, the debtor’s spouse if not otherwise a dependent); and

“(ii) excludes—

“(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

“(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

“(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

“(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such

retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.”.

**SEC. 1737. EXTENSION OF POSTAGE STAMP FOR BREAST CANCER RESEARCH.**

Section 414(h) of title 39, United States Code, is amended by striking “2019” and inserting “2027”.

**SEC. 1738. NATIONAL COMMISSION ON MILITARY AVIATION SAFETY.**

(a) **EXTENSION OF DEADLINE FOR REPORT.**—Subsection (h)(2) of section 1087 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended by striking “March 1, 2020” and inserting “December 1, 2020”.

132 Stat. 1995.

(b) **SECRETARY OF DEFENSE REPORT.**—Such section is further amended by adding at the end the following new subsection:

Coordination.

“(m) **REPORT TO CONGRESS.**—Not later than 120 days after the date of the submittal of the report under subsection (h)(2), the Secretary of Defense, in coordination with the Secretary of each of the military departments, shall submit to the Committees on Armed Services of the Senate and House of Representatives a report that includes each of the following:

Assessment.

“(1) An assessment of the findings and conclusions of the Commission.

Plan.

“(2) The plan of the Secretaries for implementing the recommendations of the Commission.

“(3) Any other actions taken or planned by the Secretary of Defense or the Secretary of any of the military departments to improve military aviation safety.”.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to any other amounts authorized to be appropriated for the National Commission on Military Aviation Safety established under section 1087 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), of the amounts authorized to be appropriated for Operation and Maintenance, Defense-wide for fiscal year 2020, as specified in the funding table in section 4301, \$3,000,000 shall be available for the National Commission on Aviation Safety.

**SEC. 1739. GUARANTEE OF RESIDENCY FOR SPOUSES OF MEMBERS OF THE UNIFORMED SERVICES.**

(a) **IN GENERAL.**—Title VI of the Servicemembers Civil Relief Act (50 U.S.C. 4021 et seq.) is amended by adding at the end the following new section:

50 USC 4027.

**“SEC. 707. GUARANTEE OF RESIDENCY FOR SPOUSES OF SERVICEMEMBERS.**

“For the purposes of establishing the residency of a spouse of a servicemember for any purpose (including the registration of a business), the spouse of a servicemember may elect to use the same residence as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.”.

(b) **CLERICAL AMENDMENT.**—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 706 the following new item:

“Sec. 707. Guarantee of residency for spouses of servicemembers.”.

**SEC. 1740. ELECTROMAGNETIC PULSES AND GEOMAGNETIC DISTURBANCES.**

(a) EMP AND GMD MITIGATION RESEARCH AND DEVELOPMENT.—

(1) THREAT ASSESSMENT, RESPONSE, AND RECOVERY.—Section 320 of the Homeland Security Act of 2002 (6 U.S.C. 195f) is amended—

(A) in the section heading, by inserting “AND THREAT ASSESSMENT, RESPONSE, AND RECOVERY” after “DEVELOPMENT”; and

(B) by adding at the end the following:

“(d) THREAT ASSESSMENT, RESPONSE, AND RECOVERY.—

“(1) ROLES AND RESPONSIBILITIES.—

“(A) DISTRIBUTION OF INFORMATION.—

“(i) IN GENERAL.—Beginning not later than June 19, 2020, the Secretary shall provide timely distribution of information on EMPs and GMDs to Federal, State, and local governments, owners and operators of critical infrastructure, and other persons determined appropriate by the Secretary. Deadline.

“(ii) BRIEFING.—The Secretary shall brief the appropriate congressional committees on the effectiveness of the distribution of information under clause (i).

“(B) RESPONSE AND RECOVERY.— Coordination.

“(i) IN GENERAL.—The Administrator of the Federal Emergency Management Agency shall—

“(I) coordinate the response to and recovery from the effects of EMPs and GMDs on critical infrastructure, in coordination with the heads of appropriate Sector-Specific Agencies, and on matters related to the bulk power system, in consultation with the Secretary of Energy and the Federal Energy Regulatory Commission; and Consultation.

“(II) to the extent practicable, incorporate events that include EMPs and extreme GMDs as a factor in preparedness scenarios and exercises.

“(ii) IMPLEMENTATION.—The Administrator of the Federal Emergency Management Agency, in coordination with the Director of the Cybersecurity and Infrastructure Security Agency, and on matters related to the bulk power system, the Secretary of Energy and the Federal Energy Regulatory Commission, shall— Deadlines.

“(I) not later than June 19, 2020, develop plans and procedures to coordinate the response to and recovery from EMP and GMD events; and Plans.  
Procedures.

“(II) not later than December 21, 2020, conduct a national exercise to test the preparedness and response of the Nation to the effect of an EMP or extreme GMD event.

“(C) RESEARCH AND DEVELOPMENT.— Coordination.

“(i) IN GENERAL.—The Secretary, in coordination with the heads of relevant Sector-Specific Agencies, shall—

“(I) without duplication of existing or ongoing efforts, conduct research and development to better understand and more effectively model the effects

- of EMPs and GMDs on critical infrastructure (which shall not include any system or infrastructure of the Department of Defense or any system or infrastructure of the Department of Energy associated with nuclear weapons activities); and
- “(II) develop technologies to enhance the resilience of and better protect critical infrastructure.
- Deadline. “(ii) PLAN.—Not later than March 26, 2020, and in coordination with the heads of relevant Sector-Specific Agencies, the Secretary shall submit to the appropriate congressional committees a research and development action plan to rapidly address modeling shortfall and technology development.
- Coordination. “(D) EMERGENCY INFORMATION SYSTEM.—
- “(i) IN GENERAL.—The Administrator of the Federal Emergency Management Agency, in coordination with relevant stakeholders, shall maintain a network of systems, such as the alerting capabilities of the integrated public alert and warning system authorized under section 526, that are capable of providing appropriate emergency information to the public before (if possible), during, and in the aftermath of an EMP or GMD.
- Deadline. “(ii) BRIEFING.—Not later than December 21, 2020, the Administrator of the Federal Emergency Management Agency, shall brief the appropriate congressional committees regarding the maintenance of systems, including the alerting capabilities of the integrated public alert and warning system authorized under section 526.
- Coordination. “(E) QUADRENNIAL RISK ASSESSMENTS.—
- “(i) IN GENERAL.—The Secretary, in coordination with the Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce, and informed by intelligence-based threat assessments, shall conduct a quadrennial EMP and GMD risk assessment.
- Deadline. “(ii) BRIEFINGS.—Not later than March 26, 2020, and every four years thereafter until 2032, the Secretary, the Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall provide a briefing to the appropriate congressional committees regarding the quadrennial EMP and GMD risk assessment.
- “(iii) ENHANCING RESILIENCE.—The Secretary, in coordination with the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the heads of other relevant Sector-Specific Agencies, shall use the results of the quadrennial EMP and GMD risk assessments to better understand and to improve resilience to the effects of EMPs and GMDs across all critical infrastructure sectors, including coordinating the prioritization of critical infrastructure at greatest risk to the effects of EMPs and GMDs.
- “(2) COORDINATION.—
- “(A) REPORT ON TECHNOLOGICAL OPTIONS.—Not later than December 21, 2020, and every four years thereafter until 2032, the Secretary, in coordination with the Secretary of Defense, the Secretary of Energy, the heads of

other appropriate agencies, and, as appropriate, private-sector partners, shall submit to the appropriate congressional committees, a report that—

“(i) assesses the technological options available to improve the resilience of critical infrastructure to the effects of EMPs and GMDs; and

“(ii) identifies gaps in available technologies and opportunities for technological developments to inform research and development activities.

“(B) TEST DATA.—

“(i) IN GENERAL.—Not later than December 20, 2020, the Secretary, in coordination with the heads of Sector-Specific Agencies, the Secretary of Defense, and the Secretary of Energy, shall—

“(I) review test data regarding the effects of EMPs and GMDs on critical infrastructure systems, networks, and assets representative of those throughout the Nation; and

“(II) identify any gaps in the test data.

“(ii) PLAN.—Not later than 180 days after identifying gaps in test data under clause (i), the Secretary, in coordination with the heads of Sector-Specific Agencies and in consultation with the Secretary of Defense and the Secretary of Energy, shall use the sector partnership structure identified in the National Infrastructure Protection Plan to develop an integrated cross-sector plan to address the identified gaps.

“(iii) IMPLEMENTATION.—The heads of each agency identified in the plan developed under clause (ii) shall implement the plan in collaboration with the voluntary efforts of the private sector, as appropriate.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘appropriate congressional committees’ means—

“(i) the Committee on Homeland Security and Governmental Affairs, the Committee on Armed Services, the Committee on Energy and Natural Resources, and the Committee on Commerce, Science, and Transportation of the Senate; and

“(ii) the Committee on Transportation and Infrastructure, the Committee on Homeland Security, the Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Science, Space and Technology of the House of Representatives.

“(B) The terms ‘prepare’ and ‘preparedness’ mean the actions taken to plan, organize, equip, train, and exercise to build and sustain the capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from those threats that pose the greatest risk to the security of the homeland, including the prediction and notification of impending EMPs and GMDs.

“(C) The term ‘Sector-Specific Agency’ has the meaning given that term in section 2201.

“(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed—

“(1) to affect in any manner the authority of the executive branch to implement Executive Order 13865, dated March 26,

Assessment.

Deadline.

Review.

Deadline.  
Consultation.

Collaboration.

2019, and entitled ‘Coordinating National Resilience to Electromagnetic Pulses’, or any other authority existing on the day before the date of enactment of this subsection of any other component of the Department or any other Federal department or agency, including the authority provided to the Sector-Specific Agency specified in section 61003(c) of division F of the Fixing America’s Surface Transportation Act (6 U.S.C. 121 note), including the authority under section 215 of the Federal Power Act (16 U.S.C. 824o), and including the authority of independent agencies to be independent; or

“(2) as diminishing or transferring any authorities vested in the Administrator of the Federal Emergency Management Agency or in the Agency prior to the date of the enactment of this subsection.”

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections in section 1(b) of the Homeland Security Act of 2002 is amended by striking the item relating to section 320 and inserting the following:

“Sec. 320. EMP and GMD mitigation research and development and threat assessment, response, and recovery.”

(b) CONSULTATION WITH SECRETARY OF ENERGY IN PREPARATION OF QUADRENNIAL HOMELAND SECURITY REVIEW.—Section 707 of the Homeland Security Act of 2002 (6 U.S.C. 347) is amended—

(1) in subsection (a)(3)(A), by inserting “the Secretary of Energy,” after “the Secretary of Agriculture”; and

(2) in subsection (c)(2)(B), by inserting after review the following “or for purposes of the quadrennial EMP and GMD risk assessment under section 320(d)(1)(E)”.

(c) NATIONAL ESSENTIAL FUNCTIONS.—

(1) UPDATED OPERATIONAL PLANS.—Not later than March 20, 2020, each agency that supports a national essential function shall prepare updated operational plans documenting the procedures and responsibilities of the agency relating to preparing for, protecting against, and mitigating the effects of EMPs and GMDs.

(2) DEFINITION OF NATIONAL ESSENTIAL FUNCTION.—In this subsection, the term “national essential functions” means the overarching responsibilities of the Federal Government to lead and sustain the Nation before, during, and in the aftermath of a catastrophic emergency, such as an EMP or GMD that adversely affects the performance of the Federal Government.

(d) BENCHMARKS.—Not later than March 26, 2020, and as appropriate thereafter, the Secretary of Energy, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and, as appropriate, the private sector, may develop or update, as necessary, quantitative and voluntary benchmarks that sufficiently describe the physical characteristics of EMPs, including waveform and intensity, in a form that is useful to and can be shared with owners and operators of critical infrastructure. Nothing in this subsection shall affect the authority of the Electric Reliability Organization to develop and enforce, or the authority of the Federal Energy Regulatory Commission to approve, reliability standards.

(e) PILOT TEST BY DHS TO EVALUATE ENGINEERING APPROACHES.—

(1) IN GENERAL.—Not later than September 22, 2020, the Secretary of Homeland Security, acting through the Under

Deadline.

Deadline.  
Consultation.  
6 USC 195f note.

Deadlines.  
Coordination.  
Consultation.



Secretary for Science and Technology of the Department of Homeland Security, in coordination with the Director of the Cybersecurity and Infrastructure Security Agency and the Administrator of the Federal Emergency Management Agency, the Secretary of Defense, and the Secretary of Energy, and in consultation with the private sector, as appropriate, shall develop and implement a pilot test to evaluate available engineering approaches for mitigating the effects of EMPs and GMDs on the most vulnerable critical infrastructure systems, networks, and assets.

(2) BRIEFING.—Not later than 90 days after the date on which the pilot test described in paragraph (1) is completed, the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology of the Department of Homeland Security, in coordination with the Director of the Cybersecurity and Infrastructure Security Agency and the Administrator of the Federal Emergency Management Agency, the Secretary of Defense, and the Secretary of Energy, shall jointly brief the appropriate congressional committees on the cost and effectiveness of the evaluated approaches.

(f) PILOT TEST BY DOD TO EVALUATE ENGINEERING APPROACHES.—

(1) IN GENERAL.—Not later than September 22, 2020, the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Energy, shall conduct a pilot test to evaluate engineering approaches for hardening a strategic military installation, including infrastructure that is critical to supporting that installation, against the effects of EMPs and GMDs.

Deadline.  
Consultation.

(2) REPORT.—Not later than 180 days after completing the pilot test described in paragraph (1), the Secretary of Defense shall submit to the appropriate congressional committees a report regarding the cost and effectiveness of the evaluated approaches.

(g) COMMUNICATIONS OPERATIONAL PLANS.—Not later than December 21, 2020, the Secretary of Homeland Security, after holding a series of joint meetings with the Administrator of the Federal Emergency Management Agency, the Director of the Cybersecurity and Infrastructure Security Agency, the Secretary of Defense, the Under Secretary of Commerce for Standards and Technology, the Assistant Secretary of Commerce for Communications and Information, the Federal Communications Commission, and the Secretary of Transportation, shall submit to the appropriate congressional committees a report—

(1) assessing the effects of EMPs and GMDs on critical communications infrastructure; and

Assessment.

(2) recommending any necessary changes to operational plans to enhance national response and recovery efforts after an EMP or GMD.

Recommendations.

(h) DEFINITIONS.—In this section:

6 USC 195f note.

(1) The term “appropriate congressional committees” has the meaning given that term in subsection (d) of section 320 of the Homeland Security Act of 2002, as added by subsection (a) of this section; and

(2) The terms “critical infrastructure”, “EMP”, and “GMD” have the meanings given such terms in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

**SEC. 1741. IMPROVEMENTS TO MANUFACTURING USA PROGRAM.**

(a) **IN GENERAL.**—Section 34 of the National Institute of Standards and Technology Act (15 U.S.C. 278s) is amended to read as follows:

**“SEC. 34. MANUFACTURING USA.**

“(a) **DEFINITIONS.**—In this section:

“(1) **AGENCY HEAD.**—The term ‘agency head’ means the head of any Executive agency (as defined in section 105 of title 5, United States Code), other than the Department of Defense.

“(2) **REGIONAL INNOVATION INITIATIVE.**—The term ‘regional innovation initiative’ has the meaning given such term in section 27(f)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3722(f)(1)).

“(b) **ESTABLISHMENT OF MANUFACTURING USA PROGRAM.**—

“(1) **IN GENERAL.**—The Secretary shall establish within the Institute a program to be known as the ‘Manufacturing United States of America Program’ or the ‘Manufacturing USA Program’ (referred to in this section as the ‘Program’).

“(2) **PURPOSES OF PROGRAM.**—The purposes of the Program are—

“(A) to improve the competitiveness of United States manufacturing and to increase the production of goods manufactured predominantly within the United States;

“(B) to stimulate United States leadership in advanced manufacturing research, innovation, and technology;

“(C) to facilitate the transition of innovative technologies into scalable, cost-effective, and high-performing manufacturing capabilities;

“(D) to facilitate access by manufacturing enterprises to capital-intensive infrastructure, including high-performance electronics and computing, and the supply chains that enable these technologies;

“(E) to accelerate the development of an advanced manufacturing workforce;

“(F) to facilitate peer exchange of and the documentation of best practices in addressing advanced manufacturing challenges;

“(G) to leverage non-Federal sources of support to promote a stable and sustainable business model without the need for long-term Federal funding;

“(H) to create and preserve jobs; and

“(I) to contribute to the development of regional innovation initiatives across the United States.

“(3) **SUPPORT.**—The Secretary, acting through the Director, shall carry out the purposes set forth in paragraph (2) by supporting—

“(A) the Manufacturing USA Network established under subsection (b); and

“(B) the establishment of Manufacturing USA institutes.

“(4) **DIRECTOR.**—The Secretary shall carry out the Program through the Director.

“(c) **ESTABLISHMENT OF MANUFACTURING USA NETWORK.**—

“(1) **IN GENERAL.**—As part of the Program, the Secretary shall establish a network of Manufacturing USA institutes.

“(2) DESIGNATION.—The network established under paragraph (1) shall be known as the ‘Manufacturing United States of America Network’ or the ‘Manufacturing USA Network’ (referred to in this section as the ‘Network’).

“(d) MANUFACTURING USA INSTITUTES.—

“(1) IN GENERAL.—For purposes of this section, a Manufacturing USA institute is an institute that—

“(A) has been established by a person or group of persons to address challenges in advanced manufacturing and to assist manufacturers in retaining or expanding industrial production and jobs in the United States;

“(B) has a predominant focus on a manufacturing process, novel material, enabling technology, supply chain integration methodology, or another relevant aspect of advanced manufacturing, such as nanotechnology applications, advanced ceramics, photonics and optics, composites, biobased and advanced materials, flexible hybrid technologies, tool development for microelectronics, food manufacturing, superconductors, advanced battery technologies, robotics, advanced sensors, quantum information science, supply chain water optimization, aeronautics and advanced materials, and graphene and graphene commercialization;

“(C) has the potential—

“(i) to improve the competitiveness of United States manufacturing, including key advanced manufacturing technologies such as nanotechnology, advanced ceramics, photonics and optics, composites, biobased and advanced materials, flexible hybrid technologies, tool development for microelectronics, food manufacturing, superconductors, advanced battery technologies, robotics, advanced sensors, quantum information science, supply chain water optimization, aeronautics and advanced materials, and graphene and graphene commercialization;

“(ii) to accelerate non-Federal investment in advanced manufacturing production capacity in the United States; or

“(iii) to enable the commercial application of new technologies or industry-wide manufacturing processes; and

“(D) includes active participation among representatives from multiple industrial entities, research universities, community colleges, and other entities as appropriate, which may include industry-led consortia, career and technical education schools, Federal laboratories, State, local, and Tribal governments, businesses, educational institutions, and nonprofit organizations.

“(2) ACTIVITIES.—

“(A) REQUIRED ACTIVITIES.—For purposes of this section, a Manufacturing USA institute is also an institute that carries out the following:

“(i) Research, development, and demonstration projects, including proof-of-concept development and prototyping, to reduce the cost, time, or risk of commercializing new technologies and improvements in existing technologies, processes, products, and research and development of materials to solve precompetitive

industrial problems with economic or national security implications.

“(ii) Development and implementation of education, training, and workforce recruitment courses, materials, and programs addressing workforce needs through training and education programs at all appropriate education levels, including programs on applied engineering.

“(iii) Development of innovative methodologies and practices for supply chain integration and introduction of new technologies into supply chains, as appropriate.

“(iv) Outreach and engagement with small and medium-sized manufacturing enterprises, including women, minority, and veteran owned manufacturing enterprises, in addition to large manufacturing enterprises.

“(v) Development of roadmaps or leveraging of existing roadmaps with respect to technology areas being pursued by that Manufacturing USA institute that take into account the research and development undertaken at other Manufacturing USA institutes and Federal agencies with respect to such areas.

“(B) PERMISSIBLE ACTIVITIES.—In addition to the activities set forth under subparagraph (A), a Manufacturing USA institute may carry out such other activities as may be consistent with the purposes set forth under subsection (b)(2).

“(3) ADDITIONAL MANUFACTURING USA INSTITUTES.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), the National Additive Manufacturing Innovation Institute and other manufacturing institutes formally recognized as Manufacturing USA institutes pursuant to Federal law or executive actions, or under pending interagency review for such recognition as of December 16, 2014, shall be considered Manufacturing USA institutes for purposes of this section.

“(B) NETWORK PARTICIPATION.—Except as provided in subparagraph (C), an institute that is substantially similar to an institute described by paragraphs (1) and (2) but does not meet every element of such description and does not receive financial assistance under subsection (e) may, upon request of the institute, be recognized as a Manufacturing USA institute by the Secretary for purposes of participation in the Network.

“(C) APPLICABILITY.—Effective beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, an institute shall be treated as a Manufacturing USA institute under this section and subject to subsections (b)(2), (d), and (e) in the same manner and to the same extent as such provisions apply to a Manufacturing USA institute described by paragraphs (1) and (2) if such institute—

“(i) is, as of such date of enactment, considered a Manufacturing USA institute under subparagraph (A) or recognized as a Manufacturing USA institute under subparagraph (B); and

Effective date.

“(II) as of such date of enactment, receives Federal financial assistance under subsection (e) or otherwise consistent with the purposes of this section;

“(ii) is under pending agency review for such recognition as of such date of enactment; or

“(iii) is currently funded by the Department of Energy.

“(e) FINANCIAL ASSISTANCE TO ESTABLISH AND SUPPORT MANUFACTURING USA INSTITUTES.—

“(1) FINANCIAL ASSISTANCE AUTHORIZED.—Under the Program, the Secretary and the Secretary of Energy shall, and every other agency head may, award financial assistance to a person or group of persons to assist the person or group of persons in planning, establishing, or supporting a Manufacturing USA institute.

“(2) PERIOD AND RENEWAL OF AWARDS.—

“(A) INITIAL PERIODS.—An award of financial assistance under paragraph (1) shall be awarded for an initial period of not less than 5 years and not more than 7 years.

“(B) RENEWAL OF AWARDS.—

“(i) RENEWAL AUTHORIZED.—An award of financial assistance under paragraph (1) may be renewed for additional periods, with each period not to exceed the duration of the initial period of the award, subject to a rigorous merit review.

“(ii) CONSIDERATION OF PERFORMANCE STANDARDS.—In carrying out a rigorous merit review under clause (i) for renewal of an award under such clause for a Manufacturing USA institute, an agency head shall consider the extent to which the institute has made progress in meeting the standards of performance established pursuant to paragraph (5)(C).

“(iii) INITIAL FAILURE TO MEET PERFORMANCE STANDARDS.—If, pursuant to a rigorous merit review under clause (i) for renewal of an award under such clause for a Manufacturing USA institute, an agency head finds that the institute does not meet the standards for performance established pursuant to paragraph (5)(C), the agency head shall—

“(I) notify the institute of any deficiencies in the performance of the institute; and

“(II) provide the institute one year to remedy such deficiencies.

“(iv) FURTHER FAILURE TO MEET PERFORMANCE STANDARDS.—If a Manufacturing USA institute fails to remedy a deficiency identified or to show significant improvement in performance during the 1-year period set forth under clause (iii)(II)—

“(I) the institute shall not be eligible for renewed award under clause (i); and

“(II) the agency head that conducted the review for renewal shall notify the institute of such ineligibility.

“(v) CONTINUATION OF EXISTING MANUFACTURING USA INSTITUTES.—Notwithstanding clauses (i) through

Notification.

(iv), a Manufacturing USA institute already in existence or undergoing a renewal process prior to December 1, 2019—

“(I) may continue to receive support for the duration of the original funding award beginning on the date of establishment of that institute; and

“(II) shall be eligible for renewal of that funding pursuant to clause (i).

“(3) APPLICATION FOR FINANCIAL ASSISTANCE.—

“(A) IN GENERAL.—A person or group of persons seeking financial assistance under paragraph (1) shall submit to an agency head an application therefor at such time, in such manner, and containing such information as the agency head may require.

“(B) REQUIREMENTS.—An application submitted under subparagraph (A) for an institute shall, at a minimum include the following:

“(i) A description of the specific sources and amounts of non-Federal financial support for the institute on the date financial assistance is sought.

“(ii) A description of the anticipated sources and amounts of non-Federal financial support during the period for which the institute could be eligible for continued Federal financial assistance under this section.

“(4) SELECTION.—

“(A) COMPETITIVE, MERIT REVIEW.—In awarding financial assistance under paragraph (1), an agency head shall—

“(i) use a competitive, merit review process that includes review by a diverse group of individuals with relevant expertise from both the private and public sectors; and

“(ii) ensure that the technology focus of a Manufacturing USA institute does not substantially duplicate the technology focus of any other Manufacturing USA institute.

“(B) PARTICIPATION IN PROCESS.—

“(i) PROHIBITION ON PARTICIPATION BY POLITICAL APPOINTEES.—The review required by subparagraph (A)(i) may not include a review by a group of individuals that includes a political appointee.

“(ii) CONFLICT OF INTEREST POLICIES.—Each agency head shall implement a conflict of interest policy that—

“(I) ensures public transparency and accountability in the process used under subparagraph (A)(i); and

“(II) requires full disclosure of any real or potential conflicts of interest on the parts of individuals that participate in the process used under subparagraph (A)(i).

“(iii) DEFINITION OF POLITICAL APPOINTEE.—For purposes of this subparagraph, the term ‘political appointee’ has the meaning given such term in section 714(h) of title 38, United States Code.

“(C) CONSIDERATIONS.—In selecting a person or group of persons who submitted an application to an agency head

under paragraph (3) for an award of financial assistance under paragraph (1) for a Manufacturing USA institute, the agency head shall consider, at a minimum, the following:

“(i) The potential of the Manufacturing USA institute to advance domestic manufacturing and the likelihood of economic impact, including the creation or preservation of jobs, in the predominant focus areas of the institute.

“(ii) The commitment of continued financial support, advice, participation, and other contributions from non-Federal sources, to provide leverage and resources to promote a stable and sustainable business model.

“(iii) Whether the financial support provided to the Manufacturing USA institute from non-Federal sources exceeds the requested Federal financial assistance.

“(iv) How the Manufacturing USA institute will increase the non-Federal investment in advanced manufacturing research in the United States.

“(v) How the Manufacturing USA institute will engage with small and medium-sized manufacturing enterprises to improve the capacity of such enterprises to commercialize new processes and technologies and to improve the domestic supply chain.

“(vi) How the Manufacturing USA institute will carry out educational and workforce activities that meet industrial needs related to the predominant focus areas of the institute.

“(vii) How the Manufacturing USA institute will advance economic competitiveness and generate substantial benefits to the Nation that extend beyond the direct return to participants in the Program.

“(viii) Whether the predominant focus of the Manufacturing USA institute is a manufacturing process, novel material, enabling technology, supply chain integration methodology, or other relevant aspect of advanced manufacturing that has not already been commercialized, marketed, distributed, or sold by another entity.

“(ix) How the Manufacturing USA institute will strengthen and leverage the industrial, research, entrepreneurship, and other assets of a region.

“(x) How the Manufacturing USA institute will encourage the education and training of veterans and individuals with disabilities.

“(5) PERFORMANCE MEASUREMENT, TRANSPARENCY, AND ACCOUNTABILITY.—For each award of financial assistance under paragraph (1) by an agency head, the agency head shall—

“(A) develop metrics to assess the effectiveness of the activities funded in making progress toward the purposes of the Program set forth under subsection (b)(2), including the effectiveness of Manufacturing USA institutes in advancing technology readiness levels or manufacturing readiness levels;

Assessment.

Time periods. Assessment.	<p>“(B) establish standards for the performance of Manufacturing USA institutes that are based on the metrics developed under subparagraph (A); and</p> <p>“(C) for each Manufacturing USA institute supported by the award, 5 years after the initial award and every 5 years thereafter until Federal financial assistance under this subsection is discontinued, conduct an assessment of the institute to confirm whether the performance of the institute is meeting the standards for performance established under subparagraph (B).</p>
Coordination.	<p>“(6) COLLABORATION.—In awarding financial assistance under paragraph (1), an agency head, in coordination with the National Program Office, as the agency head considers appropriate, may collaborate with Federal departments and agencies whose missions contribute to or are affected by advanced manufacturing, including, as the agency head considers appropriate, the Department of Agriculture, the Department of Defense, the Department of Education, the Department of Energy, the Department of Labor, the Food and Drug Administration, the National Aeronautics and Space Administration, the National Institutes of Health, and the National Science Foundation.</p>
Determination.	<p>“(7) MATCHING FUNDS AND PREFERENCES.—</p> <p>“(A) IN GENERAL.—Except as provided in subparagraph (B), an agency head may not, with respect to a Manufacturing USA institute, award financial assistance under paragraph (1) or renew an award of financial assistance under paragraph (2) unless the agency head determines that non-Federal funding comprises 50 percent or more of the total amount of funding made available for the operation and support of the institute.</p> <p>“(B) WAIVERS.—An agency head awarding financial assistance under paragraph (1) with respect to a Manufacturing USA institute may waive the requirements of subparagraph (A) in the case of satellite centers, large capital facilities, equipment purchases, workforce development, or general operations.</p>
Determination.	<p>“(f) GRANT PROGRAM FOR PUBLIC SERVICE ACTIVITIES FOR MANUFACTURING USA INSTITUTES WITHOUT FEDERAL FUNDING.—The Secretary may award a grant on a competitive basis to a Manufacturing USA institute that is not receiving financial assistance under subsection (e) to carry out workforce development, outreach to small- and medium-sized manufacturers, and other activities that—</p> <p>“(1) are determined by the Secretary to be in the national interest; and</p> <p>“(2) are unlikely to receive private sector financial support.</p> <p>“(g) AUTHORIZATION OF APPROPRIATIONS.—</p> <p>“(1) NIST INDUSTRIAL TECHNICAL SERVICES ACCOUNT.—To the extent provided for in advance by appropriations Acts, the Secretary may use amounts appropriated to the Industrial Technical Services account to carry out this section as follows:</p> <p>“(A) For each of the fiscal years 2015 through 2019, an amount not to exceed \$5,000,000.</p> <p>“(B) For each of fiscal years 2020 through 2030, such amounts as may be necessary to carry out this section.</p>



“(2) DEPARTMENT OF ENERGY.—There are authorized to be appropriated to the Secretary of Energy for the provision of financial assistance under subsection (e) by the Department of Energy amounts as follows:

“(A) \$70,000,000 for each of fiscal years 2020, 2021, and 2022.

“(B) \$84,000,000 for each of fiscal years 2023 and 2024.

“(h) NATIONAL PROGRAM OFFICE.—

“(1) ESTABLISHMENT.—The Secretary shall establish, within the Institute, the National Office of the Manufacturing USA Network (referred to in this section as the ‘National Program Office’), which shall oversee and carry out the Program.

“(2) FUNCTIONS.—The functions of the National Program Office are—

“(A) to oversee the planning, management, and coordination of the Program;

“(B) to coordinate with and, as appropriate, enter into memorandums of understanding with Federal departments and agencies whose missions contribute to or are affected by advanced manufacturing, including the Department of Agriculture, the Department of Defense, the Department of Education, the Department of Energy, the Department of Labor, the Food and Drug Administration, the National Aeronautics and Space Administration, the National Institutes of Health, and the National Science Foundation, to carry out the purposes set forth under subsection (b)(2);

Coordination.

“(C) to develop, not later than December 16, 2015, and update not less frequently than once every 3 years thereafter, a strategic plan to guide the Program;

Deadline.  
Strategic plan.

“(D) to establish such procedures, processes, and criteria as may be necessary and appropriate to maximize cooperation and coordinate the activities of the Program with programs and activities of other Federal departments and agencies whose missions contribute to or are affected by advanced manufacturing;

“(E) to establish a clearinghouse of public information related to the activities of the Program;

“(F) to act as a convener of the Network;

“(G) to work with Federal agencies that are not sponsoring or supporting a Manufacturing USA institute to explore and develop options for sponsoring or supporting a Manufacturing USA institute;

“(H) to work with Federal agencies that are sponsoring or supporting a Manufacturing USA institute to develop and implement network-wide performance goals with measurable targets and timelines;

“(I) to help develop pilot programs that may be implemented by the Manufacturing USA institutes to address specific purposes of the Program, including to accelerate technology transfer to the private sector and to develop entrepreneurship programs;

“(J) to provide support services to promote workforce development activities;

“(K) to identify and disseminate best practices for workforce education and training across the Network and further enhance collaboration among Manufacturing USA institutes in developing and implementing such practices;

Coordination.

“(L) to collaborate with the Department of Labor, the Department of Education, industry, career and technical education schools, local community colleges, universities, and labor organizations to provide input, as appropriate, for the development of national certifications for advanced manufacturing workforce skills in the technology areas of the Manufacturing USA institutes; and

“(M) to coordinate with Manufacturing USA institutes to develop best practices for the membership agreements and coordination of similar project solicitations.

“(3) RECOMMENDATIONS.—In developing and updating the strategic plan under paragraph (2)(C), the Secretary shall solicit recommendations and advice from a wide range of stakeholders, including industry, small and medium-sized manufacturing enterprises, research universities, community colleges, State, Tribal, and local governments, and other relevant organizations and institutions on an ongoing basis.

“(4) REPORT TO CONGRESS.—Upon completion, the Secretary shall transmit the strategic plan required under paragraph (2)(C) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

“(5) HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP.—

“(A) IN GENERAL.—The Secretary shall ensure that the National Program Office leverages the capabilities of the Hollings Manufacturing Extension Partnership into Program planning to ensure—

“(i) significant outreach to, participation of, and engagement of small- and medium-sized manufacturers in Manufacturing USA institutes across the entirety of the manufacturing supply chain; and

“(ii) that the results of the Program, including technologies developed by the Program, reach small- and medium-sized manufacturers and that such entities have access to technical assistance, as appropriate, in deploying those technologies.

“(B) LIAISONS.—The Secretary may provide financial assistance to a manufacturing extension center established as part of the Hollings Manufacturing Extension Partnership to support the purposes of the Program by providing services in one or more of the following areas:

“(i) Support services for small- and medium-sized manufacturers, that many include the designation of a liaison.

“(ii) Assistance with workforce development.

“(iii) Technology transfer for small and medium-sized manufacturers.

“(iv) Such other areas as the Secretary determines appropriate to support the purposes of the Program.

“(6) DETAILEES.—Any Federal Government employee may be detailed to the National Program Office without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

“(i) REPORTING AND AUDITING.—

“(1) ANNUAL REPORTS TO THE SECRETARY.—

“(A) IN GENERAL.—Not less frequently than once each year, each agency head that is providing financial assistance under subsection (e) shall—

“(i) require each recipient of such financial assistance submit to the agency head a report that describes the finances and performance of the Manufacturing USA institute with respect to which the financial assistance is awarded; and

“(ii) submit to the Secretary each report received by the agency head under clause (i).

“(B) ELEMENTS.—Each report submitted under subparagraph (A) shall include:

“(i) an accounting of expenditures of amounts awarded to the recipient under subsection (e); and

“(ii) consistent with the standards for performance established under subsection (e)(5)(B), a description of the performance of the Manufacturing USA institute with respect to—

“(I) its goals, plans, financial support, and accomplishments; and

“(II) how the Manufacturing USA institute has furthered the purposes set forth under subsection (b)(2).

“(2) ANNUAL REPORTS TO CONGRESS.—

“(A) IN GENERAL.—Not less frequently than once each year until December 31, 2030, the Secretary shall submit a report to Congress that describes the performance of the Program during the most recent 1-year period.

Time period.

“(B) ELEMENTS.—Each report submitted under subparagraph (A) shall include, for the period covered by the report—

Assessments.

“(i) a summary and assessment of the reports received by the Secretary under paragraph (1);

Summary.

“(ii) an accounting of the funds expended by the Secretary under the Program, including any waivers made under subsection (e)(7)(B);

“(iii) an assessment of the participation in, and contributions to, the Network by any Manufacturing USA institutes not receiving financial assistance under subsection (e); and

“(iv) an assessment of the Program with respect to meeting the purposes set forth under subsection (b)(2).

“(3) ASSESSMENTS BY COMPTROLLER GENERAL OF THE UNITED STATES.—

“(A) ASSESSMENTS.—Not less frequently than once every 3 years, the Comptroller General of the United States shall submit to Congress an assessment of the operation of the Program during the most recent 3-year period, including an assessment of the progress made towards achieving the goals specified in the national strategic plan for advanced manufacturing required under section 102(b)(7) of the America COMPETES Reauthorization Act of 2010 (42 U.S.C. 6622(b)(7)).

Time period.

“(B) ELEMENTS.—Each assessment submitted under subparagraph (A) shall include, for the period covered by the report—

- Review. “(i) a review of the management, coordination, and industry utility of the Program;
- “(ii) an assessment of the extent to which the Program has furthered the purposes set forth under subsection (b)(2);
- Recommendations. “(iii) such recommendations for legislative and administrative action as the Comptroller General considers appropriate to improve the Program; and
- “(iv) an assessment as to whether any prior recommendations for improvement made by the Comptroller General have been implemented or adopted.
- Deadline. “(C) FINAL ASSESSMENT.—No later than December 31, 2030, the Comptroller General shall submit to Congress a final report regarding the overall success of the Program.
- “(j) ADDITIONAL AUTHORITIES.—
- “(1) APPOINTMENT OF PERSONNEL AND CONTRACTS.—The Secretary may appoint such personnel and enter into such contracts, financial assistance agreements, and other agreements as the Secretary considers necessary or appropriate to carry out the Program, including support for research and development activities involving a Manufacturing USA institute.
- “(2) TRANSFER OF FUNDS.—Of amounts available under the authority provided by subsection (g), the Secretary may transfer to other Federal agencies such sums as the Secretary considers necessary or appropriate to carry out the Program. No funds so transferred may be used to reimburse or otherwise pay for the costs of financial assistance incurred or commitments of financial assistance made prior to December 16, 2014.
- “(3) AUTHORITY OF OTHER AGENCIES.—In the event that the Secretary exercises the authority to transfer funds to another agency under paragraph (2), such agency may accept such funds to award and administer, under the same conditions and constraints applicable to the Secretary, all aspects of financial assistance awards under this section.
- “(4) USE OF RESOURCES.—In furtherance of the purposes of the Program, the Secretary may use, with the consent of a covered entity and with or without reimbursement, the land, services, equipment, personnel, and facilities of such covered entity.
- “(5) ACCEPTANCE OF RESOURCES.—In addition to amounts appropriated to carry out the Program, the Secretary may accept funds, services, equipment, personnel, and facilities from any covered entity to carry out the Program, subject to the same conditions and constraints otherwise applicable to the Secretary under this section and such funds may only be obligated to the extent provided for in advance by appropriations Acts.
- “(6) COVERED ENTITIES.—For purposes of this subsection, a covered entity is any Federal department, Federal agency, instrumentality of the United States, State, local government, Tribal government, territory, or possession of the United States, or of any political subdivision thereof, or international organization, or any public or private entity or individual.
- “(7) COLLABORATIONS WITH OTHER AGENCIES.—The Secretary shall collaborate with Federal agencies whose missions contribute to, or are affected by, advanced manufacturing to

identify and leverage existing resources at such Federal agencies to assist Manufacturing USA institutes in carrying out the purposes of the Program set forth under subsection (b)(2). Such existing resources may include programs—

“(A) at the Department of Labor relating to labor and apprenticeships;

“(B) at the Economic Development Administration relating to regional innovation, such as the Regional Innovation Strategies program;

“(C) at the Department of Education relating to workforce development, education, training, and retraining;

“(D) at the Department of Defense relating to procurement and other authorities of the Department of Defense;

“(E) at the Food and Drug Administration relating to biopharmaceutical manufacturing;

“(F) at the National Science Foundation, including the Advanced Technological Education program;

“(G) at the National Aeronautics and Space Administration relating to procurement, workforce development, education, training, and retraining;

“(H) at the Department of Energy relating to development of clean energy technologies and other authorities of the Department of Energy;

“(I) at the Department of Agriculture relating to outreach to rural communities;

“(J) additional programs that the Secretary determines are appropriate to support the activities of existing Manufacturing USA institutes; and

“(K) additional programs that the Secretary determines are appropriate to support the activities of existing Manufacturing USA institutes.

“(k) PATENTS.—Chapter 18 of title 35, United States Code, shall apply to any funding agreement (as defined in section 201 of that title) awarded to new or existing Manufacturing USA institutes with respect to which financial assistance is awarded under subsection (e).

Applicability.

“(l) REFERENCES TO PRIOR NAMES AND TERMINOLOGY.—Any reference in law, regulation, map, document, paper, or other record of the United States to the ‘Network for Manufacturing Innovation Program’, the ‘Network for Manufacturing Innovation’, ‘National Office of the Network for Manufacturing Innovation Program’, or a ‘center for manufacturing innovation’ shall be considered to be a reference to the Manufacturing USA Program, the Manufacturing USA Network, the National Office of the Manufacturing USA Network, or a Manufacturing USA institute, respectively.”

(b) EXPANSION OF MANUFACTURING USA NETWORK.—Subject to the availability of appropriations, the Secretary of Commerce shall take such actions as may be necessary to increase the number of Manufacturing USA institutes that participate in the Manufacturing USA Network.

15 USC 278s  
note.

**SEC. 1742. REGIONAL INNOVATION PROGRAM.**

Section 27 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3722) is amended to read as follows:

**“SEC. 27. REGIONAL INNOVATION PROGRAM.**

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE RECIPIENT.—The term ‘eligible recipient’ means—

“(A) a State;

“(B) an Indian tribe;

“(C) a city or other political subdivision of a State;

“(D) an entity that—

“(i) is a nonprofit organization, an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, a venture development organization, or an economic development organization or similar entity that is focused primarily on improving science, technology, innovation, or entrepreneurship; and

“(ii) has an application submitted under subsection (c)(4) that is supported by a State or a political subdivision of a State; or

“(E) a consortium of any of the entities described in subparagraphs (A) through (D).

“(2) REGIONAL INNOVATION INITIATIVE.—The term ‘regional innovation initiative’ means a geographically-bounded public or nonprofit activity or program to address issues in the local innovation systems in order to—

“(A) increase the success of innovation-driven industry;

“(B) strengthen the competitiveness of industry through new product innovation and new technology adoption;

“(C) improve the pace of market readiness and overall commercialization of innovative research;

“(D) enhance the overall innovation capacity and long-term resilience of the region;

“(E) leverage the region’s unique competitive strengths to stimulate innovation; and

“(F) increase the number of full-time equivalent employment opportunities within innovation-based business ventures in the geographic region.

“(3) STATE.—The term ‘State’ means one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

“(4) VENTURE DEVELOPMENT ORGANIZATION.—The term ‘venture development organization’ means a State or nonprofit organization that contributes to regional or sector-based economic prosperity by providing services for the purposes of accelerating the commercialization of research.

“(b) ESTABLISHMENT.—The Secretary shall establish a regional innovation program to encourage and support the development of regional innovation strategies designed to increase innovation-driven economic opportunity within their respective regions.

“(c) REGIONAL INNOVATION GRANTS.—

“(1) AUTHORIZATION OF GRANTS.—As part of the program established pursuant to subsection (b), the Secretary may award grants, on a competitive basis, to eligible recipients for activities designed to develop and support a regional innovation initiative.

“(2) PERMISSIBLE ACTIVITIES.—A grant awarded under this subsection shall be used for multiple activities determined appropriate by the Secretary, including—

“(A) planning, technical assistance, and communication among participants of a regional innovation initiative to improve the connectedness and strategic orientation of the regional innovation initiative;

“(B) attracting additional participants to a regional innovation initiative;

“(C) increasing the availability and investment of private and philanthropic financing that supports innovation-based business ventures; and

“(D) facilitating commercialization of products, processes, and services, including through demonstration, deployment, technology transfer, and entrepreneurial activities.

“(3) RESTRICTED ACTIVITIES.—Grants awarded under this subsection may not be used to pay for—

“(A) costs related to the recruitment, inducement, or associated financial or tangible incentives that might be offered to relocate an existing business from a geographic area to another geographic area; or

“(B) costs associated with offsetting revenues forgone by 1 or more taxing authorities through tax incentives, tax increment financing, special improvement districts, tax abatements for private development within designated zones or geographic areas, or other reduction in revenues resulting from tax credits affecting the geographic region of the eligible recipients.

“(4) APPLICATIONS.—

“(A) IN GENERAL.—An eligible recipient shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

“(B) COMPONENTS.—Each application submitted under subparagraph (A) shall—

“(i) describe the regional innovation initiative;

“(ii) indicate whether the regional innovation initiative is supported by the private sector, State and local governments, and other relevant stakeholders;

“(iii) identify what activities the regional innovation initiative will undertake;

“(iv) describe the expected outcomes of the regional innovation initiative and the metrics the eligible recipient will use to assess progress toward those outcomes;

“(v) indicate whether the participants in the regional innovation initiative have access to, or contribute to, a well-trained workforce and other innovation assets that are critical to the successful outcomes specified in the application;

“(vi) indicate whether the participants in the regional innovation initiative are capable of attracting additional funds from non-Federal sources; and

“(vii) if appropriate for the activities proposed in the application, analyze the likelihood that the participants in the regional innovation initiative will be able

to sustain activities after grant funds received under this subsection have been expended.

“(C) FEEDBACK.—The Secretary shall provide feedback to program applicants that are not awarded grants to help them improve future applications.

“(D) SPECIAL CONSIDERATIONS.—The Secretary shall give special consideration to—

“(i) applications proposing to include workforce or training related activities in their regional innovation initiative from eligible recipients who agree to collaborate with local workforce investment area boards; and

“(ii) applications from regions that contain communities negatively impacted by trade.

“(5) COST SHARE.—The Secretary may not provide more than 50 percent of the total cost of any activity funded under this subsection.

“(6) OUTREACH TO RURAL COMMUNITIES.—The Secretary shall conduct outreach to public and private sector entities in rural communities to encourage those entities to participate in regional innovation initiatives under this subsection.

“(7) GEOGRAPHIC DISTRIBUTION.—In conducting a competitive process, the Secretary shall avoid undue geographic concentration among any one category of States based on their predominant rural or urban character as indicated by population density.

“(8) FUNDING.—The Secretary may accept funds from other Federal agencies to support grants and activities under this subsection.

“(d) REGIONAL INNOVATION RESEARCH AND INFORMATION PROGRAM.—

“(1) IN GENERAL.—As part of the program established pursuant to subsection (b), the Secretary shall establish a regional innovation research and information program—

“(A) to gather, analyze, and disseminate information on best practices for regional innovation initiatives, including information relating to how innovation, productivity, and economic development can be maximized through such strategies;

“(B) to provide technical assistance, including through the development of technical assistance guides, for the development and implementation of regional innovation initiatives;

“(C) to support the development of relevant metrics and measurement standards to evaluate regional innovation initiatives, including the extent to which such strategies stimulate innovation, productivity, and economic development; and

“(D) to collect and make available data on regional innovation initiatives in the United States, including data on—

“(i) the size, specialization, and competitiveness of regional innovation initiatives;

“(ii) the regional domestic product contribution, total jobs and earnings by key occupations, establishment size, nature of specialization, patents, Federal research and development spending, and other relevant information for regional innovation initiatives; and



“(iii) supply chain product and service flows within and between regional innovation initiatives.

“(2) RESEARCH GRANTS.—The Secretary may award research grants on a competitive basis to support and further the goals of the program established under this section.

“(3) DISSEMINATION OF INFORMATION.—Data and analysis compiled by the Secretary under the program established in this subsection shall be made available to other Federal agencies, State and local governments, and nonprofit and for-profit entities.

“(4) REGIONAL INNOVATION GRANT PROGRAM.—The Secretary shall incorporate data and analysis relating to any grant awarded under subsection (c) into the program established under this subsection.

“(e) INTERAGENCY COORDINATION.—

“(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other programs at the Department of Commerce or at other Federal agencies.

“(2) COLLABORATION.—

“(A) IN GENERAL.—The Secretary shall explore and pursue collaboration with other Federal agencies, including through multi-agency funding opportunities, on regional innovation strategies.

“(B) SMALL BUSINESSES.—The Secretary shall ensure that such collaboration with Federal agencies prioritizes the needs and challenges of small businesses.

“(f) EVALUATION.—

“(1) IN GENERAL.—Not later than 5 years after Congress first appropriates funds to carry out this section, the Secretary shall competitively award a contract with an independent entity to conduct an evaluation of programs established under this section.

Deadline.  
Contracts.

“(2) REQUIREMENTS.—The evaluation conducted under paragraph (1) shall include—

Recommendations.

“(A) an assessment of whether the program is achieving its goals;

Assessment.

“(B) the program’s efficacy in providing awards to geographically diverse entities;

“(C) any recommendations for how the program may be improved; and

“(D) a recommendation as to whether the program should be continued or terminated.

“(g) REPORTING REQUIREMENT.—Not later than 5 years after the first grant is awarded under subsection (c), and every 5 years thereafter until 5 years after the last grant recipient completes the regional innovation initiative for which such grant was awarded, the Secretary shall submit a summary report to Congress that describes the outcome of each regional innovation initiative that was completed during the previous 5 years.

“(h) FUNDING.—From amounts appropriated by Congress to the Secretary, the Secretary may use up to \$50,000,000 in each of the fiscal years 2020 through 2024 to carry out this section.”.

**SEC. 1743. AVIATION WORKFORCE DEVELOPMENT.**

49 USC 40101 note. (a) **IN GENERAL.**—Section 625(c)(1) of the FAA Reauthorization Act of 2018 (Public Law 115–254) is amended—

(1) in subparagraph (C), by striking “or” after the semicolon;

(2) in subparagraph (D), by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(E) an organization representing aircraft users, aircraft owners, or aircraft pilots.”.

49 USC 40101 note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect as if included in the enactment of the FAA Reauthorization Act of 2018 (Public Law 115–254).

10 USC 113 note.

**SEC. 1744. OVERSIGHT OF DEPARTMENT OF DEFENSE EXECUTE ORDERS.**

Deadline.

(a) **REVIEW OF EXECUTE ORDERS.**—Not later than 30 days after receiving a written request by the Chairman or Ranking Member of a congressional defense committee, the Secretary of Defense shall provide the committee, including appropriately designated staff of the committee, with—

(1) an execute order approved by the Secretary or the commander of a combatant command for review; and

(2) a detailed briefing on such execute order.

Briefing.

(b) **EXCEPTION.**—

Determination.

(1) **IN GENERAL.**—In extraordinary circumstances necessary to protect operations security or the sensitivity of the execute order, the Secretary may limit review of an execute order. A determination that extraordinary circumstances exist for purposes of this paragraph may only be made by the Secretary and the decision to limit the review of an execute order may not be delegated.

(2) **SUMMARY AND OTHER INFORMATION.**—In extraordinary circumstances described in paragraph (1) with respect to an execute order, within 30 days of receiving a written request under subsection (a), the Secretary shall provide to the committee concerned, including appropriately designated staff of the committee—

(A) a written explanation of the extraordinary circumstances that led to the determination by the Secretary to limit review of the execute order; and

(B) a detailed summary of the execute order and other information necessary for the conduct of the oversight duties of the committee.

(c) **QUARTERLY REPORT.**—Not later than 30 days after the date on which the budget of the President is submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2021 and every 90 days thereafter, the Secretary of Defense shall submit to the congressional defense committees a comprehensive report identifying and summarizing all execute orders approved by the Secretary or the commander of a combatant command in effect for the Department of Defense as of the date of the report.

10 USC 167 note.

**SEC. 1745. PROCESSES AND PROCEDURES FOR NOTIFICATIONS REGARDING SPECIAL OPERATIONS FORCES.**

Deadline.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish

and submit to the congressional defense committees processes and procedures for providing notifications to the committees regarding members of special operations forces, as identified in section 167(j) of title 10, United States Code.

(b) PROCESSES AND PROCEDURES.—The processes and procedures established under subsection (a) shall—

(1) clarify the roles and responsibilities of the Secretaries of the military departments, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, and the Commander of United States Special Operations Command;

(2) provide guidance relating to the types of matters that would warrant congressional notification, including awards, reprimands, incidents, and any other matters the Secretary determines necessary;

(3) be consistent with the national security of the United States;

(4) be designed to protect sensitive information during an ongoing investigation;

(5) account for the privacy of members of the Armed Forces; and

(6) take in to account existing processes and procedures for notifications to the congressional defense committees regarding members of the conventional Armed Forces.

**SEC. 1746. SECURING AMERICAN SCIENCE AND TECHNOLOGY.**

(a) INTERAGENCY WORKING GROUP.—

(1) IN GENERAL.—The Director of the Office of Science and Technology Policy, acting through the National Science and Technology Council, in consultation with the National Security Advisor, shall establish or designate an interagency working group to coordinate activities to protect federally funded research and development from foreign interference, cyber attacks, theft, or espionage and to develop common definitions and best practices for Federal science agencies and grantees, while accounting for the importance of the open exchange of ideas and international talent required for scientific progress and American leadership in science and technology.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The working group shall include at least one representative of—

(i) the National Science Foundation;

(ii) the Department of Energy;

(iii) the National Aeronautics and Space Administration;

(iv) the Department of Commerce;

(v) the Department of Health and Human Services;

(vi) the Department of Defense;

(vii) the Department of Agriculture;

(viii) the Department of Education;

(ix) the Department of State;

(x) the Department of the Treasury;

(xi) the Department of Justice;

(xii) the Department of Homeland Security;

(xiii) the Central Intelligence Agency;

(xiv) the Office of the Director of National Intelligence;

(xv) the Office of Management and Budget;

42 USC 6601  
note.

Consultation.

(xvi) the National Economic Council; and

(xvii) such other Federal department or agency as the President considers appropriate.

(B) CHAIR.—The working group shall be chaired by the Director of the Office of Science and Technology Policy (or the Director’s designee).

(3) RESPONSIBILITIES OF THE WORKING GROUP.—The working group established under paragraph (1) shall—

(A) identify known and potential cyber, physical, and human intelligence threats and vulnerabilities within the United States scientific and technological enterprise;

Coordination.

(B) coordinate efforts among agencies to share and update important information, including specific examples of foreign interference, cyber attacks, theft, or espionage directed at federally funded research and development or the integrity of the United States scientific enterprise;

(C) identify and assess existing mechanisms for protection of federally funded research and development;

(D) develop an inventory of—

(i) terms and definitions used across Federal science agencies to delineate areas that may require additional protection; and

(ii) policies and procedures at Federal science agencies regarding protection of federally funded research; and

Recommendations.

(E) develop and periodically update unclassified recommendations for policy guidance to assist Federal science agencies and grantees in defending against threats to federally funded research and development and the integrity of the United States scientific enterprise that—

(i) includes—

(I) descriptions of known and potential threats to federally funded research and development and the integrity of the United States scientific enterprise;

(II) common definitions and terminology for categorization of research and technologies that are protected;

(III) identified areas of research or technology that might require additional protection;

(IV) recommendations for how control mechanisms can be utilized to protect federally funded research and development from foreign interference, cyber attacks, theft or espionage, including any recommendations for updates to existing control mechanisms;

(V) recommendations for best practices for Federal science agencies, universities, and grantees to defend against threats to federally funded research and development, including coordination and harmonization of any relevant reporting requirements that Federal science agencies implement for grantees, and by providing such best practices with grantees and universities at the time of awarding such grants or entering into research contracts;

(VI) a remediation plan for grantees and universities to mitigate the risks regarding such threats before research grants or contracts are cancelled because of such threats;

Remediation  
plan.

(VII) recommendations for providing opportunities and facilities for academic researchers to perform controlled and classified research in support of Federal missions;

(VIII) assessments of potential consequences that any proposed practices would have on international collaboration and United States leadership in science and technology; and

Assessments.

(IX) a classified addendum as necessary to further inform Federal science agency decision-making; and

(ii) accounts for the range of needs across different sectors of the United States science and technology enterprise.

(4) POLICY GUIDANCE.—Not later than 270 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy, in consultation with the working group established under paragraph (1), shall—

Deadline.  
Consultation.

(A) develop and issue policy guidance to Federal science agencies with more than \$100,000,000 in extramural research in fiscal year 2018 to protect against threats to federally funded research and the United States science enterprise, including foreign interference, cyber attacks, theft, or espionage; and

(B) encourage consistency in the policies developed by Federal science agencies with more than \$100,000,000 in extramural research in fiscal year 2018, as appropriate, and factoring in the potential range of applications across different areas of science and technology.

(5) COORDINATION WITH NATIONAL ACADEMIES ROUNDTABLE.—The Director of the Office of Science and Technology Policy shall coordinate with the Academies to ensure that at least one member of the interagency working group is also a member of the roundtable under subsection (b).

(6) INTERIM REPORT.—Not later than six months after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall provide a report to the relevant committees that includes the inventory required under paragraph (3)(D), and an update on progress toward developing the policy guidance required under paragraphs (3)(E) and (4), as well as any additional activities undertaken by the working group in that time.

(7) BIENNIAL REPORTING.—Two years after the date of enactment of this Act, and at least every two years thereafter, the Director of the Office of Science and Technology Policy shall provide a summary report to the relevant committees on the activities of the working group and the most current version of the policy guidance required under paragraph (4).

(8) TERMINATION.—The working group established or designated under paragraph (1) shall terminate on the date that is ten years after the date on which such working group is established or designated.

(b) NATIONAL ACADEMIES SCIENCE, TECHNOLOGY AND SECURITY  
ROUNDTABLE.—

Contracts.

(1) IN GENERAL.—The National Science Foundation, the Department of Energy, and the Department of Defense, and any other agencies as determined by the Director of the Office of Science and Technology Policy, shall enter into a joint agreement with the Academies to create a new “National Science, Technology, and Security Roundtable” (hereinafter in this subsection referred to as the “roundtable”).

(2) PARTICIPANTS.—The roundtable shall include senior representatives and practitioners from Federal science, intelligence, and national security agencies, law enforcement, as well as key stakeholders in the United States scientific enterprise including institutions of higher education, Federal research laboratories, industry, and non-profit research organizations.

(3) PURPOSE.—The purpose of the roundtable is to facilitate among participants—

(A) exploration of critical issues related to protecting United States national and economic security while ensuring the open exchange of ideas and international talent required for scientific progress and American leadership in science and technology;

(B) identification and consideration of security threats and risks involving federally funded research and development, including foreign interference, cyber attacks, theft, or espionage;

(C) identification of effective approaches for communicating the threats and risks identified in subparagraph (b) to the academic and scientific community, including through the sharing of unclassified data and relevant case studies;

(D) sharing of best practices for addressing and mitigating the threats and risks identified in subparagraph (B); and

(E) examination of potential near- and long-term responses by the Government and the academic and scientific community to mitigate and address the risks associated with foreign threats.

(4) REPORT AND BRIEFING.—The joint agreement under paragraph (1) shall specify that—

Public  
information.

(A) the roundtable shall periodically organize workshops and issue publicly available reports on the topics described in paragraph (3) and the activities of the roundtable;

(B) not later than March 1, 2020, the Academies shall provide a briefing to the relevant committees on the progress and activities of the roundtable; and

(C) the Academies shall issue a final report on its activities to the relevant committees before the end of fiscal year 2024.

(5) TERMINATION.—The roundtable shall terminate on September 30, 2024.

(c) DEFINITIONS.—In this section:

(1) The term “Academies” means the National Academies of Science, Engineering and Medicine.

(2) The term “Federal science agency” means any Federal agency with at least \$100,000,000 in basic and applied research obligations in fiscal year 2018.

(3) The term “grantee” means an entity that is—

(A) a recipient or subrecipient of a Federal grant or cooperative agreement; and

(B) an institution of higher education or a non-profit organization.

(4) The term “relevant committees” means—

(A) the Committee on Science, Space, and Technology of the House of Representatives;

(B) the Committee on Commerce, Science, and Transportation of the Senate;

(C) the Committee on Armed Services of the House of Representatives;

(D) the Committee on Armed Services of the Senate; and

(E) the Committee on Homeland Security and Governmental Affairs of the Senate.

**SEC. 1747. STANDARDIZED POLICY GUIDANCE FOR CALCULATING AIRCRAFT OPERATION AND SUSTAINMENT COSTS.**

10 USC 2337a note.

Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of Cost Analysis and Program Evaluation and in consultation with the Secretary of each of the military services, shall develop and implement standardized policy guidance for calculating aircraft operation and sustainment costs for the Department of Defense. Such guidance shall provide for a standardized calculation of—

Deadline.  
Coordination.  
Consultation.

(1) aircraft cost per flying hour;

(2) aircraft cost per aircraft tail per year;

(3) total cost of ownership per flying hour for aircraft systems;

(4) average annual operation and sustainment cost per aircraft; and

(5) any other cost metrics the Under Secretary of Defense determines appropriate.

**SEC. 1748. SPECIAL FEDERAL AVIATION REGULATION WORKING GROUP.**

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, the Secretary of Transportation, and the Secretary of State, shall jointly establish a Special Federal Aviation Regulation (in this section referred to as the “SFAR”) interagency working group to review the current options for the Department of Defense to use contracted United States civil aviation to provide support for Department of Defense missions in areas where a Federal Aviation Administration SFAR is in effect.

Deadline.

(b) **DUTIES.**—The working group shall—

(1) analyze all options currently available for the Department of Defense to use contracted United States civil aviation to provide support for Department of Defense missions in areas where a Federal Aviation Administration SFAR is in effect;

Analysis.

(2) review existing processes of the Department of Defense, the Federal Aviation Administration, and the Department of

Review.

State, with respect to the Department of Defense’s use of contracted United States civil aviation in areas where a Federal Aviation Administration SFAR is in effect;

(3) identify any issues, inefficiencies, or concerns with the existing options and processes, including safety of flight, legal considerations, mission delivery, and security considerations; and

Recommendations.

(4) develop recommendations, if any, to improve existing processes or expand the options available for the Department of Defense to use contracted United States civil aviation to provide support to Department of Defense missions in areas where a Federal Aviation Administration SFAR is in effect.

(c) MEMBERS.—

(1) APPOINTMENT.—The Secretary of Defense, the Secretary of Transportation, and the Secretary of State shall each appoint not more than 5 members to the working group with expertise in civil aviation safety, state aircraft operations, the provision of contracted aviation support to the Department of Defense, and the coordination of such efforts between the Department of Defense, the Department of State, and the Federal Aviation Administration. The 5 members appointed by the Secretary of Transportation shall include at least 3 members from the Federal Aviation Administration.

(2) QUALIFICATIONS.—All working group members shall be full-time employees of the Federal Government with appropriate security clearances to allow discussion of all classified information and materials necessary to fulfill the working group’s duties pursuant to subsection (b).

(d) REPORT.—Not later than 1 year after the date it is established, the working group shall submit a report on its findings and any recommendations developed pursuant to subsection (b) to the congressional defense committees, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(e) TERMINATION.—The working group shall terminate 90 days after the date the report is submitted under subsection (d).

(f) DEFINITIONS.—In this section the following definitions apply:

(1) The term “United States civil aviation” means—

(A) United States air carriers and United States commercial operators;

(B) persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating United States-registered aircraft for a foreign air carrier; and

(C) operators of civil aircraft registered in the United States, except where the operator of such aircraft is a foreign air carrier.

(2) The term “Federal Aviation Administration SFAR” means the Special Federal Aviation Regulation included under subpart M of part 91 of title 14, Code of Federal Regulations.

10 USC 113 note. **SEC. 1749. PROHIBITION ON NAMES RELATED TO THE CONFEDERACY.**

(a) PROHIBITION ON NAMES RELATED TO THE CONFEDERACY.—In naming a new asset or renaming an existing asset, the Secretary of Defense or the Secretary of a military department may not give a name to an asset that refers to, or includes a term referring



to, the Confederate States of America (commonly referred to as the “Confederacy”), including any name referring to—

- (1) a person who served or held leadership within the Confederacy; or
- (2) a Confederate battlefield victory.

(b) **ASSET DEFINED.**—In this section, the term “asset” includes any base, installation, facility, aircraft, ship, equipment, or any other property owned or controlled by the Department of Defense or a military department.

(c) **SAVINGS CLAUSE.**—Nothing in this section may be construed as requiring a Secretary concerned to initiate a review of previously named assets.

**SEC. 1750. SUPPORT FOR NATIONAL MARITIME HERITAGE GRANTS PROGRAM.**

Of the funds authorized to be appropriated by this Act for fiscal year 2020 for the Department of Defense, the Secretary of Defense may contribute up to \$5,000,000 to support the National Maritime Heritage Grants Program established under section 308703 of title 54, United States Code.

**SEC. 1751. SUPPORT FOR WORLD LANGUAGE ADVANCEMENT AND READINESS.**

10 USC 2164  
note.

(a) **PROGRAM AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary of Defense, in consultation with the Director of National Intelligence and the Secretary of Education, may carry out a program under which the Secretary may provide support to eligible entities for the establishment, improvement, or expansion of world language study for elementary school and secondary school students.

Consultation.

(2) **SPECIAL REQUIREMENTS FOR LOCAL EDUCATIONAL AGENCIES.**—In providing support under paragraph (1) to an eligible entity that is a local educational agency, the Secretary of Defense shall support programs that—

- (A) show the promise of being continued after such support is no longer available;
- (B) demonstrate approaches that can be disseminated to and duplicated in other local educational agencies; and
- (C) may include a professional development component.

(3) **APPLICATIONS.**—

(A) **IN GENERAL.**—To be considered for support under paragraph (1), an eligible entity shall submit an application to the Secretary of Defense at such time, in such manner, and containing such information and assurances as the Secretary may require.

(B) **SPECIAL CONSIDERATION.**—The Secretary of Defense shall give special consideration to applications describing programs that—

- (i) include intensive summer world language programs for professional development of world language teachers;
- (ii) link nonnative English speakers in the community with the schools in order to promote two-way language learning;
- (iii) promote the sequential study of a world language for students, beginning in elementary schools;

(iv) make effective use of technology, such as computer-assisted instruction, language laboratories, or distance learning, to promote world language study;

(v) promote innovative activities, such as dual language immersion, partial world language immersion, or content-based instruction; and

(vi) are carried out through a consortium comprised of the eligible entity receiving the grant, an elementary school or secondary school, and an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(b) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means the following:

(A) A local educational agency that hosts a unit of the Junior Reserve Officers’ Training Corps.

(B) A school operated by the Department of Defense Education Activity.

(2) ESEA TERMS.—The terms “elementary school”, “local educational agency” and “secondary school” have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) WORLD LANGUAGE.—The term “world language” means—

(A) any natural language other than English, including—

(i) languages determined by the Secretary of Defense to be critical to the national security interests of the United States;

(ii) classical languages;

(iii) American sign language; and

(iv) Native American languages; and

(B) any language described in subparagraph (A) that is taught in combination with English as part of a dual language or immersion learning program.

**SEC. 1752. DESIGNATION OF DEPARTMENT OF DEFENSE STRATEGIC ARCTIC PORTS.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Arctic is a region of strategic importance to the national security interests of the United States and the Department of Defense must better align its presence, force posture, and capabilities to meet the growing array of challenges in the region; and

(2) although much progress has been made to increase awareness of Arctic issues and to promote increased presence in the region, additional measures, including the designation of one or more strategic Arctic ports, are needed to show the commitment of the United States to this emerging strategic choke point of future great power competition.

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, the Commanding General of the United States Army Corps of Engineers, the Commandant of the Coast Guard, and the

Consultation.

Administrator of the Maritime Administration, shall submit to the congressional defense committees a report evaluating potential sites for one or more strategic ports in the Arctic.

(2) ELEMENTS.—Consistent with the updated military strategy for the protection of United States national security interests in the Arctic region set forth in the report required under section 1071 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 114–92; 129 Stat. 992), the report required under paragraph (1) shall include—

(A) an evaluation of the amount of sufficient and suitable space needed to create capacity for port and other necessary infrastructure for at least one of each of type of Navy or Coast Guard vessel, including an Arleigh Burke class destroyer of the Navy, a national security cutter, and a heavy polar ice breaker of the Coast Guard; Evaluation.

(B) an evaluation of the amount of sufficient and suitable space needed to create capacity for equipment and fuel storage, technological infrastructure, and civil infrastructure to support military and civilian operations, including— Evaluation.

- (i) aerospace warning;
- (ii) maritime surface and subsurface warning;
- (iii) maritime control and defense;
- (iv) maritime domain awareness;
- (v) homeland defense;
- (vi) defense support to civil authorities;
- (vii) humanitarian relief;
- (viii) search and rescue;
- (ix) disaster relief;
- (x) oil spill response;
- (xi) medical stabilization and evacuation; and
- (xii) meteorological measurements and forecasting;

(C) an identification of proximity and road access required to an airport designated as a commercial service airport by the Federal Aviation Administration that is capable of supporting military and civilian aircraft for operations designated in subparagraph (B);

(D) a description of the requirements, to include infrastructure and installations, communications, and logistics necessary to improve response effectiveness to support military and civilian operations described in subparagraph (B);

(E) an identification of the sites that the Secretary recommends as potential sites for designation as Department of Defense Strategic Arctic Ports;

(F) the estimated cost of sufficient construction necessary to initiate and sustain expected operations at such sites; and Cost estimate.

(G) such other information as the Secretary deems relevant.

(c) DESIGNATION OF STRATEGIC ARCTIC PORTS.—Not later than 90 days after the date on which the report required under subsection (b) is submitted, the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, the Commanding General of the United States Army Corps of Engineers, the Commandant of the Coast Guard, and the Administrator of the Maritime Administration, may designate one or more ports as Department of Defense Deadline.  
Consultation.

Strategic Arctic Ports from the sites identified under subsection (b)(2)(E).

(d) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to authorize any additional appropriations for the Department of Defense for the establishment of any port designated pursuant to this section.

(e) **ARCTIC DEFINED.**—In this section, the term “Arctic” has the meaning given that term in section 112 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4111).

**SEC. 1753. INDEPENDENT STUDIES REGARDING POTENTIAL COST SAVINGS WITH RESPECT TO THE NUCLEAR SECURITY ENTERPRISE AND FORCE STRUCTURE .**

(a) **REVIEW OF NUCLEAR DETERRENCE POSTURES.**—

Contracts.

(1) **IN GENERAL.**—The Secretary of Defense shall seek to enter into agreements with two federally funded research and development centers for the conduct of independent reviews of alternative defense postures that achieve United States national security objectives and could produce cost savings. Each such review shall include—

(A) alternative nuclear deterrence postures to achieve national security objectives, including two alternatives with reduced and increased force posture levels;

(B) the options for and cost impacts resulting from changes to force structure, active and reserve component balance, domestic and overseas basing, and other impacts resulting from potential challenges to foundational planning assumptions to achieve national security objectives;

(C) the potential cost savings from alterations to the current balance between the military and civilian workforces; and

(D) options for reducing service contracts in the Department of Defense.

(2) **COST DATA.**—A federally funded research and development center that conducts a review pursuant to paragraph (1) shall standardize cost data through the use of Department of Defense cost estimation methodologies and may make reference to appropriate national security policy documents.

(3) **ACCESS TO CLASSIFIED INFORMATION.**—The Secretary of Defense shall provide to such a center classified information on threat capability developments, plans, and intentions of China, Russia, North Korea, Iran, and violent extremist organizations.

(b) **REPORT AND BRIEFINGS.**—

(1) **BRIEFING ON COST SAVINGS.**—Not later than February 1, 2020, the Comptroller General of the United States shall provide to the congressional defense committees a briefing on the recommendations of the Comptroller General with respect to cost savings in the Department of Defense.

(2) **BRIEFING ON EFFICIENCY INITIATIVES.**—Not later than February 1, 2020, the Comptroller General of the United States shall provide to the congressional defense committees a briefing on the recommendations of the Comptroller General with respect to the efficiency initiatives undertaken by the Office of the Chief Management Officer of the Department of Defense.

(3) **REPORT.**—Subsequent to providing the briefing under paragraph (2), the Comptroller General shall submit to the

congressional defense committees a report on the matters covered by the briefing.

**SEC. 1754. COMPREHENSIVE DEPARTMENT OF DEFENSE POLICY ON COLLECTIVE SELF-DEFENSE.**

10 USC 130f  
note.

(a) **COMPREHENSIVE POLICY REQUIRED.**—The Secretary of Defense shall prescribe a comprehensive written policy for the Department of Defense on the issuance of authorization for, and the provision by members and units of the United States Armed Forces of, collective self-defense to designated foreign nationals, their facilities, and their property.

(b) **ELEMENTS.**—The policy required by subsection (a) shall address the following:

(1) Each basis under domestic and international law pursuant to which a member or unit of the United States Armed Forces has been or may be authorized to provide collective self-defense to designated foreign nationals, their facilities, or their property under each circumstance as follows:

(A) Inside an area of active hostilities, or in a country or territory in which United States forces are authorized to conduct or support direct action operations.

(B) Outside an area of active hostilities, or in a country or territory in which United States forces are not authorized to conduct direct action military operations.

(C) When United States personnel, facilities, or equipment are not threatened, including both as described in subparagraph (A) and as described in subparagraph (B).

(D) When members of the United States Armed Forces are not participating in a military operation as part of an international coalition.

(E) Any other circumstance not encompassed by subparagraphs (A) through (D) in which a member or unit of the United States Armed Forces has been or may be authorized to provide such collective self-defense.

(2) A list and explanation of any limitations imposed by law or policy on the provision of collective self-defense to designated foreign nationals, their facilities, and their property under any of the bases in domestic or international law in the circumstances enumerated in paragraph (1), and the conditions under which any such limitation applies.

List.

(3) The procedure by which a proposal that any member or unit of the United States Armed Forces provide collective self-defense in support of designated foreign nationals, their facilities, and their property is to be submitted, processed, and endorsed through offices, officers, and officials of the Department to the applicable approval authority for final decision, and a list of any information, advice, or opinion to be included with such proposal in order to inform appropriate action on such proposal by such approval authority.

Procedures.  
List.

(4) The title and duty position of any officers and officials of the Department empowered to render a final decision on a proposal described in paragraph (3), and the conditions applicable to, and limitations on, the exercise of such decision-making authority by each such officer or official.

(5) A description of the Rules of Engagement applicable to the provision of collective self-defense to designated foreign nationals, their facilities, and their property under any of the

bases in domestic or international law in the circumstances enumerated in paragraph (1), and the conditions under which any such Rules of Engagement would be modified.

(6) A description of the process through which policy guidance pertaining to the authorization for, and the provision by members of the United States Armed Forces of, collective self-defense to designated foreign nationals, their facilities, and their property is to be disseminated to the level of tactical execution.

(7) Such other matters as the Secretary considers appropriate.

(c) REPORT ON POLICY.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report setting forth the policy required by subsection (a).

(2) DOD GENERAL COUNSEL STATEMENT.—The Secretary shall include in the report under paragraph (1) a statement by the General Counsel of the Department of Defense as to whether the policy prescribed pursuant to subsection (a) is consistent with domestic and international law.

(3) FORM.—The report required by paragraph (1) may be submitted in classified form.

(d) BRIEFING ON POLICY.—Not later than 30 days after the date of the submittal of the report required by subsection (c), the Secretary shall provide the congressional defense committees a classified briefing on the policy prescribed pursuant to subsection (a). The briefing shall make use of vignettes designated to illustrate real world application of the policy in each the circumstances enumerated in subsection (b)(1).

Deadline.  
Classified  
information.

10 USC 2223a  
note.

Deadline.  
Consultation.

**SEC. 1755. POLICY REGARDING THE TRANSITION OF DATA AND APPLICATIONS TO THE CLOUD.**

(a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Chief Information Officer of the Department of Defense and the Chief Data Officer of the Department shall, in consultation with the J6 of the Joint Staff and the Chief Management Officer, develop and issue enterprise-wide policy and implementing instructions regarding the transition of data and applications to the cloud under the Department cloud strategy in accordance with subsection (b).

(b) DESIGN.—The policy required by subsection (a) shall be designed to dramatically improve support to operational missions and management processes, including by the use of artificial intelligence and machine learning technologies, by—

(1) making the data of the Department available to support new types of analyses;

(2) preventing, to the maximum extent practicable, the replication in the cloud of data stores that cannot readily be accessed by applications for which the data stores were not originally engineered;

(3) ensuring that data sets can be readily discovered and combined with others to enable new insights and capabilities; and

(4) ensuring that data and applications are readily portable and not tightly coupled to a specific cloud infrastructure or platform.

**SEC. 1756. INTEGRATED PUBLIC ALERT AND WARNING SYSTEM.**

(a) **DEFINITIONS.**—In this section—

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “appropriate congressional committees” means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives; and

(C) the Committee on Homeland Security of the House of Representatives;

(4) the term “public alert and warning system” means the integrated public alert and warning system of the United States described in section 526 of the Homeland Security Act of 2002 (6 U.S.C. 321o);

(5) the term “Secretary” means the Secretary of Homeland Security; and

(6) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(b) **INTEGRATED PUBLIC ALERT AND WARNING SYSTEM.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Administrator shall develop minimum requirements for State, Tribal, and local governments to participate in the public alert and warning system and that are necessary to maintain the integrity of the public alert and warning system, including—

(A) guidance on the categories of public emergencies and appropriate circumstances that warrant an alert and warning from State, Tribal, and local governments using the public alert and warning system;

(B) the procedures for State, Tribal, and local government officials to authenticate civil emergencies and initiate, modify, and cancel alerts transmitted through the public alert and warning system, including protocols and technology capabilities for—

(i) the initiation, or prohibition on the initiation, of alerts by a single authorized or unauthorized individual;

(ii) testing a State, Tribal, or local government incident management and warning tool without accidentally initiating an alert through the public alert and warning system; and

(iii) steps a State, Tribal, or local government official should take to mitigate the possibility of the issuance of a false alert through the public alert and warning system;

(C) the standardization, functionality, and interoperability of incident management and warning tools used by State, Tribal, and local governments to notify the public of an emergency through the public alert and warning system;

State and local governments.  
Native Americans.  
Territories.  
6 USC 321o–1.

Deadline.  
Requirements.  
Procedures.

(D) the annual training and recertification of emergency management personnel on requirements for originating and transmitting an alert through the public alert and warning system;

(E) the procedures, protocols, and guidance concerning the protective action plans that State, Tribal, and local governments shall issue to the public following an alert issued under the public alert and warning system;

(F) the procedures, protocols, and guidance concerning the communications that State, Tribal, and local governments shall issue to the public following a false alert issued under the public alert and warning system;

Plan.

(G) a plan by which State, Tribal, and local government officials may, during an emergency, contact each other as well as Federal officials and participants in the Emergency Alert System and the Wireless Emergency Alert System, when appropriate and necessary, by telephone, text message, or other means of communication regarding an alert that has been distributed to the public; and

(H) any other procedure the Administrator considers appropriate for maintaining the integrity of and providing for public confidence in the public alert and warning system.

(2) COORDINATION WITH NATIONAL ADVISORY COUNCIL REPORT.—The Administrator shall ensure that the minimum requirements developed under paragraph (1) do not conflict with recommendations made for improving the public alert and warning system provided in the report submitted by the National Advisory Council under section 2(b)(7)(B) of the Integrated Public Alert and Warning System Modernization Act of 2015 (Public Law 114–143; 130 Stat. 332).

(3) PUBLIC CONSULTATION.—In developing the minimum requirements under paragraph (1), the Administrator shall ensure appropriate public consultation and, to the extent practicable, coordinate the development of the requirements with stakeholders of the public alert and warning system, including—

(A) appropriate personnel from Federal agencies, including the National Institute of Standards and Technology, the Agency, and the Federal Communications Commission;

(B) representatives of State and local governments and emergency services personnel, who shall be selected from among individuals nominated by national organizations representing those governments and personnel;

(C) representatives of Federally recognized Indian tribes and national Indian organizations;

(D) communications service providers;

(E) vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of communications services;

(F) third-party service bureaus;

(G) the national organization representing the licensees and permittees of noncommercial broadcast television stations;

(H) technical experts from the broadcasting industry;



(I) educators from the Emergency Management Institute; and

(J) other individuals with technical expertise as the Administrator determines appropriate.

(4) ADVICE TO THE ADMINISTRATOR.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Administrator may obtain advice from a single individual or non-consensus advice from each of the several members of a group without invoking that Act.

(c) INCIDENT MANAGEMENT AND WARNING TOOL VALIDATION.—

(1) IN GENERAL.—The Administrator shall establish a process to ensure that an incident management and warning tool used by a State, Tribal, or local government to originate and transmit an alert through the public alert and warning system meets the requirements developed by the Administrator under subsection (b)(1).

(2) REQUIREMENTS.—The process required to be established under paragraph (1) shall include—

(A) the ability to test an incident management and warning tool in the public alert and warning system lab;

(B) the ability to certify that an incident management and warning tool complies with the applicable cyber frameworks of the Department of Homeland Security and the National Institute of Standards and Technology;

(C) a process to certify developers of emergency management software; and

(D) requiring developers to provide the Administrator with a copy of and rights of use for ongoing testing of each version of incident management and warning tool software before the software is first used by a State, Tribal, or local government.

(d) REVIEW AND UPDATE OF MEMORANDA OF UNDERSTANDING.—The Administrator shall review the memoranda of understanding between the Agency and State, Tribal, and local governments with respect to the public alert and warning system to ensure that all agreements ensure compliance with the requirements developed by the Administrator under subsection (b)(1).

(e) FUTURE MEMORANDA.—On and after the date that is 60 days after the date on which the Administrator issues the requirements developed under subsection (b)(1), any new memorandum of understanding entered into between the Agency and a State, Tribal, or local government with respect to the public alert and warning system shall comply with those requirements.

(f) MISSILE ALERT AND WARNING AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITY.—On and after the date that is 120 days after the date of enactment of this Act, the authority to originate an alert warning the public of a missile launch directed against a State using the public alert and warning system shall reside primarily with the Federal Government.

(B) DELEGATION OF AUTHORITY.—The Secretary may delegate the authority described in subparagraph (A) to a State, Tribal, or local entity if, not later than 180 days after the date of enactment of this Act, the Secretary submits a report to the appropriate congressional committees that—

- (i) it is not feasible for the Federal Government to alert the public of a missile threat against a State; or
- (ii) it is not in the national security interest of the United States for the Federal Government to alert the public of a missile threat against a State.
- President. (C) ACTIVATION OF SYSTEM.—Upon verification of a missile threat, the President, utilizing established authorities, protocols and procedures, may activate the public alert and warning system.
- (D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to change the command and control relationship between entities of the Federal Government with respect to the identification, dissemination, notification, or alerting of information of missile threats against the United States that was in effect on the day before the date of enactment of this Act.
- Notification. (2) REQUIRED PROCESSES.—The Secretary, acting through the Administrator, shall establish a process to promptly notify a State warning point, and any State entities that the Administrator determines appropriate, following the issuance of an alert described in paragraph (1)(A) so the State may take appropriate action to protect the health, safety, and welfare of the residents of the State.
- (3) GUIDANCE.—The Secretary, acting through the Administrator, shall work with the Governor of a State warning point to develop and implement appropriate protective action plans to respond to an alert described in paragraph (1)(A) for that State.
- (4) STUDY AND REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall—
- Examination. (A) examine the feasibility of establishing an alert designation under the public alert and warning system that would be used to alert and warn the public of a missile threat while concurrently alerting a State warning point so that a State may activate related protective action plans; and
- (B) submit a report of the findings under subparagraph (A), including of the costs and timeline for taking action to implement an alert designation described in subparagraph (A), to—
- (i) the Subcommittee on Homeland Security of the Committee on Appropriations of the Senate;
- (ii) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (iii) the Subcommittee on Homeland Security of the Committee on Appropriations of the House of Representatives;
- (iv) the Committee on Transportation and Infrastructure of the House of Representatives; and
- (v) the Committee on Homeland Security of the House of Representatives.
- Deadline. (g) USE OF INTEGRATED PUBLIC ALERT AND WARNING SYSTEM LAB.—Not later than 1 year after the date of enactment of this Act, the Administrator shall—
- (1) develop a program to increase the utilization of the public alert and warning system lab of the Agency by State,

Tribal, and local governments to test incident management and warning tools and train emergency management professionals on alert origination protocols and procedures; and

(2) submit to the appropriate congressional committees a report describing—

(A) the impact on utilization of the public alert and warning system lab by State, Tribal, and local governments, with particular attention given to the impact on utilization in rural areas, resulting from the program developed under paragraph (1); and

(B) any further recommendations that the Administrator would make for additional statutory or appropriations authority necessary to increase the utilization of the public alert and warning system lab by State, Tribal, and local governments.

(h) AWARENESS OF ALERTS AND WARNINGS.—Not later than 1 year after the date of enactment of this Act, the Administrator shall—

Deadline.

(1) conduct a review of the National Watch Center and each Regional Watch Center of the Agency; and

Review.

(2) submit to the appropriate congressional committees a report on the review conducted under paragraph (1), which shall include—

(A) an assessment of the technical capability of the National and Regional Watch Centers described in paragraph (1) to be notified of alerts and warnings issued by a State through the public alert and warning system;

Assessment.

(B) a determination of which State alerts and warnings the National and Regional Watch Centers described in paragraph (1) should be aware of; and

Determination.

(C) recommendations for improving the ability of the National and Regional Watch Centers described in paragraph (1) to receive any State alerts and warnings that the Administrator determines are appropriate.

Recommendations.

(i) REPORTING FALSE ALERTS.—Not later than 15 days after the date on which a State, Tribal, or local government official transmits a false alert under the public alert and warning system, the Administrator shall report to the appropriate congressional committees on—

(1) the circumstances surrounding the false alert;

(2) the content, cause, and population impacted by the false alert; and

(3) any efforts to mitigate any negative impacts of the false alert.

(j) REPORTING PARTICIPATION RATES.—The Administrator shall, on an annual basis, report to the appropriate congressional committees on—

(1) participation rates in the public alert and warning system; and

(2) any efforts to expand alert, warning, and interoperable communications to rural and underserved areas.

(k) TIMELINE FOR COMPLIANCE.—Each State shall be given a reasonable amount of time to comply with any new rules, regulations, or requirements imposed under this section.

50 USC 3551.

**SEC. 1757. IMPROVING QUALITY OF INFORMATION IN BACKGROUND INVESTIGATION REQUEST PACKAGES.**

Consultation.

(a) **REPORT ON METRICS AND BEST PRACTICES.**—Not later than 180 days after the date of the enactment of this Act, the Director of the Defense Counterintelligence and Security Agency, which serves as the primary executive branch service provider for background investigations for eligibility for access to classified information, eligibility to hold a sensitive position, and for suitability and fitness for other matters pursuant to Executive Order 13467 (50 U.S.C. 3161 note; relating to reforming processes related to suitability for Government employment, fitness for contractor employees, and eligibility for access to classified national security information), shall, in consultation with the Security, Suitability, and Credentialing Performance Accountability Council established under such executive order, submit to Congress a report on—

(1) metrics for assessing the completeness and quality of packages for background investigations submitted by agencies requesting background investigations from the Defense Counterintelligence and Security Agency;

(2) rejection rates of background investigation submission packages due to incomplete or erroneous data, by agency; and

(3) best practices for ensuring full and complete information in background investigation requests.

(b) **ANNUAL REPORT ON PERFORMANCE.**—Not later than 270 days after the date of the enactment of this Act and not less frequently than once each year thereafter, the Security, Suitability, and Credentialing Performance Accountability Council shall submit to Congress a report on performance against the metrics and return rates identified in paragraphs (1) and (2) of subsection (a).

Deadlines.

(c) **IMPROVEMENT PLANS.**—

(1) **IDENTIFICATION.**—Not later than one year after the date of the enactment of this Act, executive agents under Executive Order 13467 (50 U.S.C. 3161 note) shall identify agencies in need of improvement with respect to the quality of the information in the background investigation submissions of the agencies as reported in subsection (b).

(2) **PLANS.**—Not later than 90 days after an agency is identified under paragraph (1), the head of the agency shall provide the executive agents referred to in such paragraph with a plan to improve the performance of the agency with respect to the quality of the information in the agency's background investigation submissions.

8 USC 1182 note.

**SEC. 1758. PAROLE IN PLACE FOR MEMBERS OF THE ARMED FORCES AND CERTAIN MILITARY DEPENDENTS.**

(a) **IN GENERAL.**—In evaluating a request from a covered individual for parole in place under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), the Secretary of Homeland Security shall consider, on a case-by-case basis, whether granting the request would enable military family unity that would constitute a significant public benefit.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) parole in place reinforces the objective of military family unity;

(2) except as required in furtherance of the missions of the Armed Forces, disruption to military family unity should be minimized in order to enhance military readiness and allow

members of the Armed Forces to focus on the faithful execution of their military missions and objectives, with peace of mind regarding the well-being of their family members; and

(3) the importance of the parole in place authority of the Secretary of Homeland Security is reaffirmed.

(c) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an alien who—

(1) is a member of the Armed Forces;

(2) is the spouse, son, or daughter of a member of the Armed Forces;

(3) is the parent of a member of the Armed Forces who supports the request of such parent for parole in place; or

(4) is the widow, widower, parent, son, or daughter of a deceased member of the Armed Forces.

**SEC. 1759. REPORT ON REDUCING THE BACKLOG IN LEGALLY REQUIRED HISTORICAL DECLASSIFICATION OBLIGATIONS OF THE DEPARTMENT OF DEFENSE.**

(a) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing the progress made by the Secretary toward reducing the backlog in legally required historical declassification obligations of the Department of Defense.

(b) ELEMENTS.—The report under subsection (a) shall include, with respect to the Department of Defense, the following:

(1) A plan to achieve legally mandated historical declassification requirements and reduce backlogs. Plan.

(2) A plan to incorporate new technologies, such as artificial intelligence, that would increase productivity and reduce cost in implementing the plan under paragraph (1). Plan.

(3) A detailed assessment of the documents released in each of the proceeding three years before the date of the report, broken out by program, such as the 25 and 50 year programs. Assessment.  
Time period.

(4) A detailed assessment of the documents awaiting review for release and an estimate of how many documents will be released in each of the next three years. Assessment.  
Time period.

(5) Potential policy, resource, and other options available to the Secretary to reduce backlogs.

(6) The progress and objectives of the Secretary with respect to the release of documents for publication in the Foreign Relations of the United States series or to facilitate the public accessibility of such documents at the National Archives, presidential libraries, or both. Publication.  
Public  
information.  
National  
Archives.

(c) FORM AND AVAILABILITY.—The report under subsection (a) shall be submitted in unclassified form, which shall be made publicly available, but may include a classified annex.

**SEC. 1760. MILITARY TYPE CERTIFICATION FOR LIGHT ATTACK EXPERIMENTATION AIRCRAFT.**

The Secretary of the Air Force shall make available and conduct military type certifications for light attack experimentation aircraft as needed, pursuant to the Department of Defense Directive on Military Type Certificates, 5030.61.

Military  
Construction  
Authorization  
Act for Fiscal  
Year 2020.

## DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

Sec. 2001. Short title.

Sec. 2002. Expiration of authorizations and amounts required to be specified by law.

Sec. 2003. Effective date.

### SEC. 2001. SHORT TITLE.

This division may be cited as the “Military Construction Authorization Act for Fiscal Year 2020”.

### SEC. 2002. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) EXPIRATION OF AUTHORIZATIONS AFTER FIVE YEARS.—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVII and title XXIX for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment Program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2024; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2025.

(b) EXCEPTION.—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment Program (and authorizations of appropriations therefor), for which appropriated funds have been obligated before the later of—

(1) October 1, 2024; or

(2) the date of the enactment of an Act authorizing funds for fiscal year 2025 for military construction projects, land acquisition, family housing projects and facilities, or contributions to the North Atlantic Treaty Organization Security Investment Program.

### SEC. 2003. EFFECTIVE DATE.

Titles XXI through XXVII and title XXIX shall take effect on the later of—

(1) October 1, 2019; or

(2) the date of the enactment of this Act.

## TITLE XXI—ARMY MILITARY CONSTRUCTION

Sec. 2101. Authorized Army construction and land acquisition projects.

Sec. 2102. Family housing.

Sec. 2103. Authorization of appropriations, Army.

Sec. 2104. Modification of authority to carry out certain fiscal year 2019 projects.

### SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2103(a) and available for military construction projects inside the United

States as specified in the funding table in section 4601, the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

**Army: Inside the United States**

State	Installation	Amount
Alabama .....	Redstone Arsenal .....	\$38,000,000
Colorado .....	Fort Carson .....	\$71,000,000
Georgia .....	Fort Gordon .....	\$107,000,000
	Hunter Army Airfield .....	\$62,000,000
Kentucky .....	Fort Campbell .....	\$61,300,000
Massachusetts .....	U.S. Army Natick Soldier Systems Center .....	\$50,000,000
Michigan .....	Detroit Arsenal .....	\$24,000,000
New York .....	Fort Drum .....	\$44,000,000
North Carolina .....	Fort Bragg .....	\$12,500,000
Oklahoma .....	Fort Sill .....	\$73,000,000
Pennsylvania .....	Carlisle Barracks .....	\$98,000,000
South Carolina .....	Fort Jackson .....	\$88,000,000
Texas .....	Corpus Christi Army Depot .....	\$86,000,000
	Fort Hood .....	\$50,500,000
Virginia .....	Fort Belvoir .....	\$60,000,000
	Joint Base Langley-Eustis .....	\$55,000,000
Washington .....	Joint Base Lewis-McChord .....	\$46,000,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2103(a) and available for military construction projects outside the United States as specified in the funding table in section 4601, the Secretary of the Army may acquire real property and carry out the military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

**Army: Outside the United States**

Country	Installation	Amount
Honduras .....	Soto Cano Air Base .....	\$34,000,000
Kwajalein .....	Kwajalein Atoll .....	\$40,000,000

(c) STUDY OF NEAR-TERM FACILITY ALTERNATIVES TO HOUSE HIGH VALUE DETAINEES.—

(1) STUDY REQUIRED.—The Secretary of Defense shall conduct a study of alternatives to meet the near-term facility requirements to safely and humanely house high value detainees current detained at Naval Station Guantanamo Bay, Cuba. As part of the study, the Secretary shall consider the following alternatives:

- (A) The construction of new facilities.
- (B) The repair of current facilities.
- (C) The renovation and repurposing of other facilities at Naval Station Guantanamo Bay, Cuba.
- (D) Such other alternatives as the Secretary considers practicable.

Reports.

(2) **SUBMISSION OF RESULTS.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing the results of the study conducted under paragraph (1). The report shall be unclassified, but may include a classified annex.

**SEC. 2102. FAMILY HOUSING.**

(a) **CONSTRUCTION AND ACQUISITION.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2103(a) and available for military family housing functions as specified in the funding table in section 4601, the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installation, and in the amount, set forth in the following table:

**Army: Family Housing**

State/Country	Installation	Units	Amount
Pennsylvania .....	Tobyhanna Army Depot ...	Family Housing Replacement Construction ..	\$19,000,000

(b) **PLANNING AND DESIGN.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2103(a) and available for military family housing functions as specified in the funding table in section 4601, the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$9,222,000.

**SEC. 2103. AUTHORIZATION OF APPROPRIATIONS, ARMY.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for military construction, land acquisition, and military family housing functions of the Department of the Army as specified in the funding table in section 4601.

(b) **LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.**—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed the total amount authorized to be appropriated under subsection (a), as specified in the funding table in section 4601.

**SEC. 2104. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2019 PROJECTS.**

(a) **ANNISTON ARMY DEPOT, ALABAMA.**—In the case of the authorization contained in the table in section 2101(a) of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2241) for Anniston Army Depot, Alabama, for construction of a weapon maintenance shop, as specified in the funding table in section 4601 of such Act (132 Stat. 2401), the Secretary of the Army may construct a 21,000-square foot weapon maintenance shop.



(b) UNITED STATES MILITARY ACADEMY, NEW YORK.—The table in section 2101(a) of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2241) is amended in the item relating to the United States Military Academy, New York, by striking “\$160,000,000” and inserting “\$197,000,000” for construction of a Consolidated Engineering Center and Parking Structure rather than the separate projects specified in the funding table in section 4601 of such Act (132 Stat. 2401).

## TITLE XXII—NAVY MILITARY CONSTRUCTION

Sec. 2201. Authorized Navy construction and land acquisition projects.

Sec. 2202. Family housing.

Sec. 2203. Improvements to military family housing units.

Sec. 2204. Authorization of appropriations, Navy.

Sec. 2205. Modification of authority to carry out certain fiscal year 2017 project.

### SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a) and available for military construction projects inside the United States as specified in the funding table in section 4601, the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

#### Navy: Inside the United States

State	Installation or Location	Amount
Arizona .....	Marine Corps Air Station Yuma ....	\$189,760,000
California .....	Camp Pendleton .....	\$185,569,000
	Marine Corps Air Station Miramar	\$37,400,000
	Naval Air Weapons Station China Lake .....	\$64,500,000
	Navel Base Coronado .....	\$165,830,000
	Naval Base San Diego .....	\$9,900,000
	Naval Weapons Station Seal Beach	\$123,310,000
	Travis Air Force Base .....	\$64,000,000
Connecticut .....	Naval Submarine Base New London .....	\$72,260,000
Florida .....	Blount Island .....	\$18,700,000
	Naval Air Station Jacksonville .....	\$32,420,000
Guam .....	Joint Region Marianas .....	\$226,000,000
Hawaii .....	Marine Corps Air Station Kaneohe Bay .....	\$134,050,000
	Naval Ammunition Depot West Loch .....	\$53,790,000
Maryland .....	Saint Inigoes .....	\$15,000,000
North Carolina ....	Camp Lejeune .....	\$229,010,000
	Marine Corps Air Station Cherry Point .....	\$114,570,000
	Marine Corps Air Station New River .....	\$11,320,000
Pennsylvania .....	Philadelphia .....	\$74,630,000

**Navy: Inside the United States—Continued**

State	Installation or Location	Amount
South Carolina ....	Parris Island .....	\$37,200,000
Virginia .....	Marine Corps Base Quantico .....	\$143,350,000
	Naval Station Norfolk .....	\$139,100,000
	Portsmouth Naval Shipyard .....	\$48,930,000
	Yorktown Naval Weapons Station	\$59,000,000
Washington .....	Bremerton .....	\$51,010,000
	Keyport .....	\$25,050,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a) and available for military construction projects outside the United States as specified in the funding table in section 4601, the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

**Navy: Outside the United States**

Country	Installation or Location	Amount
Australia .....	Darwin .....	\$211,500,000
Japan .....	Fleet Activities Yokosuka .....	\$174,692,000
	Marine Corps Air Station Iwakuni	\$15,870,000

(c) REPORT REQUIRED AS CONDITION OF AUTHORIZATION.—

(1) REPORT.—At the same time that the budget of the President is submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2021, the Secretary of the Navy shall submit to the congressional defense committees a report describing, for each project authorized in the first item in the table in subsection (b) for Darwin that is required to support the full complement of the Marine Rotational Force–Darwin—

(A) the required infrastructure investments for the project;

(B) the source of funding, including funds provided by the Government of Australia, for the project; and

(C) the proposed year for implementation of the project.

(2) CONDITION.—The Secretary of the Navy may not commence a project authorized in the first item in the table in subsection (b) for Darwin until the report under paragraph (1) has been submitted.

Australia.

**SEC. 2202. FAMILY HOUSING.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a) and available for military family housing functions as specified in the funding table in section 4601, the Secretary of the Navy may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$5,863,000.

**SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.**

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a) and available for military family housing functions as specified in the funding table in section 4601, the Secretary of the Navy may improve existing military family housing units in an amount not to exceed \$41,798,000.

**SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for military construction, land acquisition, and military family housing functions of the Department of the Navy, as specified in the funding table in section 4601.

(b) **LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.**—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed the total amount authorized to be appropriated under subsection (a), as specified in the funding table in section 4601.

**SEC. 2205. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2017 PROJECT.**

The table in section 2201(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2691) is amended in the item relating to Bangor, Washington, by striking “\$113,415,000” and inserting “\$161,415,000” for construction of a SEAWOLF Class Service Pier, as specified in the funding table in section 4601 of such Act (130 Stat. 2876).

## **TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION**

Sec. 2301. Authorized Air Force construction and land acquisition projects.

Sec. 2302. Family housing.

Sec. 2303. Improvements to military family housing units.

Sec. 2304. Authorizations of appropriations, Air Force.

Sec. 2305. Modification of authorities to carry out phased Joint Intelligence Analysis Complex consolidation.

Sec. 2306. Modification of authority to carry out certain fiscal year 2016 project.

Sec. 2307. Modification of authority to carry out certain fiscal year 2017 project.

Sec. 2308. Modification of authority to carry out certain fiscal year 2018 projects.

Sec. 2309. Modification of authority to carry out certain fiscal year 2019 projects.

**SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) **INSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a) and available for military construction projects inside the United States as specified in the funding table in section 4601, the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

**Air Force: Inside the United States**

State	Installation or Location	Amount
Alaska .....	Eielson Air Force Base ....	\$8,600,000
Arkansas .....	Little Rock Air Force Base.	\$47,000,000
California .....	Travis Air Force Base .....	\$43,100,000
Colorado .....	Peterson Air Force Base ..	\$54,000,000
	Schriever Air Force Base	\$148,000,000
	United States Air Force Academy .....	\$49,000,000
Georgia .....	Moody Air Force Base .....	\$12,500,000
Guam .....	Joint Region Marianas .....	\$65,000,000
Illinois .....	Scott Air Force Base .....	\$100,000,000
Mariana Islands .....	Tinian .....	\$316,000,000
Missouri .....	Whiteman Air Force Base	\$27,000,000
Montana .....	Malmstrom Air Force Base.	\$235,000,000
Nevada .....	Nellis Air Force Base .....	\$65,200,000
New Mexico .....	Holloman Air Force Base	\$20,000,000
	Kirtland Air Force Base ..	\$37,900,000
North Dakota .....	Minot Air Force Base .....	\$5,500,000
Texas .....	Joint Base San Antonio ...	\$243,300,000
Utah .....	Hill Air Force Base .....	\$114,500,000
Washington .....	Fairchild-White Bluff .....	\$31,000,000
Wyoming .....	F.E. Warren Air Force Base.	\$18,100,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a) and available for military construction projects outside the United States as specified in the funding table in section 4601, the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

**Air Force: Outside the United States**

Country	Installation or Location	Amount
Australia .....	Tindal .....	\$70,600,000
Cyprus .....	Royal Air Force Akrotiri	\$27,000,000
Japan .....	Yokota Air Base .....	\$12,400,000
United Kingdom .....	Royal Air Force Lakenheath.	\$14,300,000

**SEC. 2302. FAMILY HOUSING.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a) and available for military family housing functions as specified in the funding table in section 4601, the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$3,409,000.

**SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.**

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a) and available for military family housing functions as specified in the funding table in section 4601, the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed \$53,584,000.

**SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for military construction, land acquisition, and military family housing functions of the Department of the Air Force, as specified in the funding table in section 4601.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2301 may not exceed the total amount authorized to be appropriated under subsection (a), as specified in the funding table in section 4601.

**SEC. 2305. MODIFICATION OF AUTHORITIES TO CARRY OUT PHASED JOINT INTELLIGENCE ANALYSIS COMPLEX CONSOLIDATION.**

United Kingdom.

(a) FISCAL YEAR 2015 PROJECT AUTHORITY.—In the case of the authorization contained in the table in section 2301(b) of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3679) for Royal Air Force Croughton, United Kingdom, for Phase 1 of the Joint Intelligence Analysis Complex consolidation, as specified in the funding table in section 4601 of such Act (128 Stat. 3973), the Secretary of the Air Force shall carry out the construction at Royal Air Force Molesworth, United Kingdom.

(b) FISCAL YEAR 2016 PROJECT AUTHORITY.—In the case of the authorization contained in the table in section 2301(b) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1153), for Royal Air Force Croughton, United Kingdom, for Phase 2 of the Joint Intelligence Analysis Complex consolidation, as specified in the funding table in section 4601 of such Act (129 Stat. 1294), the Secretary of the Air Force may construct a 5,152-square meter Intelligence Analytic Center, a 5,234-square meter Intelligence Fusion Center, and a 807-square meter Battlefield Information Collection and Exploitation System Center at Royal Air Force Molesworth, United Kingdom.

(c) FISCAL YEAR 2017 PROJECT AUTHORITY.—In the case of the authorization contained in the table in section 2301(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2697), for Royal Air Force Croughton, United Kingdom, for Phase 3 of the Joint Intelligence Analysis Complex consolidation, as specified in the funding table in section 4601 of such Act (130 Stat. 2878), the Secretary of the Air Force may construct a 1,562-square meter Regional Joint Intelligence Training Facility and a 4,495-square meter Combatant Command Intelligence Facility at Royal Air Force Molesworth, United Kingdom.

(d) **CONFORMING REPEAL.**—Section 2305 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 2247) is repealed.

Nevada. **SEC. 2306. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2016 PROJECT.**

The table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1152) is amended in the item relating to Nellis Air Force Base, Nevada, by striking “\$68,950,000” and inserting “\$72,050,000” for construction of F-35A Munitions Maintenance Facilities, as specified in the funding table in section 4601 of such Act (129 Stat. 1293).

Washington. **SEC. 2307. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2017 PROJECT.**

The table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2696) is amended in the item relating to Fairchild Air Force Base, Washington, by striking “\$27,000,000” and inserting “\$31,800,000” for construction of a SERE School Pipeline Dormitory, as specified in the funding table in section 4601 of such Act (130 Stat. 2878).

**SEC. 2308. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2018 PROJECTS.**

(a) **LITTLE ROCK AIR FORCE BASE, ARKANSAS.**—The table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1825) is amended in the item relating to Little Rock Air Force Base, Arkansas, by striking “\$20,000,000” and inserting “\$27,000,000” for construction of a dormitory facility, as specified in the funding table in section 4601 of such Act (131 Stat. 2002).

(b) **JOINT BASE SAN ANTONIO, TEXAS.**—In the case of the authorization contained in the table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1826) for Joint Base San Antonio, Texas, the Secretary of the Air Force may construct—

(1) a 750-square meter equipment building for construction of a Classrooms/Dining Facility, as specified in the funding table in section 4601 of such Act (131 Stat. 2003); and

(2) a 636-square meter air traffic control tower for construction of an Air Traffic Control Tower, as specified in the funding table in section 4601 of such Act (131 Stat. 2003).

(c) **F.E. WARREN AIR FORCE BASE, WYOMING.**—The table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1825) is amended in the item relating to F.E. Warren Air Force Base, Wyoming, by striking “\$62,000,000” and inserting “\$80,100,000” for construction of a Consolidated Helo/TRF Ops/AMU and Alert Facility, as specified in the funding table in section 4601 of such Act (131 Stat. 2004).

(d) **RYGGE AIR STATION, NORWAY.**—In the case of the authorization contained in the table in section 2903 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1876) for Rygge Air Station, Norway, for replacement/expansion of a Quick Reaction Alert Pad, as specified in the funding table in section 4602 of such Act (131 Stat. 2014), the Secretary of the Air Force may construct 1,327 square meters of aircraft shelter and a 404-square meter fire protection support building.

(e) **INCIRLIK AIR BASE, TURKEY.**—In the case of the authorization contained in the table in section 2903 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1876) for Incirlik Air Base, Turkey, for Relocating Base Main Access Control Point, as specified in the funding table in section 4602 of such Act (131 Stat. 2015), the Secretary of the Air Force may construct a 223-square meter pedestrian search building.

**SEC. 2309. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2019 PROJECTS.**

(a) **HANSCOM AIR FORCE BASE, MASSACHUSETTS.**—In the case of the authorization contained in the table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2246) for Hanscom Air Force Base, Massachusetts, for the construction of a semi-conductor/microelectronics laboratory facility, as specified in the funding table in section 4601 of such Act (132 Stat. 2405), the Secretary of the Air Force may construct a 1,000 kilowatt stand-by generator.

(b) **MINOT AIR FORCE BASE, NORTH DAKOTA.**—The table in section 2301(a) of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2246) is amended in the item relating to Minot Air Force Base, North Dakota, by striking “\$66,000,000” and inserting “\$71,500,000” for construction of a Consolidated Helo/TRF Ops/AMU and Alert Facility, as specified in the funding table in section 4601 of such Act (132 Stat. 2405).

(c) **ROYAL AIR FORCE LAKENHEATH, UNITED KINGDOM.**—In the case of the authorization contained in the table in section 2301(b) of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2247) for Royal Air Force Lakenheath, United Kingdom, for the construction of an F–35A Dormitory, as specified in the funding table in section 4601 of such Act (132 Stat. 2405), the Secretary of the Air Force may construct a 5,900-square meter dormitory.

**TITLE XXIV—DEFENSE AGENCIES  
MILITARY CONSTRUCTION**

Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.

Sec. 2402. Authorized Energy Resilience and Conservation Investment Program projects.

Sec. 2403. Authorization of appropriations, Defense Agencies.

**SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) **INSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(a) and available for military construction projects inside the United States as specified in the funding table in section 4601, the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

**Defense Agencies: Inside the United States**

State	Installation or Location	Amount
California .....	Beale Air Force Base .....	\$33,700,000
	Camp Pendleton .....	\$17,700,000

**Defense Agencies: Inside the United States—Continued**

State	Installation or Location	Amount
Florida .....	Eglin Air Force Base .....	\$16,500,000
	Hurlburt Field .....	\$108,386,000
	Naval Air Station Key West .....	\$16,000,000
Guam .....	Joint Region Marianas .....	\$19,200,000
Hawaii .....	Joint Base Pearl Harbor-Hickam .....	\$67,700,000
Maryland .....	Fort Detrick .....	\$27,846,000
Mississippi .....	Columbus Air Force Base .....	\$16,800,000
North Carolina .....	Camp Lejeune .....	\$13,400,000
	Fort Bragg .....	\$84,103,000
	Tulsa International Airport .....	\$18,900,000
Rhode Island .....	Quonset State Airport .....	\$11,600,000
South Carolina .....	Joint Base Charleston .....	\$33,300,000
South Dakota .....	Ellsworth Air Force Base .....	\$24,800,000
Virginia .....	Defense Distribution Depot Richmond .....	\$98,800,000
	Joint Expeditionary Base Little Creek - Fort Story .....	\$45,604,000
	Pentagon .....	\$28,802,000
	Training Center Dam Neck .....	\$12,770,000
Washington .....	Joint Base Lewis-McChord .....	\$47,700,000
Wisconsin .....	General Mitchell International Airport .....	\$25,900,000
CONUS Classified .....	Classified Location .....	\$82,200,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(a) and available for military construction projects outside the United States as specified in the funding table in section 4601, the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

**Defense Agencies: Outside the United States**

Country	Installation or Location	Amount
Germany .....	Geilenkirchen Air Base .....	\$30,479,000
Germany .....	Ramstein .....	\$66,800,000
Japan .....	Yokota Air Base .....	\$136,411,000
Worldwide Classified.	Classified Location .....	\$52,000,000

**SEC. 2402. AUTHORIZED ENERGY RESILIENCE AND CONSERVATION INVESTMENT PROGRAM PROJECTS.**

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(a) and available for energy conservation projects as specified in the funding table in section 4601, the Secretary of Defense may carry out energy conservation projects under chapter 173 of title 10, United States Code, for the installations or locations inside the United States, and in the amounts, set forth in the following table:



**ERCIP Projects: Inside the United States**

<b>State</b>	<b>Installation or Location</b>	<b>Amount</b>
California .....	Mountain View .....	\$9,700,000
	Naval Air Weapons Station China Lake .....	\$8,950,000
	Naval Support Activity Monterey ..	\$10,540,000
Hawaii .....	Joint Base Pearl Harbor-Hickam ...	\$4,000,000
Maryland .....	Naval Support Activity Bethesda ...	\$13,840,000
	South Potomac .....	\$18,460,000
New Mexico ...	White Sands Missile Range .....	\$5,800,000
Texas .....	Camp Swift .....	\$4,500,000
	Fort Hood .....	\$16,500,000
Virginia .....	National Reconnaissance Office Headquarters .....	\$66,000
Washington ...	Naval Base Kitsap .....	\$23,670,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2403(a) and available for energy conservation projects as specified in the funding table in section 4601, the Secretary of Defense may carry out energy conservation projects under chapter 173 of title 10, United States Code, for the installations or locations outside the United States, and in the amounts, set forth in the following table:

**ERCIP Projects: Outside the United States**

<b>Country</b>	<b>Installation or Location</b>	<b>Amount</b>
Guam .....	Naval Base Guam .....	\$16,970,000
Unspecified Worldwide ..	Unspecified Worldwide Locations ...	\$150,000,000

**SEC. 2403. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments), as specified in the funding table in section 4601.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2401 of this Act may not exceed the total amount authorized to be appropriated under subsection (a), as specified in the funding table in section 4601.

## TITLE XXV—INTERNATIONAL PROGRAMS

### Subtitle A—North Atlantic Treaty Organization Security Investment Program

Subtitle A—North Atlantic Treaty Organization Security Investment Program

Sec. 2501. Authorized NATO construction and land acquisition projects.

Sec. 2502. Authorization of appropriations, NATO.

Subtitle B—Host Country In-kind Contributions

Sec. 2511. Republic of Korea funded construction projects.

#### SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment Program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

#### SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

(a) AUTHORIZATION.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment Program authorized by section 2501 as specified in the funding table in section 4601.

(b) AUTHORITY TO RECOGNIZE NATO AUTHORIZATION AMOUNTS AS BUDGETARY RESOURCES FOR PROJECT EXECUTION.—When the United States is designated as the Host Nation for the purposes of executing a project under the NATO Security Investment Program (NSIP), the Department of Defense construction agent may recognize the NATO project authorization amounts as budgetary resources to incur obligations for the purposes of executing the NSIP project.

### Subtitle B—Host Country In-kind Contributions

#### SEC. 2511. REPUBLIC OF KOREA FUNDED CONSTRUCTION PROJECTS.

Pursuant to agreement with the Republic of Korea for required in-kind contributions, the Secretary of Defense may accept military construction projects for the installations or locations in the Republic of Korea, and in the amounts, set forth in the following table:

**Republic of Korea Funded Construction Projects**

<b>Component</b>	<b>Installation or Location</b>	<b>Project</b>	<b>Amount</b>
Army .....	Camp Carroll	Army Prepositioned Stock-4 Wheeled Vehicle Maintenance Facility .....	\$51,000,000
Army .....	Camp Humphreys .....	Unaccompanied Enlisted Personnel Housing, P1 ....	\$154,000,000
Army .....	Camp Humphreys .....	Unaccompanied Enlisted Personnel Housing, P2 ....	\$211,000,000
Army .....	Camp Humphreys .....	Satellite Communications Facility .....	\$32,000,000
Air Force	Gwangju Air Base .....	Hydrant Fuel System .....	\$35,000,000
Air Force	Kunsan Air Base .....	Upgrade Electrical Distribution System .....	\$14,200,000
Air Force	Kunsan Air Base .....	Dining Facility .....	\$21,000,000
Air Force	Suwon Air Base .....	Hydrant Fuel System .....	\$24,000,000

**TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES**

- Sec. 2601. Authorized Army National Guard construction and land acquisition projects.
- Sec. 2602. Authorized Army Reserve construction and land acquisition projects.
- Sec. 2603. Authorized Navy Reserve and Marine Corps Reserve construction and land acquisition projects.
- Sec. 2604. Authorized Air National Guard construction and land acquisition projects.
- Sec. 2605. Authorized Air Force Reserve construction and land acquisition projects.
- Sec. 2606. Authorization of appropriations, National Guard and Reserve.

**SEC. 2601. AUTHORIZED ARMY NATIONAL GUARD CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2606 and available for the National Guard and Reserve as specified in the funding table in section 4601, the Secretary of the Army may acquire real property and carry out military construction projects for the Army National Guard locations inside the United States, and in the amounts, set forth in the following table:

**Army National Guard**

<b>State</b>	<b>Location</b>	<b>Amount</b>
Alabama .....	Anniston Army Depot .....	\$34,000,000
.....	Foley .....	\$12,000,000
California .....	Camp Roberts .....	\$12,000,000

**Army National Guard—Continued**

<b>State</b>	<b>Location</b>	<b>Amount</b>
Idaho .....	Orchard Training Area .....	\$29,000,000
Maryland .....	Havre de Grace .....	\$12,000,000
Massachusetts .....	Camp Edwards .....	\$9,700,000
Minnesota .....	New Ulm .....	\$11,200,000
Mississippi .....	Camp Shelby .....	\$8,100,000
Missouri .....	Springfield .....	\$12,000,000
Nebraska .....	Bellevue .....	\$29,000,000
New Hampshire ...	Concord .....	\$5,950,000
New York .....	Jamaica Armory .....	\$91,000,000
Pennsylvania .....	Moon Township .....	\$23,000,000
Vermont .....	Jericho .....	\$30,000,000
Washington .....	Richland .....	\$11,400,000

**SEC. 2602. AUTHORIZED ARMY RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2606 and available for the National Guard and Reserve as specified in the funding table in section 4601, the Secretary of the Army may acquire real property and carry out military construction projects for the Army Reserve locations inside the United States, and in the amounts, set forth in the following table:

**Army Reserve**

<b>State</b>	<b>Location</b>	<b>Amount</b>
Delaware .....	Newark Army Reserve Center .....	\$21,000,000
Wisconsin .....	Fort McCoy .....	\$25,000,000

**SEC. 2603. AUTHORIZED NAVY RESERVE AND MARINE CORPS RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2606 and available for the National Guard and Reserve as specified in the funding table in section 4601, the Secretary of the Navy may acquire real property and carry out the military construction project for the Navy Reserve and Marine Corps Reserve location inside the United States, and in the amount, set forth in the following table:

**Navy Reserve and Marine Corps Reserve**

<b>State</b>	<b>Location</b>	<b>Amount</b>
Louisiana .....	New Orleans .....	\$25,260,000

**SEC. 2604. AUTHORIZED AIR NATIONAL GUARD CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2606 and available for the National Guard and Reserve as specified in the funding table in section 4601, the Secretary of the Air Force may acquire real property and

carry out military construction projects for the Air National Guard locations inside the United States, and in the amounts, set forth in the following table:

**Air National Guard**

State	Location	Amount
California .....	Moffett Air National Guard Base .....	\$57,000,000
Georgia .....	Savannah/Hilton Head International Airport.	\$24,000,000
Missouri .....	Rosecrans Memorial Airport .....	\$9,500,000
Puerto Rico .....	Luis Munoz-Marin International Airport.	\$50,000,000
Wisconsin .....	Truax Field .....	\$34,000,000

**SEC. 2605. AUTHORIZED AIR FORCE RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

Using amounts appropriated pursuant to the authorization of appropriations in section 2606 and available for the National Guard and Reserve as specified in the funding table in section 4601, the Secretary of the Air Force may acquire real property and carry out military construction projects for the Air Force Reserve locations inside the United States, and in the amounts, set forth in the following table:

**Air Force Reserve**

State	Location	Amount
Georgia .....	Robins Air Force Base .....	\$43,000,000
Maryland .....	Joint Base Andrews .....	\$15,000,000
Minnesota .....	Minneapolis-St. Paul International Airport .....	\$9,800,000

**SEC. 2606. AUTHORIZATION OF APPROPRIATIONS, NATIONAL GUARD AND RESERVE.**

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), as specified in the funding table in section 4601.

**TITLE XXVII—BASE REALIGNMENT AND CLOSURE ACTIVITIES**

Sec. 2701. Authorization of appropriations for base realignment and closure activities funded through Department of Defense base closure account.

Sec. 2702. Prohibition on conducting additional base realignment and closure (BRAC) round.

**SEC. 2701. AUTHORIZATION OF APPROPRIATIONS FOR BASE REALIGNMENT AND CLOSURE ACTIVITIES FUNDED THROUGH DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT.**

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for base realignment and closure activities, including real property acquisition and military construction projects, as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) and funded through the Department of Defense Base Closure Account established by section 2906 of such Act (as amended by section 2711 of the Military Construction Authorization Act for Fiscal Year 2013 (division B of Public Law 112–239; 126 Stat. 2140)), as specified in the funding table in section 4601.

**SEC. 2702. PROHIBITION ON CONDUCTING ADDITIONAL BASE REALIGNMENT AND CLOSURE (BRAC) ROUND.**

Nothing in this Act shall be construed to authorize an additional Base Realignment and Closure (BRAC) round.

## **TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS**

### Subtitle A—Military Construction Program

- Sec. 2801. Military installation resilience plans and projects.
- Sec. 2802. Improved consultation with tribal governments when proposed military construction projects potentially impact Indian tribes.
- Sec. 2803. Increased authority for use of certain appropriations amounts for restoration or replacement of damaged or destroyed facilities.
- Sec. 2804. Amendment of Unified Facilities Criteria to promote military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience.
- Sec. 2805. Modification to Department of Defense Form 1391 regarding consideration of potential long-term adverse environmental effects.
- Sec. 2806. Improved flood risk disclosure for military construction.
- Sec. 2807. Prioritization of projects in annual report on unfunded requirements for laboratory military construction projects.
- Sec. 2808. Technical corrections and improvements to defense access road resilience.
- Sec. 2809. Military construction projects for child development centers at military installations.
- Sec. 2810. Prohibition on use of funds to reduce air base resiliency or demolish protected aircraft shelters in the European theater without creating a similar protection from attack.
- Sec. 2811. Prohibition on use of funds to close or return certain bases to the host nation.

### Subtitle B—Real Property and Facilities Administration

- Sec. 2821. Improved energy security for main operating bases in Europe.
- Sec. 2822. Access to Department of Defense installations for credentialed transportation workers.
- Sec. 2823. Improved recording and maintaining of Department of Defense real property data.

### Subtitle C—Land Conveyances

- Sec. 2831. Land conveyance, Hill Air Force Base, Ogden, Utah.
- Sec. 2832. Release of interests retained in Camp Joseph T. Robinson, Arkansas, for use of such land as a veterans cemetery.
- Sec. 2833. Modification of authorized uses of certain property conveyed by the United States in Los Angeles, California.
- Sec. 2834. Transfer of administrative jurisdiction over certain parcels of Federal land in Arlington, Virginia.

## Subtitle D—Military Land Withdrawals

Sec. 2841. Public notice regarding upcoming periods of Secretary of the Navy management of Shared Use Area of the Johnson Valley Off-Highway Vehicle Recreation Area.

## Subtitle E—White Sands National Park and White Sands Missile Range

Sec. 2851. White Sands Missile Range Land Enhancements.

## Subtitle F—Other Matters

- Sec. 2861. Installation and maintenance of fire extinguishers in Department of Defense facilities.
- Sec. 2862. Definition of community infrastructure for purposes of military base reuse studies and community planning assistance.
- Sec. 2863. Temporary authority for acceptance and use of contributions for certain design and construction projects mutually beneficial to the Department of Defense and the Republic of Korea.
- Sec. 2864. Black start exercises at military installations.
- Sec. 2865. Pilot program to extend service life of roads and runways under the jurisdiction of the Secretary of Defense.
- Sec. 2866. Restrictions on rehabilitation of Over-the-Horizon Backscatter Radar System receiving station, Modoc County, California.
- Sec. 2867. Designation of Sumpter Smith Joint National Guard Base.
- Sec. 2868. Santa Ynez Band of Chumash Indians land affirmation.
- Sec. 2869. Lands to be taken into trust as part of the reservation of the Lytton Rancheria.
- Sec. 2870. Little Shell Tribe of Chippewa Indians of Montana.
- Sec. 2871. Sense of Congress on restoration of Tyndall Air Force Base.

## Subtitle A—Military Construction Program

### SEC. 2801. MILITARY INSTALLATION RESILIENCE PLANS AND PROJECTS.

(a) INCLUSION OF MILITARY INSTALLATION RESILIENCE INFORMATION IN CERTAIN INSTALLATION MASTER PLANS.—

(1) REQUIREMENT.—Section 2864 of title 10, United States Code, is amended—

(A) in subsection (a)(1), by inserting “military installation resilience,” after “master planning,”;

(B) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(C) by inserting after subsection (b) the following new subsection:

“(c) MILITARY INSTALLATION RESILIENCE COMPONENT.—To address military installation resilience under subsection (a)(1), each installation master plan shall discuss the following:

“(1) Risks and threats to military installation resilience that exist at the time of the development of the plan and that are projected for the future, including from extreme weather events, mean sea level fluctuation, wildfires, flooding, and other changes in environmental conditions.

“(2) Assets or infrastructure located on the military installation vulnerable to the risks and threats described in paragraph (1), with a special emphasis on assets or infrastructure critical to the mission of the installation and the mission of members of the armed forces.

“(3) Lessons learned from the impacts of extreme weather events, including changes made to the military installation to address such impacts, since the prior master plan developed under this section.

“(4) Ongoing or planned infrastructure projects or other measures, as of the time of the development of the plan, to

mitigate the impacts of the risks and threats described in paragraph (1).

“(5) Community infrastructure and resources located outside the installation (such as medical facilities, transportation systems, and energy infrastructure) that are—

“(A) necessary to maintain mission capability or that impact the resilience of the military installation; and

“(B) vulnerable to the risks and threats described in paragraph (1).

“(6) Agreements in effect or planned, as of the time of the development of the plan, with public or private entities for the purpose of maintaining or enhancing military installation resilience or resilience of the community infrastructure and resources described in paragraph (5).

“(7) Projections from recognized governmental and scientific entities such as the Census Bureau, the National Academies of Sciences, the United States Geological Survey, and the United States Global Change Research Office (or any similar successor entities) with respect to future risks and threats (including the risks and threats described in paragraph (1)) to the resilience of any project considered in the installation master plan during the 50-year lifespan of the installation.”.

(2) REPORT ON MASTER PLANS.—Section 2864 of title 10, United States Code, is amended by inserting after subsection (c), as added by subsection (a), the following new subsection:

“(d) REPORT.—Not later than March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report listing all master plans completed pursuant to this section in the prior calendar year.”.

(b) AUTHORITY TO CARRY OUT MILITARY INSTALLATION RESILIENCE PROJECTS.—

(1) IN GENERAL.—Subchapter I of chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 2815.

**“§ 2815. Military installation resilience projects**

“(a) PROJECTS REQUIRED.—The Secretary of Defense shall carry out military construction projects for military installation resilience, in accordance with section 2802 of this title.

“(b) CONGRESSIONAL NOTIFICATION.—(1) When a decision is made to carry out a project under this section, the Secretary of Defense shall notify the congressional defense committees of that decision.

“(2) The Secretary of Defense shall include in each notification submitted under paragraph (1) the rationale for how the project would—

“(A) enhance military installation resilience;

“(B) enhance mission assurance;

“(C) support mission critical functions; and

“(D) address known vulnerabilities.

“(c) TIMING OF PROJECTS.—A project may be carried out under this section only after the end of the 14-day period beginning on the date that notification with respect to that project under subsection (b) is received by the congressional defense committees in an electronic medium pursuant to section 480 of this title.

“(d) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year until December 31, 2025, the Secretary of Defense



shall submit to the congressional defense committees a report on the status of the planned and active projects carried out under this section (including completed projects), and shall include in the report with respect to each such project the following information:

“(1) The title, location, a brief description of the scope of work, the original project cost estimate, and the current working cost estimate.

Cost estimates.

“(2) The information provided under subsection (b)(2).

“(3) Such other information as the Secretary considers appropriate.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 169 of such title is amended by inserting after the item relating to section 2814 the following new item:

10 USC 2801  
prec.

“2815. Military installation resilience projects.”.

**SEC. 2802. IMPROVED CONSULTATION WITH TRIBAL GOVERNMENTS WHEN PROPOSED MILITARY CONSTRUCTION PROJECTS POTENTIALLY IMPACT INDIAN TRIBES.**

Section 2802 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f)(1) In addition to any other applicable consultation requirement pursuant to law or Department of Defense policy, if a proposed military construction project is likely to significantly impact tribal lands, known sacred sites, or tribal treaty rights, the Secretary concerned shall initiate consultation with the tribal government of each impacted Indian tribe—

Determinations.

“(A) to determine the nature and extent of such impact;

“(B) to determine whether such impact can be avoided or mitigated in the design and implementation of the project; and

“(C) if such impact cannot be avoided, to develop feasible measures consistent with applicable law to mitigate the impact and estimate the cost of the mitigation measures.

“(2) As part of the Department of Defense Form 1391 submitted to the appropriate committees of Congress for a military construction project covered by paragraph (1), the Secretary concerned, to the extent possible at the time of such submission, shall include a description of the current status of the consultation conducted under such paragraph and specifically address each of the items specified in subparagraphs (A), (B), and (C) of such paragraph.

“(3) The requirement under paragraph (1) does not affect the obligation of the Secretary concerned to comply with any other applicable consultation requirement pursuant to law or Department of Defense policy.

“(4) In this subsection:

Definitions.

“(A) The term ‘Indian tribe’ has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(B) The term ‘tribal government’ means the recognized governing body of an Indian tribe.

“(C) The term ‘sacred site’ has the meaning given that term in Executive Order No. 13007, as in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.”.

**SEC. 2803. INCREASED AUTHORITY FOR USE OF CERTAIN APPROPRIATIONS AMOUNTS FOR RESTORATION OR REPLACEMENT OF DAMAGED OR DESTROYED FACILITIES.**

Section 2854(c)(3) of title 10, United States Code, is amended by striking “\$50,000,000” and inserting “\$100,000,000”.

10 USC 2864  
note.

**SEC. 2804. AMENDMENT OF UNIFIED FACILITIES CRITERIA TO PROMOTE MILITARY INSTALLATION RESILIENCE, ENERGY RESILIENCE, ENERGY AND CLIMATE RESILIENCY, AND CYBER RESILIENCE.**

**(a) AMENDMENT REQUIRED.—**

Deadline.

(1) **IN GENERAL.**—Not later than September 1, 2020, the Secretary of Defense shall amend the Unified Facility Criteria relating to military construction planning and design, to ensure that building practices and standards of the Department of Defense promote military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience.

(2) **CONSIDERATIONS AND CONSULTATION.**—In preparing amendments pursuant to paragraph (1), the Secretary of Defense—

(A) shall take into account historical data, current conditions, and sea level rise projections; and

(B) may consult with the heads of other Federal departments and agencies with expertise regarding military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience.

Certification.

(b) **CONDITIONAL AVAILABILITY OF FUNDS.**—Not more than 25 percent of the funds authorized to be appropriated for fiscal year 2020 for Department of Defense planning and design accounts relating to military construction projects may be obligated until the date on which the Secretary of Defense submits to the Committees on Armed Services of the House of Representatives and the Senate a certification that the Secretary—

(1) has initiated the amendment process required by subsection (a)(1); and

Deadline.

(2) intends to complete such process by September 1, 2020.

(c) **UPDATE OF UNIFIED FACILITIES CRITERIA TO INCLUDE CHANGING ENVIRONMENTAL CONDITION PROJECTIONS.**—Section 2805(c) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2864 note) is amended—

(1) by striking “Not later than” and inserting the following:

“(1) **FISCAL YEAR 2019.**—Not later than”;

(2) in paragraph (1), as designated by paragraph (1), by striking “United Facilities Criteria (UFC) 2-100-01 and UFC 2-100-02” and inserting “Unified Facilities Criteria (UFC) 1-200-01 and UFC 1-200-02”; and

(3) by adding at the end the following new paragraph:

“(2) **FISCAL YEAR 2020.**—

Deadline.

“(A) **AMENDMENTS REQUIRED.**—Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall amend the Unified Facilities Criteria as follows:

Assessment.

“(i) To require that installations of the Department of Defense assess the risks from extreme weather and related effects, and develop plans to address such risks.

“(ii) To require in the development of such Criteria the use of—

“(I) land use change projections through the use of land use and land cover modeling by the United States Geological Survey; and

“(II) weather projections—

“(aa) from the United States Global Change Research Program, including in the National Climate Assessment; or

“(bb) from the National Oceanic and Atmospheric Administration, if such projections are more up-to-date than projections under item (aa).

“(iii) To require the Secretary of Defense to provide guidance to project designers and master planners on how to use weather projections.

“(iv) To require the use throughout the Department of the Naval Facilities Engineering Command Climate Change Installation Adaptation and Resilience planning handbook, as amended (or similar publication of the Army Corps of Engineers).

“(B) NOTIFICATION.—If the Secretary of Defense determines that a projection other than a projection described in subparagraph (A)(ii) is more appropriate for use in amending the Unified Facilities Criteria, the Secretary shall notify the congressional defense committees of such determination, which shall include the rationale underlying such determination and a description of such other projection.”

Determination.

(d) IMPLEMENTATION OF UNIFIED FACILITIES CRITERIA AMENDMENTS.—

(1) IMPLEMENTATION.—Any Department of Defense Form 1391 submitted to Congress after September 1, 2020 shall comply with the Unified Facility Criteria, as amended pursuant to this section.

Compliance.

(2) CERTIFICATION.—Not later than March 1, 2021, the Secretary of Defense shall certify to the Committees on Armed Services of the House of Representatives and the Senate the completion and full incorporation into military construction planning and design—

Deadline.

(A) amendments made pursuant to subsection (a); and

(B) amendments made pursuant to section 2805(c) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2864 note), as amended by subsection (c).

(e) ANNUAL REVIEW.—Beginning with fiscal year 2022, and annually thereafter, the Secretary of Defense shall conduct a review comparing the Unified Facility Criteria and industry best practices, for the purpose of ensuring that military construction building practices and standards of the Department of Defense relating to military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience remain up-to-date.

Effective date.

(f) DEFINITIONS.—In this section:

(1) The terms “energy resilience” and “military installation resilience” have the meanings given those terms in section 101(e) of title 10, United States Code.

(2) The term “energy and climate resiliency” has the meaning given that term in section 2864 of title 10, United States Code.

10 USC 2802  
note.

**SEC. 2805. MODIFICATION TO DEPARTMENT OF DEFENSE FORM 1391 REGARDING CONSIDERATION OF POTENTIAL LONG-TERM ADVERSE ENVIRONMENTAL EFFECTS.**

(a) MODIFICATION.—

(1) CERTIFICATION REQUIREMENT.—The Secretary of Defense shall modify Department of Defense Form 1391 to require, with respect to any proposed major or minor military construction project requiring congressional notification or approval, the inclusion of a certification by the Secretary of Defense or the Secretary of the military department concerned that the proposed military construction project takes into consideration—

(A) the potential adverse consequences of long-term changes in environmental conditions, such as increasingly frequent extreme weather events, that could affect the military installation resilience of the installation for which the military construction project is proposed; and

(B) building requirements in effect for the locality in which the military construction project is proposed and industry best practices that are developed to withstand extreme weather events and other consequences of changes in environmental conditions.

(2) ELEMENTS OF CERTIFICATION.—As part of the certification required by paragraph (1) for a proposed military construction project, the Secretary concerned shall identify the potential changes in environmental conditions, such as increasingly frequent extreme weather events, considered and addressed under subparagraphs (A) and (B) of paragraph (1).

(b) RELATION TO RECENT MODIFICATION REQUIREMENT.—The modification of Department of Defense Form 1391 required by subsection (a) is in addition to, and expands upon, the modification of Department of Defense Form 1391 with respect to flood risk disclosure for military construction required by section 2805(a) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2802 note).

(c) MILITARY INSTALLATION RESILIENCE DEFINED.—In this section, the term “military installation resilience” has the meaning given that term in section 101(e)(8) of title 10, United States Code.

**SEC. 2806. IMPROVED FLOOD RISK DISCLOSURE FOR MILITARY CONSTRUCTION.**

(a) WHEN DISCLOSURE REQUIRED.—Section 2805(a)(1) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2802 note) is amended—

(1) in subparagraph (A), by inserting after “hazard data” the following: “, or will be impacted by projected current and future mean sea level fluctuations over the lifetime of the project”; and

(2) in subparagraph (B), by inserting after “floodplain” the following: “or will be impacted by projected current and future mean sea level fluctuations over the lifetime of the project”.

(b) **REPORTING REQUIREMENTS.**—Section 2805(a)(3) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2802 note) is amended—

(1) in the matter preceding the subparagraphs, by inserting after “floodplain” the following: “or are to be impacted by projected current and future mean sea level fluctuations over the lifetime of the project”; and

(2) by adding at the end the following new subparagraph:  
“(D) A description of how the proposed project has taken into account projected current and future mean sea level fluctuations over the lifetime of the project.”.

(c) **MITIGATION PLAN ASSUMPTIONS.**—Section 2805(a)(4) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2802 note) is amended—

(1) in the matter preceding the subparagraphs—

(A) by inserting after “floodplain” the following: “or that will be impacted by projected current and future mean sea level fluctuations over the lifetime of the project”; and

(B) by striking “an additional”;

(2) in subparagraph (A)—

(A) by inserting “an additional” before “2 feet”; and

(B) by striking “and” at the end of the subparagraph;

(3) in subparagraph (B)—

(A) by inserting “an additional” before “3 feet”; and

(B) by striking the period at the end of the subparagraph and inserting “; and”; and

(4) by adding at the end the following new subparagraph:  
“(C) any additional flooding that will result from projected current and future mean sea level fluctuations over the lifetime of the project.”.

**SEC. 2807. PRIORITIZATION OF PROJECTS IN ANNUAL REPORT ON UNFUNDED REQUIREMENTS FOR LABORATORY MILITARY CONSTRUCTION PROJECTS.**

Section 2806 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 222a note) is amended—

(1) by striking “Assistant Secretary of Defense for Energy, Installations, and Environment” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(2) by striking “reporting” and inserting “report”; and

(3) by inserting “in prioritized order, with specific accounts and program elements identified,” after “evaluation facilities.”.

**SEC. 2808. TECHNICAL CORRECTIONS AND IMPROVEMENTS TO DEFENSE ACCESS ROAD RESILIENCE.**

Section 210 of title 23, United States Code, is amended—

(1) in subsection (a), by striking “(a)(1) The Secretary” and all that follows through the end of paragraph (1) and inserting the following:

“(a) **AUTHORIZATION.**—

“(1) **IN GENERAL.**—When defense access roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, the Secretary is authorized, out of the funds appropriated for defense access roads, to provide for—

“(A) the construction and maintenance of defense access roads (including bridges, tubes, tunnels, and culverts or other hydraulic appurtenances on those roads) to—

“(i) military reservations;

“(ii) defense industry sites;

“(iii) air or sea ports that are necessary for or are planned to be used for the deployment or sustainment of members of the Armed Forces, equipment, or supplies; or

“(iv) sources of raw materials;

“(B) the reconstruction or enhancement of, or improvements to, those roads to ensure the continued effective use of the roads, regardless of current or projected increases in mean tides, recurrent flooding, or other weather-related conditions or natural disasters; and

“(C) replacing existing highways and highway connections that are shut off from general public use by necessary closures, closures due to mean sea level fluctuation and flooding, or restrictions at—

“(i) military reservations;

“(ii) air or sea ports that are necessary for or are planned to be used for the deployment or sustainment of members of the Armed Forces, equipment, or supplies; or

“(iii) defense industry sites.”;

(2) in subsection (b), by striking “the construction and maintenance of” and inserting “construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, or enhancements to,”;

(3) in subsection (c)—

(A) by striking “him” and inserting “the Secretary”;

(B) by striking “construction, maintenance, and repair work” and inserting “activities for construction, maintenance, reconstruction, enhancement, improvement, and repair”;

(C) by striking “therein” and inserting “in those areas”;

and

(D) by striking “condition for such training purposes and for repairing the damage caused to such highways by the operations of men and equipment in such training.” and inserting the following: “condition for—

“(1) that training; and

“(2) repairing the damage to those highways caused by—

“(A) weather-related events, increases in mean high tide levels, recurrent flooding, or natural disasters; or

“(B) the operations of men and equipment in such training.”;

(4) in subsection (g)—

(A) by striking “he” and inserting “the Secretary”;

(B) by striking “construction which has been” and inserting “construction and other activities”; and

(C) by striking “upon his demand” and inserting “upon demand by the Secretary”; and

(5) by striking subsection (i) and inserting the following:

“(i) REPAIR OF CERTAIN DAMAGES AND INFRASTRUCTURE.—The funds appropriated to carry out this section may be used to pay

Determination.

the cost of repairing damage caused, or any infrastructure to mitigate a risk posed, to a defense access road by recurrent or projected recurrent flooding, sea level fluctuation, a natural disaster, or any other current or projected change in applicable environmental conditions, if the Secretary determines that continued access to a military installation, defense industry site, air or sea port necessary for or planned to be used for the deployment or sustainment of members of the Armed Forces, equipment, or supplies, or to a source of raw materials, has been or is projected to be impacted by those events or conditions.”.

**SEC. 2809. MILITARY CONSTRUCTION PROJECTS FOR CHILD DEVELOPMENT CENTERS AT MILITARY INSTALLATIONS.**

(a) **AUTHORIZATION OF ADDITIONAL PROJECTS.**—In addition to any other military construction projects authorized under this Act, the Secretary of the military department concerned may carry out military construction projects for child development centers at military installations, as specified in the funding table in section 4601.

(b) **REQUIRING REPORT AS CONDITION OF AUTHORIZATION.**—

(1) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Secretary concerned shall submit to the congressional defense committees a report that describes the location, title, and cost, together with a Department of Defense Form 1391, for each project the Secretary concerned proposes to carry out under this section.

(2) **TIMING OF AVAILABILITY OF FUNDS.**—No funds may be obligated or expended for a project under this section—

(A) unless the project is included in the report submitted under paragraph (1); and

(B) until the expiration of the 30-day period beginning on the date on which the Secretary concerned submits the report under paragraph (1).

(c) **EXPIRATION OF AUTHORIZATION.**—Section 2002 shall apply with respect to the authorization of a military construction project under this section in the same manner as such section applies to the authorization of a project contained in titles XXI through XXX.

Applicability.

**SEC. 2810. PROHIBITION ON USE OF FUNDS TO REDUCE AIR BASE RESILIENCY OR DEMOLISH PROTECTED AIRCRAFT SHELTERS IN THE EUROPEAN THEATER WITHOUT CREATING A SIMILAR PROTECTION FROM ATTACK.**

Certification.

No funds authorized to be appropriated by this Act for fiscal year 2020 for the Department of Defense may be obligated or expended to implement any activity that reduces air base resiliency or demolishes protected aircraft shelters in the European theater, and the Department may not otherwise implement any such activity, without creating a similar protection from attack in the European theater until such time as the Secretary of Defense certifies to the congressional defense committees that protected aircraft shelters are not required in the European theater.

**SEC. 2811. PROHIBITION ON USE OF FUNDS TO CLOSE OR RETURN CERTAIN BASES TO THE HOST NATION.**

Certification.

No funds authorized to be appropriated by this Act for fiscal year 2020 for the Department of Defense may be obligated or expended to implement any activity that closes or returns to the host nation any existing base under the European Consolidation

Initiative, and the Department shall not implement any such activity in fiscal year 2020, until the Secretary of Defense certifies that there is no longer a need for a rotational military presence in the European theater.

## **Subtitle B—Real Property and Facilities Administration**

### **SEC. 2821. IMPROVED ENERGY SECURITY FOR MAIN OPERATING BASES IN EUROPE.**

10 USC 2911  
note.

(a) **PROHIBITION ON USE OF CERTAIN ENERGY SOURCE.**—The Secretary of Defense shall ensure that each contract for the acquisition of furnished energy for a covered military installation in Europe does not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation.

10 USC 2911  
note.  
Certification.

(b) **WAIVER FOR NATIONAL SECURITY INTERESTS.**—

(1) **WAIVER AUTHORITY; CERTIFICATION.**—The Secretary of Defense may waive application of subsection (a) to a specific contract for the acquisition of furnished energy for a covered military installation if the Secretary certifies to the congressional defense committees that—

(A) the waiver of such subsection is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

(B) the Secretary has balanced these national security requirements against the potential risk associated with reliance upon the Russian Federation for furnished energy.

Deadline.

(2) **SUBMISSION OF WAIVER NOTICE.**—Not later than 14 days before the execution of any energy contract for which a waiver is granted under paragraph (1), the Secretary of Defense shall submit to the congressional defense committees notice of the waiver. The waiver notice shall include the following:

(A) The rationale for the waiver, including the basis for the certifications required by subparagraphs (A) and (B) of paragraph (1).

Assessment.

(B) An assessment of how the waiver may impact the European energy resiliency strategy.

(C) An explanation of the measures the Department of Defense is taking to mitigate the risk of using Russian Federation furnished energy.

10 USC 2911  
note.

(c) **DEFINITIONS.**—In this section:

(1) The term “covered military installation” means a military installation in Europe identified by the Department of Defense as a main operating base.

(2) The term “furnished energy” means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

(d) **CONFORMING REPEAL.**—Section 2811 of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2266) is repealed.



**SEC. 2822. ACCESS TO DEPARTMENT OF DEFENSE INSTALLATIONS FOR CREDENTIALLED TRANSPORTATION WORKERS.**

Section 1050(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 113 note) is amended to read as follows:

“(a) ACCESS TO INSTALLATIONS FOR CREDENTIALLED TRANSPORTATION WORKERS.—The Secretary of Defense, to the extent practicable, shall ensure that the Transportation Worker Identification Credential is accepted as a valid credential for unescorted access to Department of Defense installations by transportation workers.”.

**SEC. 2823. IMPROVED RECORDING AND MAINTAINING OF DEPARTMENT OF DEFENSE REAL PROPERTY DATA.**

10 USC 2222  
note.

(a) INITIAL REPORT.—Not later than 150 days after the date of the enactment of this Act, the Undersecretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report that evaluates service-level best practices for recording and maintaining real property data.

Evaluation.

(b) ISSUANCE OF GUIDANCE.—Not later than 300 days after the date of the enactment of this Act, the Undersecretary of Defense for Acquisition and Sustainment shall issue service-wide guidance on the recording and collection of real property data based on the best practices described in the report.

Deadline.

**Subtitle C—Land Conveyances****SEC. 2831. LAND CONVEYANCE, HILL AIR FORCE BASE, OGDEN, UTAH.**

(a) CONVEYANCE REQUIRED.—The Secretary of the Air Force may convey, for no monetary consideration, to the State of Utah or a designee of the State of Utah (in this section referred to as the “State”) all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 35 acres located at Hill Air Force Base commonly known as the “Defense Nontactical Generator and Rail Center” and such real property adjacent to the Center as the parties consider to be appropriate, for the purpose of permitting the State to construct a new interchange for Interstate 15.

(b) CONDITION PRECEDENT.—The conveyance authorized by subsection (a) shall be contingent upon the relocation of the Defense Nontactical Generator and Rail Center.

(c) TERMINATION AND REENTRY.—If the State does not meet the conditions required under subsection (d) by the date that is five years after the date of the conveyance authorized by subsection (a), or such later date as the Secretary of the Air Force and the State may agree is reasonably necessary due to unexpected circumstances, the Secretary of the Air Force may terminate such conveyance and reenter the property.

(d) CONSIDERATION AND CONDITIONS OF CONVEYANCE.—In consideration of and as a condition to the conveyance authorized by subsection (a), the State shall agree to the following:

Deadlines.

(1) Not later than two years after the conveyance, the State shall, at no cost to the United States Government—

(A) demolish all improvements and associated infrastructure existing on the property; and

(B) conduct environmental cleanup and remediation of the property, as required by law and approved by the

Utah Department of Environmental Quality, for the planned redevelopment and use of the property.

(2) Not later than three years after the completion of the cleanup and remediation under paragraph (1)(B), the State, at no cost to the United States Government, shall construct on Hill Air Force Base a new gate for vehicular and pedestrian traffic in and out of Hill Air Force Base in compliance with all applicable construction and security requirements and such other requirements as the Secretary of the Air Force may consider necessary.

Coordination.

(3) That the State shall coordinate the demolition, cleanup, remediation, design, redevelopment, and construction activities performed pursuant to the conveyance under subsection (a) with the Secretary of the Air Force, the Utah Department of Transportation, and the Utah Department of Environmental Quality.

(e) ENVIRONMENTAL OBLIGATIONS.—The State shall not have any obligation with respect to cleanup and remediation of an environmental condition on the property to be conveyed under subsection (a) unless the condition was in existence and known before the date of the conveyance or the State exacerbates the condition which then requires further remediation.

(f) PAYMENT OF COSTS OF CONVEYANCE.—

(1) PAYMENT REQUIRED.—The Secretary of the Air Force shall require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for such costs incurred, to carry out the conveyance under subsection (a), including survey costs, costs for environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the State.

(2) TREATMENT OF AMOUNTS RECEIVED.—Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance under subsection (a) or to an appropriate fund or account currently available to the Secretary for the purposes for which the costs were paid. Amounts so credited shall be merged with amounts in such fund or account and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

Determination.  
Survey.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Air Force and the State.

(h) SAVINGS PROVISION.—Nothing in this section shall be construed to affect or limit the application of, or any obligation to comply with, any environmental law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

**SEC. 2832. RELEASE OF INTERESTS RETAINED IN CAMP JOSEPH T. ROBINSON, ARKANSAS, FOR USE OF SUCH LAND AS A VETERANS CEMETERY.**

(a) **RELEASE OF RETAINED INTERESTS.—**

(1) **IN GENERAL.—**With respect to a parcel of land at Camp Joseph T. Robinson, Arkansas, consisting of approximately 141.52 acres that lies in a part of section 35, township 3 north, range 12 west, Pulaski County, Arkansas, and comprising a portion of the property conveyed by the United States to the State of Arkansas for training of the National Guard and for other military purposes pursuant to “An Act authorizing the transfer of part of Camp Joseph T. Robinson to the State of Arkansas”, approved June 30, 1950 (64 Stat. 311, chapter 429), the Secretary of the Army may release the terms and conditions imposed, and reversionary interests retained, by the United States under section 2 of such Act, and the right to reenter and use the property retained by the United States under section 3 of such Act.

(2) **IMPACT ON OTHER RIGHTS OR INTERESTS.—**The release of terms and conditions and retained interests under paragraph (1) with respect to the parcel described in such paragraph shall not be construed to alter the rights or interests retained by the United States with respect to the remainder of the real property conveyed to the State of Arkansas under the Act described in such paragraph.

(b) **INSTRUMENT OF RELEASE AND DESCRIPTION OF PROPERTY.—**

(1) **IN GENERAL.—**The Secretary of the Army may execute and file in the appropriate office a deed of release, amended deed, or other appropriate instrument reflecting the release of terms and conditions and retained interests under subsection (a).

(2) **LEGAL DESCRIPTION.—**The exact acreage and legal description of the property described in subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

Determination.  
Survey.

(c) **CONDITIONS ON RELEASE AND REVERSIONARY INTEREST.—**

(1) **EXPANSION OF VETERANS CEMETERY AND REVERSIONARY INTEREST.—**

(A) **EXPANSION OF VETERANS CEMETERY.—**The State of Arkansas may use the parcel of land described in subsection (a)(1) only for the expansion of the Arkansas State Veterans Cemetery.

(B) **REVERSIONARY INTEREST.—**If the Secretary of the Army determines at any time that the parcel of land described in subsection (a)(1) is not being used in accordance with the purpose specified in subparagraph (A), all right, title, and interest in and to the land, including any improvements thereto, shall, at the option of the Secretary, revert to and become the property of the United States, and the United States shall have the right of immediate entry onto such parcel.

Determination.

(2) **ADDITIONAL TERMS AND CONDITIONS.—**The Secretary of the Army may require in the instrument of release such additional terms and conditions in connection with the release of terms and conditions and retained interests under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

Reimbursements.

**(d) PAYMENT OF ADMINISTRATIVE COSTS.—****(1) PAYMENT REQUIRED.—**

(A) **IN GENERAL.**—The Secretary of the Army may require the State of Arkansas to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the release of terms and conditions and retained interests under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the release.

(B) **REFUND OF AMOUNTS.**—If amounts paid to the Secretary by the State of Arkansas in advance under subparagraph (A) exceed the costs actually incurred by the Secretary to carry out the release, the Secretary shall refund the excess amount to the State.

(2) **TREATMENT OF AMOUNTS RECEIVED.**—Amounts received under paragraph (1) as reimbursement for costs incurred by the Secretary to carry out the release of terms and conditions and retained interests under subsection (a) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the release. Amounts so credited shall be merged with amounts in such fund or account and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

**SEC. 2833. MODIFICATION OF AUTHORIZED USES OF CERTAIN PROPERTY CONVEYED BY THE UNITED STATES IN LOS ANGELES, CALIFORNIA.**

(a) **IN GENERAL.**—Section 2 of Public Law 85-236 (71 Stat. 517) is amended in the first sentence by inserting after “for other military purposes” the following: “and for purposes of meeting the needs of the homeless (as that term is defined in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302))”.

Homeless persons.

**(b) MODIFICATION OF USE.—**

(1) **APPLICATION.**—The State of California shall submit to the Administrator of General Services an application for use of the property conveyed by section 2 of Public Law 85-236 for purposes of meeting the needs of the homeless in accordance with the amendment made by subsection (a).

Deadline.  
Determination.

(2) **REVIEW OF APPLICATION.**—Not later than 60 days after the date of receipt of an application pursuant to paragraph (1), the Administrator and the Secretary of Health and Human Services shall jointly determine whether the use of the property described in the application is a use for purposes of meeting the needs of the homeless.

Review.  
Consultation.

(3) **COMPATIBILITY WITH MILITARY PURPOSES.**—Before executing any instrument of modification of the deed of conveyance, the Administrator and the Secretary shall request a review by the Chief of the National Guard Bureau, in consultation with the Secretary of the Army, to ensure that any modification of the use of the property described in the application is compatible with the current and anticipated future use of the property for training members of the National Guard and other military purposes.

(4) **MODIFICATION OF INSTRUMENT OF CONVEYANCE.**—If the Chief of the National Guard Bureau determines pursuant to the review under paragraph (3) that the modification of the use of the property described in the application is compatible with the use of the property for training members of the National Guard and other military purposes, the Administrator shall execute and record in the appropriate office an instrument of modification of the deed of conveyance executed pursuant to Public Law 85–236 in order to authorize such use of the property described in the application. The instrument shall be filed within 60 days of such determination and include such additional terms and conditions as the Administrator considers appropriate to protect the interests of the United States.

Determination.  
Records.

Deadline.

**SEC. 2834. TRANSFER OF ADMINISTRATIVE JURISDICTION OVER CERTAIN PARCELS OF FEDERAL LAND IN ARLINGTON, VIRGINIA.**

(a) **TRANSFER TO THE SECRETARY OF THE ARMY.**—

38 USC 2409  
note.

(1) **TRANSFER.**—Administrative jurisdiction over the parcel of Federal land described in paragraph (2) is transferred from the Secretary of the Interior to the Secretary of the Army.

(2) **DESCRIPTION OF LAND.**—The parcel of Federal land referred to in paragraph (1) is the approximately 16.09-acre parcel of land in Arlington, Virginia, as depicted on the map entitled “Arlington National Cemetery, Memorial Ave–NPS Parcel” and dated February 11, 2019.

(b) **TRANSFER TO THE SECRETARY OF THE INTERIOR.**—

(1) **TRANSFER.**—Administrative jurisdiction over the parcel of Federal land described in paragraph (2) is transferred from the Secretary of the Army to the Secretary of the Interior.

(2) **DESCRIPTION OF LAND.**—The parcel of Federal land referred to in paragraph (1) is the approximately 1.04-acre parcel of land in Arlington, Virginia, as depicted on the map entitled “Arlington National Cemetery–Chaffee NPS Land Swap” and dated October 31, 2018.

(c) **LAND SURVEYS.**—The exact acreage and legal description of a parcel of Federal land described in subsection (a)(2) or (b)(2) shall be determined by a survey satisfactory to the Secretary of the Army and the Secretary of the Interior.

Determination.

(d) **AUTHORITY TO CORRECT ERRORS.**—The Secretary of the Army and the Secretary of the Interior may correct any clerical or typographical error in a map described in subsection (a)(2) or (b)(2).

(e) **TERMS AND CONDITIONS.**—

(1) **NO REIMBURSEMENT OR CONSIDERATION.**—A transfer by subsection (a)(1) or (b)(1) shall be without reimbursement or consideration.

(2) **CONTINUED RECREATIONAL ACCESS.**—The use of a bicycle trail or recreational access within a parcel of Federal land described in subsection (a)(2) or (b)(2) in which the use or access is authorized before the date of the enactment of this Act shall be allowed to continue after the transfer of the applicable parcel of Federal land by subsection (a)(1) or (b)(1).

(3) **MANAGEMENT OF PARCEL TRANSFERRED TO SECRETARY OF THE ARMY.**—

38 USC 2409  
note.

(A) **IN GENERAL.**—The parcel of Federal land transferred to the Secretary of the Army by subsection (a)(1) shall be administered by the Secretary of the Army—

(i) as part of Arlington National Cemetery; and

(ii) in accordance with applicable law, including—

(I) regulations; and

(II) section 2409 of title 38, United States Code.

Women in  
Military Service  
for America  
Memorial  
Foundation, Inc.  
40 USC 8903  
note.

(B) **MEMORANDUM OF UNDERSTANDING ON OPERATION OF MAINTENANCE OF MEMORIAL.**—

(i) **IN GENERAL.**—The Secretary of the Army shall seek to enter into a memorandum of understanding with the Women in Military Service for America Memorial Foundation, Inc., to define roles and responsibilities for the shared responsibility and resources for operation and maintenance of the Women in Military Service for America Memorial and the surrounding grounds.

(ii) **ALLOCATION OF AMOUNTS.**—The Secretary of the Army may, pursuant to the memorandum of understanding described in clause (i), allocate amounts to the foundation described in that clause to support operation and maintenance of the memorial described in that clause.

54 USC 320201  
note.

(4) **MANAGEMENT OF PARCEL TRANSFERRED TO SECRETARY OF THE INTERIOR.**—The parcel of Federal land transferred to the Secretary of the Interior by subsection (b)(1) shall be—

(A) included within the boundary of Arlington House, The Robert E. Lee Memorial; and

(B) administered by the Secretary of the Interior—

(i) as part of the memorial referred to in subparagraph (A); and

(ii) in accordance with applicable law (including regulations).

## Subtitle D—Military Land Withdrawals

### SEC. 2841. PUBLIC NOTICE REGARDING UPCOMING PERIODS OF SECRETARY OF THE NAVY MANAGEMENT OF SHARED USE AREA OF THE JOHNSON VALLEY OFF-HIGHWAY VEHICLE RECREATION AREA.

(a) **PUBLIC NOTICE REQUIRED.**—Section 2942(b)(2) of the Military Land Withdrawals Act of 2013 (title XXIX of Public Law 113–66; 127 Stat. 1036) is amended by adding at the end the following new subparagraph:

Deadline.

“(D) **PUBLIC NOTICE.**—Not later than one year before the date on which a 30-day period of Secretary of the Navy management of the Shared Use Area commences, the Secretary of the Navy, acting through the Resource Management Group established pursuant to section 2944, shall notify the public of such date of commencement and the intention of the Armed Forces to use the Shared Use Area for military training purposes. The Secretary of the Navy, upon notice to the Secretary of the Interior, may waive such public notice in the event of an emergent military training requirement.”.

Waiver authority.

(b) APPLICATION OF AMENDMENT.—Subparagraph (D) of section 2942(b)(2) of the Military Land Withdrawals Act of 2013 (title XXIX of Public Law 113–66; 127 Stat. 1036), as added by subsection (a), shall apply to periods of Secretary of the Navy management of the Shared Use Area of the Johnson Valley Off-Highway Vehicle Recreation Area under such section that commence on or after January 1, 2021.

Effective date.

## Subtitle E—White Sands National Park and White Sands Missile Range

New Mexico.

### SEC. 2851. WHITE SANDS MISSILE RANGE LAND ENHANCEMENTS.

16 USC 410ddd.

(a) DEFINITIONS.—In this section:

(1) MAP.—The term “Map” means the map entitled “White Sands National Park Proposed Boundary Revision & Transfer of Lands Between National Park Service & Department of the Army”, numbered 142/136,271, and dated February 14, 2017.

(2) MILITARY MUNITIONS.—The term “military munitions” has the meaning given the term in section 101(e) of title 10, United States Code.

(3) MISSILE RANGE.—The term “missile range” means the White Sands Missile Range, New Mexico, administered by the Secretary of the Army.

(4) MONUMENT.—The term “Monument” means the White Sands National Monument, New Mexico, established by Presidential Proclamation No. 2025 (54 U.S.C. 320301 note), dated January 18, 1933, and administered by the Secretary of the Interior.

(5) MUNITIONS DEBRIS.—The term “munitions debris” has the meaning given the term in volume 8 of the Department of Defense Manual Number 6055.09-M entitled “DoD Ammunitions and Explosives Safety Standards” and dated February 29, 2008 (as in effect on the date of the enactment of this Act).

(6) PARK.—The term “Park” means the White Sands National Park established by subsection (b)(1).

(7) PUBLIC LAND ORDER.—The term “Public Land Order” means Public Land Order 833, dated May 21, 1952 (17 Fed. Reg. 4822).

(8) STATE.—The term “State” means the State of New Mexico.

(b) WHITE SANDS NATIONAL PARK.—

(1) ESTABLISHMENT.—To protect, preserve, and restore its scenic, scientific, educational, natural, geological, historical, cultural, archaeological, paleontological, hydrological, fish, wildlife, and recreational values and to enhance visitor experiences, there is established in the State the White Sands National Park as a unit of the National Park System.

Historic preservation.

(2) ABOLISHMENT OF WHITE SANDS NATIONAL MONUMENT.—

(A) ABOLISHMENT.—Due to the establishment of the Park, the Monument is abolished.

(B) INCORPORATION.—The land and interests in land that comprise the Monument are incorporated in, and shall be considered to be part of, the Park.

(3) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the “White Sands National Monument” shall be considered to be a reference to the “White Sands National Park”.

(4) AVAILABILITY OF FUNDS.—Any funds available for the Monument shall be available for the Park.

(5) ADMINISTRATION.—The Secretary of the Interior shall administer the Park in accordance with—

(A) this subsection; and

(B) the laws generally applicable to units of the National Park System, including section 100101(a), chapter 1003, sections 100751(a), 100752, 100753, and 102101, and chapter 3201 of title 54, United States Code.

(6) WORLD HERITAGE LIST NOMINATION.—

(A) COUNTY CONCURRENCE.—The Secretary of the Interior shall not submit a nomination for the Park to be included on the World Heritage List of the United Nations Educational, Scientific and Cultural Organization unless each county in which the Park is located concurs in the nomination.

(B) ARMY NOTIFICATION.—Before submitting a nomination for the Park to be included on the World Heritage List of the United Nations Educational, Scientific and Cultural Organization, the Secretary of the Interior shall notify the Secretary of the Army of the intent of the Secretary of the Interior to nominate the Park.

(7) EFFECT.—Nothing in this subsection affects—

(A) valid existing rights (including water rights);

(B) permits or contracts issued by the Monument;

(C) existing agreements, including agreements with the Department of Defense;

(D) the jurisdiction of the Department of Defense regarding the restricted airspace above the Park; or

(E) the airshed classification of the Park under the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) MODIFICATION OF BOUNDARIES OF WHITE SANDS NATIONAL PARK AND WHITE SANDS MISSILE RANGE.—

(1) TRANSFERS OF ADMINISTRATIVE JURISDICTION.—

(A) TRANSFER OF ADMINISTRATIVE JURISDICTION TO THE SECRETARY OF THE INTERIOR.—

(i) IN GENERAL.—Administrative jurisdiction over the land described in clause (ii) is transferred from the Secretary of the Army to the Secretary of the Interior.

(ii) DESCRIPTION OF LAND.—The land referred to in clause (i) is—

(I) the approximately 2,826 acres of land identified as “To NPS, lands inside current boundary” on the Map; and

(II) the approximately 5,766 acres of land identified as “To NPS, new additions” on the Map.

(B) TRANSFER OF ADMINISTRATIVE JURISDICTION TO THE SECRETARY OF THE ARMY.—

(i) IN GENERAL.—Administrative jurisdiction over the land described in clause (ii) is transferred from the Secretary of the Interior to the Secretary of the Army.



(ii) DESCRIPTION OF LAND.—The land referred to in clause (i) is the approximately 3,737 acres of land identified as “To DOA” on the Map.

(2) BOUNDARY MODIFICATIONS.—

(A) PARK.—

(i) IN GENERAL.—The boundary of the Park is revised to reflect the boundary depicted on the Map.

(ii) MAP.—

(I) IN GENERAL.—The Secretary of the Interior, in coordination with the Secretary of the Army, shall prepare and keep on file for public inspection in the appropriate office of the Secretary of the Interior a map and a legal description of the revised boundary of the Park.

(II) EFFECT.—The map and legal description under subclause (I) shall have the same force and effect as if included in this section, except that the Secretary of the Interior may correct clerical and typographical errors in the map and legal description.

(iii) BOUNDARY SURVEY.—As soon as practicable after the date of the establishment of the Park and subject to the availability of funds, the Secretary of the Interior shall complete an official boundary survey of the Park.

(B) MISSILE RANGE.—

(i) IN GENERAL.—The boundary of the missile range and the Public Land Order are modified to exclude the land transferred to the Secretary of the Interior under paragraph (1)(A) and to include the land transferred to the Secretary of the Army under paragraph (1)(B).

(ii) MAP.—The Secretary of the Interior shall prepare a map and legal description depicting the revised boundary of the missile range.

(C) CONFORMING AMENDMENT.—Section 2854 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 54 U.S.C. 320301 note) is repealed.

Repeal.

(3) ADMINISTRATION.—

(A) PARK.—The Secretary of the Interior shall administer the land transferred under paragraph (1)(A) in accordance with laws (including regulations) applicable to the Park.

(B) MISSILE RANGE.—Subject to subparagraph (C), the Secretary of the Army shall administer the land transferred to the Secretary of the Army under paragraph (1)(B) as part of the missile range.

(C) INFRASTRUCTURE; RESOURCE MANAGEMENT.—

(i) RANGE ROAD 7.—

(I) INFRASTRUCTURE MANAGEMENT.—To the maximum extent practicable, in planning, constructing, and managing infrastructure on the land described in subclause (III), the Secretary of the Army shall apply low-impact development techniques and strategies to prevent impacts within the missile range and the Park from stormwater runoff from the land described in that subclause.

(II) RESOURCE MANAGEMENT.—The Secretary of the Army shall—

(aa) manage the land described in subclause (III) in a manner consistent with the protection of natural and cultural resources within the missile range and the Park and in accordance with section 101(a)(1)(B) of the Sikes Act (16 U.S.C. 670a(a)(1)(B)), division A of subtitle III of title 54, United States Code, and the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and

(bb) include the land described in subclause (III) in the integrated natural and cultural resource management plan for the missile range.

(III) DESCRIPTION OF LAND.—The land referred to in subclauses (I) and (II) is the land that is transferred to the administrative jurisdiction of the Secretary of the Army under paragraph (1)(B) and located in the area east of Range Road 7 in—

(aa) T. 17 S., R. 5 E., sec. 31;

(bb) T. 18 S., R. 5 E.; and

(cc) T. 19 S., R. 5 E., sec. 5.

Determination.

(ii) FENCE.—

(I) IN GENERAL.—The Secretary of the Army shall continue to allow the Secretary of the Interior to maintain the fence shown on the Map until such time as the Secretary of the Interior determines that the fence is unnecessary for the management of the Park.

(II) REMOVAL.—If the Secretary of the Interior determines that the fence is unnecessary for the management of the Park under subclause (I), the Secretary of the Interior shall promptly remove the fence at the expense of the Department of the Interior.

Contracts.

(D) RESEARCH.—The Secretary of the Army and the Secretary of the Interior may enter into an agreement to allow the Secretary of the Interior to conduct certain research in the area identified as “Cooperative Use Research Area” on the Map.

(E) MILITARY MUNITIONS AND MUNITIONS DEBRIS.—

(i) RESPONSE ACTION.—With respect to any Federal liability, the Secretary of the Army shall remain responsible for any response action addressing military munitions or munitions debris on the land transferred under paragraph (1)(A) to the same extent as on the day before the date of the enactment of this Act.

(ii) INVESTIGATION OF MILITARY MUNITIONS AND MUNITIONS DEBRIS.—

(I) IN GENERAL.—The Secretary of the Interior may request that the Secretary of the Army conduct 1 or more investigations of military munitions or munitions debris on any land transferred under paragraph (1)(A).

(II) ACCESS.—The Secretary of the Interior shall give access to the Secretary of the Army to the land covered by a request under subclause (I) for the purposes of conducting the 1 or more investigations under that subclause.

(III) LIMITATION.—An investigation conducted under this clause shall be subject to available appropriations.

(iii) APPLICABLE LAW.—Any activities undertaken under this subparagraph shall be carried out in accordance with—

(I) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(II) the purposes for which the Park was established; and

(III) any other applicable law.

## Subtitle F—Other Matters

**SEC. 2861. INSTALLATION AND MAINTENANCE OF FIRE EXTINGUISHERS IN DEPARTMENT OF DEFENSE FACILITIES.** 10 USC 113 note.

The Secretary of Defense shall ensure that portable fire extinguishers are installed and maintained in all Department of Defense facilities, in accordance with requirements of national model fire codes developed by the National Fire Protection Association and the International Code Council that require redundancy and extinguishers throughout occupancies regardless of the presence of other suppression systems or alarm systems.

**SEC. 2862. DEFINITION OF COMMUNITY INFRASTRUCTURE FOR PURPOSES OF MILITARY BASE REUSE STUDIES AND COMMUNITY PLANNING ASSISTANCE.**

Paragraph (4) of section 2391(e) of title 10, United States Code, is amended to read as follows:

“(4)(A) The term ‘community infrastructure’ means a project or facility described in subparagraph (B) that—

“(i) is located off of a military installation; and

“(ii) is—

“(I) owned by a State or local government; or

“(II) a not-for-profit, member-owned utility service.

“(B) A project or facility described in this subparagraph is any of the following:

“(i) Any transportation project.

“(ii) A school, hospital, police, fire, emergency response, or other community support facility.

“(iii) A water, waste-water, telecommunications, electric, gas, or other utility infrastructure project.”.

**SEC. 2863. TEMPORARY AUTHORITY FOR ACCEPTANCE AND USE OF CONTRIBUTIONS FOR CERTAIN DESIGN AND CONSTRUCTION PROJECTS MUTUALLY BENEFICIAL TO THE DEPARTMENT OF DEFENSE AND THE REPUBLIC OF KOREA.**

(a) ACCEPTANCE OF CONTRIBUTIONS.—

(1) IN GENERAL.—The Secretary concerned may accept cash contributions from the Republic of Korea to carry out the following:

(A) The design and construction of the Black Hat Intelligence Fusion Center, Camp Humphreys, Republic of Korea.

(B) The design of the Korean Air and Space Operations and Intelligence Center, Osan Air Base, Republic of Korea.

(2) COST-SHARING AGREEMENT.—In the event the contribution under paragraph (1) is insufficient to cover the entire cost of the activity authorized under that paragraph, the Secretary concerned shall enter into a cost-sharing agreement with the Republic of Korea detailing the portion of the authorized activity that is to be funded with the contribution and identifying sufficient other funds to undertake the entire authorized activity.

(b) ESTABLISHMENT OF ACCOUNT.—Contributions accepted under subsection (a) shall be placed in an account established by the Secretary concerned and shall remain available until expended as provided in such subsection.

Deadlines.  
Cost estimates.

(c) NOTICE.—

(1) IN GENERAL.—Not later than 14 days before carrying out a project using contributions accepted under subsection (a) for which the estimated cost of the project will exceed the thresholds prescribed by section 2805 of title 10, United States Code, the Secretary concerned shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives—

(A) a written notice of the decision to carry out the project;

(B) a justification for the project; and

(C) the estimated cost of the project.

(2) NOTICE FOR PROJECTS THAT REQUIRE COST SHARING.—Not later than 14 days before carrying out a project using contributions accepted under subsection (a) for which a cost-sharing agreement is entered into under paragraph (2) of such subsection, the Secretary concerned shall submit to the congressional defense committees in an electronic medium pursuant to section 480 of title 10, United States Code—

(A) a written notice of the acceptance of the contributions for the project;

(B) a copy of the Department of Defense Form 1391 for the project;

(C) the estimated cost of the project; and

(D) details on the cost-sharing agreement with the Republic of Korea.

Records.

(d) EXPIRATION OF PROJECT AUTHORITY.—

(1) IN GENERAL.—The authority to accept contributions and carry out projects under this section expires on September 30, 2030.

(2) CONTINUATION OF PROJECTS.—The expiration of authority under paragraph (1) does not prevent the continuation of any project commenced before the date specified in that paragraph.

(e) MUTUALLY BENEFICIAL.—A project described in subsection (a) shall be considered to be mutually beneficial if—

(1) the project is in support of a bilateral defense cooperation agreement between the United States and the Republic of Korea; or

(2) the Secretary concerned determines that the United States may derive a benefit from the project, including—

(A) access to and use of facilities of the military forces of the Republic of Korea;

(B) ability or capacity for future force posture; and

(C) increased interoperability between military forces of the Department of Defense and the Republic of Korea.

(f) SECRETARY CONCERNED DEFINED.—In this section, the term “Secretary concerned” has the meaning given that term in section 101(9) of title 10, United States Code.

**SEC. 2864. BLACK START EXERCISES AT MILITARY INSTALLATIONS.**

(a) REQUIREMENT.—Not later than September 30, 2020, the Secretary of Defense shall conduct a black start exercise at three military installations, at least one of which shall be a Joint Base. The exercises shall be conducted at installations at which such an exercise has not previously been conducted, for the purpose of identifying any shortcomings in infrastructure, joint operations, joint coordination, and security that would result from a loss of power at the installation.

(b) REPORT.—Not later than June 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report that contains a discussion of lessons learned from black start exercises conducted by the Secretary of Defense during the period beginning with the first such exercise and ending on December 31, 2019, including the three most recurring issues identified as a result of such exercises with respect to infrastructure, joint coordination efforts, and security.

(c) BLACK START EXERCISE DEFINED.—In this section, the term “black start exercise” means, with respect to a military installation, an exercise in which commercial utility power at the installation is dropped before backup generation assets start, for the purpose of—

(1) testing the ability of the backup systems to start, transfer the load, and carry the load until commercial power is restored;

(2) aligning stakeholders on critical energy requirements to meet mission requirements;

(3) validating mission operation plans, such as continuity of operations plans;

(4) identifying infrastructure interdependencies; and

(5) verifying backup electric power system performance.

**SEC. 2865. PILOT PROGRAM TO EXTEND SERVICE LIFE OF ROADS AND RUNWAYS UNDER THE JURISDICTION OF THE SECRETARY OF DEFENSE.**

(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense, in consultation with the Secretary of Transportation, may carry out a pilot program to design, build, and test technologies, techniques, and materials in order to extend the service life of roads and runways under the jurisdiction of the Secretary of Defense.

(b) SCOPE.—The pilot program under subsection (a) shall include the following:

(1) The design, testing, and assembly of technologies and systems suitable for pavement applications.

(2) Research, development, and testing of pavement materials for use in different geographic areas in the United States.

Determination.

Deadline.

Time period.

10 USC 2802 note.

Consultation.

Research and development.

(3) The design and procurement of platforms and equipment to test the performance, cost, feasibility, and effectiveness of the technologies, systems, and materials described in paragraphs (1) and (2).

(c) AWARD OF CONTRACTS OR GRANTS.—

(1) IN GENERAL.—The Secretary of Defense may carry out the pilot program under subsection (a) through the award of contracts or grants for the designing, building, or testing of technologies, techniques, and materials under the pilot program.

(2) MERIT-BASED SELECTION.—Any award of a contract or grant under the pilot program under subsection (a) shall be made using merit-based selection procedures.

(d) REPORT.—

(1) IN GENERAL.—Not later than two years after the commencement of the pilot program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees a report on the pilot program.

(2) CONTENTS.—The report under paragraph (1) with respect to the pilot program shall include the following:

Assessment.

(A) An assessment of the effectiveness of activities under the pilot program in improving the service life of roads and runways under the jurisdiction of the Secretary.

Analysis.

(B) An analysis of the potential lifetime cost savings and reduction in energy demands associated with the extended service life of such roads and runways.

(e) TERMINATION OF AUTHORITY.—The pilot program under subsection (a) shall terminate on September 30, 2024.

**SEC. 2866. RESTRICTIONS ON REHABILITATION OF OVER-THE-HORIZON BACKSCATTER RADAR SYSTEM RECEIVING STATION, MODOC COUNTY, CALIFORNIA.**

(a) RESTRICTIONS.—Except as provided in subsection (b), the Secretary of the Air Force may not use any funds or resources of the Department of the Air Force to carry out the rehabilitation of the obsolete Over-the-Horizon Backscatter Radar System receiving station located in Modoc National Forest in the State of California.

(b) EXCEPTION FOR REMOVAL OF PERIMETER FENCE.—Notwithstanding subsection (a), the Secretary of the Air Force may use funds and resources of the Department of the Air Force—

(1) to remove the perimeter fence, which was treated with an arsenic-based weatherproof coating, surrounding the Over-the-Horizon Backscatter Radar System receiving station referred to in such subsection; and

(2) to carry out the mitigation of soil contamination associated with such fence.

(c) SUNSET.—The restrictions in subsection (a) shall terminate on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2025.

Alabama.

**SEC. 2867. DESIGNATION OF SUMPTER SMITH JOINT NATIONAL GUARD BASE.**

(a) DESIGNATION.—The Sumpter Smith Air National Guard Base in Birmingham, Alabama, shall after the date of the enactment of this Act be known and designated as the “Sumpter Smith Joint National Guard Base”.

(b) REFERENCE.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the installation referred to in subsection (a) shall be considered to be a reference to the Sumpter Smith Joint National Guard Base.

**SEC. 2868. SANTA YNEZ BAND OF CHUMASH INDIANS LAND AFFIRMATION.**

Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019.

(a) SHORT TITLE.—This section may be cited as the “Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019”.

(b) FINDINGS.—Congress finds the following:

(1) On October 13, 2017, the General Council of the Santa Ynez Band of Chumash Indians voted to approve the Memorandum of Agreement between the County of Santa Barbara and the Santa Ynez Band of Chumash Indians regarding the approximately 1,427.28 acres of land, commonly known as Camp 4, and authorized the Tribal Chairman to sign the Memorandum of Agreement.

(2) On October 31, 2017, the Board of Supervisors for the County of Santa Barbara approved the Memorandum of Agreement on Camp 4 and authorized the Chair to sign the Memorandum of Agreement.

(3) The Secretary of the Interior approved the Memorandum of Agreement pursuant to section 2103 of the Revised Statutes (25 U.S.C. 81).

(c) LAND TO BE TAKEN INTO TRUST.—

(1) IN GENERAL.—The approximately 1,427.28 acres of land in Santa Barbara County, CA described in paragraph (3), is hereby taken into trust for the benefit of the Tribe, subject to valid existing rights, contracts, and management agreements related to easements and rights-of-way.

(2) ADMINISTRATION.—

(A) ADMINISTRATION.—The land described in paragraph (3) shall be a part of the Santa Ynez Indian Reservation and administered in accordance with the laws and regulations generally applicable to the land held in trust by the United States for an Indian tribe.

(B) EFFECT.—For purposes of certain California State laws (including the California Land Conservation Act of 1965, Government Code Section 51200, et seq.), placing the land described in paragraph (3) into trust shall remove any restrictions on the property pursuant to California Government Code Section 51295 or any other provision of such Act.

(3) LEGAL DESCRIPTION OF LANDS TRANSFERRED.—The lands to be taken into trust for the benefit of the Tribe pursuant to this Act are described as follows:

Legal Land Description/Site Location: Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows: PARCEL 1: (APN: 141-121-51 AND PORTION OF APN 141-140-10) LOTS 9 THROUGH 18, INCLUSIVE, OF TRACT 18, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. THIS LEGAL IS MADE

PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105580 OF OFFICIAL RECORDS. PARCEL 2: (PORTION OF APN: 141-140-10) LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 24, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105581 OF OFFICIAL RECORDS. PARCEL 3: (PORTIONS OF APNS: 141-230-23 AND 141-140-10) LOTS 19 AND 20 OF TRACT 18 AND THAT PORTION OF LOTS 1, 2, 7, 8, 9, 10, AND 15 THROUGH 20, INCLUSIVE, OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY. THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105582 OF OFFICIAL RECORDS. PARCEL 4: (APN: 141-240-02 AND PORTION OF APN: 141-140-10) LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 25, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105583 OF OFFICIAL RECORDS. PARCEL 5: (PORTION OF APN: 141-230-23) THAT PORTION OF LOTS 3 AND 6 OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY. THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105584 OF OFFICIAL RECORDS.

(4) RULES OF CONSTRUCTION.—Nothing in this section shall—

(A) enlarge, impair, or otherwise affect any right or claim of the Tribe to any land or interest in land that



is in existence before the date of the enactment of this Act;

(B) affect any water right of the Tribe in existence before the date of the enactment of this Act; or

(C) terminate or limit any access in any way to any right-of-way or right-of-use issued, granted, or permitted before the date of the enactment of this Act.

(5) RESTRICTED USE OF TRANSFERRED LANDS.—The Tribe may not conduct, on the land described in paragraph (3) taken into trust for the Tribe pursuant to this section, gaming activities—

(A) as a matter of claimed inherent authority; or

(B) under any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) and regulations promulgated by the Secretary or the National Indian Gaming Commission under that Act.

(6) DEFINITIONS.—For the purposes of this subsection:

(A) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(B) TRIBE.—The term “Tribe” means the Santa Ynez Band of Chumash Mission Indians.

**SEC. 2869. LANDS TO BE TAKEN INTO TRUST AS PART OF THE RESERVATION OF THE LYTTON RANCHERIA.** California.

(a) FINDINGS.—Congress finds the following:

(1) The Lytton Rancheria of California is a federally recognized Indian tribe that lost its homeland after its relationship to the United States was unjustly and unlawfully terminated in 1958. The Tribe was restored to Federal recognition in 1991, but the conditions of its restoration have prevented it from regaining a homeland on its original lands.

(2) Congress needs to take action to reverse historic injustices that befell the Tribe and that have prevented it from regaining a viable homeland for its people.

(3) Prior to European contact there were as many as 350,000 Indians living in what is now the State of California. By the turn of the 19th century, that number had been reduced to approximately 15,000 individuals, many of them homeless and living in scattered bands and communities.

(4) The Lytton Rancheria’s original homeland was purchased by the United States in 1926 pursuant to congressional authority designed to remedy the unique tragedy that befell the Indians of California and provide them with reservations called Rancherias to be held in trust by the United States.

(5) After the Lytton Rancheria lands were purchased by the United States, the Tribe settled on the land and sustained itself for several decades by farming and ranching.

(6) By the mid-1950s, Federal Indian policy had shifted back towards a policy of terminating the Federal relationship with Indian tribes. In 1958, Congress enacted the Rancheria Act of 1958 (72 Stat. 619), which slated 41 Rancherias in California, including the Lytton Rancheria, for termination after certain conditions were met.

(7) On August 1, 1961, the Federal Government terminated its relationship with the Lytton Rancheria. This termination was illegal because the conditions for termination under the Rancheria Act had never been met. After termination was

implemented, the Tribe lost its lands and was left without any means of supporting itself.

(8) In 1987, the Tribe joined three other tribes in a lawsuit against the United States challenging the illegal termination of their Rancherias. A Stipulated Judgment in the case, *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C–86–3660 (N.D.Cal. March 22, 1991), restored the Lytton Rancheria to its status as a federally recognized Indian tribe.

(9) The Stipulated Judgment provides that the Lytton Rancheria would have the “individual and collective status and rights” which it had prior to its termination and expressly contemplated the acquisition of trust lands for the Lytton Rancheria.

(10) The Stipulated Judgment contains provisions, included at the request of the local county governments and neighboring landowners, that prohibit the Lytton Rancheria from exercising its full Federal rights on its original homeland in the Alexander Valley.

(11) In 2000, approximately 9.5 acres of land in San Pablo, California, was placed in trust status for the Lytton Rancheria for economic development purposes.

(12) The Tribe has since acquired, from willing sellers at fair market value, property in Sonoma County near the Tribe’s historic Rancheria. This property, which the Tribe holds in fee status, is suitable for a new homeland for the Tribe.

(13) On a portion of the land to be taken into trust, which portion totals approximately 124.12 acres, the Tribe plans to build housing for its members and governmental and community facilities.

(14) A portion of the land to be taken into trust is being used for viticulture, and the Tribe intends to develop more of the lands to be taken into trust for viticulture. The Tribe’s investment in the ongoing viticulture operation has reinvigorated the vineyards, which are producing high-quality wines. The Tribe is operating its vineyards on a sustainable basis and is working toward certification of sustainability.

(15) No gaming shall be conducted on the lands to be taken into trust by this section.

(16) No gaming shall be conducted on any lands taken into trust on behalf of the Tribe in Sonoma County after the date of the enactment of this Act.

(17) By directing that these lands be taken into trust, the United States will ensure that the Lytton Rancheria will finally have a permanently protected homeland on which the Tribe can once again live communally and plan for future generations. This action is necessary to fully restore the Tribe to the status it had before it was wrongfully terminated in 1961.

(18) The Tribe and County of Sonoma have entered into a Memorandum of Agreement as amended in 2018 in which the County agrees to the lands in the County being taken into trust for the benefit of the Tribe in consideration for commitments made by the Tribe.

(b) DEFINITIONS.—For the purpose of this section, the following definitions apply:

Applicability.

(1) COUNTY.—The term “County” means Sonoma County, California.

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) TRIBE.—The term “Tribe” means the Lytton Rancheria of California.

(c) LANDS TO BE TAKEN INTO TRUST.—

(1) IN GENERAL.—The land owned by the Tribe and generally depicted on the map titled “Lytton Fee Owned Property to be Taken into Trust” and dated May 1, 2015, is hereby taken into trust for the benefit of the Tribe, subject to valid existing rights, contracts, and management agreements related to easements and rights-of-way.

(2) LANDS TO BE MADE PART OF THE RESERVATION.—Lands taken into trust under paragraph (1) shall be part of the Tribe’s reservation and shall be administered in accordance with the laws and regulations generally applicable to property held in trust by the United States for an Indian tribe.

(d) GAMING.—

(1) LANDS TAKEN INTO TRUST UNDER THIS SECTION.—Lands taken into trust for the benefit of the Tribe under subsection (c) shall not be eligible for gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(2) OTHER LANDS TAKEN INTO TRUST.—Lands taken into trust for the benefit of the Tribe in Sonoma County after the date of the enactment of this Act shall not be eligible for gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(e) APPLICABILITY OF CERTAIN LAW.—Notwithstanding any other provision of law, the Memorandum of Agreement entered into by the Tribe and the County concerning taking land in the County into trust for the benefit of the Tribe, which was approved by the County Board of Supervisors on March 10, 2015, and any addenda and supplement or amendment thereto, is not subject to review or approval of the Secretary in order to be effective, including review or approval under section 2103 of the Revised Statutes (25 U.S.C. 81).

**SEC. 2870. LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA.**

(a) FINDINGS.—Congress finds that—

(1) the Little Shell Tribe of Chippewa Indians is a political successor to signatories of the Pembina Treaty of 1863, under which a large area of land in the State of North Dakota was ceded to the United States;

(2) the Turtle Mountain Band of Chippewa of North Dakota and the Chippewa-Cree Tribe of the Rocky Boy’s Reservation of Montana, which also are political successors to the signatories of the Pembina Treaty of 1863, have been recognized by the Federal Government as distinct Indian tribes;

(3) the members of the Little Shell Tribe continue to live in the State of Montana, as their ancestors have for more than 100 years since ceding land in the State of North Dakota as described in paragraph (1);

(4) in the 1930s and 1940s, the Tribe repeatedly petitioned the Federal Government for reorganization under the Act of June 18, 1934 (25 U.S.C. 5101 et seq.) (commonly known as the “Indian Reorganization Act”);

(5) Federal agents who visited the Tribe and Commissioner of Indian Affairs John Collier attested to the responsibility of the Federal Government for the Tribe and members of the Tribe, concluding that members of the Tribe are eligible for, and should be provided with, trust land, making the Tribe eligible for reorganization under the Act of June 18, 1934 (25 U.S.C. 5101 et seq.) (commonly known as the “Indian Reorganization Act”);

(6) due to a lack of Federal appropriations during the Depression, the Bureau of Indian Affairs lacked adequate financial resources to purchase land for the Tribe, and the members of the Tribe were denied the opportunity to reorganize;

(7) in spite of the failure of the Federal Government to appropriate adequate funding to secure land for the Tribe as required for reorganization under the Act of June 18, 1934 (25 U.S.C. 5101 et seq.) (commonly known as the “Indian Reorganization Act”), the Tribe continued to exist as a separate community, with leaders exhibiting clear political authority;

(8) the Tribe, together with the Turtle Mountain Band of Chippewa of North Dakota and the Chippewa-Cree Tribe of the Rocky Boy’s Reservation of Montana, filed 2 law suits under the Act of August 13, 1946 (60 Stat. 1049) (commonly known as the “Indian Claims Commission Act”), to petition for additional compensation for land ceded to the United States under the Pembina Treaty of 1863 and the McCumber Agreement of 1892;

(9) in 1971 and 1982, pursuant to Acts of Congress, the tribes received awards for the claims described in paragraph (8);

(10) in 1978, the Tribe submitted to the Bureau of Indian Affairs a petition for Federal recognition, which is still pending as of the date of enactment of this Act; and

(11) the Federal Government, the State of Montana, and the other federally recognized Indian tribes of the State have had continuous dealings with the recognized political leaders of the Tribe since the 1930s.

(b) DEFINITIONS.—In this section:

(1) MEMBER.—The term “member” means an individual who is enrolled in the Tribe pursuant to subsection (f).

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) TRIBE.—The term “Tribe” means the Little Shell Tribe of Chippewa Indians of Montana.

(c) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) EFFECT OF FEDERAL LAWS.—Except as otherwise provided in this section, all Federal laws (including regulations) of general application to Indians and Indian tribes, including the Act of June 18, 1934 (25 U.S.C. 5101 et seq.) (commonly known as the “Indian Reorganization Act”), shall apply to the Tribe and members.

(d) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—Beginning on the date of enactment of this Act, the Tribe and each member shall be eligible for all services and benefits provided by the United States to Indians and federally recognized Indian tribes, without regard to—

Effective date.

- (A) the existence of a reservation for the Tribe; or
- (B) the location of the residence of any member on or near an Indian reservation.

(2) SERVICE AREA.—For purposes of the delivery of services and benefits to members, the service area of the Tribe shall be considered to be the area comprised of Blaine, Cascade, Glacier, and Hill Counties in the State of Montana.

(e) REAFFIRMATION OF RIGHTS.—

(1) IN GENERAL.—Nothing in this section diminishes any right or privilege of the Tribe or any member that existed before the date of enactment of this Act.

(2) CLAIMS OF TRIBE.—Except as otherwise provided in this section, nothing in this section alters or affects any legal or equitable claim of the Tribe to enforce any right or privilege reserved by, or granted to, the Tribe that was wrongfully denied to, or taken from, the Tribe before the date of enactment of this Act.

(f) MEMBERSHIP ROLL.—

(1) IN GENERAL.—As a condition of receiving recognition, services, and benefits pursuant to this section, the Tribe shall submit to the Secretary, by not later than 18 months after the date of enactment of this Act, a membership roll consisting of the name of each individual enrolled as a member of the Tribe.

Deadline.

(2) DETERMINATION OF MEMBERSHIP.—The qualifications for inclusion on the membership roll of the Tribe shall be determined in accordance with sections 1 through 3 of article 5 of the constitution of the Tribe dated September 10, 1977 (including amendments to the constitution).

(3) MAINTENANCE OF ROLL.—The Tribe shall maintain the membership roll under this subsection.

(g) ACQUISITION OF LAND.—

(1) HOMELAND.—The Secretary shall acquire, for the benefit of the Tribe, trust title to 200 acres of land within the service area of the Tribe to be used for a tribal land base.

(2) ADDITIONAL LAND.—The Secretary may acquire additional land for the benefit of the Tribe pursuant to section 5 of the Act of June 18, 1934 (25 U.S.C. 5108) (commonly known as the “Indian Reorganization Act”).

**SEC. 2871. SENSE OF CONGRESS ON RESTORATION OF TYNDALL AIR FORCE BASE.**

It is the sense of Congress that the Secretary of the Air Force should—

(1) restore Tyndall Air Force Base to achieve military installation resilience, as defined in section 101(e)(8) of title 10, United States Code; and

(2) use innovative construction methods, materials, designs, and technologies in carrying out such restoration in order to achieve efficiencies, cost savings, resiliency, and capability, which may include—

(A) open architecture design to evolve with the national defense strategy; and

(B) efficient ergonomic enterprise for members of the Air Force in the 21st century.

**TITLE XXIX—AUTHORIZATION OF OVERSEAS CONTINGENCY OPERATIONS MILITARY CONSTRUCTION AND EMERGENCY MILITARY CONSTRUCTION**

Subtitle A—Overseas Contingency Operations Military Construction

- Sec. 2901. Authorized Army construction and land acquisition projects.
- Sec. 2902. Authorized Navy construction and land acquisition projects.
- Sec. 2903. Authorized Air Force construction and land acquisition projects.
- Sec. 2904. Authorized Defense Agencies construction and land acquisition projects.
- Sec. 2905. Authorization of appropriations.

Subtitle B—Emergency Military Construction

- Sec. 2911. Authorization of emergency Navy construction and land acquisition projects.
- Sec. 2912. Authorization of emergency Air Force construction and land acquisition projects.
- Sec. 2913. Authorization of emergency Army National Guard construction and land acquisition projects.
- Sec. 2914. Authorization of emergency Defense Agencies construction and land acquisition projects.
- Sec. 2915. Authorization of emergency supplemental appropriations for military construction projects.

**Subtitle A—Overseas Contingency Operations Military Construction**

**SEC. 2901. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) AUTHORIZATION.—Subject to subsection (b), the Secretary of the Army may acquire real property and carry out the military construction projects for the installations outside the United States, and in the amounts, set forth in the following table:

**Army: Outside the United States**

Country	Location	Amount
Cuba .....	Guantanamo Bay Naval Station .....	\$33,800,000
Worldwide Unspecified.	European Deterrence Initiative: Various Locations .....	\$78,412,000

Plan.

(b) REPORT REQUIRED AS CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the congressional defense committees a report containing a plan to carry out each military construction project authorized in the final item in the table in subsection (a) for an unspecified location for the European Deterrence Initiative. The plan shall include a Department of Defense Form 1391 for each proposed project. The Secretary may not commence a project until the report has been submitted.

**SEC. 2902. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) AUTHORIZATION.—Subject to subsection (b), the Secretary of the Navy may acquire real property and carry out the military

construction projects for the installations outside the United States, and in the amounts, set forth in the following table:

**Navy: Outside the United States**

Country	Location	Amount
Bahrain .....	SW Asia .....	\$53,360,000
Italy .....	Sigonella .....	\$77,400,000
Spain .....	Rota .....	\$69,570,000
Worldwide Unspecified.	European Deterrence Initiative: Various Locations .....	\$36,211,000

(b) REPORT REQUIRED AS CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to the congressional defense committees a report containing a plan to carry out each military construction project authorized in the final item in the table in subsection (a) for an unspecified location for the European Deterrence Initiative. The plan shall include a Department of Defense Form 1391 for each proposed project. The Secretary may not commence a project until the report has been submitted. Plan.

**SEC. 2903. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) AUTHORIZATION.—Subject to subsection (b), the Secretary of the Air Force may acquire real property and carry out the military construction projects for the installations outside the United States, and in the amounts, set forth in the following table:

**Air Force: Outside the United States**

Country	Location	Amount
Iceland .....	Keflavik .....	\$57,000,000
Jordan .....	Azraq .....	\$66,000,000
Spain .....	Moron .....	\$8,500,000
Worldwide Unspecified.	European Deterrence Initiative: Various Locations .....	\$211,211,000

(b) REPORT REQUIRED AS CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the congressional defense committees a report containing a plan to carry out each military construction project authorized in the final item in the table in subsection (a) for an unspecified location for the European Deterrence Initiative. The plan shall include a Department of Defense Form 1391 for each proposed project. The Secretary may not commence a project until the report has been submitted. Plan.

**SEC. 2904. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

The Secretary of Defense may acquire real property and carry out the military construction project for the installation outside the United States, and in the amount, set forth in the following table:

**Defense Agencies: Outside the United States**

Country	Location	Amount
Germany .....	Gemersheim .....	\$46,000,000

**SEC. 2905. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2019, for the military construction projects outside the United States authorized by this subtitle as specified in the funding table in section 4602.

**Subtitle B—Emergency Military Construction**

**SEC. 2911. AUTHORIZATION OF EMERGENCY NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) NAVY AUTHORIZATION.—Subject to subsection (b), using amounts appropriated pursuant to the authorization of appropriations in section 2915 and available for military construction projects inside the United States as specified in the funding table in section 4603, the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

**Navy Authorization**

State or Location	Installation or Location	Amount
California .....	Naval Air Weapons Station China Lake .....	\$1,152,680,000
North Carolina ...	Camp Lejeune .....	\$627,747,000
	Marine Corps Air Station Cherry Point .....	\$66,551,000
	NCAS New River .....	\$465,822,000

Plan.

List.

(b) REPORT REQUIRED AS A CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to the congressional defense committees a report containing a plan to carry out the military construction projects authorized by this section. The plan shall include an explanation of how each military construction project will incorporate mitigation measures that reduce the threat from extreme weather events, mean sea level fluctuation, flooding, and any other known environmental threat to resilience, including a list of any areas in which there is a variance from the local building requirements and an explanation of the reason for the variance. The plan shall also include a Department of Defense Form 1391 for each proposed project. The Secretary may not commence a project until the report required from the Secretary has been submitted.



**SEC. 2912. AUTHORIZATION OF EMERGENCY AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) AIR FORCE AUTHORIZATION.—Subject to subsection (b), using amounts appropriated pursuant to the authorization of appropriations in section 2915 and available for military construction projects inside the United States as specified in the funding table in section 4603, the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

**Air Force Authorization**

State	Installation or Location	Amount
Florida .....	Tyndall Air Force Base ...	\$1,500,200,000
Nebraska .....	Offutt Air Force Base .....	\$140,500,000
Virginia .....	Joint Base Langley-Eustis .....	\$31,000,000

(b) REPORT REQUIRED AS CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report containing a plan to carry out the military construction projects authorized by this section. The plan shall include an explanation of how each military construction project will incorporate mitigation measures that reduce the threat from extreme weather events, mean sea level fluctuation, flooding, and any other known environmental threat to resilience, including a list of any areas in which there is a variance from the local building requirements and an explanation of the reason for the variance. The plan shall also include a Department of Defense Form 1391 for each proposed project. The Secretary may not commence a project until the report required from the Secretary has been submitted.

Plan.

List.

**SEC. 2913. AUTHORIZATION OF EMERGENCY ARMY NATIONAL GUARD CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) ARMY NATIONAL GUARD AUTHORIZATION.—Subject to subsection (b), using amounts appropriated pursuant to the authorization of appropriations in section 2915 and available for military construction projects inside the United States as specified in the funding table in section 4603, the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

**Army National Guard Authorization**

State	Location	Amount
Louisiana .....	Pineville .....	\$16,500,000
Nebraska .....	Ashland .....	\$43,500,000

(b) REPORT REQUIRED AS CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the congressional defense

Plan.

List. committees a report containing a plan to carry out the military construction projects authorized by this section. The plan shall include an explanation of how each military construction project will incorporate mitigation measures that reduce the threat from extreme weather events, mean sea level fluctuation, flooding, and any other known environmental threat to resilience, including a list of any areas in which there is a variance from the local building requirements and an explanation of the reason for the variance. The plan shall also include a Department of Defense Form 1391 for each proposed project. The Secretary may not commence a project until the report required from the Secretary has been submitted.

**SEC. 2914. AUTHORIZATION OF EMERGENCY DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) DEFENSE AGENCIES AUTHORIZATION.—Subject to subsection (b), using amounts appropriated pursuant to the authorization of appropriations in section 2915 and available for military construction projects inside the United States as specified in the funding table in section 4603, the Secretary of Defense may acquire real property and carry out the military construction project for the installation inside the United States, and in the amount, set forth in the following table:

**Defense Agencies Authorization**

State or Location	Installation or Location	Amount
North Carolina .....	Camp Lejeune .....	\$75,313,000

Plan. (b) REPORT REQUIRED AS A CONDITION OF AUTHORIZATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing a plan to carry out the military construction project authorized by this section. The plan shall include an explanation of how the military construction project will incorporate mitigation measures that reduce the threat from extreme weather events, mean sea level fluctuation, flooding, and any other known environmental threat to resilience, including a list of any areas in which there is a variance from the local building requirements and an explanation of the reason for the variance. The plan shall also include a Department of Defense Form 1391 for the proposed project. The Secretary may not commence the project until the report required from the Secretary has been submitted.

List.

**SEC. 2915. AUTHORIZATION OF EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR MILITARY CONSTRUCTION PROJECTS.**

Funds are hereby authorized to be appropriated for the Department of Defense for the military construction projects authorized by this subtitle as specified in the funding table in section 4603, in such amounts as may be designated as emergency requirements pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)).

## TITLE XXX—MILITARY HOUSING PRIVATIZATION REFORM

### Sec. 3001. Definitions.

#### Subtitle A—Addition of New Reform Subchapter

- Sec. 3011. Improved accountability and oversight of privatized military housing and protections and responsibilities for tenants of privatized military housing.
- Sec. 3012. Designation of Chief Housing Officer for privatized military housing.
- Sec. 3013. Additional requirements relating to contracts for privatized military housing.
- Sec. 3014. Additional requirements relating to management of privatized military housing.
- Sec. 3015. Consideration of contractor history in contracts for privatized military housing.
- Sec. 3016. Additional improvements for management of privatized military housing.
- Sec. 3017. Maintenance work order system for privatized military housing.
- Sec. 3018. Access by tenants of privatized military housing to maintenance work order system.
- Sec. 3019. Access by tenants to historical maintenance information for privatized military housing.
- Sec. 3020. Prohibition on requirement to disclose personally identifiable information in certain requests for maintenance of privatized military housing.
- Sec. 3021. Treatment of incentive fees for landlords of privatized military housing for failure to remedy a health or environmental hazard.
- Sec. 3022. Dispute resolution process for landlord-tenant disputes regarding privatized military housing and requests to withhold payments during dispute resolution process.
- Sec. 3023. Investigation of reports of reprisals relating to privatized military housing and congressional notification.
- Sec. 3024. Prohibition on use of nondisclosure agreements in connection with leases of privatized military housing.

#### Subtitle B—Other Amendatory Provisions

- Sec. 3031. Installation of carbon monoxide detectors in military family housing.
- Sec. 3032. Authority to furnish certain services in connection with use of alternative authority for acquisition and improvement of military housing.
- Sec. 3033. Treatment of breach of contract for privatized military housing.
- Sec. 3034. Modification to requirements for window fall prevention devices in military family housing units.
- Sec. 3035. Expansion of direct hire authority for Department of Defense for childcare services providers for Department child development centers to include direct hire authority for installation military housing office personnel.
- Sec. 3036. Modification of authority to make payments to lessors of privatized military housing.
- Sec. 3037. Technical correction to definition used to make payments to lessors of privatized military housing.

#### Subtitle C—One-Time Reporting Requirements

- Sec. 3041. Report on civilian personnel shortages for appropriate oversight of management of military housing constructed or acquired using alternative authority for acquisition and improvement of military housing.
- Sec. 3042. Plans for creation of councils on privatized military housing.
- Sec. 3043. Plan for establishment of Department of Defense jurisdiction over off-base privatized military housing.
- Sec. 3044. Inspector General review of Department of Defense oversight of privatized military housing.
- Sec. 3045. Information on legal services provided to members of the Armed Forces harmed by health or environmental hazards at military housing.

#### Subtitle D—Development of Housing Reform Standards and Processes

- Sec. 3051. Uniform code of basic standards for privatized military housing and plan to conduct inspections and assessments.
- Sec. 3052. Tool for assessment of hazards in Department of Defense housing.
- Sec. 3053. Process to identify and address environmental health hazards in Department of Defense housing.

- Sec. 3054. Department of Defense policy on lead-based paint testing on military installations.
- Sec. 3055. Standard for minimum credentials for health and environmental inspectors of privatized military housing.
- Sec. 3056. Requirements relating to move-in, move-out, and maintenance of privatized military housing.
- Sec. 3057. Standardized documentation, templates, and forms for privatized military housing.
- Sec. 3058. Satisfaction survey for tenants of military housing.

Subtitle E—Other Housing Reform Matters

- Sec. 3061. Radon testing of privatized military housing.
- Sec. 3062. Mitigation of risks posed by certain items in military family housing units.
- Sec. 3063. Suspension of Resident Energy Conservation Program and related programs for privatized military housing.
- Sec. 3064. Department of the Army pilot program to build and monitor use of single family homes.

**SEC. 3001. DEFINITIONS.**

10 USC 2821  
note.

(a) **DEFINITIONS GENERALLY.**—In this title:

(1) The term “landlord” means an eligible entity that enters into, or has entered into, a contract as a partner with the Secretary concerned for the acquisition or construction of a housing unit under subchapter IV of chapter 169 of title 10, United States Code. The term includes any agent of the eligible entity or any subsequent lessor who owns, manages, or is otherwise responsible for a housing unit. The term does not include an entity of the Federal Government.

(2) The term “privatized military housing” means military housing provided under subchapter IV of chapter 169 of title 10, United States Code.

(3) The term “tenant” means a member of the armed forces, including a reserve component thereof in an active status, or a dependent of a member of the armed forces who resides at a housing unit, is a party to a lease for a housing unit, or is authorized to act on behalf of the member under subchapters IV and V of chapter 169 of title 10, United States Code, in the event of the assignment or deployment of a member.

(b) **NEW AND REVISED TITLE 10 DEFINITIONS.**—Section 2871 of title 10, United States Code, is amended—

(1) in paragraph (4), by adding at the end the following new sentence: “The fact that an agreement between an eligible entity and the Secretary concerned is designated as an agreement rather than a contract shall not be construed to exclude the agreement from the term ‘contract’ for purposes of this subchapter and subchapter V.”;

(2) by redesignating paragraphs (7) and (8) as paragraphs (11) and (13), respectively;

(3) by inserting after paragraph (6) the following new paragraphs:

“(7) The term ‘housing document’ means a document developed by the Secretary of Defense under section 2890 of this title and known as the Military Housing Privatization Initiative Tenant Bill of Rights or the Military Housing Privatization Initiative Tenant Responsibilities.

“(8) The term ‘housing unit’ means a unit of family housing or military unaccompanied housing acquired or constructed under this subchapter.

“(9) The term ‘incentive fees’ means any amounts payable to a landlord for meeting or exceeding performance metrics as specified in a contract with the Department of Defense.

“(10) The term ‘landlord’ means an eligible entity that enters into, or has entered into, a contract as a partner with the Secretary concerned for the acquisition or construction of a housing unit under this subchapter. The term includes any agent of the eligible entity or any subsequent lessor who owns, manages, or is otherwise responsible for a housing unit. The term does not include an entity of the Federal Government.”; and

(4) by inserting after paragraph (11), as redesignated by paragraph (2) of this subsection, the following new paragraph:

“(12) The term ‘tenant’ means a member of the armed forces, including a reserve component thereof in an active status, or a dependent of a member of the armed forces who resides at a housing unit, is a party to a lease for a housing unit, or is authorized to act on behalf of the member under this subchapter and subchapter V of this chapter in the event of the assignment or deployment of a member.”.

(c) CONFORMING AMENDMENTS TO EXISTING DEFINITIONS.—Section 2871 of title 10, United States Code, is further amended in paragraphs (1), (3), and (5) by striking “military” before “housing units”.

## **Subtitle A—Addition of New Reform Subchapter**

### **SEC. 3011. IMPROVED ACCOUNTABILITY AND OVERSIGHT OF PRIVATIZED MILITARY HOUSING AND PROTECTIONS AND RESPONSIBILITIES FOR TENANTS OF PRIVATIZED MILITARY HOUSING.**

(a) APPLICABILITY OF DEFINITIONS.—Section 2871 of title 10, United States Code, as amended by section 3001, is further amended in the matter preceding the paragraphs by inserting “and subchapter V of this chapter” after “this subchapter”.

(b) MILITARY HOUSING PRIVATIZATION REFORMS.—Chapter 169 of title 10, United States Code, is amended by adding at the end the following new subchapter:

“SUBCHAPTER V—OVERSIGHT OF LANDLORDS AND PROTECTIONS AND RESPONSIBILITIES FOR TENANTS OF PRIVATIZED MILITARY HOUSING

10 USC 2890  
prec.

#### **“§ 2890. Rights and responsibilities of tenants of housing units**

10 USC 2890.

“(a) DEVELOPMENT OF TENANT BILL OF RIGHTS AND TENANT RESPONSIBILITIES DOCUMENTS.—(1) The Secretary of Defense shall develop two separate documents, to be known as the Military Housing Privatization Initiative Tenant Bill of Rights and the Military Housing Privatization Initiative Tenant Responsibilities, for tenants of housing units.

“(2) The Secretary of each military department shall ensure that the housing documents are attached to each lease agreement for a housing unit.

Contracts.

- “(3) The rights and responsibilities contained in the housing documents are not intended to be exclusive. The omission of a tenant right or responsibility shall not be construed to deny the existence of such a right or responsibility for tenants.
- Contracts. “(4) Each contract between the Secretary concerned and a landlord shall incorporate the housing documents and guarantee the rights and responsibilities of tenants who reside in housing units covered by the contract.
- Coordination. “(5) The Secretary of Defense shall develop the housing documents in coordination with the Secretaries of the military departments.
- “(b) ELEMENTS OF TENANT BILL OF RIGHTS.—At a minimum, the Military Housing Privatization Initiative Tenant Bill of Rights shall address the following rights of tenants of housing units:
- “(1) The right to reside in a housing unit and community that meets applicable health and environmental standards.
- “(2) The right to reside in a housing unit that has working fixtures, appliances, and utilities and to reside in a community with well-maintained common areas and amenity spaces.
- “(3) The right to be provided with a maintenance history of the prospective housing unit before signing a lease, as provided in section 2892a of this title.
- “(4) The right to a written lease with clearly defined rental terms to establish tenancy in a housing unit, including any addendums and other regulations imposed by the landlord regarding occupancy of the housing unit and use of common areas.
- Time period. Procedures. “(5) The right to a plain-language briefing, before signing a lease and 30 days after move-in, by the installation housing office on all rights and responsibilities associated with tenancy of the housing unit, including information regarding the existence of any additional fees authorized by the lease, any utilities payments, the procedures for submitting and tracking work orders, the identity of the military tenant advocate, and the dispute resolution process.
- “(6) The right to have sufficient time and opportunity to prepare and be present for move-in and move-out inspections, including an opportunity to obtain and complete necessary paperwork.
- “(7) The right to report inadequate housing standards or deficits in habitability of the housing unit to the landlord, the chain of command, and housing management office without fear of reprisal or retaliation, as provided in subsection (e), including reprisal or retaliation in the following forms:
- “(A) Unlawful recovery of, or attempt to recover, possession of the housing unit.
- “(B) Unlawfully increasing the rent, decreasing services, or increasing the obligations of a tenant.
- “(C) Interference with a tenant’s right to privacy.
- “(D) Harassment of a tenant.
- “(E) Refusal to honor the terms of the lease.
- “(F) Interference with the career of a tenant.
- “(8) The right of access to a military tenant advocate, as provided in section 2894(b)(4) of this title, through the housing management office of the installation of the Department at which the housing unit is located.

“(9) The right to receive property management services provided by a landlord that meet or exceed industry standards and that are performed by professionally and appropriately trained, responsive, and courteous customer service and maintenance staff.

“(10) The right to have multiple, convenient methods to communicate directly with the landlord maintenance staff, and to receive consistently honest, accurate, straightforward, and responsive communications.

“(11) The right to have access to an electronic work order system through which a tenant may request maintenance or repairs of a housing unit and track the progress of the work.

“(12) With respect to maintenance and repairs to a housing unit, the right to the following:

“(A) Prompt and professional maintenance and repair.

“(B) To be informed of the required time frame for maintenance or repairs when a maintenance request is submitted.

“(C) In the case of maintenance or repairs necessary to ensure habitability of a housing unit, to prompt relocation into suitable lodging or other housing at no cost to the tenant until the maintenance or repairs are completed.

“(13) The right to receive advice from military legal assistance on procedures involving mechanisms for resolving disputes with the property management company or property manager to include mediation, arbitration, and filing claims against a landlord.

“(14) The right to enter into a dispute resolution process, as provided in section 2894 of this title, should all other methods be exhausted and, in which case, a decision in favor of the tenant may include a reduction in rent or an amount to be reimbursed or credited to the tenant.

“(15) The right to have the tenant’s basic allowance housing payments segregated and held in escrow, with approval of a designated commander, and not used by the property owner, property manager, or landlord pending completion of the dispute resolution process.

“(16) The right to have reasonable, advance notice of any entrance by a landlord, installation housing staff, or chain of command into the housing unit, except in the case of an emergency or abandonment of the housing unit.

“(17) The right to not pay non-refundable fees or have application of rent credits arbitrarily held.

“(18) The right to expect common documents, forms, and processes for housing units will be the same for all installations of the Department, to the maximum extent applicable without violating local, State, and Federal regulations.

“(C) ELEMENTS OF TENANT RESPONSIBILITIES.—At a minimum, the Military Housing Privatization Initiative Tenant Responsibilities shall address the following responsibilities of tenants of housing units:

“(1) The responsibility to report in a timely manner any apparent environmental, safety, or health hazards of the housing unit to the landlord and any defective, broken, damaged, or malfunctioning building systems, fixtures, appliances, or other parts of the housing unit, the common areas, or related facilities.

“(2) The responsibility to maintain standard upkeep of the housing unit as instructed by the housing management office.

“(3) The responsibility to conduct oneself as a tenant in a manner that will not disturb neighbors, and to assume responsibility for one’s actions and those of a family member or guest in the housing unit or common areas.

“(4) The responsibility not to engage in any inappropriate, unauthorized, or criminal activity in the housing unit or common areas.

“(5) The responsibility to allow the landlord reasonable access to the rental home in accordance with the terms of the tenant lease agreement to allow the landlord to make necessary repairs in a timely manner.

“(6) The responsibility to read all lease-related materials provided by the landlord and to comply with the terms of the lease agreement, lease addenda, and any associated rules and guidelines.

“(d) SUBMISSION TO CONGRESS AND PUBLIC AVAILABILITY.—(1) As part of the budget submission for fiscal year 2021, and biennially thereafter, the Secretary of Defense shall submit the then-current housing documents to the congressional defense committees.

Deadline.

“(2) Any change made to a housing document must be submitted to Congress at least 30 days before the change takes effect.

Public information. Web posting.

“(3) Upon submission of a housing document under paragraph (1) or (2), the Secretary of Defense shall publish the housing document on a publicly available Internet website of the Department of Defense.”.

(c) CLERICAL AMENDMENTS.—

10 USC 2890 prec.

(1) TABLE OF SECTIONS.—Subchapter V of chapter 169 of title 10, United States Code, as added by subsection (b), is amended by inserting after the subchapter heading the following table of sections:

Sec.

2890. Rights and responsibilities of tenants of housing units.

2890a. Chief Housing Officer.

2891. Requirements relating to contracts for provision of housing units.

2891a. Requirements relating to management of housing units.

2891b. Considerations of eligible entity housing history in contracts for privatized military housing.

2891c. Financial transparency.

2892. Maintenance work order system for housing units.

2892a. Access by tenants to historical maintenance information.

2892b. Prohibition on requirement to disclose personally identifiable information in electronic requests for maintenance.

2893. Treatment of incentive fees for landlords of housing units for failure to remedy health or environmental hazards.

2894. Landlord-tenant dispute resolution process and treatment of certain payments during process.

2894a. Complaint database.

10 USC 2801 prec.

(2) TABLE OF SUBCHAPTERS.—The table of subchapters at the beginning of chapter 169 of title 10, United States Code, is amended by inserting after the item relating to subchapter IV the following new item:

“V. Oversight of Landlords and Protections and Responsibilities for Tenants of Privatized Military Housing .....2890.”.



**SEC. 3012. DESIGNATION OF CHIEF HOUSING OFFICER FOR PRIVATIZED MILITARY HOUSING.**

(a) DESIGNATION REQUIRED.—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2890 of such title, as added by section 3011 and amended by sections 3023 and 3024, the following new section:

**“§ 2890a. Chief Housing Officer**

10 USC 2890a.

“(a) DESIGNATION.—(1) The Secretary of Defense shall designate, from among officials of the Department of Defense who are appointed by the President with the advice and consent of the Senate, a Chief Housing Officer who shall oversee housing units.

“(2) The official of the Department of Defense designated as Chief Housing Officer may be assigned duties in addition to the duties as Chief Housing Officer under subsection (b).

“(b) PRINCIPAL DUTIES.—(1) The Chief Housing Officer shall oversee all aspects of the provision of housing under subchapter IV and this subchapter, including the following:

“(A) Creation and standardization of policies and processes regarding housing units.

“(B) Oversight of the administration of any Department of Defense-wide policies regarding housing units, to include, in coordination with the Secretaries of the military departments, the housing documents developed pursuant to section 2890 of this title entitled Military Housing Privatization Initiative Tenant Bill of Rights and Military Housing Privatization Initiative Tenant Responsibilities.

“(2) The duties specified in paragraph (1) may not be further delegated.”

(b) NOTIFICATION OF DESIGNATION.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall notify the congressional defense committees of the official of the Department of Defense designated as Chief Housing Officer under section 2890a of title 10, United States Code, as added by subsection (a). Any time the designation of Chief Housing Officer changes, the Secretary of Defense shall update the notification of the congressional defense committees within 30 days after the new designation.

Deadlines.  
10 USC 2890a  
note.

Update.

**SEC. 3013. ADDITIONAL REQUIREMENTS RELATING TO CONTRACTS FOR PRIVATIZED MILITARY HOUSING.**

(a) IN GENERAL.—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2890a of such title, as added by section 3012, the following new section:

**“§ 2891. Requirements relating to contracts for provision of housing units**

10 USC 2891.

“(a) IN GENERAL.—The requirements of this section condition contracts entered into using the authorities provided to the Secretary concerned under section 2872 of this title and other authorities provided under subchapter IV of this chapter and this subchapter.

“(b) EXCLUSION OF CERTAIN EMPLOYEES.—A landlord providing a housing unit shall prohibit any employee of the landlord who

	commits work-order fraud under the contract from doing any work under the contract.
Determination.	<p>“(c) DISPUTE RESOLUTION PROCESS.—Any decision the commander renders in favor of the tenant in the formal dispute resolution process established pursuant to section 2894 of this title will be taken into consideration in determining whether to pay or withhold all or part of any incentive fees for which a landlord may otherwise be eligible under the contract.</p> <p>“(d) RESPONSIBILITY FOR CERTAIN MEDICAL COSTS.—</p> <p>“(1) REIMBURSEMENT REQUIRED UNDER CERTAIN CIRCUMSTANCES.—If the Secretary concerned finds that a landlord fails to maintain safe and sanitary conditions for a housing unit under the contract and that, subject to paragraph (2), these conditions result in a tenant of the housing unit receiving medical evaluations and treatment, the landlord shall be responsible for reimbursing the Department of Defense for any costs incurred by the Department to provide the medical evaluations and treatment to the tenant, whether such evaluations and treatment are provided in a military medical treatment facility or through the TRICARE provider network.</p> <p>“(2) REVIEW PROCESS.—Before the Secretary concerned may submit a claim under paragraph (1) to a landlord for reimbursement of Department medical evaluation and treatment costs—</p> <p>“(A) a military medical professional must determine that the tenant’s medical conditions were caused by unsafe and unsanitary conditions of the housing unit; and</p> <p>“(B) the documentation of the medical evaluation showing causation must be sent to the Director of the Defense Health Agency for review and approval.</p> <p>“(3) UNIFORM PROCESSES AND PROCEDURES.—Not later than 180 days after the date of the enactment of this section, the Director of the Defense Health Agency shall develop and publish uniform processes and procedures to be used by medical providers in military medical treatment facilities to make determinations regarding whether environmental hazards within housing units serve as causative factors for medical conditions being evaluated and treated in military medical treatment facilities or through the TRICARE provider network.</p> <p>“(e) RESPONSIBILITY FOR RELOCATION COSTS.—</p> <p>“(1) PERMANENT RELOCATION.—A landlord providing a housing unit shall pay reasonable relocation costs associated with the permanent relocation of a tenant from the housing unit to a different housing due to health or environmental hazards—</p> <p>“(A) present in the housing unit being vacated through no fault of the tenant; and</p> <p>“(B) confirmed by the housing management office of the installation for which the housing unit is provided as making the unit uninhabitable or unable to be remediated safely while tenant occupies the housing unit.</p> <p>“(2) TEMPORARY RELOCATION.—The landlord shall pay reasonable relocation costs and actual costs of living, including per diem, associated with the temporary relocation of a tenant to a different housing unit due to health or environmental hazards—</p> <p>“(A) present in the housing unit being vacated through no fault of the tenant; and</p>
Determination.	
Deadline. Publication.	

“(B) confirmed by the housing management office of the installation as making the unit uninhabitable or unable to be remediated safely while tenant occupies the housing unit.

“(f) MAINTENANCE WORK ORDER SYSTEM.—A landlord providing a housing unit shall ensure that the maintenance work order system of the landlord (hardware and software) is up to date, including—

“(1) by providing a reliable mechanism through which a tenant may submit work order requests through an Internet portal and mobile application, which shall incorporate the ability to upload photos, communicate with maintenance personnel, and rate individual service calls;

“(2) by allowing real-time access to such system by officials of the Department at the installation, major subordinate command, and service-wide levels; and

“(3) by allowing the work order or maintenance ticket to be closed only once the tenant and the head of the housing management office of the installation sign off.

“(g) IMPLEMENTATION.—The Secretary concerned shall create such legal documents as may be necessary to carry out this section.”.

(b) EFFECTIVE DATE.—The requirements set forth in section 2891 of title 10, United States Code, as added by subsection (a), shall apply to appropriate legal documents entered into or renewed on or after the date of the enactment of this Act between the Secretary of a military department and a landlord regarding privatized military housing.

Applicability.  
10 USC 2891  
note.

(c) RETROACTIVE LANDLORD AGREEMENTS.—

(1) IN GENERAL.—Not later than February 1, 2020, the Secretary of Defense shall seek agreement from all landlords to accept the application of the requirements set forth in section 2891 of title 10, United States Code, as added by subsection (a), to appropriate legal documents entered into or renewed before the date of the enactment of this Act between the Secretary of a military department and a landlord regarding privatized military housing

Deadlines.  
10 USC 2891  
note.

(2) SUBMITTAL OF LIST TO CONGRESS.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a list of any landlords that did not agree under paragraph (1) to accept the requirements set forth in section 2891 of title 10, United States Code, as added by subsection (a).

(3) CONSIDERATION OF LACK OF AGREEMENT IN FUTURE CONTRACTS.—The Secretary of Defense and the Secretaries of the military departments shall include any lack of agreement under paragraph (1) as past performance considered under section 2891b of title 10, United States Code, as added by section 3015, with respect to entering into or renewing any future contracts regarding privatized military housing.

**SEC. 3014. ADDITIONAL REQUIREMENTS RELATING TO MANAGEMENT OF PRIVATIZED MILITARY HOUSING.**

(a) IN GENERAL.—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2891 of such title, as added by section 3013, the following new section:

10 USC 2891a.     **“§ 2891a. Requirements relating to management of housing units**

Contracts.           “(a) IN GENERAL.—The Secretary of Defense shall ensure that each contract between the Secretary concerned and a landlord regarding the management of housing units for an installation of the Department of Defense includes the requirements set forth in this section.

                          “(b) REQUIREMENTS FOR INSTALLATION COMMANDERS.—(1) The installation commander shall be responsible for—

Review.               “(A) reviewing, on an annual basis, the mold mitigation plan and pest control plan of each landlord managing housing units for the installation; and

Notification.         “(B) notifying the landlord and the major subordinate command of any deficiencies found in either plan.

                          “(2) In response to a request by the head of the housing management office of an installation, the installation commander shall use the assigned bio-environmental personnel or contractor equivalent at the installation to test housing units for mold, unsafe water conditions, and other health and safety conditions

                          “(c) REQUIREMENTS FOR HOUSING MANAGEMENT OFFICE.—(1) The head of the housing management office of an installation shall be responsible for—

                                  “(A) conducting a physical inspection of, and approving the habitability of, a vacant housing unit for the installation before the landlord managing the housing unit is authorized to offer the housing unit available for occupancy;

                                  “(B) conducting a physical inspection of the housing unit upon tenant move-out; and

                                  “(C) maintaining all test results relating to the health, environmental, and safety condition of the housing unit and the results of any inspection conducted by the housing management office, landlord, or third-party contractor for the life of the contract relating to that housing unit.

List.                   “(2) The head of the installation housing management office shall be provided a list of any move-out charges that a landlord seeks to collect from an outgoing tenant.

Deadlines.           “(3) The head of the installation housing management office shall initiate contact with a tenant regarding the satisfaction of the tenant with the housing unit of the tenant not later than—

                                  “(A) 15 days after move-in; and

                                  “(B) 60 days after move-in.

Disclosure.           “(d) REQUIREMENTS FOR LANDLORDS.—(1) The landlord providing a housing unit shall disclose to the Secretary of Defense any bonus structures offered for community managers and regional executives and any bonus structures relating to maintenance of housing units, in order to minimize the impact of those incentives on the operating budget of the installation for which the housing units are provided.

                          “(2) With respect to test results relating to the health and safety condition of a housing unit, the landlord providing the housing unit shall—

Deadline.             “(A) not later than three days after receiving the test results, share the results with the tenant of the housing unit and submit the results to the head of the installation housing management office; and

“(B) include with any environmental hazard test results a simple guide explaining those results, preferably citing standards set forth by the Federal Government relating to environmental hazards.

“(3) Before a prospective tenant signs a lease to occupy a housing unit, the landlord providing the housing unit shall conduct a walkthrough inspection of the housing unit—

“(A) for the prospective tenant; or

“(B) if the prospective tenant is not able to be present for the inspection, with an official of the housing management office designated by the prospective tenant to conduct the inspection on the tenant’s behalf.

“(4) In the event that the installation housing management office determines that a housing unit does not meet minimum health, safety, and welfare standards set forth in Federal, State, and local law as a result of a walkthrough inspection or an inspection conducted under subsection (c), the landlord providing the housing unit shall remediate any issues and make any appropriate repairs to the satisfaction of the housing management office and subject to another inspection by the housing management office.

Determination.

“(5) A landlord providing a housing unit may not conduct any promotional events to encourage tenants to fill out maintenance comment cards or satisfaction surveys of any kind, without the approval of the chief of the housing management office.

“(6) A landlord providing a housing unit may not award an installation of the Department of Defense or an officer or employee of the Department a ‘Partner of the Year award’ or similar award.

“(7) A landlord providing a housing unit may not enter into any form of settlement, nondisclosure, or release of liability agreement with a tenant without—

“(A) first notifying the tenant of the tenant’s right to assistance from the legal assistance office at the installation; and

Notification.

“(B) not later than five days before entering into such settlement, nondisclosure, or release of liability agreement, providing a copy of the agreement and terms to the Assistant Secretary of Defense for Sustainment.

Deadline.

“(8) A landlord providing a housing unit may not change the position of a prospective tenant on a waiting list for a housing unit or remove a prospective tenant from the waiting list in response to the prospective tenant turning down an offer for a housing unit, if the housing unit is determined unsatisfactory by the prospective tenant and the determination is confirmed by the housing management office and the installation commander.

Determination.

“(9) A landlord providing a housing unit shall allow employees of the housing management office and other officers and employees of the Department to conduct—

“(A) with the permission of the tenant of the housing unit as appropriate, physical inspections of the housing unit; and

“(B) physical inspections of any common areas maintained by the landlord.

“(10) A landlord providing a housing unit shall agree to participate in the dispute resolution and payment-withholding processes established pursuant to section 2894 of this title.

“(11) A landlord providing a housing unit shall ensure that the needs of enrollees in the Exceptional Family Member Program, or any successor program, are considered in assigning prospective tenants to housing units provided by the landlord.

“(12) A landlord providing a housing unit shall maintain an electronic work order system that enables access by the tenant to view work order history, status, and other relevant information, as required by section 2892 of this title.

“(13) A landlord providing a housing unit shall agree to have any agreements or forms to be used by the landlord approved by the Assistant Secretary of Defense for Sustainment, including the following:

“(A) A common lease agreement.

“(B) Any disclosure or nondisclosure forms that could be given to a tenant.

“(e) PROHIBITION AGAINST COLLECTION OF AMOUNTS IN ADDITION TO RENT.—(1) A landlord providing a housing unit may not impose on a tenant of the housing unit a supplemental payment, such as an out-of-pocket fee, in addition to the amount of rent the landlord charges for a unit of similar size and composition to the housing unit, without regard to whether or not the amount of the any basic allowance for housing under section 403 of title 37 the tenant may receive as a member of the armed forces is less than the amount of the rent.

“(2) Nothing in paragraph (1) shall be construed—

“(A) to prohibit a landlord from imposing an additional payment—

“(i) for optional services provided to military tenants, such as access to a gym or a parking space;

“(ii) for non-essential utility services, as determined in accordance with regulations promulgated by the Secretary concerned; or

“(iii) to recover damages associated with tenant negligence, consistent with subsection (c)(2); or

“(B) to limit or otherwise affect the authority of the Secretary concerned to enter into rental guarantee agreements under section 2876 of this title or to make differential lease payments under section 2877 of this title, so long as such agreements or payments do not require a tenant to pay an out-of-pocket fee or payment in addition to the amount of the any basic allowance for housing under section 403 of title 37 the tenant may receive as a member of the armed forces.”.

(b) MILITARY DEPARTMENT IMPLEMENTATION PLANS.—Not later than February 1, 2020, the Secretary of each military department shall submit to the congressional defense committees a plan for the implementation by that military department of section 2891a of title 10, United States Code, as added by subsection (a).

(c) EFFECTIVE DATE.—The requirements set forth in section 2891a of title 10, United States Code, as added by subsection (a), shall apply to appropriate legal documents entered into or renewed on or after the date of the enactment of this Act between the Secretary of a military department and a landlord regarding privatized military housing.

(d) REPEAL OF REPLACED PROVISION.—

(1) REPEAL.—Section 2886 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter IV of chapter 169 of title 10, United States Code, is amended by striking the item relating to section 2886.

(e) RETROACTIVE LANDLORD AGREEMENTS.—

Deadline.  
10 USC 2891a  
note.

10 USC 2891a  
note.

10 USC 2871  
prec.

Deadlines.  
10 USC 2891a  
note.

(1) IN GENERAL.—Not later than February 1, 2020, the Secretary of Defense shall seek agreement from all landlords to accept the application of the requirements set forth in section 2891a of title 10, United States Code, as added by subsection (a), to appropriate legal documents entered into or renewed before the date of the enactment of this Act between the Secretary of a military department and a landlord regarding privatized military housing

(2) SUBMITTAL OF LIST TO CONGRESS.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a list of any landlords that did not agree under paragraph (1) to accept the requirements set forth in section 2891a of title 10, United States Code, as added by subsection (a).

List.

(3) CONSIDERATION OF LACK OF AGREEMENT IN FUTURE CONTRACTS.—The Secretary of Defense and the Secretaries of the military departments shall include any lack of agreement under paragraph (1) as past performance considered under section 2891b of title 10, United States Code, as added by section 3015, with respect to entering into or renewing any future contracts regarding privatized military housing.

**SEC. 3015. CONSIDERATION OF CONTRACTOR HISTORY IN CONTRACTS FOR PRIVATIZED MILITARY HOUSING.**

Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2891a of such title, as added by section 3014, the following new section:

**“§ 2891b. Considerations of eligible entity housing history in contracts for privatized military housing**

10 USC 2891b.

“(a) CONSIDERATION REQUIRED.—To assist in making a determination whether to enter into a new contract, or renew an existing contract, with an eligible entity, the Secretary of Defense shall develop a standard process by which the Secretary concerned may evaluate the past performance of the eligible entity for purposes of informing future decisions regarding the award of such a contract.

Determination.  
Evaluation.

“(b) ELEMENTS OF PROCESS.—The process developed under subsection (a) shall include, at a minimum, consideration of the following:

Recommendations.

“(1) Any history of the eligible entity of providing standard housing.

“(2) The recommendation of the commander of the installation for which housing units will be provided under the contract.

“(3) The recommendation of the commander of any other installation for which the eligible entity has provided housing units.”.

**SEC. 3016. ADDITIONAL IMPROVEMENTS FOR MANAGEMENT OF PRIVATIZED MILITARY HOUSING.**

(a) IMPROVED FINANCIAL TRANSPARENCY.—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2891b of such title, as added by section 3015, the following new section:

**“§ 2891c. Financial transparency**

10 USC 2891c.

“(a) SUBMISSION OF LANDLORD FINANCIAL INFORMATION.—(1) Not less frequently than annually, the Secretary of Defense shall

Reports.

require that each landlord submit to the Secretary a report providing information regarding all housing units provided by the landlord.

“(2) Information provided under paragraph (1) by a landlord shall include the following:

Summary.

“(A) A comprehensive summary of the landlord’s financial performance.

“(B) The amount of base management fees relating to all housing units provided by the landlord.

“(C) The amount of asset management fees relating to such housing units.

“(D) The amount of preferred return fees relating to such housing units.

“(E) The residual cashflow distributions relating to such housing units.

“(F) The amount of deferred fees or other fees relating to such housing units.

Definitions.

“(3) In this subsection:

“(A) The term ‘base management fees’ means the monthly management fees collected for services associated with accepting and processing rent payments, ensuring tenant rent payments, property inspections, maintenance management, and emergency maintenance calls.

“(B) the term ‘asset management fees’ means fees paid to manage a housing unit for the purpose of ensuring the housing unit is maintained in good condition and making repairs over the lifecycle of the housing unit.

“(C) the term ‘preferred return fees’ means fees associated with any claims on profits furnished to preferred investors with an interest in the housing unit.

“(D) the term ‘residual cashflow distribution’ means the steps a specific housing project takes to restructure after it is determined that the project is in an unacceptable financial condition.

“(E) the term ‘deferred fee’ means any fee that was not paid to a person in a calendar year in order to meet other financial obligations of the landlord.

Deadline.  
Web posting.

“(b) AVAILABILITY OF INFORMATION ON USE OF INCENTIVE FEES.—(1) Not less frequently than annually, the Secretary of Defense shall publish, on a publicly accessible website, information regarding the use by the Secretary concerned of incentive fees to support contracts for the provision or management of housing units.

Contracts.

“(2) The information provided under paragraph (1) shall include, with respect to each contract, the following:

“(A) The applicable incentive fees.

“(B) The metrics used to determine the incentive fees.

“(C) Whether incentive fees were paid in full, or were withheld in part or in full, during the period covered by the release of information.

“(D) If any incentive fees were withheld, the reasons for such withholding.”.

(b) ESTABLISHMENT AND AVAILABILITY OF COMPLAINT DATABASE.—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2894 of such title, as added by section 3022, the following new section:



**“§ 2894a. Complaint database**

10 USC 2894a.

“(a) DATABASE REQUIRED.—The Secretary of Defense shall establish a database of complaints made regarding housing units.

“(b) PUBLIC AVAILABILITY.—The database shall be available to the public.

“(c) INCLUSION OF TENANT COMPLAINTS.—The Secretary of Defense shall permit a tenant of a housing unit to file a complaint regarding the housing unit for inclusion in the database.

“(d) INCLUSION OF CERTAIN INFORMATION.—(1) Information accessible in the database regarding a complaint shall include the following:

“(A) The name of the installation for which the housing unit is provided.

“(B) The name of the landlord responsible for the housing unit.

“(C) A description of the nature of the complaint.

“(2) The Secretary of Defense may not disclose personally identifiable information through the database.

“(e) RESPONSE BY LANDLORDS.—(1) The Secretary of Defense shall include in any contract with a landlord responsible for a housing unit a requirement that the landlord respond in a timely manner to any complaints included in the database that relate to the housing unit.

Contracts.  
Requirement.

“(2) The Secretary shall include landlord responses in the database.”.

**(c) AUDITS OF FINANCIAL VIABILITY OF PRIVATIZED MILITARY HOUSING PARTNERSHIPS.—**

(1) AUDITS REQUIRED.—The Comptroller General of the United States, in accordance with best audit practices, shall conduct an audit of the financial viability of each partnership for the provision of privatized military housing that the Comptroller General determines were impacted by extreme weather events or other natural disasters occurring during the 36-month period immediately preceding the date of the enactment of this Act.

Time period.

(2) REQUIRED INFORMATION.—The audit under paragraph (1) shall assess the following:

Assessments.

(A) The appropriateness of existing insurance caps contained in contracts for privatized military housing.

(B) The structure of the cashflow waterfall, including the impact of expenses relating to disaster recovery.

(3) SUBMISSION TO CONGRESS.—Not later than February 1, 2021, the Comptroller General shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of the audit conducted under paragraph (1).

Reports.

(d) ADDITIONAL INFORMATION IN CONGRESSIONAL REPORTS ON PRIVATIZED MILITARY HOUSING.—Section 2884(c) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

Assessments.

“(7) An assessment of the condition of housing units based on the average age of those units and the estimated time until recapitalization.

“(8) An assessment of tenant complaints.

“(9) An assessment of maintenance response times and completion of maintenance requests.

Analysis.	<p>“(10) An assessment of the dispute resolution process, which shall include a specific analysis of each denied tenant request to withhold rent payments and each instance in which the dispute resolution process resulted in a favorable outcome for the landlord.</p> <p>“(11) An assessment of overall customer service for tenants.</p> <p>“(12) A description of the results of any no-notice housing inspections conducted.</p>
Summary.	<p>“(13) The results of any resident surveys conducted.</p> <p>“(14) With regard to issues of lead-based paint in housing units, a summary of data relating to the presence of lead-based paint in such housing units, including the following by military department:</p> <p>“(A) The total number of housing units containing lead-based paint.</p> <p>“(B) A description of the reasons for the failure to inspect any housing unit that contains lead-based paint.</p> <p>“(C) A description of all abatement or mitigation efforts completed or underway in housing units containing lead-based paint.</p>
Certification.	<p>“(D) A certification as to whether military housing under the jurisdiction of the Secretary concerned complies with requirements relating to lead-based paint, lead-based paint activities, and lead-based paint hazards, as described in section 408 of the Toxic Substances Control Act (15 U.S.C. 2688).”.</p>

**SEC. 3017. MAINTENANCE WORK ORDER SYSTEM FOR PRIVATIZED MILITARY HOUSING.**

Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2891c of such title, as added by section 3016(a), the following new section:

10 USC 2892.	<p><b>“§ 2892. Maintenance work order system for housing units</b></p> <p>“(a) ELECTRONIC WORK ORDER SYSTEM REQUIRED.—The Secretary of Defense shall require that each landlord of a housing unit have an electronic work order system to track all maintenance requests relating to the housing unit.</p>
Requirement.	<p>“(b) ACCESS BY DEPARTMENT PERSONNEL.—The Secretary of Defense shall require each landlord of a housing unit to provide access to the maintenance work order system of the landlord relating to the housing unit to the following persons:</p> <p>“(1) Personnel of the housing management office at the installation for which the housing unit is provided.</p> <p>“(2) Personnel of the installation and engineer command or center of the military department concerned.</p> <p>“(3) Such other personnel of the Department of Defense as the Secretary determines necessary.”.</p>

**SEC. 3018. ACCESS BY TENANTS OF PRIVATIZED MILITARY HOUSING TO MAINTENANCE WORK ORDER SYSTEM.**

Section 2892 of title 10, United States Code, as added by section 3017, is amended by adding at the end the following new subsection:

Requirement.	<p>“(c) ACCESS BY TENANTS.—The Secretary of Defense shall require each landlord of a housing unit to provide access to the maintenance work order system of the landlord relating to the</p>
--------------	--

housing unit to the tenant of the housing unit to permit the tenant, at a minimum, to track the status and progress of work orders for maintenance requests relating to the housing unit.”.

**SEC. 3019. ACCESS BY TENANTS TO HISTORICAL MAINTENANCE INFORMATION FOR PRIVATIZED MILITARY HOUSING.**

Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2892, as added by section 3017 and amended by section 3018, the following new section:

**“§ 2892a. Access by tenants to historical maintenance information**

Requirement.  
10 USC 2892a.

“The Secretary concerned shall require each eligible entity or subsequent landlord that offers for lease a housing unit to provide to a prospective tenant of the housing unit, before the prospective tenant moves into the housing unit as a tenant, all information regarding maintenance conducted with respect to that housing unit for the previous seven years. In this section, the term ‘maintenance’ includes any renovations of the housing unit during such period.”.

Definition.

**SEC. 3020. PROHIBITION ON REQUIREMENT TO DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION IN CERTAIN REQUESTS FOR MAINTENANCE OF PRIVATIZED MILITARY HOUSING.**

(a) **IN GENERAL.**—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2892a of such title, as added by section 3019, the following new section:

**“§ 2892b. Prohibition on requirement to disclose personally identifiable information in requests for certain maintenance**

10 USC 2892b.

“A landlord responsible for a housing unit may not require the disclosure of personally identifiable information as a part of the submission of a request for maintenance regarding a housing unit or common area when the disclosure of personally identifiable information is not needed to identify the location at which such maintenance will be performed.”.

(b) **EFFECTIVE DATE.**—The prohibition in section 2892b of title 10, United States Code, as added by subsection (a), shall take effect on the date that is one year after the date of the enactment of this Act.

10 USC 2892a  
note.

**SEC. 3021. TREATMENT OF INCENTIVE FEES FOR LANDLORDS OF PRIVATIZED MILITARY HOUSING FOR FAILURE TO REMEDY A HEALTH OR ENVIRONMENTAL HAZARD.**

Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2892b of such title, as added by section 3020, the following new section:

**“§ 2893. Treatment of incentive fees for landlords of housing units for failure to remedy health or environmental hazards**

Determination.  
10 USC 2893.

“The Secretary concerned shall not approve the payment of incentive fees otherwise authorized to be paid to a landlord that the Secretary determines has demonstrated a propensity for failing

to remedy, or failing to remedy in a timely manner, a health or environmental hazard at a housing unit provided by the landlord.”

**SEC. 3022. DISPUTE RESOLUTION PROCESS FOR LANDLORD-TENANT DISPUTES REGARDING PRIVATIZED MILITARY HOUSING AND REQUESTS TO WITHHOLD PAYMENTS DURING DISPUTE RESOLUTION PROCESS.**

(a) IN GENERAL.—Subchapter V of chapter 169 of title 10, United States Code, as added by section 3011, is amended by inserting after section 2893 of such title, as added by section 3021, the following new section:

10 USC 2894.

**“§ 2894. Landlord-tenant dispute resolution process and treatment of certain payments during process**

“(a) PROCESS REQUIRED; PURPOSE.—The Secretary concerned shall implement a standardized formal dispute resolution process to ensure the prompt and fair resolution of disputes that arise between landlords providing housing units and tenants residing in housing units concerning maintenance and repairs, damage claims, rental payments, move-out charges, and such other issues relating to housing units as the Secretary determines appropriate.

“(b) PROCESS ELEMENTS.—(1) The dispute resolution process shall include the process by which a tenant may request that certain payments otherwise authorized to be paid to a landlord are withheld, as provided in subsection (e).

“(2) The process shall designate the installation or regional commander in charge of oversight of housing units as the deciding authority under the dispute resolution process.

“(3) The Secretary concerned shall establish a standardized mechanism and forms by which a tenant of a housing unit may submit, through online or other means, a request for resolution of a landlord-tenant dispute through the dispute resolution process.

“(4) The Secretary shall ensure that, in preparing a request described in paragraph (3), a tenant has access to advice and assistance from a military housing advocate employed by the military department concerned or a military legal assistance attorney under section 1044 of this title.

“(5) The Secretary concerned shall minimize costs to tenants for participation in the dispute resolution process.

Deadlines.

“(c) RESOLUTION PROCESS.—(1) Not later than 24 hours after receiving a request from a tenant for resolution of a landlord-tenant dispute through the dispute resolution process, the Secretary concerned shall—

Notification.

“(A) notify the tenant that the request has been received;

Records.

“(B) transmit a copy of the request to the installation or regional commander (as the case may be), housing management office responsible for the housing unit, and the landlord of the housing unit; and

“(C) if the request includes a request to withhold payments under subsection (e), initiate the process under such subsection.

Assessment.

“(2) For purposes of conducting an assessment necessary to render a decision under the dispute resolution process, both the landlord and representatives of the installation housing management office may access the housing unit at a time and for a duration mutually agreed upon amongst the parties.

“(3) Not later than seven days after the date on which the request was received by the installation housing management office shall complete an investigation that includes a physical inspection and transmit the results of the investigation to the installation or regional commander (as the case may be).

“(4) Before making any decision with respect to a dispute under the dispute resolution process, the commander shall certify that the commander has solicited recommendations or information relating to the dispute from the following persons:

Certification.  
Recommendations.

“(A) The chief of the installation housing management office.

“(B) A representative of the landlord for the housing unit.

“(C) The tenant submitting the request for dispute resolution.

“(D) A qualified judge advocate or civilian attorney who is a Federal employee.

“(E) If the dispute involves maintenance or another facilities-related matter, a civil engineer.

“(5)(A) The commander shall make a decision with respect to a request under the dispute resolution process not later than 30 days after the request was submitted.

Deadline.

“(B) The commander may take longer than such 30-day period in limited circumstances as determined by the Secretary of Defense, but in no case shall such a decision be made more than 60 days after the request was submitted.

Time period.  
Determination.

“(6) A final decision will be transmitted to the tenant and landlord no later than 30 days from initial receipt by the office of the commander, except as provided in paragraph (5)(B).

Deadline.

“(7) The decision shall include instructions for distribution of any funds that were withheld under subsection (e) and such instructions for the landlord for further remediation as the commander considers necessary.

“(8) The decision by the commander under this subsection shall be final.

“(d) EFFECT OF FAILURE TO COMPLY WITH DECISION.—If the landlord responsible for the housing unit does not remediate the issues in a manner consistent with the instructions contained in the decision rendered under subsection (c) and within a reasonable period of time, as provided in the decision, any amounts payable to the landlord for the housing unit shall be reduced by 10 percent for each period of five days during which the issues remain unremediated.

Time period.

“(e) REQUEST TO WITHHOLD PAYMENTS DURING RESOLUTION PROCESS.—(1) As part of the submission of a request for resolution of a landlord-tenant dispute through the dispute resolution process, the tenant may request that all or part of the payments described in paragraph (2) for lease of the housing unit be withheld from the landlord of the housing unit during the period in which—

“(A) the landlord has not met maintenance guidelines and procedures established by the Department of Defense, either through contract or otherwise; or

“(B) the housing unit is uninhabitable according to State and local law for the jurisdiction in which the housing unit is located.

“(2) Paragraph (1) applies to the following:

Applicability.

“(A) Any basic allowance for housing payable to the tenant (including for any dependents of the tenant in the tenant’s household) under section 403 of title 37.

“(B) All or part of any pay of a tenant subject to allotment as described in section 2882(c) of this title.

Procedures.

“(3) Upon the submission of a request by a tenant under this subsection and under such procedures as the Secretary of Defense shall establish, the Defense Finance and Accounting Service or such other appropriate office of the Department of Defense as the Secretary shall specify for purposes of such procedures, shall tentatively grant the request and hold any amounts withheld in escrow with notice to the landlord until the conclusion of the dispute resolution process.

“(f) DISCLOSURE OF RIGHTS.—(1) Each housing management office of the Department of Defense shall disclose in writing to each new tenant of a housing unit, upon the signing of the lease for the housing unit, the tenant’s rights under this section and the procedures under this section for submitting a request for resolution of a landlord-tenant dispute through the dispute resolution process, including the ability to submit a request to withhold payments during the resolution process.

Contracts.

“(2) The Secretary of Defense shall ensure that each lease entered into with a tenant for a housing unit clearly expresses, in a separate addendum, the dispute resolution procedures.

“(g) RULE OF CONSTRUCTION ON USE OF OTHER ADJUDICATIVE BODIES.—Nothing in this section or any other provision of law shall be construed to prohibit a tenant of a housing unit from pursuing a claim against a landlord in any adjudicative body with jurisdiction over the housing unit or the claim.”

(b) MODIFICATION OF DEFINITION OF MILITARY LEGAL ASSISTANCE.—Section 1044(d)(3)(B) of title 10, United States Code, is amended by striking “and 1565b(a)(1)(A)” and inserting “1565b(a)(1)(A), and 2894(b)(4)”.

Deadline.  
10 USC 2894  
note.

(c) TIMING OF ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish the dispute resolution process required under section 2894 of title 10, United States Code, as added by subsection (a).

Deadlines.  
10 USC 2894  
note.

(d) LANDLORD AGREEMENTS.—

(1) IN GENERAL.—Not later than February 1, 2020, the Secretary of Defense shall seek agreement from all landlords to participate in the dispute resolution and payment-withholding processes required under section 2894 of title 10, United States Code, as added by subsection (a).

(2) SUBMITTAL OF LIST TO CONGRESS.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a list of any landlords that did not agree under paragraph (1) to participate in the dispute resolution and payment-withholding processes.

(3) CONSIDERATION OF LACK OF AGREEMENT IN FUTURE CONTRACTS.—The Secretary of Defense and the Secretaries of the military departments shall include any lack of agreement under paragraph (1) as past performance considered under section 2891b of title 10, United States Code, as added by section 3015, with respect to entering into or renewing any future contracts regarding privatized military housing.

**SEC. 3023. INVESTIGATION OF REPORTS OF REPRISALS RELATING TO PRIVATIZED MILITARY HOUSING AND CONGRESSIONAL NOTIFICATION.**

Section 2890 of title 10, United States Code, as added by section 3011, is amended by inserting after subsection (d) the following new subsection:

“(e) INVESTIGATION OF REPORTS OF REPRISALS.—(1) The Assistant Secretary of Defense for Sustainment shall investigate all reports of reprisal against a member of the armed forces for reporting an issue relating to a housing unit.

“(2) If the Assistant Secretary of Defense for Sustainment determines under paragraph (1) that landlord has retaliated against a member of the armed forces for reporting an issue relating to a housing unit, the Assistant Secretary shall—

“(A) provide initial notice to the Committees on Armed Services of the Senate and the House of Representatives as soon as practicable after making that determination; and

“(B) following that initial notice, provide an update to such committees every 30 days thereafter until such time as the Assistant Secretary has taken final action with respect to the retaliation.

“(3) The Assistant Secretary of Defense for Sustainment shall carry out this subsection in coordination with the Secretary of the military department concerned.”

Determination.

Notifications.

Update.  
Time period.

Coordination.

**SEC. 3024. PROHIBITION ON USE OF NONDISCLOSURE AGREEMENTS IN CONNECTION WITH LEASES OF PRIVATIZED MILITARY HOUSING.**

(a) NONDISCLOSURE AGREEMENTS PROHIBITED.—Section 2890 of title 10, United States Code, as added by section 3011, is amended by inserting after subsection (e), as added by section 3023, the following new subsection:

“(f) PROHIBITION ON USE OF NONDISCLOSURE AGREEMENTS.—

(1) A tenant or prospective tenant of a housing unit may not be required to sign a nondisclosure agreement in connection with entering into, continuing, or terminating a lease for the housing unit. Any such agreement against the interests of the tenant is invalid.

“(2) Paragraph (1) shall not apply to a nondisclosure agreement executed as part of the settlement of litigation.”

(b) IMPLEMENTATION.—The Secretary of Defense and the Secretaries of the military departments shall promulgate such regulations as may be necessary to give full force and effect to subsection (f) of section 2890 of title 10, United States Code, as added by subsection (a).

(c) RETROACTIVE APPLICATION OF AMENDMENT.—Subsection (f) of section 2890 of title 10, United States Code, as added by subsection (a), shall apply with respect to any nondisclosure agreement covered by the terms of such subsection (f) regardless of the date on which the agreement was executed.

Regulations.  
10 USC 2890  
note.

10 USC 2890  
note.

## Subtitle B—Other Amendatory Provisions

### SEC. 3031. INSTALLATION OF CARBON MONOXIDE DETECTORS IN MILITARY FAMILY HOUSING.

Section 2821 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) The Secretary concerned shall provide for the installation and maintenance of an appropriate number of carbon monoxide detectors in each unit of military family housing under the jurisdiction of the Secretary.”.

### SEC. 3032. AUTHORITY TO FURNISH CERTAIN SERVICES IN CONNECTION WITH USE OF ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

Section 2872a(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

“(13) Street sweeping.

“(14) Tree trimming and removal.”.

### SEC. 3033. TREATMENT OF BREACH OF CONTRACT FOR PRIVATIZED MILITARY HOUSING.

(a) IN GENERAL.—Subchapter IV of chapter 169 of title 10, United States Code, is amended by inserting after section 2872a the following new section:

10 USC 2872b.

#### “§ 2872b. Treatment of breach of contract

“(a) RESPONSE TO MATERIAL BREACH.—In the case of a material breach of contract under this subchapter by a party to the contract, the Secretary concerned shall use the authorities available to the Secretary, including withholding amounts to be paid under the contract, to encourage the party to cure the breach.

Determination.

“(b) RESCINDING OF CONTRACT.—If a material breach of the contract is not cured in a timely manner, as determined by the Secretary concerned, the Secretary may—

“(1) rescind the contract pursuant to the terms of the contract; and

“(2) prohibit the offending party from entering into a new contract or undertaking expansions of other existing contracts, or both, with the Secretary under this subchapter.”.

10 USC 2871 prec.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter IV of chapter 169 of title 10, United States Code, is amended by inserting after the item relating to section 2872a the following new item:

“2872b. Treatment of breach of contract.”.

### SEC. 3034. MODIFICATION TO REQUIREMENTS FOR WINDOW FALL PREVENTION DEVICES IN MILITARY FAMILY HOUSING UNITS.

(a) FALL PREVENTION DEVICE REQUIREMENTS.—Section 2879(a) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “that protect against unintentional window falls by young children and that are in compliance with applicable International Building Code (IBC) standards” and inserting “described in paragraph (3)”;  
 (2) in paragraph (2)—



(A) in subparagraph (A), by striking “December 11, 2017” and inserting “October 1, 2019”; and

(B) in subparagraph (B), by striking “September 1, 2018” and inserting “October 1, 2019”; and

(3) by adding at the end the following new paragraph:

“(3) FALL PREVENTION DEVICE DESCRIBED.—A fall prevention device is a window screen or guard that complies with applicable standards in ASTM standard F2090–13 (or any successor standard).”

(b) MODIFICATION TO WINDOW DESCRIPTION.—Section 2879(c) of title 10, United States Code, is amended by striking “24” and inserting “42”.

(c) CONFORMING AMENDMENT.—Section 2879(b)(1) of title 10, United States Code, is amended by striking “paragraph (1)” and inserting “paragraph (3)”.

**SEC. 3035. EXPANSION OF DIRECT HIRE AUTHORITY FOR DEPARTMENT OF DEFENSE FOR CHILDCARE SERVICES PROVIDERS FOR DEPARTMENT CHILD DEVELOPMENT CENTERS TO INCLUDE DIRECT HIRE AUTHORITY FOR INSTALLATION MILITARY HOUSING OFFICE PERSONNEL.**

(a) IN GENERAL.—Section 559 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1406; 10 U.S.C. 1792 note) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “, and individuals to fill vacancies in installation military housing offices,” after “childcare services providers”;

(B) in paragraph (1), by inserting “or for employees at installation military housing offices” before the semicolon; and

(C) in paragraph (2), by inserting “or for installation military housing office employees” before the period;

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following new subsection (f):

“(f) INSTALLATION MILITARY HOUSING OFFICE DEFINED.—The term ‘installation military housing office’ means any office whose primary function is performing day-to-day supervision of military housing covered by subchapter IV of chapter 169 of title 10, United States Code.”

(b) HEADING AND TECHNICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of such section is amended to read as follows:

**“SEC. 559. DIRECT HIRE AUTHORITY FOR DEPARTMENT OF DEFENSE FOR CHILDCARE SERVICES PROVIDERS FOR DEPARTMENT CHILD DEVELOPMENT CENTERS AND EMPLOYEES AT INSTALLATION MILITARY HOUSING OFFICES.”**

(2) TECHNICAL AMENDMENT.—Subsection (d) of such section is amended by striking “Oversight and Government Reform” and inserting “Oversight and Reform”.

(c) USE OF EXISTING REGULATIONS.—The Secretary of Defense shall use the authority in section 559 of the National Defense Authorization Act for Fiscal Year 2018 granted by the amendments made by this section in a manner consistent with the regulations prescribed for purposes of such section 559 pursuant to subsection

10 USC 1792  
note.

(b) of such section 559, without the need to prescribe separate regulations for the use of such authority.

**SEC. 3036. MODIFICATION OF AUTHORITY TO MAKE PAYMENTS TO LESSORS OF PRIVATIZED MILITARY HOUSING.**

(a) **MODIFICATION OF PAYMENT AUTHORITY.**—Subsection (a) of section 606 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1795; 10 U.S.C. 2871 note) is amended to read as follows:

“(a) **USE OF FUNDS IN CONNECTION WITH MHPI.**—

“(1) **PAYMENTS TO LESSORS GENERALLY.**—

Effective date.

“(A) **PAYMENT AUTHORITY.**—Each month beginning with the first month after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary of a military department shall use funds, in an amount determined under subparagraph (B), to make payments to lessors of covered housing in the manner provided by this subsection, as in effect on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.

Determination.

“(B) **CALCULATION OF MONTHLY PAYMENTS.**—For purposes of making payments under subparagraph (A) for a month, the Secretary of the military department concerned shall determine the amount equal to 2.5 percent of the aggregate of the amounts calculated under section 403(b)(3)(A)(i) of title 37, United States Code, for covered housing under the jurisdiction of the Secretary for that month.

“(2) **ADDITIONAL PAYMENTS TO LESSORS RESPONSIBLE FOR UNDERFUNDED PROJECTS.**—

Effective date.

“(A) **PAYMENT AUTHORITY.**—Each month beginning with the first month after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary of a military department shall use funds, in an amount determined under subparagraph (B), to make additional payments to certain lessors responsible for underfunded MHPI housing projects identified pursuant to subparagraph (C) for the purposes of future sustainment, recapitalization, and financial sustainability of the projects.

Determination.

“(B) **CALCULATION OF MONTHLY PAYMENTS.**—For purposes of making payments under subparagraph (A) for a month, the Secretary of the military department concerned shall determine the amount equal to 2.5 percent of the aggregate of the amounts calculated under section 403(b)(3)(A)(i) of title 37, United States Code, for covered housing under the jurisdiction of the Secretary for that month.

Assessment.

“(C) **IDENTIFICATION OF UNDERFUNDED PROJECTS.**—The Chief Housing Officer of the Department of Defense, in conjunction with the Secretaries of the military departments, shall assess MHPI housing projects for the purpose of identifying all MHPI housing projects that are underfunded. Once identified, the Chief Housing Officer shall prioritize for payments under subparagraph (A) those MHPI housing projects most in need of funding to rectify such underfunding.

“(3) ALTERNATIVE AUTHORITY IN EVENT OF LACK OF UNDERFUNDED PROJECTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), if the Chief Housing Officer determines that no MHPI housing projects for a military department require additional funding under paragraph (2) for a month, the Secretary of the military department concerned, in consultation with the Chief Housing Officer, may allocate the funds otherwise available to the Secretary under such paragraph for that month to support improvements designed to enhance the quality of life of members of the uniformed services and their families who reside in MHPI housing.

Determination.  
Consultation.

“(B) CONDITIONS.—Before the Secretary of a military department may allocate funds as authorized by subparagraph (A), the Chief Housing Officer shall certify to the Committees on Armed Services of the Senate and the House of Representatives that there are no MHPI housing projects for the military department require additional funding under paragraph (2). The certification shall include sufficient details to show why no projects are determined to need the additional funds.

Certification.

“(4) BRIEFING REQUIRED.—Not later than March 1, 2020, and each year thereafter, the Secretary of Defense shall provide a briefing to the Committee on Armed Services of the Senate and the House of Representatives detailing the expenditure of funds under paragraphs (2) and (3), the MHPI housing projects receiving funds under such paragraphs, and any other information the Secretary considers relevant.”.

Deadline.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to months beginning after that date.

10 USC 2871  
note.

**SEC. 3037. TECHNICAL CORRECTION TO DEFINITION USED TO MAKE PAYMENTS TO LESSORS OF PRIVATIZED MILITARY HOUSING.**

Paragraph (3) of section 606(d) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1796; 10 U.S.C. 2871 note) is amended to read as follows:

“(3) The term ‘MHPI housing’ means housing procured, acquired, constructed, or for which any phase or portion of a project agreement was first finalized and signed, under the alternative authority of subchapter IV of chapter 169 of title 10, United States Code (known as the Military Housing Privatization Initiative), on or before September 30, 2014.”.

Definition.

**Subtitle C—One-Time Reporting Requirements**

**SEC. 3041. REPORT ON CIVILIAN PERSONNEL SHORTAGES FOR APPROPRIATE OVERSIGHT OF MANAGEMENT OF MILITARY HOUSING CONSTRUCTED OR ACQUIRED USING ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.**

(a) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary of Defense, in coordination

Coordination.

with the Secretaries of the military departments, shall submit to the congressional defense committees a report containing the following:

Evaluation.

(1) An evaluation of the extent to which shortages in the number of civilian personnel performing oversight functions at Department of Defense housing management offices or assigned to housing-related functions at headquarters levels contribute to problems regarding the management of privatized military housing.

Recommendations.

(2) Recommendations to address such personnel shortages—

(A) to eliminate problems regarding the management of privatized military housing;

(B) to ensure oversight of the partner's execution of the housing agreement and the delivery of all requirements in accordance with implementing guidance provided by the Secretaries of the military departments;

(C) to improve oversight of and expedite the work-order process; and

(D) to facilitate a positive experience for members of the Armed Forces and their dependents who reside in privatized military housing.

(b) **PERSONNEL RECOMMENDATIONS.**—As part of the recommendations required by subsection (a)(2), the Secretary of Defense shall identify the following:

(1) The number of additional personnel who are required, the installation and headquarter locations at which they will be employed, the employment positions they will fill, and the duties they will perform, including a breakdown of duty requirements by function, such as oversight, home inspectors, and maintenance.

(2) The number of such additional personnel already hired as of the date on which the report is submitted and their duty locations and the timeline for employing the remaining required personnel identified under paragraph (1).

Cost estimate.

(3) The estimated cost of employing the additional required personnel identified under paragraph (1).

**SEC. 3042. PLANS FOR CREATION OF COUNCILS ON PRIVATIZED MILITARY HOUSING.**

Deadline.

(a) **PLANS REQUIRED.**—Not later than February 1, 2020, the Assistant Secretary of each military department shall submit to the congressional defense committees a plan for the creation within the military department concerned of a council on privatized military housing for the purposes of maintaining adequate oversight of the military housing program and serving as a mechanism to identify and resolve problems regarding privatized military housing.

(b) **PLAN ELEMENTS.**—The plan for a military department shall include—

Schedule.

(1) an implementation schedule for the creation the council on privatized military housing;

(2) proposed members of the council, which shall include, at a minimum, the Assistant Secretary concerned and a representative from the installation housing offices and the civil engineering community; and

(3) the planned frequency of council meetings.

**SEC. 3043. PLAN FOR ESTABLISHMENT OF DEPARTMENT OF DEFENSE JURISDICTION OVER OFF-BASE PRIVATIZED MILITARY HOUSING.**

(a) **PLAN REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a plan to establish jurisdiction by the Department of Defense for law enforcement and other specified purposes, concurrently with local community law enforcement, at locations with privatized military housing that is not located on an installation of the Department of Defense.

Deadline.

(b) **CONSULTATION.**—The Secretary of Defense shall prepare the plan in consultation with the Secretaries of the military departments.

**SEC. 3044. INSPECTOR GENERAL REVIEW OF DEPARTMENT OF DEFENSE OVERSIGHT OF PRIVATIZED MILITARY HOUSING.**

Deadline.

Not later than one year after the date of the enactment of this Act, and annually thereafter until 2022, the Inspector General of the Department of Defense shall—

(1) conduct, at not less than three military installations, a review of the oversight by the Secretary of Defense of privatized military housing at such installations; and

(2) make publicly available on a website of the Department a summary of the results of the review.

Public information.  
Web posting.  
Summary.

**SEC. 3045. INFORMATION ON LEGAL SERVICES PROVIDED TO MEMBERS OF THE ARMED FORCES HARMED BY HEALTH OR ENVIRONMENTAL HAZARDS AT MILITARY HOUSING.**

(a) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the legal services that the Secretary may provide to members of the Armed Forces who have been harmed by a health or environmental hazard while living in military housing.

(b) **AVAILABILITY OF INFORMATION.**—The Secretary of the military department concerned shall make the information contained in the report submitted under subsection (a) available to members of the Armed Forces at all installations of the Department of Defense in the United States.

## **Subtitle D—Development of Housing Reform Standards and Processes**

**SEC. 3051. UNIFORM CODE OF BASIC STANDARDS FOR PRIVATIZED MILITARY HOUSING AND PLAN TO CONDUCT INSPECTIONS AND ASSESSMENTS.**

Deadlines.  
10 USC 2871  
note.

(a) **UNIFORM CODE.**—Not later than February 1, 2021, the Secretary of Defense shall establish and implement a uniform code of basic housing standards for safety, comfort, and habitability for privatized military housing, which shall meet or exceed requirements informed by a nationally recognized, consensus-based, model property maintenance code.

(b) **INSPECTION AND ASSESSMENT PLAN.**—Not later than February 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a Department of Defense plan to contract

with qualified home inspectors to conduct a thorough inspection and assessment of the structural integrity and habitability of each unit of privatized military housing. The plan shall include the implementation plan for the uniform code to be established under subsection (a).

(c) IMPLEMENTATION OF INSPECTIONS AND ASSESSMENTS.—

(1) IMPLEMENTATION.—Not later than February 1, 2021, the Secretary of the military department concerned shall commence conducting inspections and assessments of units of privatized military housing pursuant to the plan submitted under subsection (b) to identify issues and ensure compliance with applicable housing codes, including the uniform code established under subsection (a).

(2) REPORT.—Not later than March 1, 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the findings of the inspections and assessments conducted under paragraph (1).

(d) QUALIFIED HOME INSPECTORS DESCRIBED.—For purposes of this section, a qualified home inspector must possess the appropriate credentials for the work the inspector will perform, as defined by the respective State in which the work will be performed. A qualified home inspector may not be an employee or in a fiduciary relationship with—

- (1) the Federal Government; or
- (2) an individual or entity who owns or manages privatized military housing.

10 USC 2821  
note.

**SEC. 3052. TOOL FOR ASSESSMENT OF HAZARDS IN DEPARTMENT OF DEFENSE HOUSING.**

(a) HAZARD ASSESSMENT TOOL.—

Deadline.

(1) DEVELOPMENT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop an assessment tool, such as a rating system or similar mechanism, to identify and measure health and safety hazards in housing under the jurisdiction of the Department of Defense (including privatized military housing).

(2) COMPONENTS.—The assessment tool shall provide for the identification and measurement of the following hazards:

(A) Physiological hazards, including dampness and mold growth, lead-based paint, asbestos and manmade fibers, radiation, biocides, carbon monoxide, and volatile organic compounds.

(B) Psychological hazards, including ease of access by unlawful intruders, and lighting issues.

(C) Infection hazards.

(D) Safety hazards.

(3) PUBLIC FORUMS.—In developing the assessment tool, the Secretary of Defense shall provide for multiple public forums at which the Secretary may receive input with respect to such assessment tool from occupants of housing under the jurisdiction of the Department of Defense (including privatized military housing).

(4) REPORT.—Not later than 210 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the assessment tool.

(b) HAZARD ASSESSMENTS.—

- (1) **ASSESSMENTS REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, using the assessment tool developed under subsection (a)(1), shall complete a hazard assessment for each housing facility under the jurisdiction of the Department of Defense (including privatized military housing). Deadline.
- (2) **TENANT INFORMATION.**—As soon as practicable after the completion of the hazard assessment conducted for a housing facility under paragraph (1), the Secretary of Defense shall provide to each individual who leases or is assigned to a housing unit in the facility a summary of the results of the assessment. Summary.
- SEC. 3053. PROCESS TO IDENTIFY AND ADDRESS ENVIRONMENTAL HEALTH HAZARDS IN DEPARTMENT OF DEFENSE HOUSING.** 10 USC 2821 note.
- (a) **PROCESS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall develop a process to identify, record, and resolve environmental health hazards in housing under the jurisdiction of the Department of Defense (including privatized housing) in a timely manner. Deadline.  
Coordination.  
Records.
- (b) **ELEMENTS OF PROCESS.**—The process developed under subsection (a) shall provide for the following with respect to each identified environmental health hazard:
- (1) Categorization of the hazard.
  - (2) Identification of health risks posed by the hazard.
  - (3) Identification of the number of housing occupants potentially affected by the hazard.
  - (4) Recording and maintenance of information regarding the hazard.
  - (5) Resolution of the hazard, which shall include—
    - (A) the performance by the Secretary of Defense (or in the case of privatized housing, the landlord) of hazard remediation activities at the affected facility; and
    - (B) follow-up by the Secretary of Defense to collect information on medical care related to the hazard sought or received by individuals affected by the hazard.
- (c) **COORDINATION.**—The Secretary of Defense shall ensure coordination between military treatment facilities, appropriate public health officials, and housing managers at military installations with respect to the development and implementation of the process required by subsection (a).
- (d) **REPORT.**—Not later than 210 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the process required by subsection (a).
- SEC. 3054. DEPARTMENT OF DEFENSE POLICY ON LEAD-BASED PAINT TESTING ON MILITARY INSTALLATIONS.** 10 USC 2661 note.
- (a) **ACCESS AND TESTING POLICY.**—Not later than February 1, 2020, the Secretary of Defense shall establish a policy under which the Secretary of the military department concerned may permit a qualified individual to access a military installation for the purpose of conducting testing for the presence of lead-based paint on the installation. Deadline.
- (b) **TRANSMISSION OF RESULTS.**—

(1) **INSTALLATIONS INSIDE THE UNITED STATES.**—In the case of military installations located inside the United States, the results of any testing for lead-based paint on a military installation shall be transmitted the following:

- (A) The civil engineer of the installation.
- (B) The housing management office of the installation.
- (C) The public health organization on the installation.
- (D) The major subordinate command of the Armed Force with jurisdiction over the installation.
- (E) If required by law, any relevant Federal, State, and local agencies.

(2) **INSTALLATIONS OUTSIDE THE UNITED STATES.**—In the case of military installations located outside the United States, the results of any testing for lead-based paint on a military installation shall be transmitted to the civil engineer or commander of the installation who shall transmit those results to the major subordinate command of the Armed Force with jurisdiction over the installation.

(c) **DEFINITIONS.**—In this section:

(1) The term “United States” has the meaning given that term in section 101(a)(1) of title 10, United States Code.

(2) The term “qualified individual” means an individual who is certified by the Environmental Protection Agency or by a State as—

- (A) a lead-based paint inspector; or
- (B) a lead-based paint risk assessor.

**SEC. 3055. STANDARD FOR MINIMUM CREDENTIALS FOR HEALTH AND ENVIRONMENTAL INSPECTORS OF PRIVATIZED MILITARY HOUSING.**

Reports.

(a) **DEVELOPMENT AND SUBMISSION OF STANDARD.**—Not later than February 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report that contains a standard for minimum credentials to be used throughout the Department of Defense for all inspectors of health and environmental hazards at privatized military housing, including inspectors contracted by the Department.

(b) **INCLUSION OF CATEGORIES FOR SPECIFIC ENVIRONMENTAL HAZARDS.**—The standard submitted under subsection (a) shall include categories for specific environmental hazards such as lead, mold, and radon.

10 USC 2890  
note.

**SEC. 3056. REQUIREMENTS RELATING TO MOVE-IN, MOVE-OUT, AND MAINTENANCE OF PRIVATIZED MILITARY HOUSING.**

(a) **MOVE-IN AND MOVE-OUT CHECKLIST.**—

(1) **CHECKLIST REQUIRED.**—The Secretary of Defense shall develop a uniform move-in and move-out checklist for use by landlords providing privatized military housing and by tenants of such housing.

(2) **REQUIRED MOVE-IN ELEMENT.**—A tenant who will occupy a unit of privatized military housing is entitled to be present for an inspection of the housing unit before accepting occupancy of the housing unit to ensure that the unit is habitable and that facilities and common areas of the building are in good repair.

(3) **REQUIRED MOVE-OUT ELEMENT.**—A tenant of a unit of privatized military housing is entitled to be present for the move-out inspection of the housing unit and must be given



sufficient time to address any concerns related to the tenant's occupancy of the housing unit.

(b) **MAINTENANCE CHECKLIST.**—The Secretary of Defense shall—

(1) develop a uniform checklist to be used by housing management offices to validate the completion of all maintenance work related to health and safety issues at privatized military housing; and

(2) require that all maintenance issues and work orders related to health and safety issues at privatized military housing be reported to the commander of the installation for which the housing is provided.

Requirement.

(c) **CONSULTATION.**—The Secretary of Defense shall carry out this section in consultation with the Secretaries of the military departments.

(d) **DEADLINE.**—The uniform checklists required by this section shall be completed not later than 60 days after the date of the enactment of this Act.

**SEC. 3057. STANDARDIZED DOCUMENTATION, TEMPLATES, AND FORMS FOR PRIVATIZED MILITARY HOUSING.**

10 USC 2890  
note.

(a) **DEVELOPMENT REQUIRED.**—

(1) **IN GENERAL.**—The Secretary of Defense shall develop standardized documentation, templates, and forms for use throughout the Department of Defense with respect to privatized military housing. In developing such documentation, templates, and forms, the Secretary shall ensure that, to the maximum extent practicable, the documentation, templates, and forms do not conflict with applicable State and local housing regulations.

(2) **INITIAL GUIDANCE.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance for the development of the following:

Deadline.

(A) Policies and standard operating procedures of the Department for privatized military housing.

Procedures.

(B) A universal lease agreement for privatized military housing that includes—

Contracts.

(i) the documents developed pursuant to section 2890 of title 10, United States Code, as added by section 3011, entitled Military Housing Privatization Initiative Tenant Bill of Rights and Military Housing Privatization Initiative Tenant Responsibilities; and

(ii) any lease addendum required by the law of the State in which the unit of privatized military housing is located.

(3) **CONSULTATION.**—The Secretary of Defense shall carry out this subsection in consultation with the Secretaries of the military departments.

(b) **MILITARY DEPARTMENT PLANS.**—Not later than February 1, 2020, the Secretary of each military department shall submit to the congressional defense committees a plan for the implementation of this section by that military department.

Deadline.

**SEC. 3058. SATISFACTION SURVEY FOR TENANTS OF MILITARY HOUSING.**

10 USC 2821  
note.

(a) **SURVEY REQUIRED.**—Not later than March 1, 2020, the Secretary of Defense shall require that each installation of the

Deadline.

Department of Defense use the same satisfaction survey for tenants of military housing, including privatized military housing.

(b) **FORM OF SURVEY.**—The satisfaction survey required by subsection (a) shall be an electronic survey with embedded privacy and security mechanisms.

(c) **PRIVACY AND SECURITY MECHANISMS.**—The privacy and security mechanisms used in the satisfaction survey required by subsection (a)—

(1) may include a code unique to the tenant to be surveyed that is sent to the cell phone number of the tenant and required to be entered to access the survey; and

(2) in the case of privatized military housing, shall ensure the survey is not shared with the landlord providing the privatized military housing until the survey is reviewed and the results are tallied by Department of Defense personnel.

## Subtitle E—Other Housing Reform Matters

10 USC 2871  
note.

### SEC. 3061. RADON TESTING OF PRIVATIZED MILITARY HOUSING.

(a) **REPORT.**—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees a report identifying the installations of the Department of Defense that have privatized military housing that should be monitored for levels of radon at or above the action level.

(b) **TESTING PROCEDURES AND STANDARDS.**—The Secretaries of the military departments shall ensure that landlords providing privatized military housing at installations identified under subsection (a) establish testing procedures that are consistent with then current national consensus standards and are in compliance with applicable Federal, State, and local radon regulations in order to ensure radon levels are below recommended levels established by the Environmental Protection Agency, whether through—

(1) regular testing of privatized military housing by persons who possess certification pursuant to the proficiency program operated under section 305(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2665(a)(2)); or

(2) the installation of monitoring equipment in privatized military housing.

Deadline.  
Determination.  
Plan.

(c) **NOTIFICATION REGARDING NEED FOR MITIGATION.**—If, as a result of testing described in subsection (b), a unit of privatized military housing needs radon mitigation to ensure radon levels are below recommended levels, the landlord providing the housing unit shall submit to the Secretary of the military department concerned, not later than seven days after the determination of the need for radon mitigation, the mitigation plan for the housing unit.

10 USC 2821  
note.

### SEC. 3062. MITIGATION OF RISKS POSED BY CERTAIN ITEMS IN MILITARY FAMILY HOUSING UNITS.

(a) **ANCHORING OF ITEMS BY RESIDENTS.**—The Secretary of Defense shall allow a resident of a military family housing unit to anchor any furniture, television, or large appliance to the wall of the unit for purposes of preventing such item from tipping over without incurring a penalty or obligation to repair the wall upon vacating the unit.

(b) **ANCHORING OF ITEMS FOR ALL UNITS.**—

(1) **EXISTING UNITS.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall ensure that all freestanding chests, door chests, armoires, dressers, entertainment centers, bookcases taller than 27 inches, televisions, and large appliances provided by the Department of Defense are securely anchored in each furnished military family housing unit under the jurisdiction of the Department as of the date of the enactment of this Act. Deadline.

(2) **NEW UNITS.**—The Secretary of Defense shall ensure that all freestanding chests, door chests, armoires, dressers, entertainment centers, bookcases taller than 27 inches, televisions, and large appliances provided by the Department of Defense are securely anchored in each furnished military family housing unit made available after the date of the enactment of this Act.

**SEC. 3063. SUSPENSION OF RESIDENT ENERGY CONSERVATION PROGRAM AND RELATED PROGRAMS FOR PRIVATIZED MILITARY HOUSING.** 10 USC 2867  
note.

(a) **SUSPENSION REQUIRED.**—The Secretary of Defense shall suspend the initiative of the Department of Defense known as the Resident Energy Conservation Program and instruct the Secretary of each military department to suspend any program carried out by such Secretary that measures the energy usage for individual units of privatized military housing on installations of the Department of Defense.

(b) **TERM OF SUSPENSION.**—Subject to subsection (c), the suspension required by subsection (a) shall remain in effect for an installation of the Department of Defense until the Secretary of Defense certifies to the congressional defense committees that 100 percent of the privatized military housing on the installation is individually metered to each respective unit of privatized military housing on the installation military housing unit and the meter accurately measures the energy usage of the unit. Certification.

(c) **TERMINATION.**—If the Secretary of Defense is unable to make the certification required by subsection (b) for an installation of the Department of Defense before the end of the two-year period beginning on the date of the enactment of this Act, each program suspended pursuant to subsection (a) at that installation shall terminate at the end of such period. Time period.  
Effective date.

**SEC. 3064. DEPARTMENT OF THE ARMY PILOT PROGRAM TO BUILD AND MONITOR USE OF SINGLE FAMILY HOMES.** 10 USC 2821  
note.

(a) **IN GENERAL.**—The Secretary of the Army shall carry out a pilot program to build and monitor the use of not fewer than five single family homes for members of the Army and their families.

(b) **LOCATION.**—The Secretary of the Army shall carry out the pilot program at no less than two installations of the Army located in different climate regions of the United States as determined by the Secretary. Determination.

(c) **DESIGN.**—In building homes under the pilot program, the Secretary of the Army shall use the All-American Abode design from the suburban single-family division design by the United States Military Academy.

## **DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZA- TIONS AND OTHER AUTHORIZATIONS**

### **TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS**

#### **Subtitle A—National Security Programs and Authorizations**

- Sec. 3101. National Nuclear Security Administration.
- Sec. 3102. Defense environmental cleanup.
- Sec. 3103. Other defense activities.
- Sec. 3104. Nuclear energy.

#### **Subtitle B—Program Authorizations, Restrictions, and Limitations**

- Sec. 3111. Personnel matters at National Nuclear Security Administration.
- Sec. 3112. Estimation of costs of meeting defense environmental cleanup milestones required by consent orders.
- Sec. 3113. Office of Cost Estimating and Program Evaluation.
- Sec. 3114. Clarification of certain Stockpile Responsiveness Program objectives.
- Sec. 3115. Elimination of limitation on availability of funds relating to submission of annual reports on unfunded priorities.
- Sec. 3116. Modification to certain requirements relating to plutonium pit production capacity.
- Sec. 3117. Annual certification of shipments to Waste Isolation Pilot Plant.
- Sec. 3118. Extension and modification of pilot program on unavailability for overhead costs of amounts specified for laboratory-directed research and development.
- Sec. 3119. Modification to limitation on availability of funds for acceleration of nuclear weapons dismantlement.
- Sec. 3120. Implementation of common financial reporting system for nuclear security enterprise.
- Sec. 3121. Limitation relating to reclassification of high-level waste.
- Sec. 3122. National Laboratory Jobs ACCESS Program.

#### **Subtitle C—Reports and Other Matters**

- Sec. 3131. Civil penalties for violations of certain whistleblower protections.
- Sec. 3132. Repeal of assessments of adequacy of budget requests relating to nuclear weapons stockpile.
- Sec. 3133. Repeal of requirement for review relating to enhanced procurement authority.
- Sec. 3134. Improvements to Energy Employees Occupational Illness Compensation Program Act of 2000.
- Sec. 3135. Replacement of W78 warhead.
- Sec. 3136. Independent review of capabilities for detection, verification, and monitoring of nuclear weapons and fissile material.
- Sec. 3137. Assessment of high energy density physics.
- Sec. 3138. Determination of effect of treaty obligations with respect to producing tritium.
- Sec. 3139. Technical corrections to National Nuclear Security Administration Act and Atomic Energy Defense Act.

### **TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS**

#### **Subtitle A—National Security Programs and Authorizations**

##### **SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2020 for the activities of the National Nuclear Security Administration in carrying out programs as specified in the funding table in section 4701.

(b) **AUTHORIZATION OF NEW PLANT PROJECTS.**—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary of Energy may carry out new plant projects for the National Nuclear Security Administration as follows:

Project 20-D-931, KL Fuel Development Laboratory, Knolls Atomic Power Laboratory, Schenectady, New York, \$23,700,000.

General Purpose Project, PF-4 Power and Communications Systems Upgrade, Los Alamos National Laboratory, Los Alamos, New Mexico, \$16,000,000.

**SEC. 3102. DEFENSE ENVIRONMENTAL CLEANUP.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2020 for defense environmental cleanup activities in carrying out programs as specified in the funding table in section 4701.

(b) **AUTHORIZATION OF NEW PLANT PROJECTS.**—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary of Energy may carry out, for defense environmental cleanup activities, the following new plant projects:

Project 20-D-401, Saltstone Disposal Units numbers 10, 11, and 12, Savannah River Site, Aiken, South Carolina, \$1,000,000.

Project 20-D-402, Advanced Manufacturing Collaborative, Savannah River Site, Aiken, South Carolina, \$50,000,000.

Project 20-U-401, On-Site Waste Disposal Facility (Cell Lines 2 and 3), Portsmouth Site, Pike County, Ohio, \$10,000,000.

**SEC. 3103. OTHER DEFENSE ACTIVITIES.**

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2020 for other defense activities in carrying out programs as specified in the funding table in section 4701.

**SEC. 3104. NUCLEAR ENERGY.**

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2020 for nuclear energy as specified in the funding table in section 4701.

## **Subtitle B—Program Authorizations, Restrictions, and Limitations**

**SEC. 3111. PERSONNEL MATTERS AT NATIONAL NUCLEAR SECURITY ADMINISTRATION.**

(a) **PERSONNEL LEVELS OF THE OFFICE OF THE ADMINISTRATOR FOR NUCLEAR SECURITY.**—

(1) **PERSONNEL LEVELS.**—

(A) **INCREASE.**—Subsection (a) of section 3241A of the National Nuclear Security Administration Act (50 U.S.C. 2441a) is amended by striking “1,690” both places it appears and inserting “1,890”.

(B) **TECHNICAL AMENDMENTS.**—Such subsection is further amended—

(i) in paragraph (1), by striking “By October 1, 2015, the” and inserting “The”; and

(ii) in paragraph (2), by striking “2016” and inserting “2020”.

(2) REPORTS ON SERVICE SUPPORT CONTRACTS.—Subsection (f) of such section is amended—

(A) in the matter preceding paragraph (1), by striking “as of the date of the report” and inserting “for the most recent fiscal year for which data are available”; and

(B) by striking paragraph (5) and inserting the following new paragraphs:

“(5) With respect to each contract identified under paragraph (2)—

“(A) identification of each appropriations account that supports the contract; and

“(B) the amount obligated under the contract during the fiscal year, listed by each such account.

“(6) With respect to each appropriations account identified under paragraph (5)(A), the total amount obligated for contracts identified under paragraph (2).”.

(b) INCREASE IN CONTRACTING, PROGRAM MANAGEMENT, SCIENTIFIC, ENGINEERING, AND TECHNICAL POSITIONS.—Section 3241 of the National Nuclear Security Administration Act (50 U.S.C. 2441) is amended in the first sentence by striking “600” and inserting “800”.

**SEC. 3112. ESTIMATION OF COSTS OF MEETING DEFENSE ENVIRONMENTAL CLEANUP MILESTONES REQUIRED BY CONSENT ORDERS.**

(a) IN GENERAL.—Subtitle A of title XLIV of the Atomic Energy Defense Act (50 U.S.C. 2581 et seq.) is amended by adding at the end the following new section:

**“SEC. 4409. ESTIMATION OF COSTS OF MEETING DEFENSE ENVIRONMENTAL CLEANUP MILESTONES REQUIRED BY CONSENT ORDERS.**

“The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the cost, for that fiscal year and the four fiscal years following that fiscal year, of meeting milestones required by a consent order at each defense nuclear facility at which defense environmental cleanup activities are occurring. The report shall include, for each such facility—

“(1) a specification of the cost of meeting such milestones during that fiscal year; and

“(2) an estimate of the cost of meeting such milestones during the four fiscal years following that fiscal year.”.

(b) CLERICAL AMENDMENT.—The table of contents for the Atomic Energy Defense Act is amended by inserting after the item relating to section 4408 the following new item:

“Sec. 4409. Estimation of costs of meeting defense environmental cleanup milestones required by consent orders.”.

**SEC. 3113. OFFICE OF COST ESTIMATING AND PROGRAM EVALUATION.**

(a) REPORTING.—Section 3221(b)(1) of the National Nuclear Security Administration Act (50 U.S.C. 2411(b)(1)) is amended by

Reports.  
Time periods.  
50 USC 2590.

adding at the end the following new sentence: “The Director shall report directly to the Administrator.”

(b) BRIEFING.—Not later than 180 days after the date of the enactment of this Act, the Administrator for Nuclear Security shall provide to the congressional defense committees a briefing on the plan of the Administrator to fully staff the Office of Cost Estimating and Program Evaluation of the National Nuclear Security Administration pursuant to section 3221(f) of the National Nuclear Security Administration Act (50 U.S.C. 2411(f)). Deadline.

**SEC. 3114. CLARIFICATION OF CERTAIN STOCKPILE RESPONSIVENESS PROGRAM OBJECTIVES.**

Section 4220(c) of the Atomic Energy Defense Act (50 U.S.C. 2538b(c)) is amended—

(1) in paragraph (3), by striking “capabilities required, including prototypes” and inserting “capabilities as required, such as through the use of prototypes”; and

(2) in paragraph (6)—

(A) by striking “in consultation with the Director of National Intelligence” and inserting “in coordination with the Director of National Intelligence”; and

(B) by inserting “if needed to meet intelligence requirements” after “foreign countries”.

**SEC. 3115. ELIMINATION OF LIMITATION ON AVAILABILITY OF FUNDS RELATING TO SUBMISSION OF ANNUAL REPORTS ON UNFUNDED PRIORITIES.**

Section 4716 of the Atomic Energy Defense Act (50 U.S.C. 2756) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

“(a) ANNUAL REPORT OR CERTIFICATION.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Administrator shall submit to the Secretary of Energy and the congressional defense committees either—

“(1) a report on the unfunded priorities of the Administration; or

“(2) if the Administrator determines that there are no unfunded priorities to include in such a report, a certification and explanation by the Administrator, without delegation, of the determination.”;

(2) in subsection (b), by striking “report required by subsection (a)” both places it appears and inserting “report under subsection (a)(1)”; and

(3) by striking subsection (c); and

(4) by redesignating subsection (d) as subsection (c).

Determination.  
Certification.

**SEC. 3116. MODIFICATION TO CERTAIN REQUIREMENTS RELATING TO PLUTONIUM PIT PRODUCTION CAPACITY.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) rebuilding a robust plutonium pit production infrastructure with a capacity of up to 80 pits per year is critical to maintaining the viability of the nuclear weapons stockpile;

(2) that effort will require cooperation from experts across the nuclear security enterprise; and

50 USC 2538a  
note.

(3) any further delay to achieving a plutonium sustainment capability to support the planned stockpile life extension programs will result in an unacceptable capability gap to our deterrent posture.

(b) **MODIFICATION TO REQUIREMENTS.**—Section 4219 of the Atomic Energy Defense Act (50 U.S.C. 2538a) is amended—

(1) in subsection (a), by striking paragraph (5) and inserting the following:

“(5) during 2030, produces not less than 80 war reserve plutonium pits.”;

(2) by striking subsection (b);

(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(4) in subsection (b), as redesignated by paragraph (2), by striking “2027 (or, if the authority under subsection (b) is exercised, 2029)” and inserting “2030”; and

(5) in subsection (c), as redesignated by paragraph (2), by striking “subsection (c)” and inserting “subsection (b)”.

**SEC. 3117. ANNUAL CERTIFICATION OF SHIPMENTS TO WASTE ISOLATION PILOT PLANT.**

Section 3115(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2759), as amended by section 3137(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2303), is further amended, in the matter preceding paragraph (1), by striking “three-year period” and inserting “10-year period”.

**SEC. 3118. EXTENSION AND MODIFICATION OF PILOT PROGRAM ON UNAVAILABILITY FOR OVERHEAD COSTS OF AMOUNTS SPECIFIED FOR LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT.**

Section 3119 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 50 U.S.C. 2791 note) is amended—

(1) in subsection (c)(2), by striking “three” and inserting “four”; and

(2) in subsection (d)—

(A) by striking “Before the termination under subsection (c)(2) of the pilot program required by subsection (a)” and inserting “Not later than February 15, 2020”; and

(B) by inserting before the end period the following: “, including effects on laboratory-directed research and development and other programs”.

**SEC. 3119. MODIFICATION TO LIMITATION ON AVAILABILITY OF FUNDS FOR ACCELERATION OF NUCLEAR WEAPONS DISMANTLEMENT.**

Subsection (a) of section 3125 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2766), as amended by section 3117 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1890), is amended by striking “\$56,000,000” and inserting “\$87,000,000”.



**SEC. 3120. IMPLEMENTATION OF COMMON FINANCIAL REPORTING SYSTEM FOR NUCLEAR SECURITY ENTERPRISE.**

Not more than 90 percent of the funds authorized to be appropriated by section 3101 for the National Nuclear Security Administration for fiscal year 2020 for Federal salaries and expenses and available for travel and transportation may be obligated or expended before the date on which the Administrator for Nuclear Security completes implementation of the common financial reporting system for the nuclear security enterprise as required by section 3113(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 50 U.S.C. 2512 note).

**SEC. 3121. LIMITATION RELATING TO RECLASSIFICATION OF HIGH-LEVEL WASTE.**

None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Energy may be obligated or expended by the Secretary of Energy to apply the interpretation of high-level radioactive waste described in the notice published by the Secretary titled “Supplemental Notice Concerning U.S. Department of Energy Interpretation of High-Level Radioactive Waste” (84 Fed. Reg. 26835), or successor notice, with respect to such waste located in the State of Washington.

**SEC. 3122. NATIONAL LABORATORY JOBS ACCESS PROGRAM.**

42 USC 16539.

(a) **IN GENERAL.**—On or after the date that is 180 days after the date of the enactment of this Act, the Secretary may establish a program, to be known as the “Department of Energy National Lab Jobs ACCESS Program”, under which the Secretary may award, on a competitive basis, 5-year grants to eligible entities described in subsection (c) for the Federal share of the costs of pre-apprenticeship programs and apprenticeship programs described in subsection (b).

Effective date.  
Time period.  
Grants.

(b) **PRE-APPRENTICESHIP AND APPRENTICESHIP PROGRAMS DESCRIBED.**—A pre-apprenticeship program or apprenticeship program described in this subsection is a pre-apprenticeship program or apprenticeship program that—

(1) leads to recognized postsecondary credentials for secondary school and postsecondary students;

(2) is focused on skills and qualifications needed, as determined by the Secretary in consultation with the directors of the National Laboratories, to meet the immediate and ongoing needs of traditional and emerging technician positions (including machinists and cybersecurity technicians) at the National Laboratories and covered facilities of the National Nuclear Security Administration;

Consultation.

(3) is established in consultation with a National Laboratory or covered facility of the National Nuclear Security Administration;

Consultation.

(4) is registered with and approved by the Secretary of Labor or a State apprenticeship agency; and

(5) ensures that participants in the pre-apprenticeship program or apprenticeship program do not displace paid employees.

(c) **ELIGIBLE ENTITIES DESCRIBED.**—An eligible entity described in this subsection is a workforce intermediary or an eligible sponsor of a pre-apprenticeship program or apprenticeship program that—

(1) demonstrates experience in implementing and providing career planning and career pathways toward pre-apprenticeship programs or apprenticeship programs;

(2)(A) has a relationship with a National Laboratory or covered facility of the National Nuclear Security Administration;

(B) has knowledge of the technician workforce needs of the laboratory or facility and the associated security requirements of the laboratory or facility; and

(C) is eligible to enter into an agreement with the laboratory or facility that would be paid for in part or entirely from grant funds received under this section;

(3) demonstrates the ability to recruit and support individuals who plan to work in relevant technician positions upon the successful completion of the pre-apprenticeship program or apprenticeship program;

(4) provides students who complete the pre-apprenticeship program or apprenticeship program with, or prepares such students for obtaining, a recognized postsecondary credential;

(5) uses related instruction that is specifically aligned with the needs of the laboratory or facility and utilizes workplace learning advisors and on-the-job training to the greatest extent possible; and

(6) demonstrates successful outcomes connecting graduates of the pre-apprenticeship program or apprenticeship program to careers relevant to the program.

(d) APPLICATIONS.—If the Secretary establishes the program described in subsection (a), an eligible entity described in subsection (c) seeking a grant under the program shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) PRIORITY.—In selecting eligible entities described in subsection (c) to receive grants under this section, the Secretary may prioritize an eligible entity that—

(1) is a member of an industry or sector partnership;

(2) provides related instruction for a pre-apprenticeship program or apprenticeship program through—

(A) a local educational agency, a secondary school, a provider of adult education, an area career and technical education school, or an institution of higher education (such as a community college) that includes basic science, technology, and mathematics education in the related instruction; or

(B) an apprenticeship program that was registered with the Department of Labor or a State apprenticeship agency before the date on which the eligible entity applies for the grant under subsection (d);

(3) works with the Secretary of Defense, the Secretary of Veterans Affairs, or veterans organizations to transition members of the Armed Forces and veterans to pre-apprenticeship programs or apprenticeship programs in a relevant sector;

(4) plans to use the grant to carry out the pre-apprenticeship program or apprenticeship program with an entity that receives State funding or is operated by a State agency; and

(5) plans to use the grant to carry out the pre-apprenticeship program or apprenticeship program for—

(A) young adults ages 16 to 29, inclusive; or

(B) individuals with barriers to employment.

(f) **ADDITIONAL CONSIDERATION.**—In making grants under this section, the Secretary may consider regional diversity.

(g) **LIMITATION ON APPLICATIONS.**—An eligible entity described in subsection (c) may not submit, either individually or as part of a joint application, more than one application for a grant under this section during any one fiscal year.

(h) **LIMITATIONS ON AMOUNT OF GRANT.**—The amount of a grant provided under this section may not, for any 24-month period of the 5-year grant period, exceed \$500,000.

Time period.

(i) **NON-FEDERAL SHARE.**—The non-Federal share of the cost of a pre-apprenticeship program or apprenticeship program carried out using a grant under this section shall be not less than 25 percent of the total cost of the program.

(j) **TECHNICAL ASSISTANCE.**—The Secretary may provide technical assistance to eligible entities described in subsection (c) to leverage the existing job training and education programs of the Department of Labor and other relevant programs at appropriate Federal agencies.

(k) **REPORT.**—

(1) **IN GENERAL.**—If the Secretary establishes the program described in subsection (a), not less than once every 2 years thereafter, the Secretary shall submit to Congress, and make publicly available on the website of the Department of Energy, a report on the program, including—

Public information.  
Web posting.

(A) a description of—

(i) any entity that receives a grant under this section;

(ii) any activity carried out using a grant under this section; and

(iii) best practices used to leverage the investment of the Federal Government under this section; and

(B) an assessment of the results achieved by the program, including the rate of employment for participants after completing a pre-apprenticeship program or apprenticeship program carried out using a grant under this section.

Assessment.

(2) **PERFORMANCE REPORTS.**—Not later than one year after the establishment of a pre-apprenticeship program or apprenticeship program using a grant awarded under this section, and annually thereafter, the entity carrying out the program shall submit to the Secretary and the Secretary of Labor a report on the effectiveness of the program based on the accountability measures described in clauses (i) and (ii) of section 116(b)(2)(A) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3141(b)(2)(A)).

(l) **DEFINITIONS.**—In this section:

(1) **ESEA TERMS.**—The terms “local educational agency” and “secondary school” have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) **WIOA TERMS.**—The terms “career planning”, “community-based organization”, “customized training”, “economic development agency”, “individual with a barrier to employment”, “industry or sector partnership”, “on-the-job training”, “recognized postsecondary credential”, and “workplace learning advisor” have the meanings given such terms in section 3

of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(3) APPRENTICESHIP PROGRAM.—The term “apprenticeship program” means a program registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.).

(4) AREA CAREER AND TECHNICAL EDUCATION SCHOOL.—The term “area career and technical education school” has the meaning given the term in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302).

(5) COMMUNITY COLLEGE.—The term “community college” has the meaning given the term “junior or community college” in section 312(f) of the Higher Education Act of 1965 (20 U.S.C. 1058(f)).

(6) COVERED FACILITY OF THE NATIONAL NUCLEAR SECURITY ADMINISTRATION.—The term “covered facility of the National Nuclear Security Administration” means a national security laboratory or a nuclear weapons production facility as such terms are defined in section 4002 of the Atomic Energy Defense Act (50 U.S.C. 2501).

(7) ELIGIBLE SPONSOR.—The term “eligible sponsor” means a public organization or nonprofit organization that—

(A) with respect to an apprenticeship program, administers the program through a partnership that may include—

- (i) an industry or sector partnership;
- (ii) an employer or industry association;
- (iii) a labor-management organization;
- (iv) a local workforce development board or State workforce development board;
- (v) a 2- or 4-year institution of higher education that offers an educational program leading to an associate’s or bachelor’s degree in conjunction with a certificate of completion of apprenticeship;
- (vi) the Armed Forces (including the National Guard and Reserves);
- (vii) a community-based organization; or
- (viii) an economic development agency; and

(B) with respect to a pre-apprenticeship program, is a local educational agency, a secondary school, an area career and technical education school, a provider of adult education, a State workforce development board, a local workforce development board, or a community-based organization, that administers the program with any required coordination and necessary approvals from the Secretary of Labor or a State department of labor.

(8) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(9) LOCAL WORKFORCE DEVELOPMENT BOARD.—The term “local workforce development board” has the meaning given the term “local board” in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(10) NATIONAL LABORATORY.—The term “National Laboratory” has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

(11) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

(12) **PRE-APPRENTICESHIP PROGRAM.**—The term “pre-apprenticeship program” means a program—

(A) designed to prepare individuals to enter and succeed in an apprenticeship program; and

(B) that has a documented partnership with at least one, if not more, apprenticeship programs.

(13) **PROVIDER OF ADULT EDUCATION.**—The term “provider of adult education” has the meaning given the term “eligible provider” in section 203 of the Adult Education and Family Literacy Act (29 U.S.C. 3272).

(14) **RELATED INSTRUCTION.**—The term “related instruction” means an organized and systematic form of instruction designed to provide an individual in a pre-apprenticeship program or apprenticeship program with the knowledge of the technical subjects related to the intended occupation of the individual after completion of the program.

(15) **SECRETARY.**—The term “Secretary” means the Secretary of Energy, in consultation with the Secretary of Labor, except as otherwise specified in this section.

(16) **SPONSOR.**—The term “sponsor” means any person, association, committee, or organization operating a pre-apprenticeship program or apprenticeship program and in whose name the program is (or is to be) registered or approved.

(17) **STATE APPRENTICESHIP AGENCY.**—The term “State apprenticeship agency” has the meaning given that term in section 29.2 of title 29, Code of Federal Regulations (or any corresponding similar regulation or ruling).

(18) **STATE WORKFORCE DEVELOPMENT BOARD.**—The term “State workforce development board” has the meaning given the term “State board” in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(19) **WORKFORCE INTERMEDIARY.**—The term “workforce intermediary”—

(A) means a nonprofit organization that—

(i) proactively addresses workforce needs using a dual customer approach, which considers the needs of both employees and employers; and

(ii) has partnered with a sponsor of a pre-apprenticeship program or apprenticeship program or is a sponsor of a pre-apprenticeship program or apprenticeship program; and

(B) may include a community organization, an employer organization, a community college, a temporary staffing agency, a State workforce development board, a local workforce development board, or a labor or labor-management organization.

## Subtitle C—Reports and Other Matters

### SEC. 3131. CIVIL PENALTIES FOR VIOLATIONS OF CERTAIN WHISTLEBLOWER PROTECTIONS.

Section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a) is amended—

(1) in the heading, by inserting “AND WHISTLEBLOWER” after “SAFETY”;

(2) in subsection a.—

(A) by inserting “, or who violates any applicable law, rule, regulation, or order related to nuclear safety whistleblower protections,” before “shall be subject to a civil penalty”; and

(B) by adding at the end the following new sentence: “The Secretary of Energy may carry out this section with respect to the National Nuclear Security Administration by acting through the Administrator for Nuclear Security.”; and

Definition.

(3) by adding at the end the following new subsection: “e. In this section, the term ‘nuclear safety whistleblower protections’ means the protections for employees of contractors or subcontractors from reprisals pursuant to section 4712 of title 41, United States Code, section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851), or other provisions of Federal law (including rules, regulations, or orders) affording such protections, with respect to disclosures or other activities covered by such protections that relate to nuclear safety.”.

### SEC. 3132. REPEAL OF ASSESSMENTS OF ADEQUACY OF BUDGET REQUESTS RELATING TO NUCLEAR WEAPONS STOCKPILE.

(a) IN GENERAL.—Section 3255 of the National Nuclear Security Administration Act (50 U.S.C. 2455) is repealed.

(b) CLERICAL AMENDMENT.—The table of contents for the National Nuclear Security Administration Act is amended by striking the item relating to section 3255.

### SEC. 3133. REPEAL OF REQUIREMENT FOR REVIEW RELATING TO ENHANCED PROCUREMENT AUTHORITY.

Section 4806 of the Atomic Energy Defense Act (50 U.S.C. 2786) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

### SEC. 3134. IMPROVEMENTS TO ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000.

(a) OFFICE OF OMBUDSMAN.—Section 3686 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–15) is amended—

(1) in subsection (c)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

“(2) To provide guidance and assistance to claimants.”; and

(2) in subsection (h), by striking “2019” and inserting “2020”.

(b) **ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH.**—Section 3687 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–16) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (C), by striking “; and” and inserting a semicolon;

(B) in subparagraph (D), by striking “; and” and inserting a semicolon; and

(C) by adding after subparagraph (D) the following:

“(E) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and

“(F) such other matters as the Secretary considers appropriate; and”;

(2) in subsection (g)—

(A) by striking “The Secretary of Energy shall” and inserting “The Secretary of Energy and the Secretary of Labor shall each”; and

(B) by adding at the end the following new sentence: “The Secretary of Labor shall make available to the Board the program’s medical director, toxicologist, industrial hygienist and program’s support contractors as requested by the Board.”;

(3) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(4) by inserting after subsection (g) the following:

“(h) **RESPONSE TO RECOMMENDATIONS.**—Not later than 60 days after submission to the Secretary of Labor of the Board’s recommendations, the Secretary shall respond to the Board in writing, and post on the public internet website of the Department of Labor, a response to the recommendations that—

“(1) includes a statement of whether the Secretary accepts or rejects the Board’s recommendations;

“(2) if the Secretary accepts the Board’s recommendations, describes the timeline for when those recommendations will be implemented; and

“(3) if the Secretary does not accept the recommendations, describes the reasons the Secretary does not agree and provides all scientific research to the Board supporting that decision.”.

Deadline.  
Public  
information.  
Web posting.

Timeline.

**SEC. 3135. REPLACEMENT OF W78 WARHEAD.**

(a) **REPORT.**—

(1) **IN GENERAL.**—Not later than 210 days after the date of the enactment of this Act, the Administrator for Nuclear Security shall submit to the congressional defense committees a report on replacing the W78 warhead.

(2) **MATTERS INCLUDED.**—The report under paragraph (1) shall include the following:

(A) A discussion of the alternatives considered with respect to replacing the W78 warhead, including—

(i) a description of the technical risks, schedule, and costs for each alternative to replacing the W78 warhead; and

- (ii) a description of any changes since January 15, 2014, to the requirements for such alternatives.
- Review. (B) A review of the matters under subparagraph (A) by the Director for Cost Estimating and Program Evaluation of the National Nuclear Security Administration.
- (b) INDEPENDENT STUDY.—
- (1) IN GENERAL.—The Administrator shall seek to enter into an arrangement with the private scientific advisory group known as JASON to conduct a study of the plan of the Administrator to replace the W78 warhead. Such study shall include—
- Assessment. (A) an assessment of the risks to certification; and
- (B) the need for planned upgrades to such warhead.
- Deadline. (2) SUBMISSION.—Not later than 150 days after the date of the enactment of this Act, the Administrator shall submit to the congressional defense committees the study under paragraph (1), without change.

**SEC. 3136. INDEPENDENT REVIEW OF CAPABILITIES FOR DETECTION, VERIFICATION, AND MONITORING OF NUCLEAR WEAPONS AND FISSILE MATERIAL.**

- Deadline. (a) PLAN.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Energy, in consultation with the Secretary of Defense, shall seek to enter into a contract with the National Academy of Sciences to conduct an independent review and assessment of United States capabilities for detection, verification, and monitoring of nuclear weapons and fissile material.
- Consultation. (b) ELEMENTS.—The review and assessment required by subsection (a) shall include the following:
- Contracts. Assessment. (1) An evaluation of the current national research enterprise for detection, verification, and monitoring of nuclear weapons and fissile material.
- (2) Integration of roles, responsibilities, and planning for such detection, verification, and monitoring within the Federal Government.
- (3) Opportunities to leverage the national research enterprise to further prevent the proliferation of nuclear weapons and fissile material, including with respect to policy, research and development, and testing and evaluation.
- (4) Opportunities for international engagement for building cooperation and transparency, including bilateral and multilateral efforts, to improve inspections, detection, and monitoring of nuclear weapons and fissile material, and to create incentives for such cooperation and transparency.
- (5) Opportunities for new or expanded research and development efforts to improve detection and monitoring of, and in-field inspection and analysis capabilities with respect to, nuclear weapons and fissile materials.
- (6) Opportunities for improved coordination between departments and agencies of the Federal Government and the military departments, national laboratories, commercial industry, and academia.
- (7) Opportunities for leveraging commercial capabilities.
- Evaluation. (c) SUBMISSION TO CONGRESS.—
- (1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Energy shall submit to the congressional defense committees, without
- Deadline.



change, the findings of the National Academy resulting from the review and assessment conducted under subsection (a).

(2) FORM.—The findings described in paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 3137. ASSESSMENT OF HIGH ENERGY DENSITY PHYSICS.**

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Administrator for Nuclear Security shall enter into an arrangement with the National Academies of Sciences, Engineering, and Medicine to conduct an assessment of recent advances and the current status of research in the field of high energy density physics. Deadline.

(b) ELEMENTS.—The assessment conducted under subsection (a) shall include the following:

(1) Theoretical and computational modeling of high energy density material phases, radiation-matter interactions, plasmas atypical of astrophysical conditions, and conditions unique to the National Nuclear Security Administration.

(2) The simulation of such phases, interactions, plasmas, and conditions.

(3) Instrumentation and target fabrication.

(4) Workforce training.

(5) An assessment of advancements made by other countries in high energy density physics.

(6) Such other items as are agreed upon by the Administrator and the National Academies.

(c) APPLICABILITY OF INTERNAL CONTROLS.—The assessment under subsection (a) shall be conducted in accordance with the internal controls of the National Academies.

(d) REPORT TO CONGRESS.—Not later than 18 months after entering into the arrangement under subsection (a), the National Academies of Sciences, Engineering, and Medicine shall submit to the congressional defense committees a report on the assessment conducted under that subsection.

(e) HIGH ENERGY DENSITY PHYSICS DEFINED.—In this section, the term “high energy density physics” means the physics of matter and radiation at—

(1) energy densities exceeding 100,000,000,000 joules per cubic meter; and

(2) other temperature and pressure ranges within the warm dense matter regime.

**SEC. 3138. DETERMINATION OF EFFECT OF TREATY OBLIGATIONS WITH RESPECT TO PRODUCING TRITIUM.**

Not later than February 15, 2020, the Secretary of Energy shall— Deadline.

(1) determine whether the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defense Purposes, signed at Washington, July 3, 1958 (9 UST 1028), between the United States and the United Kingdom, permits the United States to obtain low-enriched uranium for the purposes of producing tritium in the United States; and

(2) submit to the congressional defense committees a report on that determination.

**SEC. 3139. TECHNICAL CORRECTIONS TO NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT AND ATOMIC ENERGY DEFENSE ACT.**

(a) **DEFINITIONS IN NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT.**—Section 3281(2)(A) of the National Nuclear Security Administration Act (50 U.S.C. 2471(2)(A)) is amended by striking “Plant” and inserting “National Security Campus”.

(b) **AMENDMENTS TO ATOMIC ENERGY DEFENSE ACT.**—

(1) **DEFINITIONS.**—Section 4002(9)(A) of the Atomic Energy Defense Act (50 U.S.C. 2501(9)(A)) is amended striking “Plant” and inserting “National Security Campus”.

(2) **STOCKPILE STEWARDSHIP, MANAGEMENT, AND RESPONSIVENESS PLAN.**—Section 4203 of the Atomic Energy Defense Act (50 U.S.C. 2523) is amended—

(A) in subsection (d)(4)(A)(ii), by striking “quadrennial defense review if such strategy has not been submitted” and inserting “national defense strategy”;

(B) in subsection (e)(1)(A)(i), by striking “or the most recent quadrennial defense review, as applicable under subsection (d)(4)(A), and the” and inserting “referred to in subsection (d)(4)(A)(i), the most recent the national defense strategy, and the most recent”; and

(C) in subsection (f)—

(i) by striking paragraph (4);

(ii) by redesignating paragraph (3) as paragraph

(4); and

(iii) by inserting after paragraph (2) the following new paragraph (3):

“(3) The term ‘national defense strategy’ means the review of the defense programs and policies of the United States that is carried out every four years under section 113(g) of title 10, United States Code.”.

(3) **MANUFACTURING INFRASTRUCTURE FOR NUCLEAR WEAPONS STOCKPILE.**—Section 4212 of the Atomic Energy Defense Act (50 U.S.C. 2532) is amended—

(A) in subsection (a)(1), in the matter preceding subparagraph (A), by inserting “most recent” before “Nuclear Posture Review”; and

(B) in subsection (b)—

(i) in paragraph (2), by striking “Plant” and inserting “National Security Complex”; and

(ii) in paragraph (4), by striking “Plant” and inserting “National Security Campus, Kansas City, Missouri”.

(4) **REPORTS ON LIFE EXTENSION PROGRAMS.**—

(A) **IN GENERAL.**—Section 4216 of the Atomic Energy Defense Act (50 U.S.C. 2536) is amended—

(i) in the section heading, by striking “**LIFETIME**” and inserting “**LIFE**”; and

(ii) by striking “lifetime” each place it appears and inserting “life”.

(B) **CLERICAL AMENDMENT.**—The table of contents for the Atomic Energy Defense Act is amended by striking the item relating to section 4216 and inserting the following new item:

“Sec. 4216. Reports on life extension programs.”.

Definition.

(5) **ADVICE ON SAFETY, SECURITY, AND RELIABILITY OF NUCLEAR WEAPONS STOCKPILE.**—Section 4218 of the Atomic Energy Defense Act (50 U.S.C. 2538) is amended—

(A) in subsection (d), by striking “or the Commander of the United States Strategic Command”; and

(B) in subsection (e)(1)—

(i) by striking “, a member of” and all that follows through “Strategic Command” and inserting “or a member of the Nuclear Weapons Council”; and

(ii) by striking “, member, or Commander” and inserting “or member”.

(6) **LIFE-CYCLE COST ESTIMATES.**—Section 4714(a) of the Atomic Energy Defense Act (50 U.S.C. 2754(a)) is amended—

(A) by striking “413.3” and inserting “413.3B”; and

(B) by inserting “, or a successor order,” after “assets”).

(7) **UNFUNDED PRIORITIES.**—

(A) **IN GENERAL.**—Section 4716 of the Atomic Energy Defense Act (50 U.S.C. 2756) is amended in the section heading by striking “**NATIONAL NUCLEAR SECURITY ADMINISTRATION**” and inserting “**ADMINISTRATION**”.

(B) **CLERICAL AMENDMENT.**—The table of contents for the Atomic Energy Defense Act is amended by striking the item relating to section 4716 and inserting the following new item:

“Sec. 4716. Unfunded priorities of the Administration.”

(8) **REVIEWS OF CAPITAL ASSETS ACQUISITION PROJECTS.**—Section 4733(d)(3)(B) of the Atomic Energy Defense Act (50 U.S.C. 2773(d)(3)(B)) is amended by striking “413.3” and inserting “413.3B”.

## **TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

Sec. 3201. Authorization.

Sec. 3202. Improvements to Defense Nuclear Facilities Safety Board.

Sec. 3203. Membership of Defense Nuclear Facilities Safety Board.

### **SECTION 3201. AUTHORIZATION.**

There are authorized to be appropriated for fiscal year 2020, \$29,450,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

### **SEC. 3202. IMPROVEMENTS TO DEFENSE NUCLEAR FACILITIES SAFETY BOARD.**

(a) **STAFF.**—

(1) **EXECUTIVE DIRECTOR OF OPERATIONS.**—

(A) **ESTABLISHMENT OF POSITION.**—Subsection (b) of section 313 of the Atomic Energy Act of 1954 (42 U.S.C. 2286b) is amended by adding at the end the following new paragraph:

“(3)(A) The Board shall have an Executive Director of Operations who shall be appointed under section 311(c)(6).

“(B) The Executive Director of Operations shall report to the Chairman.

“(C) The Executive Director of Operations shall be the senior employee of the Board responsible for—

- “(i) general administration and technical matters;
- “(ii) ensuring that the members of the Board are fully and currently informed with respect to matters for which the members are responsible; and
- “(iii) the functions delegated by the Chairman pursuant to section 311(c)(3)(B).”.

(B) DELEGATION OF FUNCTIONS.—Paragraph (3) of section 311(c) of such Act (42 U.S.C. 2286(c)) is amended—

- (i) by striking “The Chairman” and inserting “(A) The Chairman”; and
- (ii) by adding at the end the following new subparagraph:

“(B) In carrying out subparagraph (A), the Chairman shall delegate to the Executive Director of Operations established under section 313(b)(3) the following functions:

- “(i) Administrative functions of the Board.
- “(ii) Appointment and supervision of employees of the Board not specified under paragraph (6).
- “(iii) Distribution of business among the employees and administrative units and offices of the Board.

“(iv) Preparation of—

“(I) proposals for the reorganization of the administrative units or offices of the Board;

“(II) the budget estimate for the Board; and

“(III) the proposed distribution of funds according to purposes approved by the Board.”.

(2) PROVISION OF INFORMATION TO BOARD.—Such section 311(c), as amended by paragraph (1)(B), is further amended—

(A) in paragraph (2), by striking “paragraphs (5), (6), and (7)” and inserting “paragraphs (5) and (6)”; and

(B) by striking paragraph (6); and

(C) by redesignating paragraph (7) as paragraph (6).

(3) APPOINTMENT AND REMOVAL POWERS.—Paragraph (6) of such section 311(c), as redesignated by paragraph (2)(C), is amended to read as follows:

“(6)(A) The Chairman, subject to the approval of the Board, shall appoint the senior employees described in subparagraph (C). Any member of the Board may propose to the Chairman an individual to be so appointed.

“(B) The Chairman, subject to the approval of the Board, may remove a senior employee described in subparagraph (C). Any member of the Board may propose to the Chairman an individual to be so removed.

“(C) The senior employees described in this subparagraph are the following senior employees of the Board:

“(i) The Executive Director of Operations established under section 313(b)(3).

“(ii) The general counsel.”.

(4) ORGANIZATION OF STAFF OF BOARD.—Section 313(b) of such Act, as amended by paragraph (1)(A), is further amended—

(A) in paragraph (1)(A), by striking “section 311(c)(7)” and inserting “section 311(c)(6)”; and

(B) by adding at the end the following new paragraph:

“(4) Subject to the approval of the Board, the Chairman may organize the staff of the Board as the Chairman considers appropriate to best accomplish the mission of the Board described in section 312(a).”.

(5) TEMPORARY PERSONNEL LEVELS.—During fiscal year 2020, the Defense Nuclear Facilities Safety Board shall employ not fewer than the equivalent of 100 full-time employees.

(b) PUBLIC HEALTH AND SAFETY.—Section 312(a) of such Act (42 U.S.C. 2286a(a)) is amended by inserting before the period at the end the following: “, including with respect to the health and safety of employees and contractors at such facilities”.

(c) ACCESS TO FACILITIES, PERSONNEL, AND INFORMATION.—Section 314 of such Act (42 U.S.C. 2286c) is amended—

(1) in subsection (a)—

(A) by striking “The Secretary of Energy” and inserting “Except as specifically provided by this section, the Secretary of Energy”;

(B) by striking “ready access” both places it appears and inserting “prompt and unfettered access”; and

(C) by adding at the end the following new sentence: “The access provided to defense nuclear facilities, personnel, and information under this subsection shall be provided without regard to the hazard or risk category assigned to a facility by the Secretary.”; and

(2) by striking subsection (b) and inserting the following new subsections:

“(b) AUTHORITY OF SECRETARY TO DENY INFORMATION.—(1) The Secretary may deny access to information under subsection (a) only to any person who—

“(A) has not been granted an appropriate security clearance or access authorization by the Secretary; or

“(B) does not need such access in connection with the duties of such person.

“(2) If the Board requests access to information under subsection (a) in written form, and the Secretary denies access to such information pursuant to paragraph (1)—

“(A) the Secretary shall provide the Board notice of such denial in written form; and

“(B) not later than January 1 and July 1 of each year beginning in 2020—

“(i) the Board shall submit to the congressional defense committees a report identifying each request for access to information under subsection (a) submitted to the Secretary in written form during the preceding six-month period and denied by the Secretary; and

“(ii) the Secretary shall submit to the congressional defense committees a report identifying—

“(I) each such request denied by the Secretary during that period; and

“(II) the reason for the denial.

“(3) In this subsection, the term ‘congressional defense committees’ has the meaning given that term in section 101(a) of title 10, United States Code.

“(c) APPLICATION OF NONDISCLOSURE PROTECTIONS BY BOARD.—The Board may not publicly disclose information provided under this section if such information is otherwise protected from disclosure by law, including deliberative process information.”.

Notice.

Effective date.  
Reports.

Time period.

Definition.

**SEC. 3203. MEMBERSHIP OF DEFENSE NUCLEAR FACILITIES SAFETY BOARD.**

(a) LIST OF CANDIDATES FOR NOMINATION.—Subsection (b) of section 311 of the Atomic Energy Act of 1954 (42 U.S.C. 2286) is amended by adding at the end the following new paragraph:

“(4) The President shall enter into an arrangement with the National Academy of Sciences under which the National Academy shall maintain a list of individuals who meet the qualifications described in paragraph (1) to assist the President in selecting individuals to nominate for positions as members of the Board.”.

President.  
Contracts.

(b) TERMS OF MEMBERS.—

(1) IN GENERAL.—Subsection (d) of such section is amended—

(A) in paragraph (1), by striking the second sentence and inserting the following new sentences: “A member may be reappointed for a second term only if the member was confirmed by the Senate more than two years into the member’s first term. A member may not be reappointed for a third term.”; and

(B) in paragraph (3)—

(i) by striking “Any member” and inserting “(A) Any member”;

(ii) by striking the second sentence; and

(iii) by adding at the end the following new subparagraph:

“(B) A member may not serve after the expiration of the member’s term, unless the departure of the member would result in the loss of a quorum for the Board. If more than one member is serving after the expiration of the member’s term and a new member is appointed to the Board so that one of the members serving after the expiration of the member’s term is no longer necessary to maintain a quorum, the member whose term expired first may no longer serve on the Board.”.

42 USC 2286  
note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date that is one year after the date of the enactment of this Act.

(c) FILLING VACANCIES.—Such subsection is further amended by adding at the end the following new paragraph:

Deadline.  
President.

“(4)(A) Not later than 180 days after the expiration of the term of a member of the Board, the President shall—

“(i) submit to the Senate the nomination of an individual to fill the vacancy; or

Reports.

“(ii) submit to the Committee on Armed Services of the Senate a report that includes—

“(I) a description of the reasons the President did not submit such a nomination; and

Plan.  
Time period.  
Reports.

“(II) a plan for submitting such a nomination during the 90-day period following the submission of the report.

“(B) If the President does not submit to the Senate the nomination of an individual to fill a vacancy during the 90-day period described in subclause (II) of subparagraph (A)(ii), the President shall submit to the Committee on Armed Services a report described in that subparagraph not less frequently than every 90 days until the President submits such a nomination.”.

## TITLE XXXIV—NAVAL PETROLEUM RESERVES

Sec. 3401. Authorization of appropriations.

### SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNT.—There are hereby authorized to be appropriated to the Secretary of Energy \$14,000,000 for fiscal year 2020 for the purpose of carrying out activities under chapter 869 of title 10, United States Code, relating to the naval petroleum reserves.

(b) PERIOD OF AVAILABILITY.—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

## TITLE XXXV—MARITIME MATTERS

### Subtitle A—Maritime Administration

- Sec. 3501. Authorization of the Maritime Administration.
- Sec. 3502. Reauthorization of Maritime Security Program.
- Sec. 3503. Maritime technical assistance program.
- Sec. 3504. Appointment of candidates attending sponsored preparatory school.
- Sec. 3505. General support program.
- Sec. 3506. Improvements to the maritime guaranteed loan program.
- Sec. 3507. Requirement for small shipyard grantees.
- Sec. 3508. Salvage recoveries of cargoes.
- Sec. 3509. Salvage recoveries for subrogated ownership of vessels and cargoes.
- Sec. 3510. Maritime Occupational Safety and Health Advisory Committee.
- Sec. 3511. Military to mariner.
- Sec. 3512. Department of Transportation Inspector General Report.
- Sec. 3513. Independent study on the United States Merchant Marine Academy.
- Sec. 3514. Port operations, research, and technology.
- Sec. 3515. Assessment and report on strategic seaports.
- Sec. 3516. Technical corrections.
- Sec. 3517. United States Merchant Marine Academy sexual assault prevention and response program.
- Sec. 3518. Report on vessels for emerging offshore energy infrastructure.
- Sec. 3519. Report on United States flagged fuel tanker vessel capacity.

### Subtitle B—Cable Security Fleet

- Sec. 3521. Establishment of Cable Security Fleet.

### Subtitle C—Maritime SAFE Act

- Sec. 3531. Short titles.
- Sec. 3532. Definitions.
- Sec. 3533. Purposes.
- Sec. 3534. Statement of policy.

### PART I—PROGRAMS TO COMBAT IUU FISHING AND INCREASE MARITIME SECURITY

- Sec. 3541. Coordination with international organizations.
- Sec. 3542. Engagement of diplomatic missions of the United States.
- Sec. 3543. Assistance by Federal agencies to improve law enforcement within priority regions and priority flag states.
- Sec. 3544. Expansion of existing mechanisms to combat IUU fishing.
- Sec. 3545. Improvement of transparency and traceability programs.
- Sec. 3546. Technology programs.
- Sec. 3547. Savings clause.

### PART II—ESTABLISHMENT OF INTERAGENCY WORKING GROUP ON IUU FISHING

- Sec. 3551. Interagency Working Group on IUU Fishing.
- Sec. 3552. Strategic plan.
- Sec. 3553. Reports.
- Sec. 3554. Gulf of Mexico IUU Fishing Subworking Group.

### PART III—COMBATING HUMAN TRAFFICKING IN CONNECTION WITH THE CATCHING AND PROCESSING OF SEAFOOD PRODUCTS

- Sec. 3561. Finding.

- Sec. 3562. Adding the Secretary of Commerce to the Interagency Task Force to Monitor and Combat Trafficking.  
Sec. 3563. Human trafficking in the seafood supply chain report.

## PART IV—AUTHORIZATION OF APPROPRIATIONS

- Sec. 3571. Authorization of appropriations.  
Sec. 3572. Accounting of funds.

**Subtitle A—Maritime Administration****SEC. 3501. AUTHORIZATION OF THE MARITIME ADMINISTRATION.**

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Transportation for fiscal year 2020, to be available without fiscal year limitation if so provided in appropriations Acts, for programs associated with maintaining the United States Merchant Marine, the following amounts:

(1) For expenses necessary for operations of the United States Merchant Marine Academy, \$95,944,000, of which—

(A) \$77,944,000 shall remain available until September 30, 2021 for Academy operations; and

(B) \$18,000,000 shall remain available until expended for capital asset management at the Academy.

(2) For expenses necessary to support the State maritime academies, \$50,280,000, of which—

(A) \$2,400,000 shall remain available until September 30, 2021, for the Student Incentive Program;

(B) \$6,000,000 shall remain available until expended for direct payments to such academies;

(C) \$30,080,000 shall remain available until expended for maintenance and repair of State maritime academy training vessels;

(D) \$3,800,000 shall remain available until expended for training ship fuel assistance; and

(E) \$8,000,000 shall remain available until expended for offsetting the costs of training ship sharing.

(3) For expenses necessary to support the National Security Multi-Mission Vessel Program, \$600,000,000, which shall remain available until expended.

(4) For expenses necessary to support Maritime Administration operations and programs, \$60,442,000, of which \$5,000,000 shall remain available until expended for activities authorized under section 50307 of title 46, United States Code.

(5) For expenses necessary to dispose of vessels in the National Defense Reserve Fleet, \$5,000,000, which shall remain available until expended.

(6) For expenses necessary to maintain and preserve a United States flag Merchant Marine to serve the national security needs of the United States under chapter 531 of title 46, United States Code, \$300,000,000, which shall remain available until expended.

(7) For expenses necessary for the loan guarantee program authorized under chapter 537 of title 46, United States Code, \$33,000,000, of which—

(A) \$30,000,000 may be used for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)) of loan guarantees under the program, which shall remain available until expended; and



(B) \$3,000,000 may be used for administrative expenses relating to loan guarantee commitments under the program.

(8) For expenses necessary to provide assistance to small shipyards and for maritime training programs under section 54101 of title 46, United States Code, \$40,000,000, which shall remain available until expended.

(9) For expenses necessary to implement the Port and Intermodal Improvement Program, \$500,000,000, except that no funds shall be used for a grant award to purchase fully automated cargo handling equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control, if the Secretary determines such equipment would result in a net loss of jobs within a port or port terminal.

**SEC. 3502. REAUTHORIZATION OF MARITIME SECURITY PROGRAM.**

(a) AWARD OF OPERATING AGREEMENTS.—Section 53103 of title 46, United States Code, is amended by striking “2025” each place it appears and inserting “2035”.

(b) EFFECTIVENESS OF OPERATING AGREEMENTS.—Section 53104(a) of title 46, United States Code, is amended by striking “2025” and inserting “2035”.

(c) PAYMENTS.—Section 53106(a)(1) of title 46, United States Code, is amended—

(1) in subparagraph (B), by striking “and”;

(2) in subparagraph (C), by striking “\$3,700,000 for each of fiscal years 2022, 2023, 2024, and 2025.” and inserting “\$5,300,000 for each of fiscal years 2022, 2023, 2024, and 2025.”; and

(3) by adding at the end the following new subparagraphs:

“(D) \$5,800,000 for each of fiscal years 2026, 2027, and 2028;

“(E) \$6,300,000 for each of fiscal years 2029, 2030, and 2031; and

“(F) \$6,800,000 for each of fiscal years 2032, 2033, 2034, and 2035.”.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 53111 of title 46, United States Code, is amended—

(1) in paragraph (2), by striking “and”;

(2) in paragraph (3), by striking “\$222,000,000 for each fiscal year thereafter through fiscal year 2025.” and inserting “\$318,000,000 for each of fiscal years 2022, 2023, 2024, and 2025.”; and

(3) by adding at the end the following new paragraphs:

“(4) \$348,000,000 for each of fiscal years 2026, 2027, and 2028;

“(5) \$378,000,000 for each of fiscal years 2029, 2030, and 2031; and

“(6) \$408,000,000 for each of fiscal years 2032, 2033, 2034, and 2035.”.

**SEC. 3503. MARITIME TECHNICAL ASSISTANCE PROGRAM.**

Section 50307 of title 46, United States Code, is amended—

(1) in subsection (a), by striking “The Secretary of Transportation may engage in the environmental study” and inserting “The Secretary of Transportation, acting through the Maritime Administrator, shall engage in the study”;

(2) in subsection (b)—

(A) by striking “may—” and all that follows through “improvements by—” and inserting “shall identify, study, evaluate, test, demonstrate, or improve emerging marine technologies and practices to improve—”;

(B) by inserting before subparagraph (A) the following: “(1) environmental performance to meet United States Federal and international standards and guidelines, including—”;

(C) in subparagraph (C), by striking “species; and” and all that follows through the end of the subsection and inserting “species; or

“(D) reducing propeller cavitation; and  
“(2) the efficiency and safety of domestic maritime industries.”

(3) in subsection (c)(2), by striking “benefits” and inserting “or other benefits to domestic maritime industries”; and

(4) by adding at the end the following:

“(e) LIMITATIONS ON THE USE OF FUNDS.—Not more than three percent of the funds appropriated to carry out this section may be used for administrative purposes.”

**SEC. 3504. APPOINTMENT OF CANDIDATES ATTENDING SPONSORED PREPARATORY SCHOOL.**

Section 51303 of title 46, United States Code, is amended—

(1) by striking “The Secretary” and inserting the following:

“(a) IN GENERAL.—The Secretary”; and

(2) by adding at the end the following:

“(b) APPOINTMENT OF CANDIDATES SELECTED FOR PREPARATORY SCHOOL SPONSORSHIP.—The Secretary of Transportation may appoint each year as cadets at the United States Merchant Marine Academy not more than 40 qualified individuals sponsored by the Academy to attend preparatory school during the academic year prior to entrance in the Academy, and who have successfully met the terms and conditions of sponsorship set by the Academy.”

**SEC. 3505. GENERAL SUPPORT PROGRAM.**

Section 51501 of title 46, United States Code, is amended by adding at the end the following:

“(c) AMERICAN MARITIME CENTERS OF EXCELLENCE.—The Secretary shall designate each State maritime academy as an American Maritime Center of Excellence.”

**SEC. 3506. IMPROVEMENTS TO THE MARITIME GUARANTEED LOAN PROGRAM.**

(a) DEFINITIONS.—Section 53701 of title 46, United States Code, is amended—

(1) by striking paragraph (5);

(2) by redesignating paragraphs (6) through (15) as paragraphs (5) through (14), respectively; and

(3) by adding at the end the following:

“(15) VESSEL OF NATIONAL INTEREST.—The term ‘Vessel of National Interest’ means a vessel deemed to be of national interest that meets characteristics determined by the Administrator, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of

Designation.

the Navy, or the heads of other Federal agencies, as described in section 53703(d).”.

(b) PREFERRED LENDER.—Subsection (a) of section 53702 of title 46, United States Code, is amended to read as follows:

“(a) IN GENERAL.—

“(1) GUARANTEE OF PAYMENTS.—The Secretary or Administrator, on terms the Secretary or Administrator may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest.

“(2) PREFERRED ELIGIBLE LENDER.—The Federal Financing Bank shall be the preferred eligible lender of the principal and interest of the guaranteed obligations issued under this chapter.”.

(c) APPLICATION AND ADMINISTRATION.—Section 53703 of title 46, United States Code, is amended—

(1) in the section heading, by striking “**procedures**” and inserting “**and administration**”; and

(2) by adding at the end the following:

“(c) INDEPENDENT ANALYSIS.—

“(1) IN GENERAL.—To assess and mitigate the risks due to factors associated with markets, technology, financial, or legal structures related to an application or guarantee under this chapter, the Secretary or Administrator may utilize third party experts, including legal counsel, to—

Assessment.

“(A) process and review applications under this chapter, including conducting independent analysis and review of aspects of an application;

Review.

“(B) represent the Secretary or Administrator in structuring and documenting the obligation guarantee;

“(C) analyze and review aspects of, structure, and document the obligation guarantee during the term of the guarantee;

Review.

“(D) recommend financial covenants or financial ratios to be met by the applicant during the time a guarantee under this chapter is outstanding that are—

Recommendations.

“(i) based on the financial covenants or financial ratios, if any, that are then applicable to the obligor under private sector credit agreements; and

“(ii) in lieu of other financial covenants applicable to the obligor under this chapter with respect to requirements regarding long-term debt-to-equity, minimum working capital, or minimum amount of equity; and

“(E) represent the Secretary or Administrator to protect the security interests of the Government relating to an obligation guarantee.

“(2) PRIVATE SECTOR EXPERT.—Independent analysis, review, and representation conducted under this subsection shall be performed by a private sector expert in the applicable field who is selected by the Secretary or Administrator.

“(d) VESSELS OF NATIONAL INTEREST.—

“(1) NOTICE OF FUNDING.—The Secretary or Administrator may post a notice in the Federal Register regarding the availability of funding for obligation guarantees under this chapter

Federal Register, publication. Timeline.

for the construction, reconstruction, or reconditioning of a Vessel of National Interest and include a timeline for the submission of applications for such vessels.

“(2) VESSEL CHARACTERISTICS.—

Consultation.  
Publication.  
List.

“(A) IN GENERAL.—The Secretary or Administrator, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as service in the Department of the Navy, or the heads of other Federal agencies, shall develop and publish a list of vessel types that would be considered Vessels of National Interest.

Determination.

“(B) REVIEW.—Such list shall be reviewed and revised every four years or as necessary, as determined by the Administrator.”

(d) FUNDING LIMITS.—Section 53704 of title 46, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “that amount” and all that follows through “\$850,000,000” and inserting “that amount, \$850,000,000”; and

(B) by striking “facilities” and all that follows through the end of the subsection and inserting “facilities.”; and

(2) in subsection (c)(4)—

(A) by striking subparagraph (A); and

(B) by redesignating subparagraphs (B) through (K), as subparagraphs (A) through (J), respectively.

(e) ELIGIBLE PURPOSES OF OBLIGATIONS.—Section 53706 of title 46, United States Code, is amended—

(1) in subsection (a)(1)(A)—

(A) in the matter preceding clause (i), by striking “(including an eligible export vessel)”;

(B) in clause (iv) by inserting “or” after the semicolon;

(C) in clause (v), by striking “; or” and inserting a period; and

(D) by striking clause (vi); and

(2) in subsection (c)(1)—

(A) in subparagraph (A), by striking “and” after the semicolon;

(B) in subparagraph (B)(ii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(C) after applying subparagraphs (A) and (B), Vessels of National Interest.”

(f) AMOUNT OF OBLIGATIONS.—Section 53709(b) of title 46, United States Code, is amended—

(1) by striking paragraphs (3) and (6); and

(2) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(g) CONTENTS OF OBLIGATIONS.—Section 53710 of title 46, United States Code, is amended—

(1) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by striking “or, in the case of” and all that follows through “party”; and

(ii) by striking “and” after the semicolon; and

(B) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(C) documented under the laws of the United States for the term of the guarantee of the obligation or until the obligation is paid in full, whichever is sooner.”; and  
(2) in subsection (c)—

(A) in the subsection heading, by inserting “AND PROVIDE FOR THE FINANCIAL STABILITY OF THE OBLIGOR” after “INTERESTS”;

(B) by striking “provisions for the protection of” and inserting “provisions, which shall include—

“(1) provisions for the protection of”;

(C) by striking “, and other matters that the Secretary or Administrator may prescribe.” and inserting “; and”;

and

(D) by adding at the end the following:

“(2) any other provisions that the Secretary or Administrator may prescribe.”.

(h) ADMINISTRATIVE FEES.—Section 53713 of title 46, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “reasonable for—” and inserting “reasonable for processing the application and monitoring the loan guarantee, including for—”;

(B) in paragraph (4), by striking “; and” and inserting “or a deposit fund under section 53716 of this title;”;

(C) in paragraph (5), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(6) monitoring and providing services related to the obligor’s compliance with any terms related to the obligations, the guarantee, or maintenance of the Secretary or Administrator’s security interests under this chapter.”; and

(2) in subsection (c)—

(A) in paragraph (1), by striking “under section 53708(d) of this title” and inserting “under section 53703(c) of this title”;

(B) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and adjusting the margins accordingly;

(C) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”; and

(D) by adding at the end the following:

“(2) FEE LIMITATION INAPPLICABLE.—Fees collected under this subsection are not subject to the limitation of subsection (b).”.

(i) BEST PRACTICES; ELIGIBLE EXPORT VESSELS.—Chapter 537 of title 46, United States Code, is further amended—

(1) in subchapter I, by adding at the end the following new section:

**“§ 53719. Best practices**

“The Secretary or Administrator shall ensure that all standard documents and agreements that relate to loan guarantees made pursuant to this chapter are reviewed and updated every four years to ensure that such documents and agreements meet the

Contracts.  
Review.  
Updates.  
Time period.  
46 USC 53719.

current commercial best practices to the extent permitted by law.”; and

(2) in subchapter III, by striking section 53732.

(j) EXPEDITED CONSIDERATION OF LOW-RISK APPLICATIONS.—

(1) IN GENERAL.—In accordance with the requirements of this subsection, the Administrator shall establish an administrative process and issue guidance for the expedited consideration of low-risk applications submitted under chapter 537 of title 46, United States Code.

Deadline.  
Federal Register,  
publication.  
Notice.  
46 USC 53703  
note.

(2) STAKEHOLDER COMMENT.—Not later than 180 days after the date of enactment of this section, the Administrator of the Maritime Administration shall publish in the Federal Register a notice of a 45-day public comment period to request stakeholder input and recommendations to establish the administrative process required under this subsection, including proposals to assist applicants—

(A) in the development and submission of initial applications;

(B) in meeting requests for supplemental information made by the Administrator; and

Compliance.

(C) to comply with other requirements made by the Administrator to ensure the expedited consideration of applications.

(3) INDUSTRY BEST PRACTICES.—The administrative process established under this subsection shall utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries.

Deadline.  
Federal Register,  
publication.

(4) FINAL GUIDANCE.—Not later than 90 days after the conclusion of the public comment period required under paragraph (2), the Administrator shall publish in the Federal Register final guidance to assist applicants in the preparation and filing of applications under this subsection.

(k) CONGRESSIONAL NOTIFICATION.—

Deadline.

(1) NOTIFICATION.—Not less than 60 days before reorganizing or consolidating the activities or personnel covered under chapter 537 of title 46, United States Code, the Secretary of Transportation shall notify, in writing, the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the proposed reorganization or consolidation.

Evaluation.

(2) CONTENTS.—Each notification under paragraph (1) shall include an evaluation of, and justification for, the reorganization or consolidation.

46 USC 53701  
prec.

(l) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 537 of title 46, United States Code, is amended—

(1) by inserting after the item relating to section 53718 the following new item:

“53719. Best practices.”; and

(2) by striking the item relating to section 53732.

**SEC. 3507. REQUIREMENT FOR SMALL SHIPYARD GRANTEES.**

(a) IN GENERAL.—Section 54101(d) of title 46, United States Code, is amended—

(1) by striking “Grants awarded” and inserting the following:

“(1) IN GENERAL.—Grants awarded”; and  
 (2) by adding at the end the following:

“(2) BUY AMERICA.—

“(A) IN GENERAL.—Subject to subparagraph (B), no funds may be obligated by the Administrator of the Maritime Administration under this section, unless each product and material purchased with those funds (including products and materials purchased by a grantee), and including any commercially available off-the-shelf item, is—

“(i) an unmanufactured article, material, or supply that has been mined or produced in the United States;

or

“(ii) a manufactured article, material, or supply that has been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

“(B) EXCEPTIONS.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A), the requirements of that subparagraph shall not apply with respect to a particular product or material if the Administrator determines—

“(I) that the application of those requirements would be inconsistent with the public interest;

“(II) that such product or material is not available in the United States in sufficient and reasonably available quantities, of a satisfactory quality, or on a timely basis; or

“(III) that inclusion of a domestic product or material will increase the cost of that product or material by more than 25 percent, with respect to a certain contract between a grantee and that grantee’s supplier.

“(ii) FEDERAL REGISTER.—A determination made by the Administrator under this subparagraph shall be published in the Federal Register.

“(C) DEFINITIONS.—In this paragraph:

“(i) The term ‘commercially available off-the-shelf item’ means—

“(I) any item of supply (including construction material) that is—

“(aa) a commercial item, as defined by section 2.101 of title 48, Code of Federal Regulations (as in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020); and

“(bb) sold in substantial quantities in the commercial marketplace; and

“(II) does not include bulk cargo, as defined in section 40102(4) of this title, such as agricultural products and petroleum products.

“(ii) The term ‘product or material’ means an article, material, or supply brought to the site by the recipient for incorporation into the building, work, or project. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such

Determinations.

as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“(iii) The term ‘United States’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.”

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 54101(i) of title 46, United States Code, is amended—

(1) by striking “2018, 2019, and 2020” and inserting “2020 and 2021”; and

(2) by striking “\$35,000,000” and inserting “\$40,000,000”.

(c) NOTIFICATION OF COMMITTEES OF CERTAIN PROPOSED OBLIGATIONS.—The first section of Public Law 85-804 (50 U.S.C. 1431) is amended, in the third sentence, by inserting “and in addition, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate with respect to contracts, or modifications or amendments to contracts, or advance payments proposed to be made under this section by the Secretary of the Department in which the Coast Guard is operating with respect to the acquisition of Coast Guard cutters or aircraft,” after “House of Representatives”.

**SEC. 3508. SALVAGE RECOVERIES OF CARGOES.**

Section 57107 of title 46, United States Code, is amended by adding at the end the following:

“(c) SALVAGING CARGOES.—

“(1) REIMBURSABLE AGREEMENTS.—The Secretary of Transportation, acting through the Administrator of the Maritime Administration, may enter into reimbursable agreements with other Federal entities to provide legal services to such entities relating to the salvaging of cargoes for which such entities have custody, or control, or for which for such entities have trustee responsibilities from vessels in the custody or control of the Maritime Administration or its predecessor agencies. The Secretary may receive and retain reimbursement from such entities for all costs incurred related to the provision of such services.

“(2) AMOUNTS RECEIVED.—Amounts received as reimbursements under this subsection shall be credited to the fund or account that was used to cover the costs incurred by the Secretary or, if the period of availability of obligations for that appropriation has expired, to the appropriation of funds that is currently available to the Secretary for substantially the same purpose. Amounts so credited shall be merged with amounts in such fund or account and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

“(3) ADVANCE PAYMENTS.—Payments made in advance shall be for any part of the estimated cost as determined by the Secretary of Transportation. Adjustments to the amounts paid in advance shall be made as agreed to by the Secretary of

Cost estimate.  
Determination.



Transportation and the head of the ordering agency or unit based on the actual cost of goods or services provided.”.

**SEC. 3509. SALVAGE RECOVERIES FOR SUBROGATED OWNERSHIP OF VESSELS AND CARGOES.**

(a) **IN GENERAL.**—Chapter 571 of title 46, United States Code, as amended by this title, is further amended by adding at the end the following new section:

**“SEC. 57111. SALVAGE RECOVERIES FOR SUBROGATED OWNERSHIP OF VESSELS AND CARGOES.** 46 USC 57111.

“(a) **SALVAGE AGREEMENTS.**—The Secretary of Transportation is authorized to enter into marine salvage agreements for the recoveries, sale, and disposal of sunken or damaged vessels, cargoes, or properties owned or insured by or on behalf of the Maritime Administration, the United States Shipping Board, the U.S. Shipping Bureau, the United States Maritime Commission, or the War Shipping Administration.

“(b) **MILITARY CRAFT.**—The Secretary of Transportation shall consult with the Secretary of the military department concerned prior to engaging in or authorizing any activity under subsection (a) that will disturb sunken military craft, as such term is defined in section 1408(3) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note).

Consultation.

“(c) **RECOVERIES.**—Notwithstanding any other provision of law, the net proceeds from salvage agreements entered into as authorized in subsection (a) shall remain available until expended and be distributed as follows:

“(1) Fifty percent shall be available to the Administrator of the Maritime Administration for the payment or reimbursement of expenses incurred by or on behalf of State maritime academies or the United States Merchant Marine Academy for facility and training ship maintenance, repair, and modernization, and for the purchase of simulators and fuel.

“(2) The remainder shall be distributed for maritime heritage preservation to the Department of the Interior for grants as authorized by section 308703 of title 54.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter, as amended by this title, is further amended by adding at the end the following new item:

46 USC 57100  
prec.

“57111. Salvage recoveries for subrogated ownership of vessels and cargoes.”.

**SEC. 3510. MARITIME OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE.**

Section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) is amended by adding at the end the following:

“(d) There is established a Maritime Occupational Safety and Health Advisory Committee, which shall be a continuing body and shall provide advice to the Secretary in formulating maritime industry standards and regarding matters pertaining to the administration of this Act related to the maritime industry. The composition of such advisory committee shall be consistent with the advisory committees established under subsection (b). A member of the advisory committee who is otherwise qualified may continue

Establishment.

to serve until a successor is appointed. The Secretary may promulgate or amend regulations as necessary to implement this subsection.”.

46 USC 3702  
note.  
Deadline.  
Coordination.  
Consultation.  
List.  
Determination.

**SEC. 3511. MILITARY TO MARINER.**

(a) **CREDENTIALING SUPPORT.**—Not later than one year after the date of enactment of this title, the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, the Secretary of Commerce, and the Secretary of Health and Human Services, with respect to the applicable services in their respective departments, and in coordination with one another and with the United States Committee on the Marine Transportation System, and in consultation with the Merchant Marine Personnel Advisory Committee, shall, consistent with applicable law, identify all training and experience within the applicable service that may qualify for merchant mariner credentialing and submit a list of all identified training and experience to the United States Coast Guard National Maritime Center for a determination of whether such training and experience counts for credentialing purposes.

Determination.  
Deadline.

(b) **REVIEW OF APPLICABLE SERVICE.**—The United States Coast Guard Commandant shall make a determination of whether training and experience counts for credentialing purposes, as described in subsection (a), not later than 6 months after the date on which the United States Coast Guard National Maritime Center receives a submission under subsection (a) identifying a training or experience and requesting such a determination.

(c) **FEES AND SERVICES.**—The Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, and the Secretary of Commerce, with respect to the applicable services in their respective departments, shall—

Waiver authority.

(1) take all necessary and appropriate actions to provide for the waiver of fees through the National Maritime Center license evaluation, issuance, and examination for members of the uniformed services on active duty, if a waiver is authorized and appropriate, and, if a waiver is not granted, take all necessary and appropriate actions to provide for the payment of fees for members of the uniformed services on active duty by the applicable service to the fullest extent permitted by law;

(2) direct the applicable services to take all necessary and appropriate actions to provide for Transportation Worker Identification Credential cards for members of the uniformed services on active duty pursuing or possessing a mariner credential, such as implementation of an equal exchange process for members of the uniformed services on active duty at no or minimal cost;

Certification.  
Deadline.

(3) ensure that members of the applicable services who are to be discharged or released from active duty and who request certification or verification of sea service be provided such certification or verification no later than one month after discharge or release;

(4) ensure the applicable services have developed, or continue to operate, as appropriate, the online resource known as Credentialing Opportunities On-Line to support separating

members of the uniformed services who are seeking information and assistance on merchant mariner credentialing; and

(5) not later than 1 year after the date of enactment of this section, take all necessary and appropriate actions to review and implement service-related medical certifications to merchant mariner credential requirements. Deadline.  
Review.

**(d) ADVANCING MILITARY TO MARINER WITHIN THE EMPLOYER AGENCIES.—**

(1) **IN GENERAL.**—The Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, and the Secretary of Commerce shall have direct hiring authority to employ separated members of the uniformed services with valid merchant mariner licenses or sea service experience in support of United States national maritime needs, including the Army Corps of Engineers, U.S. Customs and Border Protection, and the National Oceanic and Atmospheric Administration.

(2) **APPOINTMENTS OF RETIRED MEMBERS OF THE ARMED FORCES.**—Except in the case of positions in the Senior Executive Service, the requirements of section 3326(b) of title 5, United States Code, shall not apply with respect to the hiring of a separated member of the uniformed services under paragraph (1).

(e) **SEPARATED MEMBER OF THE UNIFORMED SERVICES.**—In this section, the term “separated member of the uniformed services” means an individual who— Definition.

- (1) is retiring or is retired as a member of the uniformed services;
- (2) is voluntarily separating or voluntarily separated from the uniformed services at the end of enlistment or service obligation; or
- (3) is administratively separating or has administratively separated from the uniformed services with an honorable or general discharge characterization.

**SEC. 3512. DEPARTMENT OF TRANSPORTATION INSPECTOR GENERAL REPORT.**

The Inspector General of the Department of Transportation shall—

- (1) not later than 180 days after the date of enactment of this title, initiate an audit of the Maritime Administration’s actions to address only those recommendations from Chapter 3 and recommendations 5-1, 5-2, 5-3, 5-4, 5-5, and 5-6 identified by a National Academy of Public Administration panel in the November 2017 report entitled “Maritime Administration: Defining its Mission, Aligning its Programs, and Meeting its Objectives”; and Deadline.  
Audit.
- (2) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the results of that audit once the audit is completed.

**SEC. 3513. INDEPENDENT STUDY ON THE UNITED STATES MERCHANT MARINE ACADEMY.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this title, the Secretary of Transportation shall seek Deadline.  
Contracts.

to enter into an agreement with the National Academy of Public Administration (referred to in this section as the “Academy”) to carry out the activities described in this section.

(b) **STUDY ELEMENTS.**—In accordance with the agreement described in subsection (a), the Academy shall conduct a study of the United States Merchant Marine Academy that consists of the following:

Assessment.

(1) A comprehensive assessment of the United States Merchant Marine Academy’s systems, training, facilities, infrastructure, information technology, and stakeholder engagement.

(2) Identification of needs and opportunities for modernization to help the United States Merchant Marine Academy keep pace with more modern campuses.

Plan.  
Recommendations.

(3) Development of an action plan for the United States Merchant Marine Academy with specific recommendations for—

(A) improvements or updates relating to the opportunities described in paragraph (2); and

(B) systemic changes needed to help the United States Merchant Marine Academy achieve its mission of inspiring and educating the next generation of the mariner workforce on a long-term basis.

(c) **DEADLINE AND REPORT.**—Not later than 1 year after the date of the agreement described in subsection (a), the Academy shall prepare and submit to the Administrator of the Maritime Administration a report containing the action plan described in subsection (b)(3), including specific findings and recommendations.

Ports  
Improvement  
Act.  
46 USC 101 note.

**SEC. 3514. PORT OPERATIONS, RESEARCH, AND TECHNOLOGY.**

(a) **SHORT TITLE.**—This section may be cited as the “Ports Improvement Act”.

(b) **PORT AND INTERMODAL IMPROVEMENT PROGRAM.**—Section 50302 of title 46, United States Code, is amended by striking subsection (c) and inserting the following:

Grants.

“(c) **PORT AND INTERMODAL IMPROVEMENT PROGRAM.**—

“(1) **GENERAL AUTHORITY.**—Subject to the availability of appropriations, the Secretary of Transportation shall make grants, on a competitive basis, to eligible applicants to assist in funding eligible projects for the purpose of improving the safety, efficiency, or reliability of the movement of goods through ports and intermodal connections to ports.

“(2) **ELIGIBLE APPLICANT.**—The Secretary may make a grant under this subsection to the following:

“(A) A State.

“(B) A political subdivision of a State, or a local government.

“(C) A public agency or publicly chartered authority established by 1 or more States.

“(D) A special purpose district with a transportation function.

“(E) An Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), without regard to capitalization), or a consortium of Indian Tribes.

“(F) A multistate or multijurisdictional group of entities described in this paragraph.

“(G) A lead entity described in subparagraph (A), (B), (C), (D), (E), or (F) jointly with a private entity or group of private entities.

“(3) ELIGIBLE PROJECTS.—The Secretary may make a grant under this subsection—

“(A) for a project, or package of projects, that—

“(i) is either—

“(I) within the boundary of a port; or

“(II) outside the boundary of a port, but is directly related to port operations or to an intermodal connection to a port; and

“(ii) will be used to improve the safety, efficiency, or reliability of—

“(I) the loading and unloading of goods at the port, such as for marine terminal equipment;

“(II) the movement of goods into, out of, around, or within a port, such as for highway or rail infrastructure, intermodal facilities, freight intelligent transportation systems, and digital infrastructure systems; or

“(III) environmental mitigation measures and operational improvements directly related to enhancing the efficiency of ports and intermodal connections to ports; or

“(B) notwithstanding paragraph (6)(A)(v), to provide financial assistance to 1 or more projects under subparagraph (A) for development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, and preliminary engineering and design work.

“(4) PROHIBITED USES.—A grant award under this subsection may not be used—

“(A) to finance or refinance the construction, reconstruction, reconditioning, or purchase of a vessel that is eligible for such assistance under chapter 537, unless the Secretary determines such vessel—

Determination.

“(i) is necessary for a project described in paragraph (3)(A)(ii)(III) of this subsection; and

“(ii) is not receiving assistance under chapter 537;

or

“(B) for any project within a small shipyard (as defined in section 54101).

“(5) APPLICATIONS AND PROCESS.—

“(A) APPLICATIONS.—To be eligible for a grant under this subsection, an eligible applicant shall submit to the Secretary an application in such form, at such time, and containing such information as the Secretary considers appropriate.

Deadline.

“(B) SOLICITATION PROCESS.—Not later than 60 days after the date that amounts are made available for grants under this subsection for a fiscal year, the Secretary shall solicit grant applications for eligible projects in accordance with this subsection.

“(6) PROJECT SELECTION CRITERIA.—

“(A) IN GENERAL.—The Secretary may select a project described in paragraph (3) for funding under this subsection if the Secretary determines that—

Determination.

“(i) the project improves the safety, efficiency, or reliability of the movement of goods through a port or intermodal connection to a port;

“(ii) the project is cost effective;

“(iii) the eligible applicant has authority to carry out the project;

“(iv) the eligible applicant has sufficient funding available to meet the matching requirements under paragraph (8);

“(v) the project will be completed without unreasonable delay; and

“(vi) the project cannot be easily and efficiently completed without Federal funding or financial assistance available to the project sponsor.

“(B) ADDITIONAL CONSIDERATIONS.—In selecting projects described in paragraph (3) for funding under this subsection, the Secretary shall give substantial weight to—

“(i) the utilization of non-Federal contributions;

and

“(ii) the net benefits of the funds awarded under this subsection, considering the cost-benefit analysis of the project, as applicable.

Waiver authority.

“(C) SMALL PROJECTS.—The Secretary may waive the cost-benefit analysis under subparagraph (A)(ii), and establish a simplified, alternative basis for determining whether a project is cost effective, for a small project described in paragraph (7)(B).

“(7) ALLOCATION OF FUNDS.—

“(A) GEOGRAPHIC DISTRIBUTION.—Not more than 25 percent of the amounts made available for grants under this subsection for a fiscal year may be used to make grants for projects in any 1 State.

“(B) SMALL PROJECTS.—The Secretary shall reserve 25 percent of the amounts made available for grants under this subsection each fiscal year to make grants for eligible projects described in paragraph (3)(A) that request the lesser of—

“(i) 10 percent of the amounts made available for grants under this subsection for a fiscal year; or

“(ii) \$10,000,000.

“(C) DEVELOPMENT PHASE ACTIVITIES.—Not more than 10 percent of the amounts made available for grants under this subsection for a fiscal year may be used to make grants for development phase activities under paragraph (3)(B).

“(8) FEDERAL SHARE OF TOTAL PROJECT COSTS.—

“(A) TOTAL PROJECT COSTS.—To be eligible for a grant under this subsection, an eligible applicant shall submit to the Secretary an estimate of the total costs of a project under this subsection based on the best available information, including any available engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment or facilities.

“(B) FEDERAL SHARE.—

“(i) IN GENERAL.—Except as provided in clause (ii), the Federal share of the total costs of a project under this subsection shall not exceed 80 percent.

“(ii) RURAL AREAS.—The Secretary may increase the Federal share of costs above 80 percent for a project located in a rural area.

“(9) PROCEDURAL SAFEGUARDS.—The Secretary shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

“(A) grant funds are used for the purposes for which those funds were made available;

“(B) each grantee properly accounts for all expenditures of grant funds; and

“(C) grant funds not used for such purposes and amounts not obligated or expended are returned.

“(10) GRANT CONDITIONS.—

“(A) IN GENERAL.—The Secretary shall require as a condition of making a grant under this subsection that a grantee—

“(i) maintain such records as the Secretary considers necessary;

“(ii) make the records described in clause (i) available for review and audit by the Secretary; and

“(iii) periodically report to the Secretary such information as the Secretary considers necessary to assess progress.

“(B) ADDITIONAL REQUIREMENT.—The Secretary shall apply the same requirements of section 117(k) of title 23, United States Code, to a port project assisted in whole or in part under this section as the Secretary does a port-related freight project under section 117 of title 23, United States Code.

“(C) CONSTRUCTION, REPAIR, OR ALTERATION OF VESSELS.—With regard to the construction, repair, or alteration of vessels, the same requirements of section 117(k) of title 23, United States Code, shall apply regardless of whether the location of contract performance is known when bids for such work are solicited.

“(11) ADMINISTRATION.—

“(A) ADMINISTRATIVE AND OVERSIGHT COSTS.—The Secretary may retain not more than 2 percent of the amounts appropriated for each fiscal year under this subsection for the administrative and oversight costs incurred by the Secretary to carry out this subsection.

“(B) AVAILABILITY.—

“(i) IN GENERAL.—Amounts appropriated for carrying out this subsection shall remain available until expended.

“(ii) UNEXPENDED FUNDS.—Amounts awarded as a grant under this subsection that are not expended by the grantee during the 5-year period following the date of the award shall remain available to the Secretary for use for grants under this subsection in a subsequent fiscal year.

“(12) DEFINITIONS.—In this subsection:

“(A) APPROPRIATE COMMITTEES OF CONGRESS.—The term ‘appropriate committees of Congress’ means—

“(i) the Committee on Commerce, Science, and Transportation of the Senate; and

Guidelines.

Applicability.  
Records.

Review.  
Audits.  
Reports.  
Assessment.

Time period.

“(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

“(B) PORT.—The term ‘port’ includes—

“(i) any port on the navigable waters of the United States; and

“(ii) any harbor, marine terminal, or other shore side facility used principally for the movement of goods on inland waters.

“(C) PROJECT.—The term ‘project’ includes construction, reconstruction, environmental rehabilitation, acquisition of property, including land related to the project and improvements to the land, equipment acquisition, and operational improvements.

“(D) RURAL AREA.—The term ‘rural area’ means an area that is outside an urbanized area.

Coordination.

“(d) ADDITIONAL AUTHORITY OF THE SECRETARY.—In carrying out this section, the Secretary may—

“(1) coordinate with other Federal agencies to expedite the process established under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the improvement of port facilities to improve the efficiency of the transportation system, to increase port security, or to provide greater access to port facilities;

“(2) seek to coordinate all reviews or requirements with appropriate Federal, State, and local agencies; and

“(3) in addition to any financial assistance provided under subsection (c), provide such technical assistance to port authorities or commissions or their subdivisions and agents.”.

46 USC 50302  
note.

(c) SAVINGS CLAUSE.—A repeal made by subsection (b) of this section shall not affect amounts apportioned or allocated before the effective date of the repeal. Such apportioned or allocated funds shall continue to be subject to the requirements to which the funds were subject under—

(1) section 50302(c) of title 46, United States Code, as in effect on the day before the date of enactment of this title;

(2) section 9008 of the SAFETEA-LU Act (Public Law 109–59; 119 Stat. 1926);

(3) section 10205 of the SAFETEA-LU Act (Public Law 109–59; 119 Stat. 1934); and

(4) section 3512 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (48 U.S.C. 1421r).

(d) REMEDIAL ACTIONS.—Section 533 of the Coast Guard Authorization Act of 2016 (Public Law 114–120; 130 Stat. 74) is amended by adding at the end the following:

“(f) REMEDIAL ACTIONS.—For purposes of the conveyances under this section, the remedial actions required under section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) may be completed by the United States Coast Guard after the date of such conveyance and a deed entered into for such conveyance shall include a clause granting the United States Coast Guard access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such conveyance.”.

(e) ENVIRONMENTAL COMPLIANCE.—Section 534(a) of the Coast Guard Authorization Act of 2016 (Public Law 114–120; 42 U.S.C. 9620 note) is amended—



(1) by striking “Nothing” and inserting “After the date on which the Secretary of the Interior conveys land under section 533 of this Act, nothing”; and

(2) by inserting “, with respect to contaminants on such land prior to the date on which the land is conveyed” before the period.

**SEC. 3515. ASSESSMENT AND REPORT ON STRATEGIC SEAPORTS.**

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this title, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate a report on port facilities used for military purposes at ports designated by the Department of Defense as strategic seaports.

(b) **ELEMENTS.**—The report required by subsection (a) shall include, with respect to port facilities included in the report, the following:

(1) An assessment of whether there are structural integrity or other deficiencies in such facilities.

(2) If there are such deficiencies—

(A) an assessment of infrastructure improvements to such facilities that would be needed to meet, directly or indirectly, national security and readiness requirements;

(B) an assessment of the impact on operational readiness of the Armed Forces if such improvements are not undertaken; and

(C) an identification of, to the maximum extent practical, all potential funding sources for such improvements from existing authorities.

(3) An identification of the support that would be appropriate for the Department of Defense to provide in the execution of the responsibilities of the Secretary of Transportation under section 50302 of title 46, United States Code, with respect to such facilities.

(4) If additional statutory or administrative authorities would be required for the provision of support as described in paragraph (3), recommendations for legislative or administrative action to establish such authorities.

Recommendations.

(c) **CONSULTATION.**—The Secretary of Defense shall prepare the report required by subsection (a) in consultation with the Maritime Administrator and the individual responsible for each port facility described in such subsection.

**SEC. 3516. TECHNICAL CORRECTIONS.**

(a) **OFFICE OF PERSONNEL MANAGEMENT GUIDANCE.**—Not later than 120 days after the date of the enactment of this title, the Director of the Office of Personnel Management, in consultation with the Administrator of the Maritime Administration, shall identify key skills and competencies necessary to maintain a balance of expertise in merchant marine seagoing service and strategic sealift military service in each of the following positions within the Office of the Commandant of the Merchant Marine Academy:

Deadline.  
Consultation.

(1) Commandant.

(2) Deputy Commandant.

(3) Tactical company officers.

(4) Regimental officers.

(b) SEA YEAR COMPLIANCE.—Section 3514(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 46 U.S.C. 51318 note) is amended by inserting “domestic and international” after “criteria that”.

46 USC 51318  
note.

**SEC. 3517. UNITED STATES MERCHANT MARINE ACADEMY SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM.**

Deadline.

(a) IMPLEMENTATION OF RECOMMENDATIONS.—The Secretary of Transportation shall ensure that, not later than 180 days after the date of the enactment of this title, the recommendations in report of the Inspector General of the Department of Transportation on the effectiveness sexual assault prevention and response program of the United States Merchant Marine Academy (mandated under section 3512 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2786)), are fully implemented.

(b) REPORT.—Not later than 180 days after the date of the enactment of this title, the Secretary of Transportation shall submit to Congress a report that includes—

(1) confirmation that the recommendations described in subsection (a) have been fully implemented, and explaining how those recommendations have been implemented; or

(2) if such recommendations have not been fully implemented as of the date of the report, an explanation of why such recommendations have not been fully implemented and a description of the resources that are needed to fully implement such recommendations.

**SEC. 3518. REPORT ON VESSELS FOR EMERGING OFFSHORE ENERGY INFRASTRUCTURE.**

(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report on the need for vessels documented under chapter 121 of title 46, United States Code, to install, operate, and maintain emerging offshore energy infrastructure, including offshore wind energy.

(b) CONTENTS.—The report required by subsection (a) shall include—

Inventory.

(1) an inventory of vessels documented under chapter 121 of title 46, United States Code, (including existing vessels and vessels that have the potential to be refurbished) to install, operate, and maintain such emerging offshore energy infrastructure;

(2) a projection of existing vessels needed to meet such emerging offshore energy needs over the next 10 years;

Summary.

(3) a summary of actions taken or proposed by offshore energy developers and producers, the United States domestic shipbuilding industry, and United States coastwise qualified operators to ensure sufficient vessel capacity in compliance with United States coastwise laws; and

(4) a description of the potential benefits to the United States maritime and shipbuilding industries and to the United States economy associated with the use of United States coastwise qualified vessels to support offshore energy development and production.

**SEC. 3519. REPORT ON UNITED STATES FLAGGED FUEL TANKER VESSEL CAPACITY.**

(a) **REPORT REQUIRED.**—Concurrent with the budget of the President for fiscal year 2021, as submitted to Congress under section 1105 of title 31, United States Code, the Secretary of Defense shall, in consultation with the Secretary of Transportation, submit to the appropriate committees of Congress a report on the capabilities of the United States to maintain adequate United States-flagged fuel tanker vessel capacity to support the full range of anticipated military operations over each period as follows:

Consultation.  
Time periods.

- (1) In 2020.
- (2) Between 2020 and 2025.
- (3) Between 2020 and 2030.

(b) **ELEMENTS.**—The report required by subsection (a) shall include, for each period specified in that subsection, the following:

Assessments.

(1) A description of current and projected United States-flagged fuel tanker vessel capacity.

(2) A description of current and projected United States military needs for United States-flagged fuel tanker vessel capacity, including the most stressing peacetime and wartime requirements.

(3) A description and assessment of the number of foreign-flagged tanker vessels required to address United States military needs described pursuant to paragraph (2), including the most stressing peacetime and wartime requirements.

(4) An identification and assessment of any gaps in the capacity described pursuant to paragraph (1) to meet the United States military needs described pursuant to paragraph (2), including quantities of tanker vessels, as well as an assessment of the risk to military objectives due to reliance on foreign-flagged tanker vessels described pursuant to paragraph (3).

(5) A description and assessment of options to address the gaps identified pursuant to paragraph (4), including the establishment of a program for United States-flagged fuel tanker vessels modeled on the Maritime Security Program.

(6) Such recommendations as the Secretary of Defense considers appropriate in light of the matters set forth in the report.

Recommendations.

(c) **FORM.**—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) **DEFINITIONS.**—In this section:

(1) The term “appropriate committees of Congress” means—  
(A) the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate; and

(B) the Committee on Transportation and Infrastructure and the Committee on Armed Services of the House of Representatives.

(2) The term “Maritime Security Program” means the program in connection with the Maritime Security Fleet under chapter 531 of title 46, United States Code.

## Subtitle B—Cable Security Fleet

### SEC. 3521. ESTABLISHMENT OF CABLE SECURITY FLEET.

(a) IN GENERAL.—Title 46, United States Code, is amended by inserting before chapter 533 the following new chapter:

46 USC 53201  
prec.

#### “CHAPTER 532—CABLE SECURITY FLEET

“Sec.

“53201. Definitions.

“53202. Establishment of the Cable Security Fleet.

“53203. Award of operating agreements.

“53204. Effectiveness of operating agreements.

“53205. Obligations and rights under operating agreements.

“53206. Payments.

“53207. National security requirements.

“53208. Regulatory relief.

“53209. Authorization of appropriations.

46 USC 53201.

#### “§ 53201. Definitions

“In this chapter:

“(1) CABLE SERVICES.—The term ‘cable services’ means the installation, maintenance, or repair of submarine cables and related equipment, and related cable vessel operations.

“(2) CABLE VESSEL.—The term ‘cable vessel’ means a vessel—

“(A) classed as a cable ship or cable vessel by, and designed in accordance with the rules of, the American Bureau of Shipping, or another classification society accepted by the Secretary; and

“(B) capable of installing, maintaining, and repairing submarine cables.

“(3) CABLE FLEET.—The term ‘Cable Fleet’ means the Cable Security Fleet established under section 53202(a).

“(4) CONTINGENCY AGREEMENT.—The term ‘Contingency Agreement’ means the agreement required by section 53207.

“(5) CONTRACTOR.—The term ‘Contractor’ means an owner or operator of a vessel that enters into an Operating Agreement for a cable vessel with the Secretary under section 53203.

“(6) FISCAL YEAR.—The term ‘fiscal year’ means any annual period beginning on October 1 and ending on September 30.

“(7) OPERATING AGENCY.—The term ‘Operating Agency’ means that agency or component of the Department of Defense so designated by the Secretary of Defense under this chapter.

“(8) OPERATING AGREEMENT OR AGREEMENT.—The terms ‘Operating Agreement’ or ‘Agreement’ mean the agreement required by section 53203.

“(9) PERSON.—The term ‘person’ includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

“(10) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.

“(11) UNITED STATES.—The term ‘United States’ includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

“(12) UNITED STATES CITIZEN TRUST.—

“(A) Subject to paragraph (C), the term ‘United States citizen trust’ means a trust that is qualified under this paragraph.

“(B) A trust is qualified under this paragraph with respect to a vessel only if—

“(i) it was created under the laws of a state of the United States;

“(ii) each of the trustees is a citizen of the United States; and

“(iii) the application for documentation of the vessel under chapter 121 of this title includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence, or limit the exercise of the authority of, the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

“(C) If any person that is not a citizen of the United States has authority to direct, or participate in directing, the trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to direct or remove a trustee.

“(D) This paragraph shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

**“§ 53202. Establishment of the Cable Security Fleet**

46 USC 53202.

“(a) IN GENERAL.—(1) The Secretary, in consultation with the Operating Agency, shall establish a fleet of active, commercially viable, cable vessels to meet national security requirements. The fleet shall consist of privately owned, United States-documented cable vessels for which there are in effect Operating Agreements under this chapter, and shall be known as the Cable Security Fleet.

Consultation.

“(2) The Fleet described under this section shall include two vessels.

“(b) VESSEL ELIGIBILITY.—A cable vessel is eligible to be included in the Fleet if—

“(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

“(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in commercial service providing cable services;

“(3) the vessel is 40 years of age or less on the date the vessel is included in the Fleet;

Determinations.

“(4) the vessel is—

“(A) determined by the Operating Agency to be suitable for engaging in cable services by the United States in the interest of national security; and

“(B) determined by the Secretary to be commercially viable, whether independently or taking any payments which are the consequence of participation in the Cable Fleet into account; and

“(5) the vessel—

“(A) is a United States-documented vessel; or

“(B) is not a United States-documented vessel, but—

“(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Cable Fleet; and

“(ii) at the time an Operating Agreement is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

“(c) REQUIREMENTS REGARDING CITIZENSHIP OF OWNERS AND OPERATORS.—

“(1) VESSELS OWNED AND OPERATED BY SECTION 50501 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an Operating Agreement under this chapter that applies to the vessel, the vessel will be owned and operated by one or more persons that are citizens of the United States under section 50501 of this title.

“(2) VESSELS OWNED BY A SECTION 50501 CITIZEN, OR UNITED STATES CITIZEN TRUST, AND CHARTERED TO A DOCUMENTATION CITIZEN.—A vessel meets the requirements of this paragraph if—

“(A) during the period of an Operating Agreement under this chapter that applies to the vessel, the vessel will be—

“(i) owned by a person that is a citizen of the United States under section 50501 of this title or that is a United States citizen trust; and

“(ii) demise chartered to and operated by a person—

“(I) that is eligible to document the vessel under chapter 121 of this title;

“(II) the chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors of which are citizens of the United States under section 50501 of this title, and are appointed and subject to removal only upon approval by the Secretary; and

“(III) that certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the Contractor for the vessel from performing its obligations under an Operating Agreement under this chapter;

Certification.

Contracts.

“(B) in the case of a vessel that will be demise chartered to a person that is owned or controlled by another person that is not a citizen of the United States under section 50501 of this title, the other person enters into an agreement with the Secretary not to influence the operation

of the vessel in a manner that will adversely affect the interests of the United States; and

“(C) the Secretary and the Operating Agency notify the Committee on Armed Services and the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Armed Services of the House of Representatives that they concur, and have reviewed the certification required under subparagraph (A)(ii)(III) and determined that there are no legal, operational, or other impediments that would prohibit the Contractor for the vessel from performing its obligations under an Operating Agreement under this chapter.

Notification.  
Determination.

“(3) VESSEL OWNED AND OPERATED BY A DEFENSE CONTRACTOR.—A vessel meets the requirements of this paragraph if—

“(A) during the period of an Operating Agreement under this chapter that applies to the vessel, the vessel will be owned and operated by a person that—

“(i) is eligible to document a vessel under chapter 121 of this title;

“(ii) operates or manages other United States-documented vessels for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

“(iii) has entered into a special security agreement for purposes of this paragraph with the Secretary of Defense;

“(iv) makes the certification described in paragraph (2)(A)(ii)(III); and

“(v) in the case of a vessel described in paragraph (2)(B), enters into an agreement referred to in that paragraph; and

“(B) the Secretary and the Secretary of Defense notify the Committee on Armed Services and Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they have reviewed the certification required by subparagraph (A)(iv) and determined that there are no other legal, operational, or other impediments that would prohibit the Contractor for the vessel from performing its obligations under an Operating Agreement under this chapter.

Notification.  
Determination.

“(4) VESSEL OWNED BY A DOCUMENTATION CITIZEN AND CHARTERED TO A SECTION 50501 CITIZEN.—A vessel meets the requirements of this paragraph if, during the period of an Operating Agreement under this chapter that applies to the vessel, the vessel will be—

“(A) owned by a person that is eligible to document a vessel under chapter 121 of this title; and

“(B) demise chartered to a person that is a citizen of the United States under section 50501 of this title.

“(d) VESSEL STANDARDS.—

“(1) CERTIFICATE OF INSPECTION.—A cable vessel which the Secretary of the Department in which the Coast Guard is operating determines meets the criteria of subsection (b) of this section but which, on the date of enactment of the Act, is not documented under chapter 121 of this title, shall

Determination.

be eligible for a certificate of inspection if that Secretary determines that—

Compliance.

“(A) the vessel is classed by, and designed in accordance with the rules of, the American Bureau of Shipping, or another classification society accepted by that Secretary;

“(B) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming documented under chapter 121; and

“(C) that country has not been identified by that Secretary as inadequately enforcing international vessel regulations as to that vessel.

“(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Paragraph (1) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in paragraph (1)(B).

“(3) RELIANCE ON CLASSIFICATION SOCIETY.—

“(A) IN GENERAL.—The Secretary of the Department in which the Coast Guard is operating may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by that Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).

“(B) FOREIGN CLASSIFICATION SOCIETY.—The Secretary of the Department in which the Coast Guard is operating may accept certification from a foreign classification society under subparagraph (A) only—

“(i) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

“(ii) if the foreign classification society has offices and maintains records in the United States.

Determination.

“(e) WAIVER OF AGE REGISTRATION.—The Secretary, in conjunction with the Operating Agency, may waive the application of the age restriction under subsection (b)(3) if they jointly determine that the waiver—

“(1) is in the national interest;

“(2) the subject cable vessel and any associated operating network is and will continue to be economically viable; and

“(3) is necessary due to the lack of availability of other vessels and operators that comply with the requirements of this chapter.

46 USC 53203.

**“§ 53203. Award of operating agreements**

“(a) IN GENERAL.—The Secretary shall require, as a condition of including any vessel in the Cable Fleet, that the person that is the owner or operator of the vessel for purposes of section 53202(c) enter into an Operating Agreement with the Secretary under this section.

Deadlines.

“(b) PROCEDURE FOR APPLICATIONS.—

“(1) ACCEPTANCE OF APPLICATIONS.—Beginning no later than 60 days after the effective date of this chapter, the Secretary shall accept applications for enrollment of vessels in the Cable Fleet.



“(2) ACTION ON APPLICATIONS.—Within 120 days after receipt of an application for enrollment of a vessel in the Cable Fleet, the Secretary shall approve the application in conjunction with the Operating Agency, and shall enter into an Operating Agreement with the applicant, or provide in writing the reason for denial of that application.

“(c) PRIORITY FOR AWARDING AGREEMENTS.—Subject to the availability of appropriations, the Secretary shall enter into Operating Agreements with those vessels determined by the Operating Agency, in its sole discretion, to best meet the national security requirements of the United States. After consideration of national security requirements, priority shall be given to an applicant that is a United States citizen under section 50501 of this title. Determination.

**“§ 53204. Effectiveness of operating agreements**

46 USC 53204.

“(a) EFFECTIVENESS GENERALLY.—The Secretary may enter into an Operating Agreement under this chapter for fiscal year 2021. Except as provided in subsection (d), the agreement shall be effective only for one fiscal year, but shall be renewable, subject to available appropriations, for each subsequent year.

“(b) VESSELS UNDER CHARTER TO THE UNITED STATES.—Vessels under charter to the United States are eligible to receive payments pursuant to their Operating Agreements.

“(c) TERMINATION.—

Notifications.

“(1) TERMINATION BY THE SECRETARY.—If the Contractor with respect to an Operating Agreement materially fails to comply with the terms of the Agreement—

“(A) the Secretary shall notify the Contractor and provide a reasonable opportunity for it to comply with the Operating Agreement;

Compliance.

“(B) the Secretary shall terminate the Operating Agreement if the Contractor fails to achieve such compliance; and

“(C) upon such termination, any funds obligated by the Agreement shall be available to the Secretary to carry out this chapter.

“(2) EARLY TERMINATION BY A CONTRACTOR.—An Operating Agreement under this chapter shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary, not fewer than 60 days prior to the effective date of the termination, that the Contractor intends to terminate the Agreement.

Deadline.

“(d) NONRENEWAL FOR LACK OF FUNDS.—If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by this chapter for that fiscal year for all Operating Agreements, then the Secretary shall notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that Operating Agreements authorized under this chapter for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the Operating Agency, shall select the vessels to retain under Operating Agreements, based on their determinations of which vessels are most useful for national security. In the event that no funds are appropriated, then no Operating Agreements shall be renewed and each

Notification.  
Deadline.

Consultation.  
Determinations.

Contractor shall be released from its obligations under the Operating Agreement. Final payments under an Operating Agreement that is not renewed shall be made in accordance with section 53206. To the extent that sufficient funds are appropriated in a subsequent fiscal year, an Operating Agreement that has not been renewed pursuant to this subsection may be reinstated if mutually acceptable to the Secretary, in consultation with the Operating Agency, and the Contractor, provided the vessel remains eligible for participation pursuant to section 53202, without regard to subsection 53202 (b)(3).

Consultation.

Deadline.  
Consultation.  
Deadline.

“(e) RELEASE OF VESSELS FROM OBLIGATIONS.—If funds are not appropriated for payments under an Operating Agreement under this chapter for any fiscal year by the 60th day of a fiscal year, and the Secretary, in consultation with the Operating Agency determines to not renew a Contractor’s Operating Agreement for a vessel, then—

“(1) each vessel covered by the Operating Agreement that is not renewed is thereby released from any further obligation under the Operating Agreement;

“(2) the owner or operator of the vessel whose Operating Agreement was not renewed may transfer and register such vessel under a foreign registry that is acceptable to the Secretary and the Operating Agency, notwithstanding section 56101 of this title; and

“(3) if chapter 563 of this title is applicable to such vessel after registration, then the vessel is available to be requisitioned by the Secretary pursuant to chapter 563.

46 USC 53205.

**“§ 53205. Obligations and rights under operating agreements**

“(a) OPERATION OF VESSEL.—An Operating Agreement under this chapter shall require that, during the period the vessel is operating under the Agreement, the vessel—

“(1) shall be operated in the trade for Cable Services, or under a charter to the United States; and

“(2) shall be documented under chapter 121 of this title.

“(b) ANNUAL PAYMENTS BY THE SECRETARY.—

“(1) IN GENERAL.—An Operating Agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make payment to the Contractor in accordance with section 53206.

“(2) OPERATING AGREEMENT IS AN OBLIGATION OF THE UNITED STATES GOVERNMENT.—An Operating Agreement under this chapter constitutes a contractual obligation of the United States Government to pay the amounts provided for in the Operating Agreement to the extent of actual appropriations.

“(c) DOCUMENTATION REQUIREMENT.—Each vessel covered by an Operating Agreement (including an Agreement terminated under section 53204(c)(2)) shall remain documented under chapter 121 of this title, until the date the Operating Agreement would terminate according to its own terms.

“(d) NATIONAL SECURITY REQUIREMENTS.—

“(1) IN GENERAL.—A Contractor with respect to an Operating Agreement (including an Agreement terminated under section 53204(c)(2)) shall continue to be bound by the provisions of section 53207 until the date the Operating Agreement would terminate according to its terms.

“(2) CONTINGENCY AGREEMENT WITH OPERATING AGENCY.—All terms and conditions of a Contingency Agreement entered into under section 53207 shall remain in effect until a date the Operating Agreement would terminate according to its terms, except that the terms of such Contingency Agreement may be modified by the mutual consent of the Contractor, and the Operating Agency.

“(e) TRANSFER OF OPERATING AGREEMENTS.—Operating Agreements shall not be transferrable by the Contractor.

“(f) REPLACEMENT VESSEL.—A Contractor may replace a vessel under an Operating Agreement with another vessel that is eligible to be included in the Fleet under section 53202(b), if the Secretary and the Operating Agency jointly determine that the replacement vessel meets national security requirements and approve the replacement.

Determination.

#### “§ 53206. Payments

46 USC 53206.

“(a) ANNUAL PAYMENT.—

“(1) IN GENERAL.—The Secretary, subject to availability of appropriations and other provisions of this section, shall pay to the Contractor for an operating agreement, for each vessel that is covered by the operating agreement, an amount equal to \$5,000,000 for each fiscal year 2021 through 2035.

“(2) TIMING.—This amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

“(b) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the Contractor for the vessel shall certify that the vessel has been and will be operated in accordance with section 53205(a)(1) for 365 days in each fiscal year. Up to thirty (30) days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

Time periods.

“(c) GENERAL LIMITATIONS.—The Secretary shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

“(1) not operated or maintained in accordance with an Operating Agreement under this chapter; or

“(2) more than 40 years of age.

“(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an Operating Agreement, the Secretary shall make a pro rata reduction for each day less than 365 in a fiscal year that the vessel is not operated in accordance with section 53205(a)(1), with days during which the vessel is drydocked or undergoing survey, inspection or repair to be considered days on which the vessel is operated as provided in subsection (b).

Time period.

#### “§ 53207. National security requirements

46 USC 53207.

“(a) CONTINGENCY AGREEMENT REQUIRED.—The Secretary shall include in each Operating Agreement under this chapter a requirement that the Contractor enter into a Contingency Agreement with the Operating Agency. The Operating Agency shall negotiate and enter into a Contingency Agreement with each Contractor as promptly as practicable after the Contractor has entered into an Operating Agreement under this chapter.

“(b) TERMS OF CONTINGENCY AGREEMENT.—

“(1) IN GENERAL.—A Contingency Agreement under this section shall require that a Contractor for a vessel covered by an Operating Agreement under this chapter make the vessel, including all necessary resources to engage in Cable Services required by the Operating Agency, available upon request by the Operating Agency.

“(2) TERMS.—

“(A) IN GENERAL.—The basic terms of a Contingency Agreement shall be established (subject to subparagraph (B)) by the Operating Agency.

“(B) ADDITIONAL TERMS.—The Operating Agency and a Contractor may agree to additional or modifying terms appropriate to the Contractor’s circumstances.

“(c) DEFENSE MEASURES AGAINST UNAUTHORIZED SEIZURES.—  
(1) The Contingency Agreement shall require that any vessel operating under the direction of the Operating Agency operating in area that is designated by the Coast Guard as an area of high risk of piracy shall be equipped with, at a minimum, appropriate non-lethal defense measures to protect the vessel and crew from unauthorized seizure at sea.

“(2) The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating shall jointly prescribe the non-lethal defense measures that are required under this paragraph.

“(d) PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.—Except as provided by section 53205(d), the Operating Agency may not require, through a Contingency Agreement or an Operating Agreement, that a Contractor continue to participate in a Contingency Agreement after the Operating Agreement with the Contractor has expired according to its terms or is otherwise no longer in effect.

“(e) RESOURCES MADE AVAILABLE.—The resources to be made available in addition to the vessel under a Contingency Agreement shall include all equipment, personnel, supplies, management services, and other related services as the Operating Agency may determine to be necessary to provide the Cable Services required by the Operating Agency.

“(f) COMPENSATION.—

“(1) IN GENERAL.—The Operating Agency shall include in each Contingency Agreement provisions under which the Operating Agency shall pay fair and reasonable compensation for use of the vessel and all Cable Services provided pursuant to this section and the Contingency Agreement.

“(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

“(A) shall be at the rate specified in the Contingency Agreement;

“(B) shall be provided from the time that a vessel is required by the Operating Agency under the Contingency Agreement until the time it is made available by the Operating Agency available to reenter commercial service; and

“(C) shall be in addition to and shall not in any way reflect amounts payable under section 53206.

“(g) LIABILITY OF THE UNITED STATES FOR DAMAGES.—

“(1) LIMITATION ON THE LIABILITY OF THE U.S.—Except as otherwise provided by law, the Government shall not be liable for disruption of a Contractor’s commercial business or other

consequential damages to a Contractor arising from the activation of the Contingency Agreement.

“(2) **AFFIRMATIVE DEFENSE.**—In any action in any Federal or State court for breach of third-party contract, there shall be available as an affirmative defense that the alleged breach of contract was caused predominantly by action taken to carry out a Contingent Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

**“§ 53208. Regulatory relief**

46 USC 53208.

“The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an Operating Agreement under this chapter shall be deemed to satisfy all Federal Communication Commission equipment certification requirements, if—

“(1) such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

Compliance.  
Determination.

“(2) that country has not been identified by the Secretary of the Department in which the Coast Guard is operating as inadequately enforcing international regulations as to that vessel; and

“(3) at the end of its useful life, such equipment shall be replaced with equipment that meets Federal Communication Commission equipment certification standards.

**“§ 53209. Authorization of appropriations**

46 USC 53209.

“There are authorized to be appropriated for payments under section 53206, \$10,000,000 for each of the fiscal years 2021 through 2035.”

(b) **CONFORMING AMENDMENT.**—The table of chapters at the beginning of subtitle V of title 46, United States Code, is amended by inserting before the item relating to chapter 533 the following new item:

46 USC 50101  
prec.

**“532. Cable Security Fleet .....53201”.**

**Subtitle C—Maritime SAFE Act**

Maritime  
Security and  
Fisheries  
Enforcement Act.  
16 USC 8001  
note.

**SEC. 3531. SHORT TITLES.**

This subtitle may be cited as the “Maritime Security and Fisheries Enforcement Act” or the “Maritime SAFE Act”.

**SEC. 3532. DEFINITIONS.**

16 USC 8001.

In this subtitle:

(1) **AIS.**—The term “AIS” means Automatic Identification System (as defined in section 164.46 of title 33, Code of Federal Regulations, or a similar successor regulation).

(2) **COMBINED MARITIME FORCES.**—The term “Combined Maritime Forces” means the 33-nation naval partnership, originally established in February 2002, which promotes security, stability, and prosperity across approximately 3,200,000 square miles of international waters.

(3) **EXCLUSIVE ECONOMIC ZONE.**—

President.  
Federal Register,  
publication.

(A) IN GENERAL.—Unless otherwise specified by the President as being in the public interest in a writing published in the Federal Register, the term “exclusive economic zone” means—

(i) the area within a zone established by a maritime boundary that has been established by a treaty in force or a treaty that is being provisionally applied by the United States; or

(ii) in the absence of a treaty described in clause (i)—

(I) a zone, the outer boundary of which is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured; or

(II) if the distance between the United States and another country is less than 400 nautical miles, a zone, the outer boundary of which is represented by a line equidistant between the United States and the other country.

(B) INNER BOUNDARY.—Without affecting any Presidential Proclamation with regard to the establishment of the United States territorial sea or exclusive economic zone, the inner boundary of the exclusive economic zone is—

(i) in the case of coastal States, a line coterminous with the seaward boundary of each such State (as described in section 4 of the Submerged Lands Act (43 U.S.C. 1312));

Puerto Rico.

(ii) in the case of the Commonwealth of Puerto Rico, a line that is 3 marine leagues from the coastline of the Commonwealth of Puerto Rico;

Territories.

(iii) in the case of American Samoa, the United States Virgin Islands, Guam, and the Northern Mariana Islands, a line that is 3 geographic miles from the coastlines of American Samoa, the United States Virgin Islands, Guam, or the Northern Mariana Islands, respectively; or

(iv) for any possession of the United States not referred to in clause (ii) or (iii), the coastline of such possession.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to diminish the authority of the Department of Defense, the Department of the Interior, or any other Federal department or agency.

(4) FOOD SECURITY.—The term “food security” means access to, and availability, utilization, and stability of, sufficient food to meet caloric and nutritional needs for an active and healthy life.

(5) GLOBAL RECORD OF FISHING VESSELS, REFRIGERATED TRANSPORT VESSELS, AND SUPPLY VESSELS.—The term “global record of fishing vessels, refrigerated transport vessels, and supply vessels” means the Food and Agriculture Organization of the United Nations’ initiative to rapidly make available certified data from state authorities about vessels and vessel related activities.

(6) IUU FISHING.—The term “IUU fishing” means illegal fishing, unreported fishing, or unregulated fishing (as such terms are defined in paragraph 3 of the International Plan

of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, adopted at the 24th Session of the Committee on Fisheries in Rome on March 2, 2001).

(7) PORT STATE MEASURES AGREEMENT.—The term “Port State Measures Agreement” means the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing set forth by the Food and Agriculture Organization of the United Nations, done at Rome, Italy November 22, 2009, and entered into force June 5, 2016, which offers standards for reporting and inspecting fishing activities of foreign-flagged fishing vessels at port.

(8) PRIORITY FLAG STATE.—The term “priority flag state” means a country selected in accordance with section 3552 (b)(3)—

(A) whereby the flagged vessels of which actively engage in, knowingly profit from, or are complicit in IUU fishing; and

(B) that is willing, but lacks the capacity, to monitor or take effective enforcement action against its fleet.

(9) PRIORITY REGION.—The term “priority region” means a region selected in accordance with section 3552 (b)(2)—

(A) that is at high risk for IUU fishing activity or the entry of illegally caught seafood into the markets of countries in the region; and

(B) in which countries lack the capacity to fully address the illegal activity described in subparagraph (A).

(10) REGIONAL FISHERIES MANAGEMENT ORGANIZATION.—The term “Regional Fisheries Management Organization” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures.

(11) SEAFOOD.—The term “seafood”—

(A) means marine finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, including those grown, produced, or reared through marine aquaculture operations or techniques; and

(B) does not include marine mammals, turtles, or birds.

(12) TRANSNATIONAL ORGANIZED ILLEGAL ACTIVITY.—The term “transnational organized illegal activity” means criminal activity conducted by self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, or monetary or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms.

(13) TRANSSHIPMENT.—The term “transshipment” means the use of refrigerated vessels that—

(A) collect catch from multiple fishing boats;

(B) carry the accumulated catches back to port; and

(C) deliver supplies to fishing boats, which allows fishing vessels to remain at sea for extended periods without coming into port.

**SEC. 3533. PURPOSES.**

The purposes of this subtitle are—

(1) to support a whole-of-government approach across the Federal Government to counter IUU fishing and related threats to maritime security;

(2) to improve data sharing that enhances surveillance, enforcement, and prosecution against IUU fishing and related activities at a global level;

(3) to support coordination and collaboration to counter IUU fishing within priority regions;

(4) to increase and improve global transparency and traceability across the seafood supply chain as—

(A) a deterrent to IUU fishing; and

(B) a tool for strengthening fisheries management and food security;

(5) to improve global enforcement operations against IUU fishing through a whole-of-government approach by the United States; and

(6) to prevent the use of IUU fishing as a financing source for transnational organized groups that undermine United States and global security interests.

16 USC 8003.

**SEC. 3534. STATEMENT OF POLICY.**

It is the policy of the United States

(1) to take action to curtail the global trade in seafood and seafood products derived from IUU fishing, including its links to forced labor and transnational organized illegal activity;

(2) to develop holistic diplomatic, military, law enforcement, economic, and capacity-building tools to counter IUU fishing;

(3) to provide technical assistance to countries in priority regions and priority flag states to combat IUU fishing, including assistance—

(A) to increase local, national, and regional level capacities to counter IUU fishing through the engagement of law enforcement and security forces;

(B) to enhance port capacity and security, including by supporting other countries in working toward the adoption and implementation of the Port State Measures Agreement;

(C) to combat corruption and increase transparency and traceability in fisheries management and trade;

(D) to enhance information sharing within and across governments and multilateral organizations through the development and use of agreed standards for information sharing; and

(E) to support effective, science-based fisheries management regimes that promote legal and safe fisheries and act as a deterrent to IUU fishing;

(4) to promote global maritime security through improved capacity and technological assistance to support improved maritime domain awareness;

(5) to engage with priority flag states to encourage the use of high quality vessel tracking technologies where existing enforcement tools are lacking;

(6) to engage with multilateral organizations working on fisheries issues, including Regional Fisheries Management Organizations and the Food and Agriculture Organization of the United Nations, to combat and deter IUU fishing;



(7) to advance information sharing across governments and multilateral organizations in areas that cross multiple jurisdictions, through the development and use of an agreed standard for information sharing;

(8) to continue to use existing and future trade agreements to combat IUU fishing;

(9) to employ appropriate assets and resources of the United States Government in a coordinated manner to disrupt the illicit networks involved in IUU fishing;

(10) to continue to declassify and make available, as appropriate and practicable, technologies developed by the United States Government that can be used to help counter IUU fishing;

(11) to recognize the ties of IUU fishing to transnational organized illegal activity, including human trafficking and illegal trade in narcotics and arms, and as applicable, to focus on illicit activity in a coordinated, cross-cutting manner;

(12) to recognize and respond to poor working conditions, labor abuses, and other violent crimes in the fishing industry;

(13) to increase and improve global transparency and traceability along the seafood supply chain as—

(A) a deterrent to IUU fishing; and

(B) an approach for strengthening fisheries management and food security; and

(14) to promote technological investment and innovation to combat IUU fishing.

## **PART I—PROGRAMS TO COMBAT IUU FISHING AND INCREASE MARITIME SECURITY**

### **SEC. 3541. COORDINATION WITH INTERNATIONAL ORGANIZATIONS.**

The Secretary of State, in consultation with the Secretary of Commerce, shall coordinate with Regional Fisheries Management Organizations and the Food and Agriculture Organization of the United Nations, and may coordinate with other relevant international governmental or nongovernmental organizations, or the private sector, as appropriate, to enhance regional responses to IUU fishing and related transnational organized illegal activities.

Consultation.  
16 USC 8011.

### **SEC. 3542. ENGAGEMENT OF DIPLOMATIC MISSIONS OF THE UNITED STATES.**

Not later than 1 year after the date of the enactment of this title, each chief of mission (as defined in section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902)) to a relevant country in a priority region or to a priority flag state may, if the Secretary of State determines such action is appropriate—

Deadline.  
Determination.  
16 USC 8012.

(1) convene a working group, led by Department of State officials, to examine IUU fishing, which may include stakeholders such as—

(A) United States officials from relevant agencies participating in the interagency Working Group identified in section 3551, foreign officials, nongovernmental organizations, the private sector, and representatives of local fishermen in the region; and

(B) experts on IUU fishing, law enforcement, criminal justice, transnational organized illegal activity, defense,

Designation.	intelligence, vessel movement monitoring, and international development operating in or with knowledge of the region; and (2) designate a counter-IUU Fishing Coordinator from among existing personnel at the mission if the chief of mission determines such action is appropriate.
Evaluations. 16 USC 8013.	<b>SEC. 3543. ASSISTANCE BY FEDERAL AGENCIES TO IMPROVE LAW ENFORCEMENT WITHIN PRIORITY REGIONS AND PRIORITY FLAG STATES.</b>
Consultation.	(a) <b>IN GENERAL.</b> —The Secretary of State, in consultation with the Secretary of Commerce and the Commandant of the Coast Guard when the Coast Guard is not operating as a service in the Department of the Navy, as well as any other relevant department or agency, shall provide assistance, as appropriate, in accordance with this section. (b) <b>LAW ENFORCEMENT TRAINING AND COORDINATION ACTIVITIES.</b> —The officials referred to in subsection (a) shall evaluate opportunities to provide assistance, as appropriate, to countries in priority regions and priority flag states to improve the effectiveness of IUU fishing enforcement, with clear and measurable targets and indicators of success, including— (1) by assessing and using existing resources, enforcement tools, and legal authorities to coordinate efforts to combat IUU fishing with efforts to combat other illegal trade, including weapons, drugs, and human trafficking; (2) by expanding existing IUU fishing enforcement training; (3) by providing targeted, country- and region-specific training on combating IUU fishing, including in those countries that have not adopted the Port State Measures Agreement; (4) by supporting increased effectiveness and transparency of the fisheries enforcement sectors of the governments of such countries; and (5) by supporting increased outreach to stakeholders in the affected communities as key partners in combating and prosecuting IUU fishing.
Assessment.	(c) <b>IMPLEMENTATION OF PORT STATE MEASURES.</b> —The officials referred to in subsection (a) shall evaluate opportunities to provide assistance, as appropriate, to countries in priority regions and priority flag states to help those states implement programs related to port security and capacity for the purposes of preventing IUU fishing products from entering the global seafood market, including by supporting other countries in working toward the adoption and implementation of the Port State Measures Agreement. (d) <b>CAPACITY BUILDING FOR INVESTIGATIONS AND PROSECUTIONS.</b> —The officials referred to in subsection (a), in collaboration with the governments of countries in priority regions and of priority flag states, shall evaluate opportunities to assist those countries in designing and implementing programs in such countries, as appropriate, to increase the capacity of IUU fishing enforcement and customs and border security officers to improve their ability— (1) to conduct effective investigations, including using law enforcement techniques such as undercover investigations and the development of informer networks and actionable intelligence; (2) to conduct vessel boardings and inspections at sea and associated enforcement actions;

(3) to exercise existing shiprider agreements and to enter into and implement new shiprider agreements, as appropriate, including in those countries that have not adopted the Port State Measures Agreement;

(4) to conduct vessel inspections at port and associated enforcement actions;

(5) to assess technology needs and promote the use of technology to improve monitoring, enforcement, and prosecution of IUU fishing;

Assessment.

(6) to conduct DNA-based and forensic identification of seafood used in trade;

(7) to conduct training on techniques, such as collecting electronic evidence and using computer forensics, for law enforcement personnel involved in complex investigations related to international matters, financial issues, and government corruption that include IUU fishing;

(8) to assess financial flows and the use of financial institutions to launder profits related to IUU fishing;

Assessment.

(9) to conduct training on the legal mechanisms that can be used to prosecute those identified in the investigations as alleged perpetrators of IUU fishing and other associated crimes such as trafficking and forced labor; and

(10) to conduct training to raise awareness of the use of whistleblower information and ways to incentivize whistleblowers to come forward with original information related to IUU fishing.

(e) **CAPACITY BUILDING FOR INFORMATION SHARING.**—The officials referred to in subsection (a) shall evaluate opportunities to provide assistance, as appropriate, to key countries in priority regions and priority flag states in the form of training, equipment, and systems development to build capacity for information sharing related to maritime enforcement and port security.

(f) **COORDINATION WITH OTHER RELEVANT AGENCIES.**—The Secretary of State shall coordinate, as appropriate, with the Secretary of Commerce, the Commandant of the Coast Guard when the Coast Guard is not operating as a service in the Department of the Navy, and with other relevant Federal agencies in accordance with this section.

**SEC. 3544. EXPANSION OF EXISTING MECHANISMS TO COMBAT IUU FISHING.**

16 USC 8014.

(a) **MECHANISMS TO COMBAT IUU FISHING.**—The Secretary of State, the Administrator of the United States Agency for International Development, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, the Secretary of Defense, the Secretary of Commerce, the Attorney General, and the heads of other appropriate Federal agencies shall assess opportunities to combat IUU fishing by expanding, as appropriate, the use of the following mechanisms:

Assessment.

(1) Including counter-IUU fishing in existing shiprider agreements in which the United States is a party.

(2) Entering into shiprider agreements that include counter-IUU fishing with priority flag states and countries in priority regions with which the United States does not already have such an agreement.

(3) Including counter-IUU fishing as part of the mission of the Combined Maritime Forces.

(4) Including counter-IUU fishing exercises in the annual at-sea exercises conducted by the Department of Defense, in coordination with the United States Coast Guard.

(5) Creating partnerships similar to the Oceania Maritime Security Initiative and the Africa Maritime Law Enforcement Partnership in other priority regions.

(b) INFORMATION SHARING.—The Director of National Intelligence, in conjunction with other agencies, as appropriate, shall develop an enterprise approach to appropriately share information and data within the United States Government or with other countries or nongovernmental organizations, or the private sector, as appropriate, on IUU fishing and other connected transnational organized illegal activity occurring in priority regions and elsewhere, including big data analytics and machine learning.

16 USC 8015.

**SEC. 3545. IMPROVEMENT OF TRANSPARENCY AND TRACEABILITY PROGRAMS.**

The Secretary of State, the Administrator of the United States Agency for International Development, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, the Secretary of Commerce, and the heads of other Federal agencies, if merited, shall work, as appropriate, with priority flag states and key countries in priority regions—

(1) to increase knowledge within such countries about the United States transparency and traceability standards for imports of seafood and seafood products;

(2) to improve the capacity of seafood industries within such countries through information sharing and training to meet the requirements of transparency and traceability standards for seafood and seafood product imports, including catch documentation and trade tracking programs adopted by relevant regional fisheries management organizations; and

(3) to improve the capacities of government, industry, and civil society groups to develop and implement comprehensive traceability systems that—

(A) deter IUU fishing;

(B) strengthen fisheries management; and

(C) enhance maritime domain awareness.

16 USC 8016.

**SEC. 3546. TECHNOLOGY PROGRAMS.**

The Secretary of State, the Administrator of the United States Agency for International Development, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, the Secretary of Defense, the Secretary of Commerce, and the heads of other Federal agencies, if merited, shall pursue programs, as appropriate, to expand the role of technology for combating IUU fishing, including by—

(1) promoting the use of technology to combat IUU fishing;

(2) assessing the technology needs, including vessel tracking technologies and data sharing, in priority regions and priority flag states;

(3) engaging with priority flag states to encourage the mandated use of vessel tracking technologies, including vessel monitoring systems, AIS, or other vessel movement monitoring

Assessment.

technologies on fishing vessels and transshipment vessels at all times, as appropriate, while at sea as a means to identify IUU fishing activities and the shipment of illegally caught fish products; and

(4) building partnerships with the private sector, including universities, nonprofit research organizations, the seafood industry, and the technology, transportation and logistics sectors, to leverage new and existing technologies and data analytics to address IUU fishing.

**SEC. 3547. SAVINGS CLAUSE.**

16 USC 8017.

No provision of section 3532 or of this part shall impose, or be interpreted to impose, any duty, responsibility, requirement, or obligation on the Department of Defense, the Department of the Navy, the United States Coast Guard when operating as a service in the Department of Homeland Security, or any official or component of either.

**PART II—ESTABLISHMENT OF INTERAGENCY  
WORKING GROUP ON IUU FISHING**

**SEC. 3551. INTERAGENCY WORKING GROUP ON IUU FISHING.**

16 USC 8031.

(a) **IN GENERAL.**—There is established a collaborative interagency working group on maritime security and IUU fishing (referred to in this subtitle as the “Working Group”).

(b) **MEMBERS.**—The members of the Working Group shall be composed of—

Appointments.

(1) 1 chair, who shall rotate between the Secretary of the Department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, the Secretary of State, and the National Oceanographic and Atmospheric Administration, acting through the Administrator, on a 3-year term;

(2) 2 deputy chairs, who shall be appointed by their respective agency heads and shall be from a different Department than that of the chair, from—

(A) the Coast Guard;

(B) the Department of State; and

(C) the National Oceanic and Atmospheric Administration;

(3) 12 members, who shall be appointed by their respective agency heads, from—

(A) the Department of Defense;

(B) the United States Navy;

(C) the United States Agency for International Development;

(D) the United States Fish and Wildlife Service;

(E) the Department of Justice;

(F) the Department of the Treasury;

(G) U.S. Customs and Border Protection;

(H) U.S. Immigration and Customs Enforcement;

(I) the Federal Trade Commission;

(J) the Department of Agriculture;

(K) the Food and Drug Administration; and

(L) the Department of Labor;

(4) 1 or more members from the intelligence community (as defined in section 3 of the National Security Act of 1947

- (50 U.S.C. 3003)), who shall be appointed by the Director of National Intelligence; and
- President. (5) 5 members, who shall be appointed by the President, from—
- (A) the National Security Council;
  - (B) the Council on Environmental Quality;
  - (C) the Office of Management and Budget;
  - (D) the Office of Science and Technology Policy; and
  - (E) the Office of the United States Trade Representative.
- (c) RESPONSIBILITIES.—The Working Group shall ensure an integrated, Federal Government-wide response to IUU fishing globally, including by—
- Coordination. (1) improving the coordination of Federal agencies to identify, interdict, investigate, prosecute, and dismantle IUU fishing operations and organizations perpetrating and knowingly benefiting from IUU fishing;
- Assessment. (2) assessing areas for increased interagency information sharing on matters related to IUU fishing and related crimes;
- Standards. (3) establishing standards for information sharing related to maritime enforcement;
- Strategy. (4) developing a strategy to determine how military assets and intelligence can contribute to enforcement strategies to combat IUU fishing;
- Determination. (5) increasing maritime domain awareness relating to IUU fishing and related crimes and developing a strategy to leverage awareness for enhanced enforcement and prosecution actions against IUU fishing;
- Assessment. (6) supporting the adoption and implementation of the Port State Measures Agreement in relevant countries and assessing the capacity and training needs in such countries;
- Strategy. (7) outlining a strategy to coordinate, increase, and use shiprider agreements between the Department of Defense or the Coast Guard and relevant countries;
- Coordination. (8) enhancing cooperation with partner governments to combat IUU fishing;
- (9) identifying opportunities for increased information sharing between Federal agencies and partner governments working to combat IUU fishing;
- Consultation. (10) consulting and coordinating with the seafood industry and nongovernmental stakeholders that work to combat IUU fishing;
- Coordination. (11) supporting the work of collaborative international initiatives to make available certified data from state authorities about vessel and vessel-related activities related to IUU fishing;
- (12) supporting the identification and certification procedures to address IUU fishing in accordance with the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.); and
- Publication. (13) publishing annual reports summarizing nonsensitive information about the Working Group’s efforts to investigate, enforce, and prosecute groups and individuals engaging in IUU fishing.
- 16 USC 8032. **SEC. 3552. STRATEGIC PLAN.**
- Deadline. (a) STRATEGIC PLAN.—Not later than 2 years after the date of the enactment of this title, the Working Group, after consultation
- Consultation.

with the relevant stakeholders, shall submit to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Foreign Relations of the Senate, the Committee on Appropriations of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Natural Resources of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives a 5-year integrated strategic plan on combating IUU fishing and enhancing maritime security, including specific strategies with monitoring benchmarks for addressing IUU fishing in priority regions.

(b) IDENTIFICATION OF PRIORITY REGIONS AND PRIORITY FLAG STATES.—

(1) IN GENERAL.—The strategic plan submitted under subsection (a) shall identify priority regions and priority flag states to be the focus of assistance coordinated by the Working Group under section 3551.

(2) PRIORITY REGION SELECTION CRITERIA.—In selecting priority regions under paragraph (1), the Working Group shall select regions that—

(A) are at high risk for IUU fishing activity or the entry of illegally caught seafood into their markets; and

(B) lack the capacity to fully address the issues described in subparagraph (A).

(3) PRIORITY FLAG STATES SELECTION CRITERIA.—In selecting priority flag states under paragraph (1), the Working Group shall select countries—

(A) the flagged vessels of which actively engage in, knowingly profit from, or are complicit in IUU fishing; and

(B) that lack the capacity to police their fleet.

**SEC. 3553. REPORTS.**

Not later than 5 years after the submission of the 5-year integrated strategic plan under section 3552, and 5 years after, the Working Group shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Foreign Relations of the Senate, the Committee on Appropriations of the Senate, the Committee on the Judiciary of the Senate, the Select Committee on Intelligence of the Senate, the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Natural Resources of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives that contains—

(1) a summary of global and regional trends in IUU fishing;

(2) an assessment of the extent of the convergence between transnational organized illegal activity, including human trafficking and forced labor, and IUU fishing;

(3) an assessment of the topics, data sources, and strategies that would benefit from increased information sharing and recommendations regarding harmonization of data collection and sharing;

(4) an assessment of assets, including military assets and intelligence, which can be used for either enforcement operations or strategies to combat IUU fishing;

Assessments.  
16 USC 8033.

Summary.

## Summaries.

(5) summaries of the situational threats with respect to IUU fishing in priority regions and an assessment of the capacity of countries within such regions to respond to those threats;

(6) an assessment of the progress of countries in priority regions in responding to those threats as a result of assistance by the United States pursuant to the strategic plan developed under section 3552, including—

(A) the identification of—

(i) relevant supply routes, ports of call, methods of landing and entering illegally caught product into legal supply chains, and financial institutions used in each country by participants engaging in IUU fishing; and

(ii) indicators of IUU fishing that are related to money laundering;

(B) an assessment of the adherence to, or progress toward adoption of, international treaties related to IUU fishing, including the Port State Measures Agreement, by countries in priority regions;

(C) an assessment of the implementation by countries in priority regions of seafood traceability or capacity to apply traceability to verify the legality of catch and strengthen fisheries management;

(D) an assessment of the capacity of countries in priority regions to implement shiprider agreements;

(E) an assessment of the capacity of countries in priority regions to increase maritime domain awareness; and

(F) an assessment of the capacity of governments of relevant countries in priority regions to sustain the programs for which the United States has provided assistance under this subtitle;

(7) an assessment of the capacity of priority flag states to track the movement of and police their fleet, prevent their flagged vessels from engaging in IUU fishing, and enforce applicable laws and regulations; and

(8) an assessment of the extent of involvement in IUU fishing of organizations designated as foreign terrorist organizations under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

16 USC 8034.

**SEC. 3554. GULF OF MEXICO IUU FISHING SUBWORKING GROUP.**

Deadline.  
Coordination.  
Establishment.

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this title, the Administrator of the National Oceanic and Atmospheric Administration, in coordination with the Commandant of the Coast Guard and the Secretary of State, shall establish a subworking group to address IUU fishing in the exclusive economic zone of the United States in the Gulf of Mexico.

(b) **FUNCTIONS.**—The subworking group established under subsection (a) shall identify—

Time period.

(1) Federal actions taken and policies established during the 5-year period immediately preceding the date of the enactment of this title with respect to IUU fishing in the exclusive economic zone of the United States in the Gulf of Mexico, including such actions and policies related to—

(A) the surveillance, interdiction, and prosecution of any foreign nationals engaged in such fishing; and



(B) the application of the provisions of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.) to any relevant nation, including the status of any past or ongoing consultations and certification procedures;

(2) actions and policies, in addition to the actions and policies described in paragraph (1), each of the Federal agencies described in subsection (a) can take, using existing resources, to combat IUU fishing in the exclusive economic zone of the United States in the Gulf of Mexico; and

(3) any additional authorities that could assist each such agency in more effectively addressing such IUU fishing.

(c) REPORT.—Not later than 1 year after the IUU Fishing Subworking Group is established under subsection (a), the group shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Natural Resources of the House of Representatives that contains—

(1) the findings identified pursuant to subsection (b); and

(2) a timeline for each of the Federal agencies described in subsection (a) to implement each action or policy identified pursuant to subsection (b)(2).

Timeline.

### **PART III—COMBATING HUMAN TRAFFICKING IN CONNECTION WITH THE CATCHING AND PROCESSING OF SEAFOOD PRODUCTS**

#### **SEC. 3561. FINDING.**

Congress finds that human trafficking, including forced labor, is a pervasive problem in the catching and processing of certain seafood products imported into the United States, particularly seafood products obtained through illegal, unreported, and unregulated fishing.

#### **SEC. 3562. ADDING THE SECRETARY OF COMMERCE TO THE INTER-AGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.**

Section 105(b) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(b)) is amended by inserting “the Secretary of Commerce,” after “the Secretary of Education,”.

#### **SEC. 3563. HUMAN TRAFFICKING IN THE SEAFOOD SUPPLY CHAIN REPORT.**

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this title, the Secretary of State and the Administrator of the National Oceanic and Atmospheric Administration shall jointly submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Foreign Relations of the Senate, the Committee on Appropriations of the Senate, the Committee on Natural Resources of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives that describes the existence of human trafficking, including forced labor, in the supply chains of seafood products imported into the United States.

- (b) **REPORT ELEMENTS.**—The report required under subsection (a) shall include—
- List.  
Assessment.
- (1) a list of the countries at risk for human trafficking, including forced labor, in their seafood catching and processing industries, and an assessment of such risk for each listed country;
- (2) a description of the quantity and economic value of seafood products imported into the United States from the countries on the list compiled pursuant to paragraph (1);
- Assessment.
- (3) a description and assessment of the methods, if any, in the countries on the list compiled pursuant to paragraph (1) to trace and account for the manner in which seafood is caught;
- (4) a description of domestic and international enforcement mechanisms to deter illegal practices in the catching of seafood in the countries on the list compiled pursuant to paragraph (1); and
- Recommendations.
- (5) such recommendations as the Secretary of State and the Administrator of the National Oceanic and Atmospheric Administration jointly consider appropriate for administrative action to enhance and improve actions against human trafficking, including forced labor, in the catching and processing of seafood products outside of United States waters.

## **PART IV—AUTHORIZATION OF APPROPRIATIONS**

16 USC 8041. **SEC. 3571. AUTHORIZATION OF APPROPRIATIONS.**

(a) **FUNDING.**—Amounts made available to carry out this subtitle shall be derived from amounts appropriated to the relevant agencies and departments.

(b) **NO INCREASE IN CONTRIBUTIONS.**—Nothing in this subtitle shall be construed to authorize an increase in required or voluntary contributions paid by the United States to any multilateral or international organization.

Reports. **SEC. 3572. ACCOUNTING OF FUNDS.**

By not later than 180 days after the date of enactment of this title, the head of each Federal agency receiving or allocating funds to carry out activities under this subtitle shall, to the greatest extent practicable, prepare and submit to Congress a report that provides an accounting of all funds made available under this subtitle to the Federal agency.

## **DIVISION D—FUNDING TABLES**

Sec. 4001. Authorization of amounts in funding tables.

### TITLE XLI—PROCUREMENT

Sec. 4101. Procurement.

Sec. 4102. Procurement for overseas contingency operations.

Sec. 4103. Procurement for emergency requirements.

### TITLE XLII—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Sec. 4201. Research, development, test, and evaluation.

Sec. 4202. Research, development, test, and evaluation for overseas contingency operations.

Sec. 4203. Research, development, test, and evaluation for emergency requirements.

## TITLE XLIII—OPERATION AND MAINTENANCE

- Sec. 4301. Operation and maintenance.
- Sec. 4302. Operation and maintenance for overseas contingency operations.
- Sec. 4303. Operation and maintenance for emergency requirements.

## TITLE XLIV—MILITARY PERSONNEL

- Sec. 4401. Military personnel.
- Sec. 4402. Military personnel for overseas contingency operations.

## TITLE XLV—OTHER AUTHORIZATIONS

- Sec. 4501. Other authorizations.
- Sec. 4502. Other authorizations for overseas contingency operations.

## TITLE XLVI—MILITARY CONSTRUCTION

- Sec. 4601. Military construction.
- Sec. 4602. Military construction for overseas contingency operations.
- Sec. 4603. Military construction for emergency requirements.

## TITLE XLVII—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

- Sec. 4701. Department of energy national security programs.

**SEC. 4001. AUTHORIZATION OF AMOUNTS IN FUNDING TABLES.**

(a) **IN GENERAL.**—Whenever a funding table in this division specifies a dollar amount authorized for a project, program, or activity, the obligation and expenditure of the specified dollar amount for the project, program, or activity is hereby authorized, subject to the availability of appropriations.

(b) **MERIT-BASED DECISIONS.**—A decision to commit, obligate, or expend funds with or to a specific entity on the basis of a dollar amount authorized pursuant to subsection (a) shall—

- (1) be based on merit-based selection procedures in accordance with the requirements of sections 2304(k) and 2374 of title 10, United States Code, or on competitive procedures; and

- (2) comply with other applicable provisions of law.

Compliance.

(c) **RELATIONSHIP TO TRANSFER AND PROGRAMMING AUTHORITY.**—An amount specified in the funding tables in this division may be transferred or reprogrammed under a transfer or reprogramming authority provided by another provision of this Act or by other law. The transfer or reprogramming of an amount specified in such funding tables shall not count against a ceiling on such transfers or reprogrammings under section 1001 or section 1522 of this Act or any other provision of law, unless such transfer or reprogramming would move funds between appropriation accounts.

(d) **APPLICABILITY TO CLASSIFIED ANNEX.**—This section applies to any classified annex that accompanies this Act.

(e) **ORAL WRITTEN COMMUNICATIONS.**—No oral or written communication concerning any amount specified in the funding tables in this division shall supersede the requirements of this section.

**TITLE XLI—PROCUREMENT**

- Sec. 4101. Procurement.
- Sec. 4102. Procurement for overseas contingency operations.
- Sec. 4103. Procurement for emergency requirements.

## SEC. 4101. PROCUREMENT.

SEC. 4101. PROCUREMENT (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
<b>AIRCRAFT PROCUREMENT, ARMY</b>			
<b>FIXED WING</b>			
002	UTILITY F/W AIRCRAFT .....	16,000	0
	Early to need .....		[-16,000]
004	RQ-11 (RAVEN) .....	23,510	21,420
	Unit cost growth .....		[-2,090]
<b>ROTARY</b>			
005	TACTICAL UNMANNED AIRCRAFT SYSTEM (TUAS) .....	12,100	6,100
	Program reduction .....		[-6,000]
007	HELICOPTER, LIGHT UTILITY (LUH) .....		11,000
	Program increase for sustainment improvements .....		[11,000]
008	AH-64 APACHE BLOCK IIIA REMAN .....	806,849	798,785
	Unjustified cost growth .....		[-8,064]
009	AH-64 APACHE BLOCK IIIA REMAN .....	190,870	190,870
012	UH-60 BLACKHAWK M MODEL (MYP) .....	1,411,540	1,397,740
	Unit cost growth .....		[-13,800]
013	UH-60 BLACKHAWK M MODEL (MYP) .....	79,572	79,572
014	UH-60 BLACK HAWK L AND V MODELS .....	169,290	169,290
015	CH-47 HELICOPTER .....	140,290	131,290
	Unit cost growth .....		[-9,000]
016	CH-47 HELICOPTER .....	18,186	46,186
	Advance procurement for CH-47F Block II .....		[28,000]
<b>MODIFICATION OF AIRCRAFT</b>			
019	UNIVERSAL GROUND CONTROL EQUIPMENT (UAS) .....	2,090	2,090
020	GRAY EAGLE MODS2 .....	14,699	14,699
021	MULTI SENSOR ABN RECON (MIP) .....	35,189	35,189
022	AH-64 MODS .....	58,172	58,172
023	CH-47 CARGO HELICOPTER MODS (MYP) .....	11,785	11,785
024	GRCS SEMA MODS (MIP) .....	5,677	5,677
025	ARL SEMA MODS (MIP) .....	6,566	6,566
026	EMARSS SEMA MODS (MIP) .....	3,859	3,859
027	UTILITY/CARGO AIRPLANE MODS .....	15,476	13,476
	Unit cost discrepancy .....		[-2,000]
028	UTILITY HELICOPTER MODS .....	6,744	6,744
029	NETWORK AND MISSION PLAN .....	105,442	98,442
	Cost growth .....		[-7,000]
030	COMMS, NAV SURVEILLANCE .....	164,315	164,315
032	GATM ROLLUP .....	30,966	30,966
033	RQ-7 UAV MODS .....	8,983	8,983
034	UAS MODS .....	10,205	10,205
<b>GROUND SUPPORT AVIONICS</b>			
035	AIRCRAFT SURVIVABILITY EQUIPMENT .....	52,297	52,297
036	SURVIVABILITY CM .....	8,388	8,388
037	CMWS .....	13,999	13,999
038	COMMON INFRARED COUNTERMEASURES (CIRCM) .....	168,784	168,784
<b>OTHER SUPPORT</b>			
039	AVIONICS SUPPORT EQUIPMENT .....	1,777	1,777
040	COMMON GROUND EQUIPMENT .....	18,624	18,624
041	AIRCREW INTEGRATED SYSTEMS .....	48,255	48,255
042	AIR TRAFFIC CONTROL .....	32,738	32,738
044	LAUNCHER, 2.75 ROCKET .....	2,201	2,201
045	LAUNCHER GUIDED MISSILE: LONGBOW HELLFIRE XM2 ..	991	991
	<b>TOTAL AIRCRAFT PROCUREMENT, ARMY .....</b>	<b>3,696,429</b>	<b>3,671,475</b>
<b>MISSILE PROCUREMENT, ARMY</b>			
<b>SURFACE-TO-AIR MISSILE SYSTEM</b>			
001	SYSTEM INTEGRATION AND TEST PROCUREMENT .....	113,857	113,857
002	M-SHORAD—PROCUREMENT .....	103,800	71,800
	Early to need .....		[-32,000]
003	MSE MISSILE .....	698,603	698,603
004	INDIRECT FIRE PROTECTION CAPABILITY INC 2-I .....	9,337	9,337
<b>AIR-TO-SURFACE MISSILE SYSTEM</b>			
006	HELLFIRE SYS SUMMARY .....	193,284	186,084
	Unit cost growth .....		[-7,200]
007	JOINT AIR-TO-GROUND MSLS (JAGM) .....	233,353	199,295

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Contract and schedule delays .....		[-34,058]
	<b>ANTI-TANK/ASSAULT MISSILE SYS</b>		
008	JAVELIN (AAWS-M) SYSTEM SUMMARY .....	138,405	138,405
009	TOW 2 SYSTEM SUMMARY .....	114,340	107,958
	Unit cost growth .....		[-6,382]
010	TOW 2 SYSTEM SUMMARY .....	10,500	10,500
011	GUIDED MLRS ROCKET (GMLRS) .....	797,213	767,213
	Program adjustment .....		[-30,000]
012	MLRS REDUCED RANGE PRACTICE ROCKETTS (RRPR) .....	27,555	27,555
014	ARMY TACTICAL MSL SYS (ATACMS)—SYS SUM .....	209,842	170,013
	Excess to need .....		[-39,829]
	<b>MODIFICATIONS</b>		
016	PATRIOT MODS .....	279,464	279,464
017	ATACMS MODS .....	85,320	80,320
	Unit cost growth .....		[-5,000]
018	GMLRS MOD .....	5,094	5,094
019	STINGER MODS .....	81,615	81,615
020	AVENGER MODS .....	14,107	14,107
021	ITAS/TOW MODS .....	3,469	3,469
022	MLRS MODS .....	39,019	39,019
023	HIMARS MODIFICATIONS .....	12,483	12,483
	<b>SPARES AND REPAIR PARTS</b>		
024	SPARES AND REPAIR PARTS .....	26,444	26,444
	<b>SUPPORT EQUIPMENT &amp; FACILITIES</b>		
025	AIR DEFENSE TARGETS .....	10,593	10,593
	<b>TOTAL MISSILE PROCUREMENT, ARMY</b> .....	<b>3,207,697</b>	<b>3,053,228</b>
	<b>PROCUREMENT OF W&amp;TCV, ARMY</b>		
	<b>TRACKED COMBAT VEHICLES</b>		
002	ARMORED MULTI PURPOSE VEHICLE (AMPV) .....	264,040	230,307
	Program reduction .....		[-33,733]
	<b>MODIFICATION OF TRACKED COMBAT VEHICLES</b>		
003	STRYKER (MOD) .....	144,387	393,587
	Accelerate Stryker medium caliber weapon system—Army unfunded priority.		[249,200]
004	STRYKER UPGRADE .....	550,000	522,962
	Unit cost growth .....		[-27,038]
005	BRADLEY PROGRAM (MOD) .....	638,781	573,781
	Program decrease .....		[-65,000]
006	M109 FOV MODIFICATIONS .....	25,756	25,756
007	PALADIN INTEGRATED MANAGEMENT (PIM) .....	553,425	553,425
009	ASSAULT BRIDGE (MOD) .....	2,821	2,821
010	ASSAULT BREACHER VEHICLE .....	31,697	31,697
011	M88 FOV MODS .....	4,500	4,500
012	JOINT ASSAULT BRIDGE .....	205,517	205,517
013	M1 ABRAMS TANK (MOD) .....	348,800	401,800
	Test support excess to need .....		[-7,000]
	Vehicle protection system for one armored brigade .....		[60,000]
014	ABRAMS UPGRADE PROGRAM .....	1,752,784	1,752,784
	<b>WEAPONS &amp; OTHER COMBAT VEHICLES</b>		
016	MULTI-ROLE ANTI-ARMOR ANTI-PERSONNEL WEAPONS ...	19,420	19,420
017	GUN AUTOMATIC 30MM M230 .....	20,000	5,042
	Program reduction .....		[-14,958]
019	MORTAR SYSTEMS .....	14,907	14,907
020	XM320 GRENADE LAUNCHER MODULE (GLM) .....	191	191
021	PRECISION SNIPER RIFLE .....	7,977	7,977
022	COMPACT SEMI-AUTOMATIC SNIPER SYSTEM .....	9,860	9,860
023	CARBINE .....	30,331	30,331
024	SMALL ARMS—FIRE CONTROL .....	8,060	0
	Late contract award .....		[-8,060]
025	COMMON REMOTELY OPERATED WEAPONS STATION .....	24,007	24,007
026	HANDGUN .....	6,174	6,174
	<b>MOD OF WEAPONS AND OTHER COMBAT VEH</b>		
028	MK-19 GRENADE MACHINE GUN MODS .....	3,737	3,737
029	M777 MODS .....	2,367	2,367
030	M4 CARBINE MODS .....	17,595	17,595
033	M240 MEDIUM MACHINE GUN MODS .....	8,000	8,000

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
034	SNIPER RIFLES MODIFICATIONS .....	2,426	2,426
035	M119 MODIFICATIONS .....	6,269	6,269
036	MORTAR MODIFICATION .....	1,693	1,693
037	MODIFICATIONS LESS THAN \$5.0M (WOCV-WTCV) .....	4,327	4,327
	<b>SUPPORT EQUIPMENT &amp; FACILITIES</b>		
038	ITEMS LESS THAN \$5.0M (WOCV-WTCV) .....	3,066	3,066
039	PRODUCTION BASE SUPPORT (WOCV-WTCV) .....	2,651	2,651
	<b>TOTAL PROCUREMENT OF W&amp;TCV, ARMY .....</b>	<b>4,715,566</b>	<b>4,868,977</b>
	<b>PROCUREMENT OF AMMUNITION, ARMY</b>		
	<b>SMALL/MEDIUM CAL AMMUNITION</b>		
001	CTG, 5.56MM, ALL TYPES .....	68,949	65,520
	Prior-year carryover .....		[-3,429]
002	CTG, 7.62MM, ALL TYPES .....	114,228	112,228
	Prior-year carryover .....		[-2,000]
003	CTG, HANDGUN, ALL TYPES .....	17,807	17,807
004	CTG, .50 CAL, ALL TYPES .....	63,966	63,966
005	CTG, 20MM, ALL TYPES .....	35,920	27,920
	Unit cost growth .....		[-8,000]
006	CTG, 25MM, ALL TYPES .....	8,990	8,990
007	CTG, 30MM, ALL TYPES .....	68,813	65,337
	Prior-year carry over .....		[-1,134]
	Program adjustment .....		[-2,342]
008	CTG, 40MM, ALL TYPES .....	103,952	103,952
	<b>MORTAR AMMUNITION</b>		
009	60MM MORTAR, ALL TYPES .....	50,580	49,580
	Unit cost discrepancy .....		[-1,000]
010	81MM MORTAR, ALL TYPES .....	59,373	44,673
	Contract delays .....		[-14,700]
011	120MM MORTAR, ALL TYPES .....	125,452	123,452
	Unit cost growth .....		[-2,000]
	<b>TANK AMMUNITION</b>		
012	CARTRIDGES, TANK, 105MM AND 120MM, ALL TYPES .....	171,284	120,464
	Unit cost growth .....		[-50,820]
	<b>ARTILLERY AMMUNITION</b>		
013	ARTILLERY CARTRIDGES, 75MM & 105MM, ALL TYPES .....	44,675	44,675
014	ARTILLERY PROJECTILE, 155MM, ALL TYPES .....	266,037	266,037
015	PROJ 155MM EXTENDED RANGE M982 .....	57,434	57,434
016	ARTILLERY PROPELLANTS, FUZES AND PRIMERS, ALL .....	271,602	268,022
	Cost growth and unjustified product improvements .....		[-3,580]
	<b>MINES</b>		
017	MINES & CLEARING CHARGES, ALL TYPES .....	55,433	39,239
	Contract delay .....		[-16,194]
	<b>ROCKETS</b>		
018	SHOULDER LAUNCHED MUNITIONS, ALL TYPES .....	74,878	74,878
019	ROCKET, HYDRA 70, ALL TYPES .....	175,994	165,994
	Excess support costs .....		[-10,000]
	<b>OTHER AMMUNITION</b>		
020	CAD/PAD, ALL TYPES .....	7,595	7,595
021	DEMOLITION MUNITIONS, ALL TYPES .....	51,651	51,651
022	GRENADES, ALL TYPES .....	40,592	40,592
023	SIGNALS, ALL TYPES .....	18,609	18,609
024	SIMULATORS, ALL TYPES .....	16,054	16,054
	<b>MISCELLANEOUS</b>		
025	AMMO COMPONENTS, ALL TYPES .....	5,261	5,261
026	NON-LETHAL AMMUNITION, ALL TYPES .....	715	715
027	ITEMS LESS THAN \$5 MILLION (AMMO) .....	9,213	9,213
028	AMMUNITION PECULIAR EQUIPMENT .....	10,044	10,044
029	FIRST DESTINATION TRANSPORTATION (AMMO) .....	18,492	18,492
030	CLOSEOUT LIABILITIES .....	99	99
	<b>PRODUCTION BASE SUPPORT</b>		
031	INDUSTRIAL FACILITIES .....	474,511	474,511
032	CONVENTIONAL MUNITIONS DEMILITARIZATION .....	202,512	202,512
033	ARMS INITIATIVE .....	3,833	3,833
	<b>TOTAL PROCUREMENT OF AMMUNITION, ARMY ..</b>	<b>2,694,548</b>	<b>2,579,349</b>

**OTHER PROCUREMENT, ARMY**

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
<b>TACTICAL VEHICLES</b>			
001	TACTICAL TRAILERS/DOLLY SETS .....	12,993	12,993
002	SEMITRAILERS, FLATBED: .....	102,386	102,386
003	AMBULANCE, 4 LITTER, 5/4 TON, 4X4 .....	127,271	127,271
004	GROUND MOBILITY VEHICLES (GMV) .....	37,038	35,038
	Unit cost growth .....		[-2,000]
006	JOINT LIGHT TACTICAL VEHICLE .....	996,007	976,507
	Army requested transfer to RDTE, A line 169 .....		[-4,500]
	Simulator delay .....		[-15,000]
007	TRUCK, DUMP, 20T (CCE) .....	10,838	10,838
008	FAMILY OF MEDIUM TACTICAL VEH (FMTV) .....	72,057	138,057
	Program increase .....		[66,000]
009	FIRETRUCKS & ASSOCIATED FIREFIGHTING EQUIP .....	28,048	28,048
010	FAMILY OF HEAVY TACTICAL VEHICLES (FHTV) .....	9,969	9,969
011	PLS ESP .....	6,280	6,280
012	HVY EXPANDED MOBILE TACTICAL TRUCK EXT SERV .....	30,841	95,185
	Program increase .....		[64,344]
013	HMMWV RECAPITALIZATION PROGRAM .....	5,734	5,734
014	TACTICAL WHEELED VEHICLE PROTECTION KITS .....	45,113	45,113
015	MODIFICATION OF IN SVC EQUIP .....	58,946	58,946
<b>NON-TACTICAL VEHICLES</b>			
017	HEAVY ARMORED VEHICLE .....	791	791
018	PASSENGER CARRYING VEHICLES .....	1,416	1,416
019	NONTACTICAL VEHICLES, OTHER .....	29,891	29,891
<b>COMM—JOINT COMMUNICATIONS</b>			
021	SIGNAL MODERNIZATION PROGRAM .....	153,933	143,933
	Excess funding for spares .....		[-10,000]
022	TACTICAL NETWORK TECHNOLOGY MOD IN SVC .....	387,439	411,439
	ITN-M for one armored brigade combat team .....		[24,000]
023	SITUATION INFORMATION TRANSPORT .....	46,693	46,693
025	JCSE EQUIPMENT (USRDECOM) .....	5,075	5,075
<b>COMM—SATELLITE COMMUNICATIONS</b>			
028	DEFENSE ENTERPRISE WIDEBAND SATCOM SYSTEMS .....	101,189	101,189
029	TRANSPORTABLE TACTICAL COMMAND COMMUNICA- TIONS .....	77,141	77,141
030	SHF TERM .....	16,054	16,054
031	ASSURED POSITIONING, NAVIGATION AND TIMING .....	41,074	33,674
	Program cancellation .....		[-7,400]
032	SMART-T (SPACE) .....	10,515	10,515
033	GLOBAL BRDCST SVC—GBS .....	11,800	11,800
034	ENROUTE MISSION COMMAND (EMC) .....	8,609	8,609
<b>COMM—C3 SYSTEM</b>			
038	COE TACTICAL SERVER INFRASTRUCTURE (TSI) .....	77,533	57,533
	Program reduction .....		[-20,000]
<b>COMM—COMBAT COMMUNICATIONS</b>			
039	HANDHELD MANPACK SMALL FORM FIT (HMS) .....	468,026	488,026
	SFAB technology refresh .....		[20,000]
040	RADIO TERMINAL SET, MIDS LVT(2) .....	23,778	23,778
044	SPIDER FAMILY OF NETWORKED MUNITIONS INCR .....	10,930	10,930
046	UNIFIED COMMAND SUITE .....	9,291	9,291
047	COTS COMMUNICATIONS EQUIPMENT .....	55,630	55,630
048	FAMILY OF MED COMM FOR COMBAT CASUALTY CARE .....	16,590	16,590
049	ARMY COMMUNICATIONS & ELECTRONICS .....	43,457	43,457
<b>COMM—INTELLIGENCE COMM</b>			
051	CI AUTOMATION ARCHITECTURE (MIP) .....	10,470	10,470
052	DEFENSE MILITARY DECEPTION INITIATIVE .....	3,704	3,704
<b>INFORMATION SECURITY</b>			
053	FAMILY OF BIOMETRICS .....	1,000	1,000
054	INFORMATION SYSTEM SECURITY PROGRAM-ISSP .....	3,600	3,600
055	COMMUNICATIONS SECURITY (COMSEC) .....	160,899	147,097
	Unit cost growth .....		[-13,802]
056	DEFENSIVE CYBER OPERATIONS .....	61,962	61,962
057	INSIDER THREAT PROGRAM—UNIT ACTIVITY MONITO .....	756	756
058	PERSISTENT CYBER TRAINING ENVIRONMENT .....	3,000	3,000
<b>COMM—LONG HAUL COMMUNICATIONS</b>			
059	BASE SUPPORT COMMUNICATIONS .....	31,770	31,770
<b>COMM—BASE COMMUNICATIONS</b>			

SEC. 4101. PROCUREMENT (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
060	INFORMATION SYSTEMS .....	159,009	159,009
061	EMERGENCY MANAGEMENT MODERNIZATION PROGRAM .....	4,854	4,854
062	HOME STATION MISSION COMMAND CENTERS (HSMCC) ...	47,174	47,174
063	INSTALLATION INFO INFRASTRUCTURE MOD PROGRAM ...	297,994	265,494
	Insufficient budget justification .....		[-32,500]
	<b>ELECT EQUIP—TACT INT REL ACT (TIARA)</b>		
066	JTT/CIBS-M (MIP) .....	7,686	7,686
068	DCGS-A (MIP) .....	180,350	180,350
070	TROJAN (MIP) .....	17,368	17,368
071	MOD OF IN-SVC EQUIP (INTEL SPT) (MIP) .....	59,052	59,052
	<b>ELECT EQUIP—ELECTRONIC WARFARE (EW)</b>		
077	LIGHTWEIGHT COUNTER MORTAR RADAR .....	5,400	5,400
078	EW PLANNING & MANAGEMENT TOOLS (EWPMT) .....	7,568	7,568
079	AIR VIGILANCE (AV) (MIP) .....	8,953	8,953
081	MULTI-FUNCTION ELECTRONIC WARFARE (MFEW) SYST ...	6,420	3,220
	Program reduction .....		[-3,200]
083	COUNTERINTELLIGENCE/SECURITY COUNTERMEASURES	501	501
084	CI MODERNIZATION (MIP) .....	121	121
	<b>ELECT EQUIP—TACTICAL SURV. (TAC SURV)</b>		
085	SENTINEL MODS .....	115,210	114,210
	Excess support costs .....		[-1,000]
086	NIGHT VISION DEVICES .....	236,604	160,379
	Insufficient justification (IVAS) .....		[-76,225]
088	SMALL TACTICAL OPTICAL RIFLE MOUNTED MLRF .....	22,623	22,623
090	INDIRECT FIRE PROTECTION FAMILY OF SYSTEMS .....	29,127	29,127
091	FAMILY OF WEAPON SIGHTS (FWS) .....	120,883	81,541
	Excess unit cost growth .....		[-39,342]
094	JOINT BATTLE COMMAND—PLATFORM (JBC-P) .....	265,667	256,567
	Program adjustment .....		[-9,100]
095	JOINT EFFECTS TARGETING SYSTEM (JETS) .....	69,720	44,720
	Program delay .....		[-25,000]
096	MOD OF IN-SVC EQUIP (LLDR) .....	6,044	6,044
097	COMPUTER BALLISTICS: LHMCB XM32 .....	3,268	3,268
098	MORTAR FIRE CONTROL SYSTEM .....	13,199	13,199
099	MORTAR FIRE CONTROL SYSTEMS MODIFICATIONS .....	10,000	10,000
100	COUNTERFIRE RADARS .....	16,416	16,416
	<b>ELECT EQUIP—TACTICAL C2 SYSTEMS</b>		
102	FIRE SUPPORT C2 FAMILY .....	13,197	13,197
103	AIR & MSL DEFENSE PLANNING & CONTROL SYS .....	24,730	24,730
104	IAMD BATTLE COMMAND SYSTEM .....	29,629	29,629
105	LIFE CYCLE SOFTWARE SUPPORT (LCSS) .....	6,774	6,774
106	NETWORK MANAGEMENT INITIALIZATION AND SERVICE	24,448	24,448
107	MANEUVER CONTROL SYSTEM (MCS) .....	260	260
108	GLOBAL COMBAT SUPPORT SYSTEM-ARMY (GCSS-A) .....	17,962	17,962
109	INTEGRATED PERSONNEL AND PAY SYSTEM-ARMY (IPP) ...	18,674	8,674
	Poor business process reengineering .....		[-10,000]
110	RECONNAISSANCE AND SURVEYING INSTRUMENT SET ....	11,000	11,000
111	MOD OF IN-SVC EQUIPMENT (ENFIRE) .....	7,317	15,317
	Program increase—land surveying systems .....		[8,000]
	<b>ELECT EQUIP—AUTOMATION</b>		
112	ARMY TRAINING MODERNIZATION .....	14,578	14,578
113	AUTOMATED DATA PROCESSING EQUIP .....	139,342	129,342
	Program decrease .....		[-5,000]
	Unjustified growth .....		[-5,000]
114	GENERAL FUND ENTERPRISE BUSINESS SYSTEMS FAM ...	15,802	15,802
115	HIGH PERF COMPUTING MOD PGM (HPCMP) .....	67,610	67,610
116	CONTRACT WRITING SYSTEM .....	15,000	6,000
	Program duplication .....		[-9,000]
117	CSS COMMUNICATIONS .....	24,700	24,700
118	RESERVE COMPONENT AUTOMATION SYS (RCAS) .....	27,879	27,879
	<b>ELECT EQUIP—AUDIO VISUAL SYS (AV)</b>		
120	ITEMS LESS THAN \$5M (SURVEYING EQUIPMENT) .....	5,000	5,000
	<b>ELECT EQUIP—SUPPORT</b>		
122	BCT EMERGING TECHNOLOGIES .....	22,302	10,302
	Program reduction .....		[-12,000]
	<b>CLASSIFIED PROGRAMS</b>		
122A	CLASSIFIED PROGRAMS .....	11,910	11,910



<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
<b>CHEMICAL DEFENSIVE EQUIPMENT</b>			
126	CBRN DEFENSE .....	25,828	25,828
127	SMOKE & OBSCURANT FAMILY: SOF (NON AAO ITEM) .....	5,050	5,050
<b>BRIDGING EQUIPMENT</b>			
128	TACTICAL BRIDGING .....	59,821	57,821
	Contract delays .....		[-2,000]
129	TACTICAL BRIDGE, FLOAT-RIBBON .....	57,661	57,661
130	BRIDGE SUPPLEMENTAL SET .....	17,966	17,966
131	COMMON BRIDGE TRANSPORTER (CBT) RECAP .....	43,155	43,155
<b>ENGINEER (NON-CONSTRUCTION) EQUIPMENT</b>			
132	HANDHELD STANDOFF MINEFIELD DETECTION SYS-HST .....	7,570	7,570
133	GRND STANDOFF MINE DETECTN SYSM (GSTAMIDS) .....	37,025	37,025
135	HUSKY MOUNTED DETECTION SYSTEM (HMDS) .....	83,082	47,899
	Unjustified unit cost growth .....		[-35,183]
136	ROBOTIC COMBAT SUPPORT SYSTEM (RCSS) .....	2,000	2,000
137	EOD ROBOTICS SYSTEMS RECAPITALIZATION .....	23,115	23,115
138	ROBOTICS AND APPLIQUE SYSTEMS .....	101,056	101,056
140	RENDER SAFE SETS KITS OUTFITS .....	18,684	18,684
142	FAMILY OF BOATS AND MOTORS .....	8,245	6,245
	Unit cost growth .....		[-2,000]
<b>COMBAT SERVICE SUPPORT EQUIPMENT</b>			
143	HEATERS AND ECU'S .....	7,336	7,336
145	PERSONNEL RECOVERY SUPPORT SYSTEM (PRSS) .....	4,281	4,281
146	GROUND SOLDIER SYSTEM .....	111,955	111,955
147	MOBILE SOLDIER POWER .....	31,364	29,943
	Unit cost growth .....		[-1,421]
149	FIELD FEEDING EQUIPMENT .....	1,673	1,673
150	CARGO AERIAL DEL & PERSONNEL PARACHUTE SYSTEM .....	43,622	43,622
151	FAMILY OF ENGR COMBAT AND CONSTRUCTION SETS .....	11,451	11,451
152	ITEMS LESS THAN \$5M (ENG SPT) .....	5,167	5,167
<b>PETROLEUM EQUIPMENT</b>			
154	DISTRIBUTION SYSTEMS, PETROLEUM & WATER .....	74,867	74,867
<b>MEDICAL EQUIPMENT</b>			
155	COMBAT SUPPORT MEDICAL .....	68,225	68,225
<b>MAINTENANCE EQUIPMENT</b>			
156	MOBILE MAINTENANCE EQUIPMENT SYSTEMS .....	55,053	55,053
157	ITEMS LESS THAN \$5.0M (MAINT EQ) .....	5,608	5,608
<b>CONSTRUCTION EQUIPMENT</b>			
161	HYDRAULIC EXCAVATOR .....	500	500
162	TRACTOR, FULL TRACKED .....	4,835	4,835
163	ALL TERRAIN CRANES .....	23,936	23,936
164	HIGH MOBILITY ENGINEER EXCAVATOR (HMEE) .....	27,188	27,188
166	CONST EQUIP ESP .....	34,790	34,790
167	ITEMS LESS THAN \$5.0M (CONST EQUIP) .....	4,381	4,381
<b>RAIL FLOAT CONTAINERIZATION EQUIPMENT</b>			
168	ARMY WATERCRAFT ESP .....	35,194	35,194
169	MANEUVER SUPPORT VESSEL (MSV) .....	14,185	14,185
170	ITEMS LESS THAN \$5.0M (FLOAT/RAIL) .....	6,920	6,920
<b>GENERATORS</b>			
171	GENERATORS AND ASSOCIATED EQUIP .....	58,566	58,566
172	TACTICAL ELECTRIC POWER RECAPITALIZATION .....	14,814	14,814
<b>MATERIAL HANDLING EQUIPMENT</b>			
173	FAMILY OF FORKLIFTS .....	14,864	14,864
<b>TRAINING EQUIPMENT</b>			
174	COMBAT TRAINING CENTERS SUPPORT .....	123,411	123,411
175	TRAINING DEVICES, NONSYSTEM .....	220,707	220,707
176	SYNTHETIC TRAINING ENVIRONMENT (STE) .....	20,749	15,749
	Program adjustment .....		[-5,000]
178	AVIATION COMBINED ARMS TACTICAL TRAINER .....	4,840	4,840
179	GAMING TECHNOLOGY IN SUPPORT OF ARMY TRAINING ..	15,463	15,463
<b>TEST MEASURE AND DIG EQUIPMENT (TMD)</b>			
180	CALIBRATION SETS EQUIPMENT .....	3,030	3,030
181	INTEGRATED FAMILY OF TEST EQUIPMENT (IFTE) .....	76,980	76,980
182	TEST EQUIPMENT MODERNIZATION (TEMOD) .....	16,415	13,415
	Historical underexecution .....		[-3,000]
<b>OTHER SUPPORT EQUIPMENT</b>			
184	RAPID EQUIPPING SOLDIER SUPPORT EQUIPMENT .....	9,877	9,877

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
185	PHYSICAL SECURITY SYSTEMS (OPA3) .....	82,158	82,158
186	BASE LEVEL COMMON EQUIPMENT .....	15,340	15,340
187	MODIFICATION OF IN-SVC EQUIPMENT (OPA-3) .....	50,458	50,458
189	BUILDING, PRE-FAB, RELOCATABLE .....	14,400	14,400
190	SPECIAL EQUIPMENT FOR USER TESTING .....	9,821	9,821
	<b>OPA2</b>		
192	INITIAL SPARES—C&E .....	9,757	9,757
	<b>TOTAL OTHER PROCUREMENT, ARMY</b> .....	<b>7,451,301</b>	<b>7,284,972</b>
	<b>AIRCRAFT PROCUREMENT, NAVY</b>		
	<b>COMBAT AIRCRAFT</b>		
001	F/A-18E/F (FIGHTER) HORNET .....	1,748,934	1,730,360
	ECO and ancillary equipment excess growth .....		[-18,574]
002	F/A-18E/F (FIGHTER) HORNET .....	55,128	51,180
	Excess engine cost growth .....		[-3,948]
003	JOINT STRIKE FIGHTER CV .....	2,272,301	2,217,821
	Target cost savings .....		[-54,480]
004	JOINT STRIKE FIGHTER CV .....	339,053	339,053
005	JSF STOVL .....	1,342,035	1,266,301
	Target cost savings .....		[-75,734]
006	JSF STOVL .....	291,804	291,804
007	CH-53K (HEAVY LIFT) .....	807,876	807,876
008	CH-53K (HEAVY LIFT) .....	215,014	215,014
009	V-22 (MEDIUM LIFT) .....	966,666	1,214,766
	Program increase .....		[248,100]
010	V-22 (MEDIUM LIFT) .....	27,104	27,104
011	H-1 UPGRADES (UH-1Y/AH-1Z) .....	62,003	53,003
	Production line shutdown excess to need .....		[-9,000]
013	MH-60R (MYP) .....	894	894
014	P-8A POSEIDON .....	1,206,701	1,680,601
	Line shutdown costs early to need .....		[-67,300]
	Navy unfunded priority .....		[541,200]
016	E-2D ADV HAWKEYE .....	744,484	900,284
	Navy unfunded priority .....		[173,000]
	NRE excess cost growth .....		[-17,200]
017	E-2D ADV HAWKEYE .....	190,204	190,204
	<b>TRAINER AIRCRAFT</b>		
019	ADVANCED HELICOPTER TRAINING SYSTEM .....	261,160	261,160
	<b>OTHER AIRCRAFT</b>		
020	KC-130J .....	240,840	221,904
	Unit cost growth .....		[-18,936]
021	KC-130J .....	66,061	66,061
022	F-5 .....	39,676	39,676
023	MQ-4 TRITON .....	473,134	448,134
	PGSE excess cost growth .....		[-25,000]
024	MQ-4 TRITON .....	20,139	20,139
025	MQ-8 UAV .....	44,957	44,957
026	STUASL0 UAV .....	43,819	43,819
028	VH-92A EXECUTIVE HELO .....	658,067	647,351
	Program reduction .....		[-10,716]
	<b>MODIFICATION OF AIRCRAFT</b>		
029	AEA SYSTEMS .....	44,470	39,170
	Program reduction .....		[-5,300]
030	AV-8 SERIES .....	39,472	39,472
031	ADVERSARY .....	3,415	3,415
032	F-18 SERIES .....	1,207,089	1,128,089
	Early to need .....		[-79,000]
033	H-53 SERIES .....	68,385	68,385
034	MH-60 SERIES .....	149,797	147,297
	NRE prior year carryover (OSIP 018-12) .....		[-2,500]
035	H-1 SERIES .....	114,059	114,059
036	EP-3 SERIES .....	8,655	8,655
038	E-2 SERIES .....	117,059	117,059
039	TRAINER A/C SERIES .....	5,616	5,616
040	C-2A .....	15,747	15,747
041	C-130 SERIES .....	122,671	116,786
	B kit cost growth (OSIP 019-14) .....		[-3,009]

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	GFE excess growth (OSIP 019-14) .....		[-2,876]
042	FEWSG .....	509	509
043	CARGO/TRANSPORT A/C SERIES .....	8,767	8,767
044	E-6 SERIES .....	169,827	167,216
	Program reduction .....		[-2,611]
045	EXECUTIVE HELICOPTERS SERIES .....	8,933	8,933
047	T-45 SERIES .....	186,022	184,314
	NRE previously funded .....		[-1,708]
048	POWER PLANT CHANGES .....	16,136	16,136
049	JPATS SERIES .....	21,824	21,824
050	AVIATION LIFE SUPPORT MODS .....	39,762	39,762
051	COMMON ECM EQUIPMENT .....	162,839	152,839
	Program decrease .....		[-10,000]
052	COMMON AVIONICS CHANGES .....	102,107	75,107
	Computing and displays concurrency and equipment growth early to need. ....		[-27,000]
053	COMMON DEFENSIVE WEAPON SYSTEM .....	2,100	2,100
054	ID SYSTEMS .....	41,437	41,437
055	P-8 SERIES .....	107,539	96,563
	Increment 3 ECP 6 early to need (OSIP 006-18) .....		[-10,976]
056	MAGTF EW FOR AVIATION .....	26,536	26,536
057	MQ-8 SERIES .....	34,686	34,686
058	V-22 (TILT/ROTOR ACFT) OSPREY .....	325,367	325,367
059	NEXT GENERATION JAMMER (NGJ) .....	6,223	3,111
	Program reduction .....		[-3,112]
060	F-35 STOVL SERIES .....	65,585	65,585
061	F-35 CV SERIES .....	15,358	15,358
062	QRC .....	165,016	146,558
	Program decrease .....		[-18,458]
063	MQ-4 SERIES .....	27,994	27,994
064	RQ-21 SERIES .....	66,282	61,032
	EO/IR turret upgrades unit cost growth (OSIP 004-20) .....		[-5,250]
	<b>AIRCRAFT SPARES AND REPAIR PARTS</b>		
067	SPARES AND REPAIR PARTS .....	2,166,788	2,146,788
	MQ-4 Triton spares excess growth .....		[-20,000]
	<b>AIRCRAFT SUPPORT EQUIP &amp; FACILITIES</b>		
068	COMMON GROUND EQUIPMENT .....	491,025	470,025
	Other flight training previously funded .....		[-21,000]
069	AIRCRAFT INDUSTRIAL FACILITIES .....	71,335	71,335
070	WAR CONSUMABLES .....	41,086	32,086
	BRU-61 previously funded .....		[-9,000]
072	SPECIAL SUPPORT EQUIPMENT .....	135,740	135,740
073	FIRST DESTINATION TRANSPORTATION .....	892	892
	<b>TOTAL AIRCRAFT PROCUREMENT, NAVY</b> .....	<b>18,522,204</b>	<b>18,961,816</b>
	<b>WEAPONS PROCUREMENT, NAVY</b>		
	<b>MODIFICATION OF MISSILES</b>		
001	TRIDENT II MODS .....	1,177,251	1,177,251
	<b>SUPPORT EQUIPMENT &amp; FACILITIES</b>		
002	MISSILE INDUSTRIAL FACILITIES .....	7,142	7,142
	<b>STRATEGIC MISSILES</b>		
003	TOMAHAWK .....	386,730	344,648
	Unjustified tooling and facilitization costs .....		[-42,082]
	<b>TACTICAL MISSILES</b>		
004	AMRAAM .....	224,502	201,502
	Unit cost growth .....		[-23,000]
005	SIDEWINDER .....	119,456	117,404
	Program reduction .....		[-2,052]
007	STANDARD MISSILE .....	404,523	404,523
008	STANDARD MISSILE .....	96,085	96,085
009	SMALL DIAMETER BOMB II .....	118,466	115,828
	Program reduction .....		[-2,638]
010	RAM .....	106,765	106,765
012	HELLFIRE .....	1,525	1,525
015	AERIAL TARGETS .....	145,880	145,880
016	DRONES AND DECOYS .....	20,000	18,521
	Excess to need .....		[-1,479]

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
017	OTHER MISSILE SUPPORT .....	3,388	3,388
018	LRASM .....	143,200	143,200
019	LCS OTH MISSILE .....	38,137	38,137
<b>MODIFICATION OF MISSILES</b>			
020	ESSM .....	128,059	110,059
	Production support excess to need .....		[-18,000]
021	HARPOON MODS .....	25,447	25,447
022	HARM MODS .....	183,740	183,740
023	STANDARD MISSILES MODS .....	22,500	2,500
	Early to need .....		[-20,000]
<b>SUPPORT EQUIPMENT &amp; FACILITIES</b>			
024	WEAPONS INDUSTRIAL FACILITIES .....	1,958	1,958
025	FLEET SATELLITE COMM FOLLOW-ON .....	67,380	67,380
<b>ORDNANCE SUPPORT EQUIPMENT</b>			
027	ORDNANCE SUPPORT EQUIPMENT .....	109,427	85,717
	Insufficient budget justification .....		[-23,710]
<b>TORPEDOES AND RELATED EQUIP</b>			
028	SSTD .....	5,561	5,561
029	MK-48 TORPEDO .....	114,000	130,000
	Program increase .....		[16,000]
030	ASW TARGETS .....	15,095	15,095
<b>MOD OF TORPEDOES AND RELATED EQUIP</b>			
031	MK-54 TORPEDO MODS .....	119,453	112,013
	HAAWC cost growth .....		[-7,440]
032	MK-48 TORPEDO ADCAP MODS .....	39,508	39,508
033	QUICKSTRIKE MINE .....	5,183	5,183
<b>SUPPORT EQUIPMENT</b>			
034	TORPEDO SUPPORT EQUIPMENT .....	79,028	79,028
035	ASW RANGE SUPPORT .....	3,890	3,890
<b>DESTINATION TRANSPORTATION</b>			
036	FIRST DESTINATION TRANSPORTATION .....	3,803	3,803
<b>GUNS AND GUN MOUNTS</b>			
037	SMALL ARMS AND WEAPONS .....	14,797	13,607
	Program reduction .....		[-1,190]
<b>MODIFICATION OF GUNS AND GUN MOUNTS</b>			
038	CIWS MODS .....	44,126	44,126
039	COAST GUARD WEAPONS .....	44,980	44,980
040	GUN MOUNT MODS .....	66,376	66,376
041	LCS MODULE WEAPONS .....	14,585	14,585
043	AIRBORNE MINE NEUTRALIZATION SYSTEMS .....	7,160	7,160
<b>SPARES AND REPAIR PARTS</b>			
<b>UNDISTRIBUTED</b>			
045	SPARES AND REPAIR PARTS .....	126,138	124,390
	Program reduction .....		[-1,748]
	<b>TOTAL WEAPONS PROCUREMENT, NAVY .....</b>	<b>4,235,244</b>	<b>4,107,905</b>
<b>PROCUREMENT OF AMMO, NAVY &amp; MC</b>			
<b>NAVY AMMUNITION</b>			
001	GENERAL PURPOSE BOMBS .....	36,028	34,997
	Fuze contract delay and unit cost growth .....		[-1,031]
002	JDAM .....	70,413	70,413
003	AIRBORNE ROCKETS, ALL TYPES .....	31,756	27,707
	Unit cost growth .....		[-4,049]
004	MACHINE GUN AMMUNITION .....	4,793	4,793
005	PRACTICE BOMBS .....	34,708	27,208
	Q1300 LGTR unit cost growth .....		[-7,500]
006	CARTRIDGES & CART ACTUATED DEVICES .....	45,738	38,738
	Contract and schedule delays .....		[-7,000]
007	AIR EXPENDABLE COUNTERMEASURES .....	77,301	67,854
	Unit cost growth .....		[-9,447]
008	JATOS .....	7,262	7,262
009	5 INCH/54 GUN AMMUNITION .....	22,594	21,166
	MK187 mod 0 projectile unit cost growth .....		[-1,428]
010	INTERMEDIATE CALIBER GUN AMMUNITION .....	37,193	37,193
011	OTHER SHIP GUN AMMUNITION .....	39,491	39,291
	CART 20MM contract award delay .....		[-200]
012	SMALL ARMS & LANDING PARTY AMMO .....	47,896	47,896

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
013	PYROTECHNIC AND DEMOLITION .....	10,621	10,621
015	AMMUNITION LESS THAN \$5 MILLION .....	2,386	2,386
<b>MARINE CORPS AMMUNITION</b>			
016	MORTARS .....	55,543	50,543
	Prior year underexecution .....		[-5,000]
017	DIRECT SUPPORT MUNITIONS .....	131,765	131,765
018	INFANTRY WEAPONS AMMUNITION .....	78,056	52,088
	Underexecution and schedule delays .....		[-25,968]
019	COMBAT SUPPORT MUNITIONS .....	40,048	34,048
	Unit cost growth .....		[-6,000]
020	AMMO MODERNIZATION .....	14,325	14,325
021	ARTILLERY MUNITIONS .....	188,876	167,476
	DA 54 contract delay .....		[-21,400]
022	ITEMS LESS THAN \$5 MILLION .....	4,521	4,521
	<b>TOTAL PROCUREMENT OF AMMO, NAVY &amp; MC .....</b>	<b>981,314</b>	<b>892,291</b>
<b>SHIPBUILDING AND CONVERSION, NAVY</b>			
<b>FLEET BALLISTIC MISSILE SHIPS</b>			
001	OHIO REPLACEMENT SUBMARINE .....	1,698,907	1,821,907
	Submarine supplier development .....		[123,000]
<b>OTHER WARSHIPS</b>			
002	CARRIER REPLACEMENT PROGRAM .....	2,347,000	1,042,000
	Basic construction/conversion excess cost growth .....		[-20,000]
	Restoring acquisition accountability: Transfer CVN-81 only to line 2X .....		[-1,285,000]
002A	CARRIER REPLACEMENT PROGRAM .....		1,285,000
	For CVN-81 only .....		[1,285,000]
003	VIRGINIA CLASS SUBMARINE .....	7,155,946	5,445,946
	Block V program increase .....		[1,490,000]
	SSN-812 program decrease .....		[-3,200,000]
004	VIRGINIA CLASS SUBMARINE ADVANCE PROCUREMENT ...	2,769,552	2,969,552
	Advance Procurement in support of a 10th multi-year pro- curement contract ship only .....		[200,000]
005	CVN REFUELING OVERHAULS .....	647,926	631,926
	CVN-74 RCOH unjustified cost growth .....		[-16,000]
006	CVN REFUELING OVERHAULS ADVANCE PROCUREMENT ..		16,900
	Restore CVN-75 RCOH .....		[16,900]
007	DDG 1000 .....	155,944	155,944
008	DDG-51 .....	5,099,295	5,033,295
	Basic Construction excess growth .....		[-66,000]
009	DDG-51 ADVANCE PROCUREMENT .....	224,028	484,028
	Accelerate LLTM for FY21 Flight III destroyers .....		[260,000]
011	FFG-FRIGATE .....	1,281,177	1,281,177
<b>AMPHIBIOUS SHIPS</b>			
012	LPD FLIGHT II .....		525,000
	LPD-31 program increase .....		[277,900]
	Transfer from line 13 .....		[247,100]
013	LPD FLIGHT II ADVANCE PROCUREMENT .....	247,100	0
	Transfer to line 12 .....		[-247,100]
015	LHA REPLACEMENT .....		650,000
	LHA-9 program increase .....		[650,000]
<b>AUXILIARIES, CRAFT AND PRIOR YR PROGRAM COST</b>			
018	TAO FLEET OILER .....	981,215	981,215
019	TAO FLEET OILER ADVANCE PROCUREMENT .....	73,000	73,000
020	TOWING, SALVAGE, AND RESCUE SHIP (ATS) .....	150,282	150,282
022	LCU 1700 .....	85,670	85,670
023	OUTFITTING .....	754,679	705,721
	Excess cost growth .....		[-40,000]
	Virginia class outfitting excess growth .....		[-8,958]
024	SHIP TO SHORE CONNECTOR .....		65,000
	Program increase .....		[65,000]
025	SERVICE CRAFT .....	56,289	81,789
	Accelerate YP-703 Flight II .....		[25,500]
028	COMPLETION OF PY SHIPBUILDING PROGRAMS .....	55,700	104,700
	UPL EPF-14 conversion .....		[49,000]
	<b>TOTAL SHIPBUILDING AND CONVERSION, NAVY ..</b>	<b>23,783,710</b>	<b>23,590,052</b>

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	<b>OTHER PROCUREMENT, NAVY</b>		
	<b>SHIP PROPULSION EQUIPMENT</b>		
001	SURFACE POWER EQUIPMENT .....	14,490	14,490
	<b>GENERATORS</b>		
002	SURFACE COMBATANT HM&E .....	31,583	31,561
	Twisted rudder installation early to need .....		[-22]
	<b>NAVIGATION EQUIPMENT</b>		
003	OTHER NAVIGATION EQUIPMENT .....	77,404	77,404
	<b>OTHER SHIPBOARD EQUIPMENT</b>		
004	SUB PERISCOPE, IMAGING AND SUPT EQUIP PROG .....	160,803	160,803
005	DDG MOD .....	566,140	553,490
	Aegis modernization testing excess to need .....		[-5,000]
	Combat system ship qualification trials excess to need .....		[-7,650]
006	FIREFIGHTING EQUIPMENT .....	18,223	18,223
007	COMMAND AND CONTROL SWITCHBOARD .....	2,086	2,086
008	LHA/LHD MIDLIFE .....	95,651	79,563
	Excess cost growth .....		[-16,088]
009	POLLUTION CONTROL EQUIPMENT .....	23,910	23,910
010	SUBMARINE SUPPORT EQUIPMENT .....	44,895	44,895
011	VIRGINIA CLASS SUPPORT EQUIPMENT .....	28,465	28,465
012	LCS CLASS SUPPORT EQUIPMENT .....	19,426	19,426
013	SUBMARINE BATTERIES .....	26,290	25,297
	Virginia class unit cost growth .....		[-993]
014	LPD CLASS SUPPORT EQUIPMENT .....	46,945	46,945
015	DDG 1000 CLASS SUPPORT EQUIPMENT .....	9,930	9,930
016	STRATEGIC PLATFORM SUPPORT EQUIP .....	14,331	14,331
017	DSSP EQUIPMENT .....	2,909	2,909
018	CG MODERNIZATION .....	193,990	193,990
019	LCAC .....	3,392	3,392
020	UNDERWATER EOD PROGRAMS .....	71,240	71,240
021	ITEMS LESS THAN \$5 MILLION .....	102,543	102,543
022	CHEMICAL WARFARE DETECTORS .....	2,961	2,961
023	SUBMARINE LIFE SUPPORT SYSTEM .....	6,635	6,635
	<b>REACTOR PLANT EQUIPMENT</b>		
024	REACTOR POWER UNITS .....	5,340	5,340
025	REACTOR COMPONENTS .....	465,726	462,749
	Program decrease—unit cost growth .....		[-2,977]
	<b>OCEAN ENGINEERING</b>		
026	DIVING AND SALVAGE EQUIPMENT .....	11,854	11,854
	<b>SMALL BOATS</b>		
027	STANDARD BOATS .....	79,102	79,102
	<b>PRODUCTION FACILITIES EQUIPMENT</b>		
028	OPERATING FORCES IPE .....	202,238	202,238
	<b>OTHER SHIP SUPPORT</b>		
029	LCS COMMON MISSION MODULES EQUIPMENT .....	51,553	51,553
030	LCS MCM MISSION MODULES .....	197,129	134,157
	Excess cost growth .....		[-62,972]
031	LCS ASW MISSION MODULES .....	27,754	27,754
032	LCS SUW MISSION MODULES .....	26,566	26,566
033	LCS IN-SERVICE MODERNIZATION .....	84,972	82,000
	Habitability mod (Freedom variant) unit cost growth .....		[-2,972]
034	SMALL & MEDIUM UUV .....	40,547	10,647
	Knifefish early to need .....		[-29,900]
	<b>LOGISTIC SUPPORT</b>		
035	LSD MIDLIFE & MODERNIZATION .....	40,269	40,269
	<b>SHIP SONARS</b>		
036	SPQ-9B RADAR .....	26,195	26,195
037	AN/SQQ-89 SURF ASW COMBAT SYSTEM .....	125,237	125,237
038	SSN ACOUSTIC EQUIPMENT .....	366,968	356,953
	Low cost conformal array contract delay .....		[-10,015]
039	UNDERSEA WARFARE SUPPORT EQUIPMENT .....	8,967	8,967
	<b>ASW ELECTRONIC EQUIPMENT</b>		
040	SUBMARINE ACOUSTIC WARFARE SYSTEM .....	23,545	23,545
041	SSTD .....	12,439	12,439
042	FIXED SURVEILLANCE SYSTEM .....	128,441	128,441
043	SURTASS .....	21,923	21,923
	<b>ELECTRONIC WARFARE EQUIPMENT</b>		

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
044	AN/SLQ-32 .....	420,154	350,686
	Block 3 kit early to need .....		[-65,758]
	FMP block 1B3 for SLQ-32(V) 6 previously funded .....		[-2,300]
	SEWIP block 1B2 for USCG ship forward fit contract delays .....		[-1,410]
	<b>RECONNAISSANCE EQUIPMENT</b>		
045	SHIPBOARD IW EXPLOIT .....	194,758	193,440
	SSEE modifications kits unit cost growth .....		[-1,318]
046	AUTOMATED IDENTIFICATION SYSTEM (AIS) .....	5,368	5,368
	<b>OTHER SHIP ELECTRONIC EQUIPMENT</b>		
047	COOPERATIVE ENGAGEMENT CAPABILITY .....	35,128	35,128
048	NAVAL TACTICAL COMMAND SUPPORT SYSTEM (NTCSS) .....	15,154	15,154
049	ATDLS .....	52,753	52,753
050	NAVY COMMAND AND CONTROL SYSTEM (NCCS) .....	3,390	3,390
051	MINESWEEPING SYSTEM REPLACEMENT .....	19,448	19,448
052	SHALLOW WATER MCM .....	8,730	8,730
053	NAVSTAR GPS RECEIVERS (SPACE) .....	32,674	32,674
054	AMERICAN FORCES RADIO AND TV SERVICE .....	2,617	2,617
055	STRATEGIC PLATFORM SUPPORT EQUIP .....	7,973	7,973
	<b>AVIATION ELECTRONIC EQUIPMENT</b>		
056	ASHORE ATC EQUIPMENT .....	72,406	72,406
057	AFLOAT ATC EQUIPMENT .....	67,410	65,779
	ACLS mod kits installations cost growth .....		[-1,631]
058	ID SYSTEMS .....	26,059	26,059
059	JOINT PRECISION APPROACH AND LANDING SYSTEM ( .....	92,695	78,195
	Early to need .....		[-14,500]
060	NAVAL MISSION PLANNING SYSTEMS .....	15,296	15,296
	<b>OTHER SHORE ELECTRONIC EQUIPMENT</b>		
061	TACTICAL/MOBILE C4I SYSTEMS .....	36,226	36,226
062	DCGS-N .....	21,788	21,427
	DCGS-N increment 2 kit unit cost discrepancy .....		[-361]
063	CANES .....	426,654	395,154
	Program decrease .....		[-31,500]
064	RADIAC .....	6,450	6,450
065	CANES-INTELL .....	52,713	52,713
066	GPETE .....	13,028	13,028
067	MASF .....	5,193	5,193
068	INTEG COMBAT SYSTEM TEST FACILITY .....	6,028	6,028
069	EMI CONTROL INSTRUMENTATION .....	4,209	4,209
070	ITEMS LESS THAN \$5 MILLION .....	168,436	144,636
	NGSSR early to need .....		[-23,800]
	<b>SHIPBOARD COMMUNICATIONS</b>		
071	SHIPBOARD TACTICAL COMMUNICATIONS .....	55,853	50,053
	DMR IW and MUOS system procurement afloat previously funded.		[-5,800]
072	SHIP COMMUNICATIONS AUTOMATION .....	137,861	122,380
	STACC cost growth .....		[-15,481]
073	COMMUNICATIONS ITEMS UNDER \$5M .....	35,093	31,493
	Improving funds management: prior year carryover .....		[-3,600]
	<b>SUBMARINE COMMUNICATIONS</b>		
074	SUBMARINE BROADCAST SUPPORT .....	50,833	50,833
075	SUBMARINE COMMUNICATION EQUIPMENT .....	69,643	60,794
	Buoy shape improvement unjustified request .....		[-8,849]
	<b>SATELLITE COMMUNICATIONS</b>		
076	SATELLITE COMMUNICATIONS SYSTEMS .....	45,841	45,841
077	NAVY MULTIBAND TERMINAL (NMT) .....	88,021	82,148
	Afloat ship kit cost growth .....		[-4,055]
	Assured C2 modems installation cost excess growth .....		[-1,818]
	<b>SHORE COMMUNICATIONS</b>		
078	JOINT COMMUNICATIONS SUPPORT ELEMENT (JCSE) .....	4,293	4,293
	<b>CRYPTOGRAPHIC EQUIPMENT</b>		
079	INFO SYSTEMS SECURITY PROGRAM (ISSP) .....	166,540	166,540
080	MIO INTEL EXPLOITATION TEAM .....	968	968
	<b>CRYPTOLOGIC EQUIPMENT</b>		
081	CRYPTOLOGIC COMMUNICATIONS EQUIP .....	13,090	13,090
	<b>OTHER ELECTRONIC SUPPORT</b>		
083	COAST GUARD EQUIPMENT .....	61,370	61,370
	<b>SONOBUOYS</b>		

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
085	SONOBUOYS—ALL TYPES .....	260,644	310,644
	UPL sonobuoy increase .....		[50,000]
	<b>AIRCRAFT SUPPORT EQUIPMENT</b>		
086	MINOTAUR .....	5,000	5,000
087	WEAPONS RANGE SUPPORT EQUIPMENT .....	101,843	101,843
088	AIRCRAFT SUPPORT EQUIPMENT .....	145,601	135,211
	Excess cost growth .....		[-10,390]
089	ADVANCED ARRESTING GEAR (AAG) .....	4,725	4,725
090	METEOROLOGICAL EQUIPMENT .....	14,687	12,407
	ASOS upgrades unit cost growth .....		[-2,280]
092	LEGACY AIRBORNE MCM .....	19,250	18,918
	Modifications unjustified growth .....		[-332]
093	LAMPS EQUIPMENT .....	792	792
094	AVIATION SUPPORT EQUIPMENT .....	55,415	52,415
	Contract delay .....		[-3,000]
095	UMCS-UNMAN CARRIER AVIATION(UCA)MISSION CNTRL ...	32,668	32,668
	<b>SHIP GUN SYSTEM EQUIPMENT</b>		
096	SHIP GUN SYSTEMS EQUIPMENT .....	5,451	5,451
	<b>SHIP MISSILE SYSTEMS EQUIPMENT</b>		
097	HARPOON SUPPORT EQUIPMENT .....	1,100	1,100
098	SHIP MISSILE SUPPORT EQUIPMENT .....	228,104	268,304
	Program increase .....		[40,200]
099	TOMAHAWK SUPPORT EQUIPMENT .....	78,593	78,593
	<b>FBM SUPPORT EQUIPMENT</b>		
100	STRATEGIC MISSILE SYSTEMS EQUIP .....	280,510	280,510
	<b>ASW SUPPORT EQUIPMENT</b>		
101	SSN COMBAT CONTROL SYSTEMS .....	148,547	143,678
	Excess cost growth .....		[-4,869]
102	ASW SUPPORT EQUIPMENT .....	21,130	21,130
	<b>OTHER ORDNANCE SUPPORT EQUIPMENT</b>		
103	EXPLOSIVE ORDNANCE DISPOSAL EQUIP .....	15,244	15,244
104	ITEMS LESS THAN \$5 MILLION .....	5,071	5,071
	<b>OTHER EXPENDABLE ORDNANCE</b>		
105	ANTI-SHIP MISSILE DECOY SYSTEM .....	41,962	41,962
106	SUBMARINE TRAINING DEVICE MODS .....	75,057	75,057
107	SURFACE TRAINING EQUIPMENT .....	233,175	222,647
	BFFT ship sets excess to need .....		[-1,515]
	LCS trainer equipment early to need .....		[-9,013]
	<b>CIVIL ENGINEERING SUPPORT EQUIPMENT</b>		
108	PASSENGER CARRYING VEHICLES .....	4,562	4,562
109	GENERAL PURPOSE TRUCKS .....	10,974	10,974
110	CONSTRUCTION & MAINTENANCE EQUIP .....	43,191	43,191
111	FIRE FIGHTING EQUIPMENT .....	21,142	11,642
	Contract delays .....		[-9,500]
112	TACTICAL VEHICLES .....	33,432	33,432
114	POLLUTION CONTROL EQUIPMENT .....	2,633	2,633
115	ITEMS UNDER \$5 MILLION .....	53,467	53,467
116	PHYSICAL SECURITY VEHICLES .....	1,173	1,173
	<b>SUPPLY SUPPORT EQUIPMENT</b>		
117	SUPPLY EQUIPMENT .....	16,730	16,730
118	FIRST DESTINATION TRANSPORTATION .....	5,389	5,389
119	SPECIAL PURPOSE SUPPLY SYSTEMS .....	654,674	617,522
	Insufficient budget justification .....		[-37,152]
	<b>TRAINING DEVICES</b>		
120	TRAINING SUPPORT EQUIPMENT .....	3,633	3,633
121	TRAINING AND EDUCATION EQUIPMENT .....	97,636	94,536
	Excess growth .....		[-3,100]
	<b>COMMAND SUPPORT EQUIPMENT</b>		
122	COMMAND SUPPORT EQUIPMENT .....	66,102	50,434
	Prior year underexecution .....		[-15,668]
123	MEDICAL SUPPORT EQUIPMENT .....	3,633	3,633
125	NAVAL MIP SUPPORT EQUIPMENT .....	6,097	6,097
126	OPERATING FORCES SUPPORT EQUIPMENT .....	16,905	16,905
127	C4ISR EQUIPMENT .....	30,146	30,146
128	ENVIRONMENTAL SUPPORT EQUIPMENT .....	21,986	21,986
129	PHYSICAL SECURITY EQUIPMENT .....	160,046	160,046
130	ENTERPRISE INFORMATION TECHNOLOGY .....	56,899	56,899



<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	<b>OTHER</b>		
133	NEXT GENERATION ENTERPRISE SERVICE .....	122,832	122,832
	<b>CLASSIFIED PROGRAMS</b>		
133A	CLASSIFIED PROGRAMS .....	16,346	16,346
	<b>SPARES AND REPAIR PARTS</b>		
134	SPARES AND REPAIR PARTS .....	375,608	352,140
	JPALS spares early to need .....		[-8,137]
	LCS spares early to need .....		[-15,331]
	<b>TOTAL OTHER PROCUREMENT, NAVY .....</b>	<b>9,652,956</b>	<b>9,302,099</b>
	<b>PROCUREMENT, MARINE CORPS</b>		
	<b>TRACKED COMBAT VEHICLES</b>		
001	AAV7A1 PIP .....	39,495	39,495
002	AMPHIBIOUS COMBAT VEHICLE 1.1 .....	317,935	313,131
	Excess engineering change orders .....		[-4,804]
003	LAV PIP .....	60,734	60,734
	<b>ARTILLERY AND OTHER WEAPONS</b>		
004	155MM LIGHTWEIGHT TOWED HOWITZER .....	25,065	25,065
005	ARTILLERY WEAPONS SYSTEM .....	100,002	90,002
	Equipment previously funded and cost growth .....		[-10,000]
006	WEAPONS AND COMBAT VEHICLES UNDER \$5 MILLION ...	31,945	31,945
	<b>OTHER SUPPORT</b>		
007	MODIFICATION KITS .....	22,760	22,760
	<b>GUIDED MISSILES</b>		
008	GROUND BASED AIR DEFENSE .....	175,998	175,998
009	ANTI-ARMOR MISSILE-JAVELIN .....	20,207	20,207
010	FAMILY ANTI-ARMOR WEAPON SYSTEMS (FOAAWS) .....	21,913	21,913
011	ANTI-ARMOR MISSILE-TOW .....	60,501	60,501
012	GUIDED MLRS ROCKET (GMLRS) .....	29,062	28,062
	Unit cost discrepancy .....		[-1,000]
	<b>COMMAND AND CONTROL SYSTEMS</b>		
013	COMMON AVIATION COMMAND AND CONTROL SYSTEM (C AN/MRQ-13 communications subsystems upgrades unjusti- fied growth. ....	37,203	32,203 [-5,000]
	<b>REPAIR AND TEST EQUIPMENT</b>		
014	REPAIR AND TEST EQUIPMENT .....	55,156	55,156
	<b>OTHER SUPPORT (TEL)</b>		
015	MODIFICATION KITS .....	4,945	4,945
	<b>COMMAND AND CONTROL SYSTEM (NON-TEL)</b>		
016	ITEMS UNDER \$5 MILLION (COMM & ELEC) .....	112,124	82,424
	Unit cost growth .....		[-29,700]
017	AIR OPERATIONS C2 SYSTEMS .....	17,408	17,408
	<b>RADAR + EQUIPMENT (NON-TEL)</b>		
018	RADAR SYSTEMS .....	329	329
019	GROUND/AIR TASK ORIENTED RADAR (G/ATOR) .....	273,022	273,022
	<b>INTELL/COMM EQUIPMENT (NON-TEL)</b>		
021	GCSS-MC .....	4,484	4,484
022	FIRE SUPPORT SYSTEM .....	35,488	35,488
023	INTELLIGENCE SUPPORT EQUIPMENT .....	56,896	54,396
	Unjustified growth .....		[-2,500]
025	UNMANNED AIR SYSTEMS (INTEL) .....	34,711	34,711
026	DCGS-MC .....	32,562	32,562
	<b>OTHER SUPPORT (NON-TEL)</b>		
030	NEXT GENERATION ENTERPRISE NETWORK (NGEN) .....	114,901	114,901
031	COMMON COMPUTER RESOURCES .....	51,094	51,094
032	COMMAND POST SYSTEMS .....	108,897	108,897
033	RADIO SYSTEMS .....	227,320	212,320
	Cost growth and early to need .....		[-15,000]
034	COMM SWITCHING & CONTROL SYSTEMS .....	31,685	23,781
	ECP small form factor previously funded .....		[-7,904]
035	COMM & ELEC INFRASTRUCTURE SUPPORT .....	21,140	21,140
036	CYBERSPACE ACTIVITIES .....	27,632	27,632
	<b>CLASSIFIED PROGRAMS</b>		
036A	CLASSIFIED PROGRAMS .....	5,535	5,535
	<b>ADMINISTRATIVE VEHICLES</b>		
037	COMMERCIAL CARGO VEHICLES .....	28,913	28,913
	<b>TACTICAL VEHICLES</b>		

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
038	MOTOR TRANSPORT MODIFICATIONS .....	19,234	19,234
039	JOINT LIGHT TACTICAL VEHICLE .....	558,107	556,107
	ECP previously funded .....		[-2,000]
040	FAMILY OF TACTICAL TRAILERS .....	2,693	2,693
	<b>ENGINEER AND OTHER EQUIPMENT</b>		
041	ENVIRONMENTAL CONTROL EQUIP ASSORT .....	495	495
042	TACTICAL FUEL SYSTEMS .....	52	52
043	POWER EQUIPMENT ASSORTED .....	22,441	22,441
044	AMPHIBIOUS SUPPORT EQUIPMENT .....	7,101	7,101
045	EOD SYSTEMS .....	44,700	44,700
	<b>MATERIALS HANDLING EQUIPMENT</b>		
046	PHYSICAL SECURITY EQUIPMENT .....	15,404	15,404
	<b>GENERAL PROPERTY</b>		
047	FIELD MEDICAL EQUIPMENT .....	2,898	2,898
048	TRAINING DEVICES .....	149,567	126,567
	ODS unjustified request .....		[-23,000]
049	FAMILY OF CONSTRUCTION EQUIPMENT .....	35,622	35,622
050	ULTRA-LIGHT TACTICAL VEHICLE (ULTV) .....	647	647
	<b>OTHER SUPPORT</b>		
051	ITEMS LESS THAN \$5 MILLION .....	10,956	10,956
	<b>SPARES AND REPAIR PARTS</b>		
052	SPARES AND REPAIR PARTS .....	33,470	33,470
	<b>TOTAL PROCUREMENT, MARINE CORPS .....</b>	<b>3,090,449</b>	<b>2,989,541</b>
	<b>AIRCRAFT PROCUREMENT, AIR FORCE</b>		
	<b>TACTICAL FORCES</b>		
001	F-35 .....	4,274,359	5,566,409
	Program increase .....		[1,042,800]
	Program increase: Turkish F-35A Reallocation Initiative .....		[440,000]
	Target cost savings .....		[-190,750]
002	F-35 .....	655,500	811,500
	UPL Increase .....		[156,000]
003	F-15E .....	1,050,000	985,500
	Unjustified non-recurring engineering .....		[-64,500]
	<b>TACTICAL AIRLIFT</b>		
005	KC-46A MDAP .....	2,234,529	2,198,529
	Excess to need .....		[-36,000]
	<b>OTHER AIRLIFT</b>		
006	C-130J .....	12,156	404,156
	Program increase .....		[392,000]
008	MC-130J .....	871,207	857,607
	Excess to need .....		[-13,600]
009	MC-130J .....	40,000	40,000
	<b>HELICOPTERS</b>		
010	COMBAT RESCUE HELICOPTER .....	884,235	876,035
	Excess to need .....		[-8,200]
	<b>MISSION SUPPORT AIRCRAFT</b>		
011	C-37A .....	161,000	147,500
	Unit cost growth .....		[-13,500]
012	CIVIL AIR PATROL A/C .....	2,767	2,767
	<b>OTHER AIRCRAFT</b>		
014	TARGET DRONES .....	130,837	130,837
015	COMPASS CALL .....	114,095	114,095
017	MQ-9 .....	189,205	175,205
	Unit cost growth .....		[-14,000]
	<b>STRATEGIC AIRCRAFT</b>		
019	B-2A .....	9,582	9,582
020	B-1B .....	22,111	13,111
	ADS-B ahead of need .....		[-9,000]
021	B-52 .....	69,648	69,648
022	LARGE AIRCRAFT INFRARED COUNTERMEASURES .....	43,758	43,758
	<b>TACTICAL AIRCRAFT</b>		
023	A-10 .....	132,069	132,069
024	E-11 BACN/HAG .....	70,027	70,027
025	F-15 .....	481,073	467,767
	ADCP unnecessary due to F-15X .....		[-13,306]
026	F-16 .....	234,782	309,782

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Additional radars .....		[75,000]
028	F-22A .....	323,597	323,597
030	F-35 MODIFICATIONS .....	343,590	343,590
031	F-15 EPAW .....	149,047	125,417
	Not required because of F-15X .....		[-23,630]
032	INCREMENT 3.2B .....	20,213	20,213
033	KC-46A MDAP .....	10,213	5,213
	Funding ahead of need .....		[-5,000]
	<b>AIRLIFT AIRCRAFT</b>		
034	C-5 .....	73,550	73,550
036	C-17A .....	60,244	60,244
037	C-21 .....	216	216
038	C-32A .....	11,511	11,511
039	C-37A .....	435	435
	<b>TRAINER AIRCRAFT</b>		
040	GLIDER MODS .....	138	138
041	T-6 .....	11,826	11,826
042	T-1 .....	26,787	26,787
043	T-38 .....	37,341	37,341
	<b>OTHER AIRCRAFT</b>		
044	U-2 MODS .....	86,896	106,896
	Increase for U-2 enhancements .....		[20,000]
045	KC-10A (ATCA) .....	2,108	2,108
046	C-12 .....	3,021	3,021
047	VC-25A MOD .....	48,624	48,624
048	C-40 .....	256	256
049	C-130 .....	52,066	186,066
	3.5 Engine Enhancement Package .....		[79,000]
	NP-2000 prop blade upgrades .....		[55,000]
050	C-130J MODS .....	141,686	141,686
051	C-135 .....	124,491	122,616
	Low cost mods slow execution .....		[-1,000]
	RPI installs .....		[-875]
053	COMPASS CALL .....	110,754	110,754
054	COMBAT FLIGHT INSPECTION—CFIN .....	508	508
055	RC-135 .....	227,673	227,673
056	E-3 .....	216,299	128,992
	NATO AWACS—Air Force requested transfer to line 88 .....		[-87,307]
057	E-4 .....	58,477	58,477
058	E-8 .....	28,778	48,778
	Increase for re-engining .....		[20,000]
059	AIRBORNE WARNING AND CNTRL SYS (AWACS) 40/45 .....	36,000	36,000
060	FAMILY OF BEYOND LINE-OF-SIGHT TERMINALS .....	7,910	7,910
061	H-1 .....	3,817	3,817
062	H-60 .....	20,879	20,879
063	RQ-4 MODS .....	1,704	1,704
064	HC/MC-130 MODIFICATIONS .....	51,482	51,482
065	OTHER AIRCRAFT .....	50,098	50,098
066	MQ-9 MODS .....	383,594	251,594
	Production rate adjustment of DAS-4 sensor .....		[-132,000]
068	CV-22 MODS .....	65,348	65,348
	<b>AIRCRAFT SPARES AND REPAIR PARTS</b>		
069	INITIAL SPARES/REPAIR PARTS .....	708,230	799,230
	F-35 spares .....		[96,000]
	Program decrease .....		[-30,000]
	RQ-4 .....		[25,000]
	<b>COMMON SUPPORT EQUIPMENT</b>		
072	AIRCRAFT REPLACEMENT SUPPORT EQUIP .....	84,938	84,938
	<b>POST PRODUCTION SUPPORT</b>		
073	B-2A .....	1,403	1,403
074	B-2B .....	42,234	42,234
075	B-52 .....	4,641	4,641
076	C-17A .....	124,805	124,805
079	F-15 .....	2,589	2,589
081	F-16 .....	15,348	15,348
084	RQ-4 POST PRODUCTION CHARGES .....	47,246	47,246
	<b>INDUSTRIAL PREPAREDNESS</b>		

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
086	INDUSTRIAL RESPONSIVENESS .....	17,705	17,705
	<b>WAR CONSUMABLES</b>		
087	WAR CONSUMABLES .....	32,102	32,102
	<b>OTHER PRODUCTION CHARGES</b>		
088	OTHER PRODUCTION CHARGES .....	1,194,728	1,222,035
	F-22 NGEN lab excess .....		[-60,000]
	NATO AWACS—Air Force requested transfer from line 56 ...		[87,307]
	<b>CLASSIFIED PROGRAMS</b>		
090A	CLASSIFIED PROGRAMS .....	34,193	34,193
	<b>TOTAL AIRCRAFT PROCUREMENT, AIR FORCE</b> ....	<b>16,784,279</b>	<b>18,569,718</b>
	<b>MISSILE PROCUREMENT, AIR FORCE</b>		
	<b>MISSILE REPLACEMENT EQUIPMENT—BALLISTIC</b>		
001	MISSILE REPLACEMENT EQ-BALLISTIC .....	55,888	55,888
	<b>TACTICAL</b>		
002	REPLAC EQUIP & WAR CONSUMABLES .....	9,100	9,100
003	JOINT AIR-TO-GROUND MUNITION .....	15,000	7,500
	Unjustified requirement (JAGM-F) .....		[-7,500]
004	JOINT AIR-SURFACE STANDOFF MISSILE .....	482,525	482,525
006	SIDEWINDER (AIM-9X) .....	160,408	160,408
007	AMRAAM .....	332,250	332,250
008	PREDATOR HELLFIRE MISSILE .....	118,860	118,860
009	SMALL DIAMETER BOMB .....	275,438	275,438
010	SMALL DIAMETER BOMB II .....	212,434	200,684
	Unit cost growth .....		[-11,750]
	<b>INDUSTRIAL FACILITIES</b>		
011	INDUSTRL PREPAREDNS/POL PREVENTION .....	801	801
	<b>CLASS IV</b>		
012	ICBM FUZE MOD .....	5,000	5,000
013	ICBM FUZE MOD .....	14,497	14,497
014	MM III MODIFICATIONS .....	50,831	59,705
	Air Force requested transfer .....		[8,874]
015	AGM-65D MAVERICK .....	294	294
016	AIR LAUNCH CRUISE MISSILE (ALCM) .....	77,387	68,513
	Air Force requested transfer .....		[-8,874]
	<b>MISSILE SPARES AND REPAIR PARTS</b>		
018	MSL SPRS/REPAIR PARTS (INITIAL) .....	1,910	1,910
019	REPLEN SPARES/REPAIR PARTS .....	82,490	82,490
	<b>SPECIAL PROGRAMS</b>		
023	SPECIAL UPDATE PROGRAMS .....	144,553	144,553
	<b>CLASSIFIED PROGRAMS</b>		
023A	CLASSIFIED PROGRAMS .....	849,521	849,521
	<b>TOTAL MISSILE PROCUREMENT, AIR FORCE</b> .....	<b>2,889,187</b>	<b>2,869,937</b>
	<b>SPACE PROCUREMENT, AIR FORCE</b>		
	<b>SPACE PROGRAMS</b>		
001	ADVANCED EHF .....	31,894	31,894
002	AF SATELLITE COMM SYSTEM .....	56,298	56,298
004	COUNTERSPACE SYSTEMS .....	5,700	5,700
005	FAMILY OF BEYOND LINE-OF-SIGHT TERMINALS .....	34,020	29,020
	Unjustified growth .....		[-5,000]
007	GENERAL INFORMATION TECH—SPACE .....	3,244	3,244
008	GPSIII FOLLOW ON .....	414,625	414,625
009	GPS III SPACE SEGMENT .....	31,466	31,466
012	SPACEBORNE EQUIP (COMSEC) .....	32,031	32,031
013	MILSATCOM .....	11,096	11,096
015	EVOLVED EXPENDABLE LAUNCH VEH(SPACE) .....	1,237,635	1,237,635
016	SBIR HIGH (SPACE) .....	233,952	233,952
017	NUDET DETECTION SYSTEM .....	7,432	7,432
018	ROCKET SYSTEMS LAUNCH PROGRAM .....	11,473	11,473
019	SPACE FENCE .....	71,784	71,784
020	SPACE MODS .....	106,330	106,330
021	SPACELIFT RANGE SYSTEM SPACE .....	118,140	118,140
	<b>SPACE PROCUREMENT, AIR FORCE</b>		
	<b>SPARES</b>		
022	SPARES AND REPAIR PARTS .....	7,263	7,263
	<b>TOTAL SPACE PROCUREMENT, AIR FORCE</b> .....	<b>2,414,383</b>	<b>2,409,383</b>

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
<b>PROCUREMENT OF AMMUNITION, AIR FORCE</b>			
<b>ROCKETS</b>			
001	ROCKETS .....	133,268	115,068
	APKWS Mk 66 rocket motor price adjustment .....		[-18,200]
<b>CARTRIDGES</b>			
002	CARTRIDGES .....	140,449	140,449
<b>BOMBS</b>			
003	PRACTICE BOMBS .....	29,313	29,313
004	GENERAL PURPOSE BOMBS .....	85,885	85,885
006	JOINT DIRECT ATTACK MUNITION .....	1,066,224	1,034,224
	Tailkit unit cost adjustment .....		[-32,000]
007	B61 .....	80,773	80,773
<b>OTHER ITEMS</b>			
009	CAD/PAD .....	47,069	47,069
010	EXPLOSIVE ORDNANCE DISPOSAL (EOD) .....	6,133	6,133
011	SPARES AND REPAIR PARTS .....	533	533
012	MODIFICATIONS .....	1,291	1,291
013	ITEMS LESS THAN \$5,000,000 .....	1,677	1,677
<b>FLARES</b>			
015	FLARES .....	36,116	36,116
<b>FUZES</b>			
016	FUZES .....	1,734	1,734
<b>SMALL ARMS</b>			
017	SMALL ARMS .....	37,496	37,496
	<b>TOTAL PROCUREMENT OF AMMUNITION, AIR FORCE.</b>	<b>1,667,961</b>	<b>1,617,761</b>
<b>OTHER PROCUREMENT, AIR FORCE</b>			
<b>PASSENGER CARRYING VEHICLES</b>			
001	PASSENGER CARRYING VEHICLES .....	15,238	15,238
<b>CARGO AND UTILITY VEHICLES</b>			
002	MEDIUM TACTICAL VEHICLE .....	34,616	34,616
003	CAP VEHICLES .....	1,040	3,567
	Program increase—communications .....		[1,867]
	Program increase—vehicles .....		[660]
004	CARGO AND UTILITY VEHICLES .....	23,133	23,133
<b>SPECIAL PURPOSE VEHICLES</b>			
005	JOINT LIGHT TACTICAL VEHICLE .....	32,027	32,027
006	SECURITY AND TACTICAL VEHICLES .....	1,315	1,315
007	SPECIAL PURPOSE VEHICLES .....	14,593	14,593
<b>FIRE FIGHTING EQUIPMENT</b>			
008	FIRE FIGHTING/CRASH RESCUE VEHICLES .....	28,604	28,604
<b>MATERIALS HANDLING EQUIPMENT</b>			
009	MATERIALS HANDLING VEHICLES .....	21,848	21,848
<b>BASE MAINTENANCE SUPPORT</b>			
010	RUNWAY SNOW REMOV AND CLEANING EQU .....	2,925	2,925
011	BASE MAINTENANCE SUPPORT VEHICLES .....	55,776	55,776
<b>COMM SECURITY EQUIPMENT(COMSEC)</b>			
013	COMSEC EQUIPMENT .....	91,461	91,461
<b>INTELLIGENCE PROGRAMS</b>			
014	INTERNATIONAL INTEL TECH & ARCHITECTURES .....	11,386	11,386
015	INTELLIGENCE TRAINING EQUIPMENT .....	7,619	7,619
016	INTELLIGENCE COMM EQUIPMENT .....	35,558	32,058
	IMAD unjustified procurement .....		[-3,500]
<b>ELECTRONICS PROGRAMS</b>			
017	AIR TRAFFIC CONTROL & LANDING SYS .....	17,939	17,939
019	BATTLE CONTROL SYSTEM—FIXED .....	3,063	3,063
021	WEATHER OBSERVATION FORECAST .....	31,447	31,447
022	STRATEGIC COMMAND AND CONTROL .....	5,090	5,090
023	CHEYENNE MOUNTAIN COMPLEX .....	10,145	10,145
024	MISSION PLANNING SYSTEMS .....	14,508	14,508
026	INTEGRATED STRAT PLAN & ANALY NETWORK (ISPAN) .....	9,901	9,901
<b>SPCL COMM-ELECTRONICS PROJECTS</b>			
027	GENERAL INFORMATION TECHNOLOGY .....	26,933	26,933
028	AF GLOBAL COMMAND & CONTROL SYS .....	2,756	2,756
029	BATTLEFIELD AIRBORNE CONTROL NODE (BACN) .....	48,478	48,478

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
030	MOBILITY COMMAND AND CONTROL .....	21,186	21,186
031	AIR FORCE PHYSICAL SECURITY SYSTEM .....	178,361	178,361
032	COMBAT TRAINING RANGES .....	233,993	261,993
	Joint threat emitters .....		[28,000]
033	MINIMUM ESSENTIAL EMERGENCY COMM N .....	132,648	132,648
034	WIDE AREA SURVEILLANCE (WAS) .....	80,818	42,118
	Program decrease .....		[-38,700]
035	C3 COUNTERMEASURES .....	25,036	25,036
036	INTEGRATED PERSONNEL AND PAY SYSTEM .....	20,900	0
	Poor agile implementation .....		[-20,900]
037	GCSS-AF FOS .....	11,226	11,226
038	DEFENSE ENTERPRISE ACCOUNTING & MGT SYS .....	1,905	1,905
039	MAINTENANCE REPAIR & OVERHAUL INITIATIVE .....	1,912	1,912
040	THEATER BATTLE MGT C2 SYSTEM .....	6,337	6,337
041	AIR & SPACE OPERATIONS CENTER (AOC) .....	33,243	33,243
	<b>AIR FORCE COMMUNICATIONS</b>		
043	BASE INFORMATION TRANSP T INFRAS T (BIT) WIRED .....	69,530	62,280
	Restoring acquisition accountability .....		[-7,250]
044	AFNET .....	147,063	147,063
045	JOINT COMMUNICATIONS SUPPORT ELEMENT (JCSE) .....	6,505	6,505
046	USCENTCOM .....	20,190	20,190
047	USSTRATCOM .....	11,244	11,244
	<b>ORGANIZATION AND BASE</b>		
048	TACTICAL C-E EQUIPMENT .....	143,757	143,757
050	RADIO EQUIPMENT .....	15,402	15,402
051	CCTV/AUDIOVISUAL EQUIPMENT .....	3,211	3,211
052	BASE COMM INFRASTRUCTURE .....	43,123	43,123
	<b>MODIFICATIONS</b>		
053	COMM ELECT MODS .....	14,500	14,500
	<b>PERSONAL SAFETY &amp; RESCUE EQUIP</b>		
054	PERSONAL SAFETY AND RESCUE EQUIPMENT .....	50,634	50,634
	<b>DEPOT PLANT+MTRLS HANDLING EQ</b>		
055	POWER CONDITIONING EQUIPMENT .....	11,000	11,000
056	MECHANIZED MATERIAL HANDLING EQUIP .....	11,901	11,901
	<b>BASE SUPPORT EQUIPMENT</b>		
057	BASE PROCURED EQUIPMENT .....	23,963	23,963
058	ENGINEERING AND EOD EQUIPMENT .....	34,124	34,124
059	MOBILITY EQUIPMENT .....	26,439	26,439
060	FUELS SUPPORT EQUIPMENT (FSE) .....	24,255	24,255
061	BASE MAINTENANCE AND SUPPORT EQUIPMENT .....	38,986	38,986
	<b>SPECIAL SUPPORT PROJECTS</b>		
063	DARP RC135 .....	26,716	26,716
064	DCGS-AF .....	116,055	116,055
066	SPECIAL UPDATE PROGRAM .....	835,148	835,148
	<b>CLASSIFIED PROGRAMS</b>		
066A	CLASSIFIED PROGRAMS .....	18,292,807	18,292,807
	<b>SPARES AND REPAIR PARTS</b>		
067	SPARES AND REPAIR PARTS .....	81,340	81,340
	<b>TOTAL OTHER PROCUREMENT, AIR FORCE</b> .....	<b>21,342,857</b>	<b>21,303,034</b>
	<b>PROCUREMENT, DEFENSE-WIDE</b>		
	<b>MAJOR EQUIPMENT, OSD</b>		
022	MAJOR EQUIPMENT, DPAA .....	1,504	1,504
045	MAJOR EQUIPMENT, OSD .....	43,705	43,705
	<b>MAJOR EQUIPMENT, NSA</b>		
044	INFORMATION SYSTEMS SECURITY PROGRAM (ISSP) .....	1,533	133
	Realignment to DISA for Sharkseer .....		[-1,400]
	<b>MAJOR EQUIPMENT, WHS</b>		
049	MAJOR EQUIPMENT, WHS .....	507	507
	<b>MAJOR EQUIPMENT, DISA</b>		
008	INFORMATION SYSTEMS SECURITY .....	3,318	4,718
	Realignment for Sharkseer .....		[1,400]
009	TELEPORT PROGRAM .....	25,103	25,103
010	ITEMS LESS THAN \$5 MILLION .....	26,416	26,416
012	DEFENSE INFORMATION SYSTEM NETWORK .....	17,574	17,574
014	WHITE HOUSE COMMUNICATION AGENCY .....	45,079	45,079
015	SENIOR LEADERSHIP ENTERPRISE .....	78,669	78,669

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
016	JOINT REGIONAL SECURITY STACKS (JRSS) .....	88,000	88,000
017	JOINT SERVICE PROVIDER .....	107,907	107,907
	<b>MAJOR EQUIPMENT, DLA</b>		
019	MAJOR EQUIPMENT .....	8,122	8,122
	<b>MAJOR EQUIPMENT, DSS</b>		
023	MAJOR EQUIPMENT .....	496	496
	<b>MAJOR EQUIPMENT, TJS</b>		
046	MAJOR EQUIPMENT, TJS .....	6,905	6,905
047	MAJOR EQUIPMENT-TJS CYBER .....	1,458	1,458
	<b>MAJOR EQUIPMENT, MISSILE DEFENSE AGENCY</b>		
028	THAAD .....	425,863	388,543
	Unit cost savings .....		[-37,320]
029	GROUND BASED MIDCOURSE .....	9,471	9,471
031	AEGIS BMD .....	600,773	565,374
	SM-3 Block IB multiyear unit cost savings .....		[-35,399]
032	AEGIS BMD .....	96,995	96,995
033	BMDS AN/TPY-2 RADARS .....	10,046	10,046
034	ARROW 3 UPPER TIER SYSTEMS .....	55,000	55,000
035	SHORT RANGE BALLISTIC MISSILE DEFENSE (SRBMD) .....	50,000	50,000
036	AEGIS ASHORE PHASE III .....	25,659	25,659
037	IRON DOME .....	95,000	95,000
038	AEGIS BMD HARDWARE AND SOFTWARE .....	124,986	124,986
	<b>MAJOR EQUIPMENT, DHRA</b>		
003	PERSONNEL ADMINISTRATION .....	5,030	5,030
	<b>MAJOR EQUIPMENT, DEFENSE THREAT REDUCTION AGENCY</b>		
025	VEHICLES .....	211	211
026	OTHER MAJOR EQUIPMENT .....	11,521	11,521
	<b>MAJOR EQUIPMENT, DODEA</b>		
021	AUTOMATION/EDUCATIONAL SUPPORT & LOGISTICS .....	1,320	1,320
	<b>MAJOR EQUIPMENT, DCMA</b>		
002	MAJOR EQUIPMENT .....	2,432	2,432
	<b>MAJOR EQUIPMENT, DMACT</b>		
020	MAJOR EQUIPMENT .....	10,961	10,961
	<b>CLASSIFIED PROGRAMS</b>		
049A	CLASSIFIED PROGRAMS .....	589,366	589,366
	<b>AVIATION PROGRAMS</b>		
053	ROTARY WING UPGRADES AND SUSTAINMENT .....	172,020	172,020
054	UNMANNED ISR .....	15,208	15,208
055	NON-STANDARD AVIATION .....	32,310	32,310
056	U-28 .....	10,898	10,898
057	MH-47 CHINOOK .....	173,812	173,812
058	CV-22 MODIFICATION .....	17,256	17,256
059	MQ-9 UNMANNED AERIAL VEHICLE .....	5,338	5,338
060	PRECISION STRIKE PACKAGE .....	232,930	232,930
061	AC/MC-130J .....	173,419	165,019
	RFCM realignment to RDAF FVL .....		[-8,400]
062	C-130 MODIFICATIONS .....	15,582	15,582
	<b>SHIPBUILDING</b>		
063	UNDERWATER SYSTEMS .....	58,991	58,991
	<b>AMMUNITION PROGRAMS</b>		
064	ORDNANCE ITEMS <\$5M .....	279,992	279,992
	<b>OTHER PROCUREMENT PROGRAMS</b>		
065	INTELLIGENCE SYSTEMS .....	100,641	100,641
066	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS .....	12,522	12,522
067	OTHER ITEMS <\$5M .....	103,910	103,910
068	COMBATANT CRAFT SYSTEMS .....	33,088	33,088
069	SPECIAL PROGRAMS .....	63,467	63,467
070	TACTICAL VEHICLES .....	77,832	77,832
071	WARRIOR SYSTEMS <\$5M .....	298,480	298,480
072	COMBAT MISSION REQUIREMENTS .....	19,702	19,702
073	GLOBAL VIDEO SURVEILLANCE ACTIVITIES .....	4,787	4,787
074	OPERATIONAL ENHANCEMENTS INTELLIGENCE .....	8,175	8,175
075	OPERATIONAL ENHANCEMENTS .....	282,532	282,532
	<b>CBDP</b>		
076	CHEMICAL BIOLOGICAL SITUATIONAL AWARENESS .....	162,406	162,406
077	CB PROTECTION & HAZARD MITIGATION .....	188,188	183,618

<b>SEC. 4101. PROCUREMENT</b> (In Thousands of Dollars)			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
	Unjustified growth .....		[-4,570]
	<b>TOTAL PROCUREMENT, DEFENSE-WIDE</b> .....	<b>5,114,416</b>	<b>5,028,727</b>
<b>JOINT URGENT OPERATIONAL NEEDS FUND</b>			
<b>JOINT URGENT OPERATIONAL NEEDS FUND</b>			
001	JOINT URGENT OPERATIONAL NEEDS FUND .....	99,200	0
	Program decrease .....		[-99,200]
	<b>TOTAL JOINT URGENT OPERATIONAL NEEDS FUND.</b>	<b>99,200</b>	<b>0</b>
	<b>TOTAL PROCUREMENT</b> .....	<b>132,343,701</b>	<b>133,100,265</b>

**SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS.**

<b>SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS</b> (In Thousands of Dollars)			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>AIRCRAFT PROCUREMENT, ARMY</b>			
<b>FIXED WING</b>			
003	MQ-1 UAV .....	54,000	54,000
<b>ROTARY</b>			
015	CH-47 HELICOPTER .....	25,000	25,000
<b>MODIFICATION OF AIRCRAFT</b>			
021	MULTI SENSOR ABN RECON (MIP) .....	80,260	80,260
024	GRCS SEMA MODS (MIP) .....	750	750
026	EMARSS SEMA MODS (MIP) .....	22,180	22,180
027	UTILITY/CARGO AIRPLANE MODS .....	8,362	8,362
029	NETWORK AND MISSION PLAN .....	10	10
031	DEGRADED VISUAL ENVIRONMENT .....	49,450	49,450
<b>GROUND SUPPORT AVIONICS</b>			
037	CMWS .....	130,219	130,219
038	COMMON INFRARED COUNTERMEASURES (CIRC) .....	9,310	9,310
<b>OTHER SUPPORT</b>			
045	LAUNCHER GUIDED MISSILE: LONGBOW HELLFIRE XM2 ..	2,000	2,000
	<b>TOTAL AIRCRAFT PROCUREMENT, ARMY</b> .....	<b>381,541</b>	<b>381,541</b>
<b>MISSILE PROCUREMENT, ARMY</b>			
<b>SURFACE-TO-AIR MISSILE SYSTEM</b>			
002	M-SHORAD—PROCUREMENT .....	158,300	158,300
003	MSE MISSILE .....	37,938	37,938
<b>AIR-TO-SURFACE MISSILE SYSTEM</b>			
006	HELLFIRE SYS SUMMARY .....	236,265	236,265
<b>ANTI-TANK/ASSAULT MISSILE SYS</b>			
008	JAVELIN (AAWS-M) SYSTEM SUMMARY .....	4,389	4,389
011	GUIDED MLRS ROCKET (GMLRS) .....	431,596	431,596
014	ARMY TACTICAL MSL SYS (ATACMS)—SYS SUM .....	130,770	130,770
015	LETHAL MINIATURE AERIAL MISSILE SYSTEM (LMAMS) ....	83,300	83,300
<b>MODIFICATIONS</b>			
019	STINGER MODS .....	7,500	7,500
022	MLRS MODS .....	348,000	336,500
	Excess to need .....		[-11,500]
	<b>TOTAL MISSILE PROCUREMENT, ARMY</b> .....	<b>1,438,058</b>	<b>1,426,558</b>
<b>PROCUREMENT OF W&amp;TCV, ARMY</b>			
<b>TRACKED COMBAT VEHICLES</b>			
002	ARMORED MULTI PURPOSE VEHICLE (AMPV) .....	221,638	221,638
<b>MODIFICATION OF TRACKED COMBAT VEHICLES</b>			
003	STRYKER (MOD) .....	4,100	4,100
008	IMPROVED RECOVERY VEHICLE (M88A2 HERCULES) .....	80,146	80,146
013	M1 ABRAMS TANK (MOD) .....	13,100	13,100
<b>WEAPONS &amp; OTHER COMBAT VEHICLES</b>			
015	M240 MEDIUM MACHINE GUN (7.62MM) .....	900	900
016	MULTI-ROLE ANTI-ARMOR ANTI-PERSONNEL WEAPONS ...	2,400	2,400



<b>SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
019	MORTAR SYSTEMS .....	18,941	18,941
020	XM320 GRENADE LAUNCHER MODULE (GLM) .....	526	526
023	CARBINE .....	1,183	1,183
025	COMMON REMOTELY OPERATED WEAPONS STATION .....	4,182	4,182
026	HANDGUN .....	248	248
	<b>MOD OF WEAPONS AND OTHER COMBAT VEH</b>		
031	M2 50 CAL MACHINE GUN MODS .....	6,090	6,090
	<b>TOTAL PROCUREMENT OF W&amp;TCV, ARMY .....</b>	<b>353,454</b>	<b>353,454</b>
	<b>PROCUREMENT OF AMMUNITION, ARMY</b>		
	<b>SMALL/MEDIUM CAL AMMUNITION</b>		
001	CTG, 5.56MM, ALL TYPES .....	567	567
002	CTG, 7.62MM, ALL TYPES .....	40	40
003	CTG, HANDGUN, ALL TYPES .....	17	17
004	CTG, .50 CAL, ALL TYPES .....	189	189
007	CTG, 30MM, ALL TYPES .....	24,900	24,900
	<b>ARTILLERY AMMUNITION</b>		
015	PROJ 155MM EXTENDED RANGE M982 .....	36,052	36,052
016	ARTILLERY PROPELLANTS, FUZES AND PRIMERS, ALL .....	7,271	7,271
	<b>ROCKETS</b>		
018	SHOULDER LAUNCHED MUNITIONS, ALL TYPES .....	176	176
019	ROCKET, HYDRA 70, ALL TYPES .....	79,459	79,459
	<b>MISCELLANEOUS</b>		
027	ITEMS LESS THAN \$5 MILLION (AMMO) .....	11	11
	<b>TOTAL PROCUREMENT OF AMMUNITION, ARMY .....</b>	<b>148,682</b>	<b>148,682</b>
	<b>OTHER PROCUREMENT, ARMY</b>		
	<b>TACTICAL VEHICLES</b>		
010	FAMILY OF HEAVY TACTICAL VEHICLES (FHTV) .....	26,917	26,917
011	PLS ESP .....	16,941	16,941
012	HVY EXPANDED MOBILE TACTICAL TRUCK EXT SERV .....	62,734	62,734
014	TACTICAL WHEELED VEHICLE PROTECTION KITS .....	50,000	50,000
015	MODIFICATION OF IN SVC EQUIP .....	28,000	28,000
	<b>COMM—JOINT COMMUNICATIONS</b>		
022	TACTICAL NETWORK TECHNOLOGY MOD IN SVC .....	40,000	40,000
	<b>COMM—SATELLITE COMMUNICATIONS</b>		
029	TRANSPORTABLE TACTICAL COMMAND COMMUNICA- TIONS.	6,930	6,930
031	ASSURED POSITIONING, NAVIGATION AND TIMING .....	11,778	11,778
032	SMART-T (SPACE) .....	825	825
	<b>COMM—COMBAT COMMUNICATIONS</b>		
040	RADIO TERMINAL SET, MIDS LVT(2) .....	350	350
047	COTS COMMUNICATIONS EQUIPMENT .....	20,400	20,400
048	FAMILY OF MED COMM FOR COMBAT CASUALTY CARE .....	1,231	1,231
	<b>COMM—INTELLIGENCE COMM</b>		
051	CI AUTOMATION ARCHITECTURE (MIP) .....	6,200	6,200
	<b>COMM—LONG HAUL COMMUNICATIONS</b>		
059	BASE SUPPORT COMMUNICATIONS .....	20,482	20,482
	<b>COMM—BASE COMMUNICATIONS</b>		
060	INFORMATION SYSTEMS .....	55,800	55,800
063	INSTALLATION INFO INFRASTRUCTURE MOD PROGRAM ..	75,820	75,820
	<b>ELECT EQUIP—TACT INT REL ACT (TIARA)</b>		
068	DCGS-A (MIP) .....	38,613	38,613
070	TROJAN (MIP) .....	1,337	1,337
071	MOD OF IN-SVC EQUIP (INTEL SPT) (MIP) .....	2,051	2,051
075	BIOMETRIC TACTICAL COLLECTION DEVICES (MIP) .....	1,800	1,800
	<b>ELECT EQUIP—ELECTRONIC WARFARE (EW)</b>		
082	FAMILY OF PERSISTENT SURVEILLANCE CAP. (MIP) .....	71,493	31,493
	Unjustified growth .....		[-40,000]
083	COUNTERINTELLIGENCE/SECURITY COUNTERMEASURES <b>ELECT EQUIP—TACTICAL SURV. (TAC SURV)</b>	6,917	6,917
085	SENTINEL MODS .....	20,000	20,000
086	NIGHT VISION DEVICES .....	3,676	3,676
094	JOINT BATTLE COMMAND—PLATFORM (JBC-P) .....	25,568	25,568
097	COMPUTER BALLISTICS: LHMBC XM32 .....	570	570
098	MORTAR FIRE CONTROL SYSTEM .....	15,975	15,975
	<b>ELECT EQUIP—TACTICAL C2 SYSTEMS</b>		

**SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS**  
(In Thousands of Dollars)

Line	Item	FY 2020 Request	Conference Authorized
103	AIR & MSL DEFENSE PLANNING & CONTROL SYS .....	14,331	14,331
	<b>ELECT EQUIP—AUTOMATION</b>		
112	ARMY TRAINING MODERNIZATION .....	6,014	6,014
113	AUTOMATED DATA PROCESSING EQUIP .....	32,700	32,700
	<b>CHEMICAL DEFENSIVE EQUIPMENT</b>		
124	FAMILY OF NON-LETHAL EQUIPMENT (FNLE) .....	25,480	25,480
125	BASE DEFENSE SYSTEMS (BDS) .....	47,110	39,984
	Unjustified growth .....		[-7,126]
126	CBRN DEFENSE .....	18,711	17,461
	Unit cost discrepancies .....		[-1,250]
	<b>BRIDGING EQUIPMENT</b>		
128	TACTICAL BRIDGING .....	4,884	4,884
	<b>ENGINEER (NON-CONSTRUCTION) EQUIPMENT</b>		
133	GRND STANDOFF MINE DETECTN SYSM (GSTAMIDS) .....	4,500	3,655
	Program reduction .....		[-845]
135	HUSKY MOUNTED DETECTION SYSTEM (HMDS) .....	34,253	28,071
	Program reduction .....		[-6,182]
136	ROBOTIC COMBAT SUPPORT SYSTEM (RCSS) .....	3,300	3,300
140	RENDER SAFE SETS KITS OUTFITS .....	84,000	84,000
	<b>COMBAT SERVICE SUPPORT EQUIPMENT</b>		
143	HEATERS AND ECU'S .....	8	8
145	PERSONNEL RECOVERY SUPPORT SYSTEM (PRSS) .....	5,101	5,101
146	GROUND SOLDIER SYSTEM .....	1,760	1,760
148	FORCE PROVIDER .....	56,400	56,400
150	CARGO AERIAL DEL & PERSONNEL PARACHUTE SYSTEM .....	2,040	2,040
	<b>PETROLEUM EQUIPMENT</b>		
154	DISTRIBUTION SYSTEMS, PETROLEUM & WATER .....	13,986	13,986
	<b>MEDICAL EQUIPMENT</b>		
155	COMBAT SUPPORT MEDICAL .....	2,735	2,735
	<b>CONSTRUCTION EQUIPMENT</b>		
159	SCRAPERS, EARTHMOVING .....	4,669	4,669
160	LOADERS .....	380	380
162	TRACTOR, FULL TRACKED .....	8,225	8,225
164	HIGH MOBILITY ENGINEER EXCAVATOR (HMEE) .....	3,000	3,000
166	CONST EQUIP ESP .....	3,870	3,870
167	ITEMS LESS THAN \$5.0M (CONST EQUIP) .....	350	350
	<b>GENERATORS</b>		
171	GENERATORS AND ASSOCIATED EQUIP .....	2,436	2,436
	<b>MATERIAL HANDLING EQUIPMENT</b>		
173	FAMILY OF FORKLIFTS .....	5,152	5,152
	<b>TRAINING EQUIPMENT</b>		
175	TRAINING DEVICES, NONSYSTEM .....	2,106	2,106
	<b>TEST MEASURE AND DIG EQUIPMENT (TMD)</b>		
181	INTEGRATED FAMILY OF TEST EQUIPMENT (IFTE) .....	1,395	1,395
	<b>OTHER SUPPORT EQUIPMENT</b>		
184	RAPID EQUIPPING SOLDIER SUPPORT EQUIPMENT .....	24,122	24,122
185	PHYSICAL SECURITY SYSTEMS (OPA3) .....	10,016	10,016
187	MODIFICATION OF IN-SVC EQUIPMENT (OPA-3) .....	33,354	33,354
189	BUILDING, PRE-FAB, RELOCATABLE .....	62,654	62,654
	<b>TOTAL OTHER PROCUREMENT, ARMY</b> .....	<b>1,131,450</b>	<b>1,076,047</b>
	<b>AIRCRAFT PROCUREMENT, NAVY</b>		
	<b>OTHER AIRCRAFT</b>		
026	STUASL0 UAV .....	7,921	7,921
027	MQ-9A REAPER .....	77,000	77,000
	<b>MODIFICATION OF AIRCRAFT</b>		
036	EP-3 SERIES .....	5,488	5,488
046	SPECIAL PROJECT AIRCRAFT .....	3,498	3,498
051	COMMON ECM EQUIPMENT .....	3,406	3,406
053	COMMON DEFENSIVE WEAPON SYSTEM .....	3,274	3,274
062	QRC .....	18,458	18,458
	<b>TOTAL AIRCRAFT PROCUREMENT, NAVY</b> .....	<b>119,045</b>	<b>119,045</b>
	<b>WEAPONS PROCUREMENT, NAVY</b>		
	<b>TACTICAL MISSILES</b>		
011	JOINT AIR GROUND MISSILE (JAGM) .....	90,966	90,966
015	AERIAL TARGETS .....	6,500	6,500

<b>SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
	<b>TOTAL WEAPONS PROCUREMENT, NAVY</b> .....	<b>97,466</b>	<b>97,466</b>
	<b>PROCUREMENT OF AMMO, NAVY &amp; MC</b>		
	<b>NAVY AMMUNITION</b>		
001	GENERAL PURPOSE BOMBS .....	26,978	26,978
002	JDAM .....	12,263	12,263
003	AIRBORNE ROCKETS, ALL TYPES .....	45,020	45,020
004	MACHINE GUN AMMUNITION .....	33,577	33,577
005	PRACTICE BOMBS .....	11,903	11,903
006	CARTRIDGES & CART ACTUATED DEVICES .....	15,081	15,081
007	AIR EXPENDABLE COUNTERMEASURES .....	16,911	16,911
011	OTHER SHIP GUN AMMUNITION .....	3,262	3,262
012	SMALL ARMS & LANDING PARTY AMMO .....	1,010	1,010
013	PYROTECHNIC AND DEMOLITION .....	537	537
	<b>MARINE CORPS AMMUNITION</b>		
016	MORTARS .....	1,930	1,930
017	DIRECT SUPPORT MUNITIONS .....	1,172	1,172
018	INFANTRY WEAPONS AMMUNITION .....	2,158	2,158
019	COMBAT SUPPORT MUNITIONS .....	965	965
021	ARTILLERY MUNITIONS .....	32,047	32,047
	<b>TOTAL PROCUREMENT OF AMMO, NAVY &amp; MC</b> .....	<b>204,814</b>	<b>204,814</b>
	<b>OTHER PROCUREMENT, NAVY</b>		
	<b>OTHER SHIPBOARD EQUIPMENT</b>		
020	UNDERWATER EOD PROGRAMS .....	5,800	5,800
	<b>ASW ELECTRONIC EQUIPMENT</b>		
042	FIXED SURVEILLANCE SYSTEM .....	310,503	310,503
	<b>SONOBUOYS</b>		
085	SONOBUOYS—ALL TYPES .....	2,910	2,910
	<b>AIRCRAFT SUPPORT EQUIPMENT</b>		
088	AIRCRAFT SUPPORT EQUIPMENT .....	13,420	13,420
094	AVIATION SUPPORT EQUIPMENT .....	500	500
	<b>OTHER ORDNANCE SUPPORT EQUIPMENT</b>		
103	EXPLOSIVE ORDNANCE DISPOSAL EQUIP .....	15,307	15,307
	<b>CIVIL ENGINEERING SUPPORT EQUIPMENT</b>		
108	PASSENGER CARRYING VEHICLES .....	173	173
109	GENERAL PURPOSE TRUCKS .....	408	408
111	FIRE FIGHTING EQUIPMENT .....	785	785
	<b>SUPPLY SUPPORT EQUIPMENT</b>		
117	SUPPLY EQUIPMENT .....	100	100
118	FIRST DESTINATION TRANSPORTATION .....	510	510
	<b>COMMAND SUPPORT EQUIPMENT</b>		
122	COMMAND SUPPORT EQUIPMENT .....	2,800	2,800
123	MEDICAL SUPPORT EQUIPMENT .....	1,794	1,794
126	OPERATING FORCES SUPPORT EQUIPMENT .....	1,090	1,090
128	ENVIRONMENTAL SUPPORT EQUIPMENT .....	200	200
129	PHYSICAL SECURITY EQUIPMENT .....	1,300	1,300
	<b>TOTAL OTHER PROCUREMENT, NAVY</b> .....	<b>357,600</b>	<b>357,600</b>
	<b>PROCUREMENT, MARINE CORPS</b>		
	<b>GUIDED MISSILES</b>		
012	GUIDED MLRS ROCKET (GMLRS) .....	16,919	16,919
	<b>ENGINEER AND OTHER EQUIPMENT</b>		
045	EOD SYSTEMS .....	3,670	3,670
	<b>TOTAL PROCUREMENT, MARINE CORPS</b> .....	<b>20,589</b>	<b>20,589</b>
	<b>AIRCRAFT PROCUREMENT, AIR FORCE</b>		
	<b>OTHER AIRCRAFT</b>		
017	MQ-9 .....	172,240	172,240
018	RQ-20B PUMA .....	12,150	12,150
	<b>STRATEGIC AIRCRAFT</b>		
022	LARGE AIRCRAFT INFRARED COUNTERMEASURES .....	53,335	53,335
	<b>OTHER AIRCRAFT</b>		
067	MQ-9 UAS PAYLOADS .....	19,800	19,800
	<b>AIRCRAFT SPARES AND REPAIR PARTS</b>		
069	INITIAL SPARES/REPAIR PARTS .....	44,560	44,560
	<b>COMMON SUPPORT EQUIPMENT</b>		

<b>SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
072	AIRCRAFT REPLACEMENT SUPPORT EQUIP .....	7,025	7,025
	<b>TOTAL AIRCRAFT PROCUREMENT, AIR FORCE .....</b>	<b>309,110</b>	<b>309,110</b>
	<b>MISSILE PROCUREMENT, AIR FORCE</b>		
	<b>TACTICAL</b>		
004	JOINT AIR-SURFACE STANDOFF MISSILE .....	20,900	20,900
008	PREDATOR HELLFIRE MISSILE .....	180,771	180,771
	<b>TOTAL MISSILE PROCUREMENT, AIR FORCE .....</b>	<b>201,671</b>	<b>201,671</b>
	<b>PROCUREMENT OF AMMUNITION, AIR FORCE</b>		
	<b>ROCKETS</b>		
001	ROCKETS .....	84,960	84,960
	<b>CARTRIDGES</b>		
002	CARTRIDGES .....	52,642	52,642
	<b>BOMBS</b>		
004	GENERAL PURPOSE BOMBS .....	545,309	545,309
	<b>FLARES</b>		
015	FLARES .....	93,272	93,272
	<b>FUZES</b>		
016	FUZES .....	157,155	157,155
	<b>SMALL ARMS</b>		
017	SMALL ARMS .....	6,095	6,095
	<b>TOTAL PROCUREMENT OF AMMUNITION, AIR FORCE ...</b>	<b>939,433</b>	<b>939,433</b>
	<b>OTHER PROCUREMENT, AIR FORCE</b>		
	<b>PASSENGER CARRYING VEHICLES</b>		
001	PASSENGER CARRYING VEHICLES .....	1,276	1,276
	<b>CARGO AND UTILITY VEHICLES</b>		
004	CARGO AND UTILITY VEHICLES .....	9,702	9,702
	<b>SPECIAL PURPOSE VEHICLES</b>		
005	JOINT LIGHT TACTICAL VEHICLE .....	40,999	40,999
007	SPECIAL PURPOSE VEHICLES .....	52,502	52,502
	<b>FIRE FIGHTING EQUIPMENT</b>		
008	FIRE FIGHTING/CRASH RESCUE VEHICLES .....	16,652	16,652
	<b>MATERIALS HANDLING EQUIPMENT</b>		
009	MATERIALS HANDLING VEHICLES .....	2,944	2,944
	<b>BASE MAINTENANCE SUPPORT</b>		
010	RUNWAY SNOW REMOV AND CLEANING EQU .....	3,753	3,753
011	BASE MAINTENANCE SUPPORT VEHICLES .....	11,837	11,837
	<b>SPCL COMM-ELECTRONICS PROJECTS</b>		
027	GENERAL INFORMATION TECHNOLOGY .....	5,000	5,000
031	AIR FORCE PHYSICAL SECURITY SYSTEM .....	106,919	106,919
	<b>ORGANIZATION AND BASE</b>		
048	TACTICAL C-E EQUIPMENT .....	306	306
052	BASE COMM INFRASTRUCTURE .....	4,300	4,300
	<b>PERSONAL SAFETY &amp; RESCUE EQUIP</b>		
054	PERSONAL SAFETY AND RESCUE EQUIPMENT .....	22,200	22,200
	<b>BASE SUPPORT EQUIPMENT</b>		
059	MOBILITY EQUIPMENT .....	26,535	26,535
060	FUELS SUPPORT EQUIPMENT (FSE) .....	4,040	4,040
061	BASE MAINTENANCE AND SUPPORT EQUIPMENT .....	20,067	20,067
	<b>CLASSIFIED PROGRAMS</b>		
066A	CLASSIFIED PROGRAMS .....	3,209,066	3,209,066
	<b>TOTAL OTHER PROCUREMENT, AIR FORCE .....</b>	<b>3,538,098</b>	<b>3,538,098</b>
	<b>PROCUREMENT, DEFENSE-WIDE</b>		
	<b>MAJOR EQUIPMENT, DISA</b>		
009	TELEPORT PROGRAM .....	3,800	3,800
012	DEFENSE INFORMATION SYSTEM NETWORK .....	12,000	12,000
	<b>MAJOR EQUIPMENT, DEFENSE THREAT REDUCTION AGENCY</b>		
027	COUNTER IED & IMPROVISED THREAT TECHNOLOGIES ....	4,590	4,590
	<b>CLASSIFIED PROGRAMS</b>		
049A	CLASSIFIED PROGRAMS .....	51,380	46,380
	Program decrease .....		[-5,000]
	<b>AVIATION PROGRAMS</b>		
050	MANNED ISR .....	5,000	5,000

**SEC. 4102. PROCUREMENT FOR OVERSEAS CONTINGENCY OPERATIONS**  
(In Thousands of Dollars)

Line	Item	FY 2020 Request	Conference Authorized
051	MC-12 .....	5,000	5,000
052	MH-60 BLACKHAWK .....	28,100	28,100
054	UNMANNED ISR .....	8,207	8,207
056	U-28 .....	31,500	31,500
057	MH-47 CHINOOK .....	37,500	37,500
059	MQ-9 UNMANNED AERIAL VEHICLE .....	1,900	1,900
	<b>AMMUNITION PROGRAMS</b>		
064	ORDNANCE ITEMS <\$5M .....	138,252	138,252
	<b>OTHER PROCUREMENT PROGRAMS</b>		
065	INTELLIGENCE SYSTEMS .....	16,500	16,500
067	OTHER ITEMS <\$5M .....	28	28
070	TACTICAL VEHICLES .....	2,990	2,990
071	WARRIOR SYSTEMS <\$5M .....	37,512	37,512
072	COMBAT MISSION REQUIREMENTS .....	10,000	10,000
074	OPERATIONAL ENHANCEMENTS INTELLIGENCE .....	7,594	7,594
075	OPERATIONAL ENHANCEMENTS .....	45,194	45,194
	<b>TOTAL PROCUREMENT, DEFENSE-WIDE .....</b>	<b>447,047</b>	<b>442,047</b>
	<b>NATIONAL GUARD AND RESERVE EQUIPMENT</b>		
	<b>UNDISTRIBUTED</b>		
007	UNDISTRIBUTED .....		265,000
	Program increase .....		[265,000]
	<b>TOTAL NATIONAL GUARD AND RESERVE EQUIPMENT</b>		<b>265,000</b>
	<b>TOTAL PROCUREMENT .....</b>	<b>9,688,058</b>	<b>9,881,155</b>

**SEC. 4103. PROCUREMENT FOR EMERGENCY REQUIREMENTS.**

**SEC. 4103. PROCUREMENT FOR EMERGENCY REQUIREMENTS**  
(In Thousands of Dollars)

Line	Item	FY 2020 Request	Conference Authorized
	<b>OTHER PROCUREMENT, NAVY</b>		
	<b>COMMAND SUPPORT EQUIPMENT</b>		
122	COMMAND SUPPORT EQUIPMENT .....	0	233,000
	Earthquake damage recovery .....		[233,000]
	<b>TOTAL PROCUREMENT, NAVY .....</b>		<b>233,000</b>
	<b>AIRCRAFT PROCUREMENT, AIR FORCE</b>		
	<b>TACTICAL FORCES</b>		
	<b>OTHER AIRCRAFT</b>		
055	RC-135 .....	0	204,448
	Equipment replacement .....		[204,448]
	<b>COMMON SUPPORT EQUIPMENT</b>		
072	AIRCRAFT REPLACEMENT SUPPORT EQUIP .....		46,000
	Equipment replacement .....		[46,000]
	<b>TOTAL AIRCRAFT PROCUREMENT, AIR FORCE .....</b>	<b>0</b>	<b>250,448</b>
	<b>OTHER PROCUREMENT, AIR FORCE</b>		
	<b>PASSENGER CARRYING VEHICLES</b>		
001	PASSENGER CARRYING VEHICLES .....	0	994
	Equipment replacement .....		[994]
	<b>CARGO AND UTILITY VEHICLES</b>		
004	CARGO AND UTILITY VEHICLES .....	0	126
	Equipment replacement .....		[126]
	<b>SPECIAL PURPOSE VEHICLES</b>		
007	SPECIAL PURPOSE VEHICLES .....	0	306
	Equipment replacement .....		[306]
	<b>FIRE FIGHTING EQUIPMENT</b>		
009	MATERIALS HANDLING VEHICLES .....	0	276
	Equipment replacement .....		[994]
	<b>BASE MAINTENANCE SUPPORT</b>		
011	BASE MAINTENANCE SUPPORT VEHICLES .....	0	2,400
	Equipment replacement .....		[994]
	<b>BASE SUPPORT EQUIPMENT</b>		

SEC. 4103. PROCUREMENT FOR EMERGENCY REQUIREMENTS (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
057	BASE PROCURED EQUIPMENT .....	0	49,434
	Equipment replacement .....		[49,434]
	<b>SPECIAL SUPPORT PROJECTS</b>		
063	DARP RC135 .....	0	29,438
	Equipment replacement .....		[29,438]
	<b>TOTAL OTHER PROCUREMENT, AIR FORCE .....</b>	<b>0</b>	<b>82,974</b>
	<b>TOTAL PROCUREMENT .....</b>	<b>0</b>	<b>566,422</b>

## TITLE XLII—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

- Sec. 4201. Research, development, test, and evaluation.
- Sec. 4202. Research, development, test, and evaluation for overseas contingency operations.
- Sec. 4203. Research, development, test, and evaluation for emergency requirements.

### SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION.

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, ARMY</b>		
		<b>BASIC RESEARCH</b>		
002	0601102A	DEFENSE RESEARCH SCIENCES .....	297,976	307,976
		Counter UAS University Research .....		[5,000]
		Cyber basic research .....		[5,000]
003	0601103A	UNIVERSITY RESEARCH INITIATIVES .....	65,858	75,858
		Program increase .....		[10,000]
004	0601104A	UNIVERSITY AND INDUSTRY RESEARCH CENTERS. Program increase—artificial intelligence .....	86,164	95,164
		University and industry biotechnology research .....		[4,000]
005	0601121A	CYBER COLLABORATIVE RESEARCH ALLIANCE .....	4,982	4,982
		<b>SUBTOTAL BASIC RESEARCH .....</b>	<b>454,980</b>	<b>483,980</b>
		<b>APPLIED RESEARCH</b>		
010	0602141A	LETHALITY TECHNOLOGY .....	26,961	31,961
		Program increase—next generation air-breathing propulsion technology.		[5,000]
011	0602142A	ARMY APPLIED RESEARCH .....	25,319	25,319
012	0602143A	SOLDIER LETHALITY TECHNOLOGY .....	115,274	128,274
		Expeditionary mobile base camp technology .....		[5,000]
		HEROES program .....		[5,000]
		UPL MDTF for INDOPACOM .....		[3,000]
013	0602144A	GROUND TECHNOLOGY .....	35,199	54,199
		Advanced materials manufacturing process .....		[2,000]
		Biopolymer structural materials .....		[2,000]
		Cellulose structural materials .....		[5,000]
		High performance polymers research .....		[5,000]
		Manufacturing research technology .....		[5,000]
014	0602145A	NEXT GENERATION COMBAT VEHICLE TECHNOLOGY. Structural thermoplastics .....	219,047	225,047
		Next generation SAR small sat .....		[6,000]
015	0602146A	NETWORK C3I TECHNOLOGY .....	114,516	117,016
		Next generation SAR small sat .....		[2,500]
016	0602147A	LONG RANGE PRECISION FIRES TECHNOLOGY Composite tube and propulsion technology .....	74,327	86,327
		Novel printed armament components .....		[10,000]
				[2,000]
017	0602148A	FUTURE VERTICLE LIFT TECHNOLOGY .....	93,601	96,601

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Program increase .....		[3,000]
018	0602150A	AIR AND MISSILE DEFENSE TECHNOLOGY .....	50,771	50,771
020	0602213A	C3I APPLIED CYBER .....	18,947	18,947
038	0602785A	MANPOWER/PERSONNEL/TRAINING TECH- NOLOGY.	20,873	20,873
040	0602787A	MEDICAL TECHNOLOGY .....	99,155	108,955
		Female warfighter performance research .....		[2,000]
		Musculoskeletal injury risk mitigation .....		[4,800]
		Program increase .....		[3,000]
		<b>SUBTOTAL APPLIED RESEARCH .....</b>	<b>893,990</b>	<b>964,290</b>
		<b>ADVANCED TECHNOLOGY DEVELOPMENT</b>		
042	0603002A	MEDICAL ADVANCED TECHNOLOGY .....	42,030	42,030
047	0603007A	MANPOWER, PERSONNEL AND TRAINING AD- VANCED TECHNOLOGY.	11,038	11,038
050	0603117A	ARMY ADVANCED TECHNOLOGY DEVELOP- MENT.	63,338	63,338
051	0603118A	SOLDIER LETHALITY ADVANCED TECH- NOLOGY.	118,468	128,468
		Improvement of combat helmet suspension sys- tems.		[5,000]
		Thermal mitigation technologies .....		[5,000]
052	0603119A	GROUND ADVANCED TECHNOLOGY .....	12,593	35,593
		100 hour battery .....		[10,000]
		Ground advanced technology for cold regions ....		[5,000]
		Lightweight protective and hardening materials		[3,000]
		Robotic construction research .....		[5,000]
059	0603457A	C3I CYBER ADVANCED DEVELOPMENT .....	13,769	13,769
060	0603461A	HIGH PERFORMANCE COMPUTING MOD- ERNIZATION PROGRAM.	184,755	224,755
		Program increase .....		[40,000]
061	0603462A	NEXT GENERATION COMBAT VEHICLE AD- VANCED TECHNOLOGY.	160,035	174,035
		Ground vehicle sustainment research .....		[4,000]
		Program increase—hydrogen fuel cells .....		[10,000]
062	0603463A	NETWORK C3I ADVANCED TECHNOLOGY .....	106,899	103,899
		Underexecution .....		[-3,000]
063	0603464A	LONG RANGE PRECISION FIRES ADVANCED TECHNOLOGY.	174,386	183,386
		Hypersonics research .....		[4,000]
		Program increase missile demonstrations .....		[5,000]
064	0603465A	FUTURE VERTICAL LIFT ADVANCED TECH- NOLOGY.	151,640	151,640
065	0603466A	AIR AND MISSILE DEFENSE ADVANCED TECH- NOLOGY.	60,613	60,613
		<b>SUBTOTAL ADVANCED TECHNOLOGY DE- VELOPMENT.</b>	<b>1,099,564</b>	<b>1,192,564</b>
		<b>ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES</b>		
073	0603305A	ARMY MISSILE DEFENSE SYSTEMS INTEGRA- TION.	10,987	18,987
		Conventional mission capabilities .....		[8,000]
074	0603327A	AIR AND MISSILE DEFENSE SYSTEMS ENGI- NEERING.	15,148	15,148
075	0603619A	LANDMINE WARFARE AND BARRIER—ADV DEV.	92,915	92,915
077	0603639A	TANK AND MEDIUM CALIBER AMMUNITION ....	82,146	82,146
078	0603645A	ARMORED SYSTEM MODERNIZATION—ADV DEV.	157,656	157,656
079	0603747A	SOLDIER SUPPORT AND SURVIVABILITY .....	6,514	6,514
080	0603766A	TACTICAL ELECTRONIC SURVEILLANCE SYS- TEM—ADV DEV.	34,890	34,890
081	0603774A	NIGHT VISION SYSTEMS ADVANCED DEVELOP- MENT.	251,011	222,791
		IVAS insufficient justification .....		[-28,220]

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)					
Line	Program Element	Item	FY 2020 Request	Conference Authorized	
082	0603779A	ENVIRONMENTAL QUALITY TECHNOLOGY— DEMVAL.	15,132	15,132	
083	0603790A	NATO RESEARCH AND DEVELOPMENT .....	5,406	5,406	
084	0603801A	AVIATION—ADV DEV .....	459,290	534,890	
		Program increase: Future long-range assault aircraft.			[75,600]
085	0603804A	LOGISTICS AND ENGINEER EQUIPMENT—ADV DEV.	6,254	6,254	
086	0603807A	MEDICAL SYSTEMS—ADV DEV .....	31,175	31,175	
087	0603827A	SOLDIER SYSTEMS—ADVANCED DEVELOP- MENT.	22,113	22,113	
088	0604017A	ROBOTICS DEVELOPMENT .....	115,222	88,222	
		Early to need .....			[-27,000]
090	0604021A	ELECTRONIC WARFARE TECHNOLOGY MATU- RATION (MIP).	18,043	18,043	
091	0604100A	ANALYSIS OF ALTERNATIVES .....	10,023	10,023	
092	0604113A	FUTURE TACTICAL UNMANNED AIRCRAFT SYSTEM (FTUAS).	40,745	35,745	
		Program adjustment .....			[-5,000]
093	0604114A	LOWER TIER AIR MISSILE DEFENSE (LTAMD) SENSOR.	427,772	379,772	
		Rapid prototyping excess funding .....			[-48,000]
094	0604115A	TECHNOLOGY MATURATION INITIATIVES .....	196,676	161,676	
		Insufficient schedule detail .....			[-35,000]
095	0604117A	MANEUVER—SHORT RANGE AIR DEFENSE (M- SHORAD).	33,100	29,400	
		Excess testing cost .....			[-3,700]
097	0604119A	ARMY ADVANCED COMPONENT DEVELOP- MENT & PROTOTYPING.	115,116	103,331	
		Early to need .....			[-11,785]
099	0604121A	SYNTHETIC TRAINING ENVIRONMENT RE- FINEMENT & PROTOTYPING.	136,761	111,761	
		Early to need (IVAS) .....			[-25,000]
100	0604182A	HYPERSONICS .....	228,000	389,610	
		Transfer from RDTE Defense-Wide, line 124 .....			[31,000]
		UPL accelerate Hypersonic Weapons System .....			[130,610]
102	0604403A	FUTURE INTERCEPTOR .....	8,000	0	
		Early to need .....			[-8,000]
103	0604541A	UNIFIED NETWORK TRANSPORT .....	39,600	29,700	
		Early to need .....			[-9,900]
104	0604644A	MOBILE MEDIUM RANGE MISSILE .....	20,000	10,000	
		Program decrease .....			[-10,000]
106	0305251A	CYBERSPACE OPERATIONS FORCES AND FORCE SUPPORT.	52,102	52,102	
107	1206120A	ASSURED POSITIONING, NAVIGATION AND TIMING (PNT).	192,562	150,062	
		Project cancellation .....			[-42,500]
108	1206308A	ARMY SPACE SYSTEMS INTEGRATION .....	104,996	104,996	
		<b>SUBTOTAL ADVANCED COMPONENT DE- VELOPMENT &amp; PROTOTYPES.</b>	<b>2,929,355</b>	<b>2,920,460</b>	
<b>SYSTEM DEVELOPMENT &amp; DEMONSTRATION</b>					
109	0604201A	AIRCRAFT AVIONICS .....	29,164	29,164	
110	0604270A	ELECTRONIC WARFARE DEVELOPMENT .....	70,539	70,539	
113	0604601A	INFANTRY SUPPORT WEAPONS .....	106,121	106,121	
114	0604604A	MEDIUM TACTICAL VEHICLES .....	2,152	2,152	
115	0604611A	JAVELIN .....	17,897	16,055	
		Qualification testing early to need .....			[-1,842]
116	0604622A	FAMILY OF HEAVY TACTICAL VEHICLES .....	16,745	16,745	
117	0604633A	AIR TRAFFIC CONTROL .....	6,989	6,989	
118	0604642A	LIGHT TACTICAL WHEELED VEHICLES .....	10,465	2,965	
		Program reduction .....			[-7,500]
119	0604645A	ARMORED SYSTEMS MODERNIZATION (ASM)— ENG DEV.	310,152	293,964	
		Program delay .....			[-16,188]
120	0604710A	NIGHT VISION SYSTEMS—ENG DEV .....	181,732	166,732	



SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Insufficient justification (IVAS) .....		[-15,000]
121	0604713A	COMBAT FEEDING, CLOTHING, AND EQUIPMENT.	2,393	2,393
122	0604715A	NON-SYSTEM TRAINING DEVICES-ENG DEV ...	27,412	27,412
123	0604741A	AIR DEFENSE COMMAND, CONTROL AND INTELLIGENCE-ENG DEV.	43,502	43,502
124	0604742A	CONSTRUCTIVE SIMULATION SYSTEMS DEVELOPMENT.	11,636	11,636
125	0604746A	AUTOMATIC TEST EQUIPMENT DEVELOPMENT	10,915	10,915
126	0604760A	DISTRIBUTIVE INTERACTIVE SIMULATIONS (DIS)-ENG DEV.	7,801	7,801
127	0604768A	BRILLIANT ANTI-ARMOR SUBMUNITION (BAT)	25,000	20,000
		PFAL excess .....		[-5,000]
128	0604780A	COMBINED ARMS TACTICAL TRAINER (CATT) CORE.	9,241	9,241
129	0604798A	BRIGADE ANALYSIS, INTEGRATION AND EVALUATION.	42,634	38,303
		RCO support excess .....		[-4,331]
130	0604802A	WEAPONS AND MUNITIONS-ENG DEV .....	181,023	181,023
131	0604804A	LOGISTICS AND ENGINEER EQUIPMENT-ENG DEV.	103,226	103,226
132	0604805A	COMMAND, CONTROL, COMMUNICATIONS SYSTEMS-ENG DEV.	12,595	12,595
133	0604807A	MEDICAL MATERIEL/MEDICAL BIOLOGICAL DEFENSE EQUIPMENT-ENG DEV.	48,264	48,264
134	0604808A	LANDMINE WARFARE/BARRIER-ENG DEV .....	39,208	39,208
135	0604818A	ARMY TACTICAL COMMAND & CONTROL HARDWARE & SOFTWARE.	140,637	138,137
		CPI2 testing previously funded .....		[-2,500]
136	0604820A	RADAR DEVELOPMENT .....	105,243	105,243
137	0604822A	GENERAL FUND ENTERPRISE BUSINESS SYSTEM (GFEBS).	46,683	46,683
138	0604823A	FIREFINDER .....	17,294	17,294
139	0604827A	SOLDIER SYSTEMS-WARRIOR DEM/VAL .....	5,803	5,803
140	0604852A	SUITE OF SURVIVABILITY ENHANCEMENT SYSTEMS-EMD.	98,698	118,698
		Program increase for vehicle active protection system evaluation.		[30,000]
		Program reduction .....		[-10,000]
141	0604854A	ARTILLERY SYSTEMS-EMD .....	15,832	15,832
142	0605013A	INFORMATION TECHNOLOGY DEVELOPMENT	126,537	71,537
		Historical underexecution .....		[-10,000]
		Program decrease .....		[-45,000]
143	0605018A	INTEGRATED PERSONNEL AND PAY SYSTEM-ARMY (IPPS-A).	142,773	92,073
		Poor business process reengineering .....		[-50,700]
144	0605028A	ARMORED MULTI-PURPOSE VEHICLE (AMPV) ...	96,730	92,130
		Program reduction .....		[-4,600]
145	0605029A	INTEGRATED GROUND SECURITY SURVEILLANCE RESPONSE CAPABILITY (IGSSR-C).	6,699	6,699
146	0605030A	JOINT TACTICAL NETWORK CENTER (JTNC) .....	15,882	15,882
147	0605031A	JOINT TACTICAL NETWORK (JTN) .....	40,808	40,808
149	0605033A	GROUND-BASED OPERATIONAL SURVEILLANCE SYSTEM-EXPEDITIONARY (GBOSS-E).	3,847	3,847
150	0605034A	TACTICAL SECURITY SYSTEM (TSS) .....	6,928	6,928
151	0605035A	COMMON INFRARED COUNTERMEASURES (CIRCM).	34,488	34,488
152	0605036A	COMBATING WEAPONS OF MASS DESTRUCTION (CWMD).	10,000	10,000
154	0605038A	NUCLEAR BIOLOGICAL CHEMICAL RECONNAISSANCE VEHICLE (NBCRV) SENSOR SUITE.	6,054	6,054
155	0605041A	DEFENSIVE CYBER TOOL DEVELOPMENT .....	62,262	45,662
		Contract delays .....		[-10,000]
		Excess growth .....		[-6,600]
156	0605042A	TACTICAL NETWORK RADIO SYSTEMS (LOW-TIER).	35,654	29,254

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Excess growth .....		[-6,400]
157	0605047A	CONTRACT WRITING SYSTEM .....	19,682	19,682
158	0605049A	MISSILE WARNING SYSTEM MODERNIZATION (MWSM).	1,539	1,539
159	0605051A	AIRCRAFT SURVIVABILITY DEVELOPMENT .....	64,557	64,557
160	0605052A	INDIRECT FIRE PROTECTION CAPABILITY INC 2—BLOCK 1.	243,228	236,428
		EMAM development ahead of need .....		[-6,800]
161	0605053A	GROUND ROBOTICS .....	41,308	28,508
		Excess to requirement .....		[-12,800]
162	0605054A	EMERGING TECHNOLOGY INITIATIVES .....	45,896	31,616
		Testing and evaluation excess growth .....		[-4,280]
		Unjustified request .....		[-10,000]
163	0605203A	ARMY SYSTEM DEVELOPMENT & DEMONSTRATION.	164,883	164,883
165	0605450A	JOINT AIR-TO-GROUND MISSILE (JAGM) .....	9,500	9,500
166	0605457A	ARMY INTEGRATED AIR AND MISSILE DEFENSE (AIAMD).	208,938	193,938
		Testing and evaluation excess growth .....		[-15,000]
167	0605625A	MANNED GROUND VEHICLE .....	378,400	228,400
		Program decrease .....		[-150,000]
168	0605766A	NATIONAL CAPABILITIES INTEGRATION (MIP)	7,835	7,835
169	0605812A	JOINT LIGHT TACTICAL VEHICLE (JLTV) ENGINEERING AND MANUFACTURING DEVELOPMENT PH.	2,732	7,232
		Army requested realignment from OPA 7 .....		[4,500]
170	0605830A	AVIATION GROUND SUPPORT EQUIPMENT .....	1,664	1,664
172	0303032A	TROJAN—RH12 .....	3,936	3,936
174	0304270A	ELECTRONIC WARFARE DEVELOPMENT .....	19,675	19,675
		<b>SUBTOTAL SYSTEM DEVELOPMENT &amp; DEMONSTRATION.</b>	<b>3,549,431</b>	<b>3,189,390</b>
		<b>RDT&amp;E MANAGEMENT SUPPORT</b>		
176	0604256A	THREAT SIMULATOR DEVELOPMENT .....	14,117	16,117
		Cybersecurity threat simulation .....		[2,000]
177	0604258A	TARGET SYSTEMS DEVELOPMENT .....	8,327	8,327
178	0604759A	MAJOR T&E INVESTMENT .....	136,565	136,565
179	0605103A	RAND ARROYO CENTER .....	13,113	13,113
180	0605301A	ARMY KWAJALEIN ATOLL .....	238,691	238,691
181	0605326A	CONCEPTS EXPERIMENTATION PROGRAM .....	42,922	36,922
		Program reduction .....		[-6,000]
183	0605601A	ARMY TEST RANGES AND FACILITIES .....	334,468	334,468
184	0605602A	ARMY TECHNICAL TEST INSTRUMENTATION AND TARGETS.	46,974	51,974
		Program increase—space and missile cybersecurity.		[5,000]
185	0605604A	SURVIVABILITY/LETHALITY ANALYSIS .....	35,075	35,075
186	0605606A	AIRCRAFT CERTIFICATION .....	3,461	3,461
187	0605702A	METEOROLOGICAL SUPPORT TO RDT&E ACTIVITIES.	6,233	6,233
188	0605706A	MATERIEL SYSTEMS ANALYSIS .....	21,342	21,342
189	0605709A	EXPLOITATION OF FOREIGN ITEMS .....	11,168	11,168
190	0605712A	SUPPORT OF OPERATIONAL TESTING .....	52,723	52,723
191	0605716A	ARMY EVALUATION CENTER .....	60,815	60,815
192	0605718A	ARMY MODELING & SIM X-CMD COLLABORATION & INTEG.	2,527	2,527
193	0605801A	PROGRAMWIDE ACTIVITIES .....	58,175	58,175
194	0605803A	TECHNICAL INFORMATION ACTIVITIES .....	25,060	25,060
195	0605805A	MUNITIONS STANDARDIZATION, EFFECTIVENESS AND SAFETY.	44,458	44,458
196	0605857A	ENVIRONMENTAL QUALITY TECHNOLOGY MGMT SUPPORT.	4,681	4,681
197	0605898A	ARMY DIRECT REPORT HEADQUARTERS—R&D - MHA.	53,820	53,820
198	0606001A	MILITARY GROUND-BASED CREW TECHNOLOGY.	4,291	4,291

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
199	0606002A	RONALD REAGAN BALLISTIC MISSILE DEFENSE TEST SITE.	62,069	62,069
200	0606003A	COUNTERINTEL AND HUMAN INTEL MODERNIZATION.	1,050	1,050
201	0606942A	ASSESSMENTS AND EVALUATIONS CYBER VULNERABILITIES.	4,500	4,500
		<b>SUBTOTAL RDT&amp;E MANAGEMENT SUPPORT.</b>	<b>1,286,625</b>	<b>1,287,625</b>
<b>OPERATIONAL SYSTEMS DEVELOPMENT</b>				
<b>UNDISTRIBUTED</b>				
204	0603778A	MLRS PRODUCT IMPROVEMENT PROGRAM ..... HIMARS excess growth .....	22,877	19,877 [-3,000]
206	0605024A	ANTI-TAMPER TECHNOLOGY SUPPORT .....	8,491	8,491
207	0607131A	WEAPONS AND MUNITIONS PRODUCT IMPROVEMENT PROGRAMS.	15,645	15,645
209	0607134A	LONG RANGE PRECISION FIRES (LRPF) .....	164,182	164,182
211	0607136A	BLACKHAWK PRODUCT IMPROVEMENT PROGRAM.	13,039	13,039
212	0607137A	CHINOOK PRODUCT IMPROVEMENT PROGRAM Program reduction .....	174,371	168,371 [-6,000]
213	0607138A	FIXED WING PRODUCT IMPROVEMENT PROGRAM. Program reduction .....	4,545	0 [-4,545]
214	0607139A	IMPROVED TURBINE ENGINE PROGRAM .....	206,434	206,434
216	0607142A	AVIATION ROCKET SYSTEM PRODUCT IMPROVEMENT AND DEVELOPMENT. Integrated munitions launcher early to need .....	24,221	21,130 [-3,091]
217	0607143A	UNMANNED AIRCRAFT SYSTEM UNIVERSAL PRODUCTS. Program reduction .....	32,016	25,516 [-6,500]
218	0607145A	APACHE FUTURE DEVELOPMENT .....	5,448	448 [-5,000]
219	0607312A	ARMY OPERATIONAL SYSTEMS DEVELOPMENT	49,526	49,526
220	0607665A	FAMILY OF BIOMETRICS .....	1,702	1,702
221	0607865A	PATRIOT PRODUCT IMPROVEMENT .....	96,430	63,630 [-32,800]
222	0203728A	JOINT AUTOMATED DEEP OPERATION COORDINATION SYSTEM (JADOCs).	47,398	47,398
223	0203735A	COMBAT VEHICLE IMPROVEMENT PROGRAMS Early to need .....	334,463	290,545 [-41,918]
225	0203743A	155MM SELF-PROPELLED HOWITZER IMPROVEMENTS. Program reduction .....	214,246	192,746 [-21,500]
226	0203744A	AIRCRAFT MODIFICATIONS/PRODUCT IMPROVEMENT PROGRAMS. Excess to need .....	16,486	13,778 [-2,708]
227	0203752A	AIRCRAFT ENGINE COMPONENT IMPROVEMENT PROGRAM.	144	144
228	0203758A	DIGITIZATION .....	5,270	5,270
229	0203801A	MISSILE/AIR DEFENSE PRODUCT IMPROVEMENT PROGRAM.	1,287	1,287
234	0205412A	ENVIRONMENTAL QUALITY TECHNOLOGY—OPERATIONAL SYSTEM DEV.	732	732
235	0205456A	LOWER TIER AIR AND MISSILE DEFENSE (AMD) SYSTEM. Testing excess to need .....	107,746	99,746 [-8,000]
236	0205778A	GUIDED MULTIPLE-LAUNCH ROCKET SYSTEM (GMLRS). Testing excess to need .....	138,594	128,594 [-10,000]
238	0303028A	SECURITY AND INTELLIGENCE ACTIVITIES .....	13,845	13,845
239	0303140A	INFORMATION SYSTEMS SECURITY PROGRAM	29,185	29,185
240	0303141A	GLOBAL COMBAT SUPPORT SYSTEM .....	68,976	48,376 [-20,600]
241	0303150A	WWMCCS/GLOBAL COMMAND AND CONTROL SYSTEM.	2,073	2,073

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
245	0305179A	INTEGRATED BROADCAST SERVICE (IBS) .....	459	459
246	0305204A	TACTICAL UNMANNED AERIAL VEHICLES .....	5,097	5,097
247	0305206A	AIRBORNE RECONNAISSANCE SYSTEMS .....	11,177	11,177
248	0305208A	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS.	38,121	38,121
250	0305232A	RQ-11 UAV .....	3,218	3,218
251	0305233A	RQ-7 UAV .....	7,817	7,817
252	0307665A	BIOMETRICS ENABLED INTELLIGENCE .....	2,000	2,000
253	0708045A	END ITEM INDUSTRIAL PREPAREDNESS ACTIVITIES.	59,848	67,848
		Nanoscale materials manufacturing .....		[3,000]
		Program increase—additive manufacturing technology insertion.		[5,000]
254	1203142A	SATCOM GROUND ENVIRONMENT (SPACE) .....	34,169	34,169
255	1208053A	JOINT TACTICAL GROUND SYSTEM .....	10,275	10,275
255A	9999999999	CLASSIFIED PROGRAMS .....	7,273	7,273
		<b>SUBTOTAL OPERATIONAL SYSTEMS DEVELOPMENT.</b>	<b>1,978,826</b>	<b>1,819,164</b>
		<b>SUBTOTAL UNDISTRIBUTED .....</b>		<b>-159,662</b>
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, ARMY.</b>	<b>12,192,771</b>	<b>11,857,473</b>
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, NAVY</b>		
		<b>BASIC RESEARCH</b>		
001	0601103N	UNIVERSITY RESEARCH INITIATIVES .....	116,850	146,850
		Advanced radar research .....		[5,000]
		Cyber basic research .....		[10,000]
		Defense University research initiatives .....		[5,000]
		Program increase .....		[10,000]
002	0601152N	IN-HOUSE LABORATORY INDEPENDENT RESEARCH.	19,121	19,121
003	0601153N	DEFENSE RESEARCH SCIENCES .....	470,007	470,007
		<b>SUBTOTAL BASIC RESEARCH .....</b>	<b>605,978</b>	<b>635,978</b>
		<b>APPLIED RESEARCH</b>		
004	0602114N	POWER PROJECTION APPLIED RESEARCH .....	18,546	25,546
		Hypersonic testing facilities .....		[7,000]
005	0602123N	FORCE PROTECTION APPLIED RESEARCH .....	119,517	166,017
		Carbon capture .....		[8,000]
		Electric propulsion research .....		[2,500]
		Energy resilience .....		[5,000]
		Energy resilience research .....		[3,000]
		Hybrid composite struct. res. enhanced mobility		[5,000]
		Navy power and energy systems technology .....		[5,000]
		Program increase .....		[10,000]
		Test bed for autonomous ship systems .....		[8,000]
006	0602131M	MARINE CORPS LANDING FORCE TECHNOLOGY.	56,604	61,604
		Interdisciplinary expeditionary cybersecurity research.		[5,000]
007	0602235N	COMMON PICTURE APPLIED RESEARCH .....	49,297	44,297
		Coordinate space activities .....		[-5,000]
008	0602236N	WARFIGHTER SUSTAINMENT APPLIED RESEARCH.	63,825	63,825
009	0602271N	ELECTROMAGNETIC SYSTEMS APPLIED RESEARCH.	83,497	83,497
010	0602435N	OCEAN WARFIGHTING ENVIRONMENT APPLIED RESEARCH.	63,894	63,894
011	0602651M	JOINT NON-LETHAL WEAPONS APPLIED RESEARCH.	6,346	6,346
012	0602747N	UNDERSEA WARFARE APPLIED RESEARCH .....	57,075	74,075
		Academic partnerships for undersea vehicle research.		[10,000]
		Resident autonomous undersea robotics .....		[7,000]

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
013	0602750N	FUTURE NAVAL CAPABILITIES APPLIED RESEARCH.	154,755	154,755
014	0602782N	MINE AND EXPEDITIONARY WARFARE APPLIED RESEARCH.	36,074	36,074
015	0602792N	INNOVATIVE NAVAL PROTOTYPES (INP) APPLIED RESEARCH.	153,062	153,062
016	0602861N	SCIENCE AND TECHNOLOGY MANAGEMENT—ONR FIELD ACITIVITIES.	73,961	73,961
		<b>SUBTOTAL APPLIED RESEARCH .....</b>	<b>936,453</b>	<b>1,006,953</b>
		<b>ADVANCED TECHNOLOGY DEVELOPMENT</b>		
017	0603123N	FORCE PROTECTION ADVANCED TECHNOLOGY.	35,286	35,286
018	0603271N	ELECTROMAGNETIC SYSTEMS ADVANCED TECHNOLOGY.	9,499	9,499
019	0603640M	USMC ADVANCED TECHNOLOGY DEMONSTRATION (ATD).	172,847	177,847
		Program increase—modular advanced armed robotic system.		[5,000]
020	0603651M	JOINT NON-LETHAL WEAPONS TECHNOLOGY DEVELOPMENT.	13,307	13,307
021	0603673N	FUTURE NAVAL CAPABILITIES ADVANCED TECHNOLOGY DEVELOPMENT.	231,907	231,907
022	0603680N	MANUFACTURING TECHNOLOGY PROGRAM .....	60,138	65,138
		Program increase .....		[5,000]
023	0603729N	WARFIGHTER PROTECTION ADVANCED TECHNOLOGY.	4,849	4,849
025	0603758N	NAVY WARFIGHTING EXPERIMENTS AND DEMONSTRATIONS.	67,739	67,739
026	0603782N	MINE AND EXPEDITIONARY WARFARE ADVANCED TECHNOLOGY.	13,335	13,335
027	0603801N	INNOVATIVE NAVAL PROTOTYPES (INP) ADVANCED TECHNOLOGY DEVELOPMENT.	133,303	150,330
		Electromagnetic railgun .....		[10,000]
		Funds excess to requirements .....		[–7,973]
		Program increase .....		[15,000]
		<b>SUBTOTAL ADVANCED TECHNOLOGY DEVELOPMENT.</b>	<b>742,210</b>	<b>769,237</b>
		<b>ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES</b>		
028	0603207N	AIR/OCEAN TACTICAL APPLICATIONS .....	32,643	38,643
		Program increase for 1 REMUS 600 vehicle .....		[6,000]
029	0603216N	AVIATION SURVIVABILITY .....	11,919	11,919
030	0603251N	AIRCRAFT SYSTEMS .....	1,473	1,473
031	0603254N	ASW SYSTEMS DEVELOPMENT .....	7,172	7,172
032	0603261N	TACTICAL AIRBORNE RECONNAISSANCE .....	3,419	3,419
033	0603382N	ADVANCED COMBAT SYSTEMS TECHNOLOGY ..	64,694	64,694
034	0603502N	SURFACE AND SHALLOW WATER MINE COUNTERMEASURES.	507,000	310,500
		Reduce one LUSV .....		[–86,500]
		VLS concept design and LLTM early to need .....		[–110,000]
035	0603506N	SURFACE SHIP TORPEDO DEFENSE .....	15,800	7,242
		Excess sundown costs .....		[–8,558]
036	0603512N	CARRIER SYSTEMS DEVELOPMENT .....	4,997	4,997
037	0603525N	PILOT FISH .....	291,148	186,328
		Program adjustment .....		[–104,820]
038	0603527N	RETRACT LARCH .....	11,980	11,980
039	0603536N	RETRACT JUNIPER .....	129,163	129,163
040	0603542N	RADIOLOGICAL CONTROL .....	689	689
041	0603553N	SURFACE ASW .....	1,137	1,137
042	0603561N	ADVANCED SUBMARINE SYSTEM DEVELOPMENT.	148,756	120,046
		Program decrease .....		[–19,000]
		Project 9710: Unjustified new start .....		[–9,710]
043	0603562N	SUBMARINE TACTICAL WARFARE SYSTEMS .....	11,192	11,192
044	0603563N	SHIP CONCEPT ADVANCED DESIGN .....	81,846	57,846

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Future surface combatant concept development		[-24,000]
045	0603564N	SHIP PRELIMINARY DESIGN & FEASIBILITY STUDIES.	69,084	22,584
		Early to need .....		[-46,500]
046	0603570N	ADVANCED NUCLEAR POWER SYSTEMS .....	181,652	181,652
047	0603573N	ADVANCED SURFACE MACHINERY SYSTEMS ...	25,408	155,408
		Program increase .....		[5,000]
		Surface combatant component-level prototyping		[125,000]
048	0603576N	CHALK EAGLE .....	64,877	64,877
049	0603581N	LITTORAL COMBAT SHIP (LCS) .....	9,934	9,934
050	0603582N	COMBAT SYSTEM INTEGRATION .....	17,251	17,251
051	0603595N	OHIO REPLACEMENT .....	419,051	434,051
		Accelerate advanced propulsor development .....		[15,000]
052	0603596N	LCS MISSION MODULES .....	108,505	105,595
		Available prior year funds due to SUW MP testing delay.		[-2,910]
053	0603597N	AUTOMATED TEST AND ANALYSIS .....	7,653	7,653
054	0603599N	FRIGATE DEVELOPMENT .....	59,007	59,007
055	0603609N	CONVENTIONAL MUNITIONS .....	9,988	9,988
056	0603635M	MARINE CORPS GROUND COMBAT/SUPPORT SYSTEM.	86,464	16,477
		Insufficient justification and contract delay .....		[-69,987]
057	0603654N	JOINT SERVICE EXPLOSIVE ORDNANCE DEVELOPMENT.	33,478	33,478
058	0603713N	OCEAN ENGINEERING TECHNOLOGY DEVELOPMENT.	5,619	5,619
059	0603721N	ENVIRONMENTAL PROTECTION .....	20,564	20,564
060	0603724N	NAVY ENERGY PROGRAM .....	26,514	49,514
		Battery development and safety enterprise .....		[13,000]
		Marine energy systems for sensors and microgrids.		[10,000]
061	0603725N	FACILITIES IMPROVEMENT .....	3,440	3,440
062	0603734N	CHALK CORAL .....	346,800	310,400
		Insufficient budget justification .....		[-36,400]
063	0603739N	NAVY LOGISTIC PRODUCTIVITY .....	3,857	3,857
064	0603746N	RETRACT MAPLE .....	258,519	258,519
065	0603748N	LINK PLUMERIA .....	403,909	396,509
		Insufficient budget justification .....		[-7,400]
066	0603751N	RETRACT ELM .....	63,434	63,434
067	0603764N	LINK EVERGREEN .....	184,110	184,110
068	0603790N	NATO RESEARCH AND DEVELOPMENT .....	7,697	7,697
069	0603795N	LAND ATTACK TECHNOLOGY .....	9,086	9,086
070	0603851M	JOINT NON-LETHAL WEAPONS TESTING .....	28,466	28,466
071	0603860N	JOINT PRECISION APPROACH AND LANDING SYSTEMS—DEM/VAL.	51,341	51,341
072	0603925N	DIRECTED ENERGY AND ELECTRIC WEAPON SYSTEMS.	118,169	118,169
073	0604014N	F/A -18 INFRARED SEARCH AND TRACK (IRST)	113,456	112,456
		Program delay .....		[-1,000]
074	0604027N	DIGITAL WARFARE OFFICE .....	50,120	25,120
		Artificial intelligence development operations unjustified growth.		[-10,000]
		Program decrease .....		[-15,000]
075	0604028N	SMALL AND MEDIUM UNMANNED UNDERSEA VEHICLES.	32,527	32,527
076	0604029N	UNMANNED UNDERSEA VEHICLE CORE TECHNOLOGIES.	54,376	54,376
077	0604030N	RAPID PROTOTYPING, EXPERIMENTATION AND DEMONSTRATION..	36,197	36,197
078	0604031N	LARGE UNMANNED UNDERSEA VEHICLES .....	68,310	68,310
079	0604112N	GERALD R. FORD CLASS NUCLEAR AIRCRAFT CARRIER (CVN 78—80).	121,310	112,310
		Integrated digital shipbuilding insufficient budget justification.		[-9,000]
080	0604126N	LITTORAL AIRBORNE MCM .....	17,248	17,248
081	0604127N	SURFACE MINE COUNTERMEASURES .....	18,735	18,735

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
082	0604272N	TACTICAL AIR DIRECTIONAL INFRARED COUNTERMEASURES (TADIRCM).	68,346	58,449
		Excess to need .....		[-9,897]
084	0604289M	NEXT GENERATION LOGISTICS .....	4,420	13,420
		Additive manufacturing logistics software pilot ..		[9,000]
085	0604320M	RAPID TECHNOLOGY CAPABILITY PROTOTYPE	4,558	4,558
086	0604454N	LX (R) .....	12,500	12,500
087	0604536N	ADVANCED UNDERSEA PROTOTYPING .....	181,967	181,967
088	0604636N	COUNTER UNMANNED AIRCRAFT SYSTEMS (C-UAS).	5,500	5,500
089	0604659N	PRECISION STRIKE WEAPONS DEVELOPMENT PROGRAM.	718,148	688,148
		Excess growth .....		[-30,000]
090	0604707N	SPACE AND ELECTRONIC WARFARE (SEW) ARCHITECTURE/ENGINEERING SUPPORT.	5,263	5,263
091	0604786N	OFFENSIVE ANTI-SURFACE WARFARE WEAPON DEVELOPMENT.	65,419	65,419
092	0303354N	ASW SYSTEMS DEVELOPMENT—MIP .....	9,991	9,991
093	0304240M	ADVANCED TACTICAL UNMANNED AIRCRAFT SYSTEM.	21,157	39,657
		KMAX Large Unmanned Logistics System USMC unfunded priority.		[18,500]
095	0304270N	ELECTRONIC WARFARE DEVELOPMENT—MIP	609	609
		<b>SUBTOTAL ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES.</b>	<b>5,559,062</b>	<b>5,159,880</b>
		<b>SYSTEM DEVELOPMENT &amp; DEMONSTRATION</b>		
096	0603208N	TRAINING SYSTEM AIRCRAFT .....	15,514	15,514
097	0604212N	OTHER HELO DEVELOPMENT .....	28,835	28,835
098	0604214M	AV-8B AIRCRAFT—ENG DEV .....	27,441	27,441
100	0604215N	STANDARDS DEVELOPMENT .....	3,642	3,642
101	0604216N	MULTI-MISSION HELICOPTER UPGRADE DEVELOPMENT.	19,196	19,196
104	0604230N	WARFARE SUPPORT SYSTEM .....	8,601	8,601
105	0604231N	TACTICAL COMMAND SYSTEM .....	77,232	77,232
106	0604234N	ADVANCED HAWKEYE .....	232,752	232,752
107	0604245M	H-1 UPGRADES .....	65,359	65,359
109	0604261N	ACOUSTIC SEARCH SENSORS .....	47,013	47,013
110	0604262N	V-22A .....	185,105	190,105
		Increase reliability and reduce vibrations of V-22 nacelles.		[5,000]
111	0604264N	AIR CREW SYSTEMS DEVELOPMENT .....	21,172	21,172
112	0604269N	EA-18 .....	143,585	133,585
		Unjustified cost growth .....		[-10,000]
113	0604270N	ELECTRONIC WARFARE DEVELOPMENT .....	116,811	109,651
		Unjustified request .....		[-7,160]
114	0604273M	EXECUTIVE HELO DEVELOPMENT .....	187,436	187,436
116	0604274N	NEXT GENERATION JAMMER (NGJ) .....	524,261	448,261
		Underexecution .....		[-76,000]
117	0604280N	JOINT TACTICAL RADIO SYSTEM—NAVY (JTRS-NAVY).	192,345	190,845
		Early to need .....		[-1,500]
118	0604282N	NEXT GENERATION JAMMER (NGJ) INCREMENT II.	111,068	90,922
		Program reduction .....		[-20,146]
119	0604307N	SURFACE COMBATANT COMBAT SYSTEM ENGINEERING.	415,625	413,684
		Aegis development support studies and analysis early to need.		[-1,941]
120	0604311N	LPD-17 CLASS SYSTEMS INTEGRATION .....	640	640
121	0604329N	SMALL DIAMETER BOMB (SDB) .....	50,096	50,096
122	0604366N	STANDARD MISSILE IMPROVEMENTS .....	232,391	232,391
123	0604373N	AIRBORNE MCM .....	10,916	10,916
124	0604378N	NAVAL INTEGRATED FIRE CONTROL—COUNTER AIR SYSTEMS ENGINEERING.	33,379	33,379
125	0604501N	ADVANCED ABOVE WATER SENSORS .....	34,554	34,554

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
126	0604503N	SSN-688 AND TRIDENT MODERNIZATION .....	84,663	84,663
127	0604504N	AIR CONTROL .....	44,923	44,923
128	0604512N	SHIPBOARD AVIATION SYSTEMS .....	10,632	10,632
129	0604518N	COMBAT INFORMATION CENTER CONVERSION	16,094	16,094
130	0604522N	AIR AND MISSILE DEFENSE RADAR (AMDR) SYSTEM. Engineering changes testing and evaluation early to need.	55,349	52,349 [-3,000]
131	0604530N	ADVANCED ARRESTING GEAR (AAG) .....	123,490	123,490
132	0604558N	NEW DESIGN SSN .....	121,010	221,010 [100,000]
		Accelerate capability development .....		
133	0604562N	SUBMARINE TACTICAL WARFARE SYSTEM .....	62,426	62,426
134	0604567N	SHIP CONTRACT DESIGN/ LIVE FIRE T&E .....	46,809	46,809
135	0604574N	NAVY TACTICAL COMPUTER RESOURCES .....	3,692	3,692
137	0604601N	MINE DEVELOPMENT .....	28,964	28,964
138	0604610N	LIGHTWEIGHT TORPEDO DEVELOPMENT .....	148,349	115,541 [-32,808]
		Excess to need .....		
139	0604654N	JOINT SERVICE EXPLOSIVE ORDNANCE DE- VELOPMENT.	8,237	8,237
140	0604657M	USMC GROUND COMBAT/SUPPORTING ARMS SYSTEMS—ENG DEV.	22,000	22,000
141	0604703N	PERSONNEL, TRAINING, SIMULATION, AND HUMAN FACTORS.	5,500	5,500
142	0604727N	JOINT STANDOFF WEAPON SYSTEMS .....	18,725	16,225 [-2,500]
		Excess to need .....		
143	0604755N	SHIP SELF DEFENSE (DETECT & CONTROL) .....	192,603	180,085 [-12,518]
		Project 2178 prior year carryover .....		
144	0604756N	SHIP SELF DEFENSE (ENGAGE: HARD KILL) .....	137,268	121,630 [-15,638]
		Project 2070 excess test assets .....		
145	0604757N	SHIP SELF DEFENSE (ENGAGE: SOFT KILL/EW)	97,363	97,363
146	0604761N	INTELLIGENCE ENGINEERING .....	26,710	26,710
147	0604771N	MEDICAL DEVELOPMENT .....	8,181	8,181
148	0604777N	NAVIGATION/ID SYSTEM .....	40,755	40,755
149	0604800M	JOINT STRIKE FIGHTER (JSF)—EMD .....	1,710	1,710
150	0604800N	JOINT STRIKE FIGHTER (JSF)—EMD .....	1,490	1,490
153	0605013M	INFORMATION TECHNOLOGY DEVELOPMENT	1,494	1,494
154	0605013N	INFORMATION TECHNOLOGY DEVELOPMENT	384,162	268,364 [-36,000]
		Program decrease .....		
		Unjustified growth over FY19 projection .....		
155	0605024N	ANTI-TAMPER TECHNOLOGY SUPPORT .....	4,882	4,882
156	0605212M	CH-53K RDTE .....	516,955	516,955
158	0605215N	MISSION PLANNING .....	75,886	75,886
159	0605217N	COMMON AVIONICS .....	43,187	43,187
160	0605220N	SHIP TO SHORE CONNECTOR (SSC) .....	4,909	19,909 [15,000]
		Expand development and use of composite mate- rials.		
161	0605327N	T-AO 205 CLASS .....	1,682	1,682
162	0605414N	UNMANNED CARRIER AVIATION (UCA) .....	671,258	657,098 [-14,160]
		UMCS excess to need .....		
163	0605450M	JOINT AIR-TO-GROUND MISSILE (JAGM) .....	18,393	18,393
165	0605500N	MULTI-MISSION MARITIME AIRCRAFT (MMA) ...	21,472	21,472
166	0605504N	MULTI-MISSION MARITIME (MMA) INCREMENT III.	177,234	177,234
167	0605611M	MARINE CORPS ASSAULT VEHICLES SYSTEM DEVELOPMENT & DEMONSTRATION. Early to need .....	77,322	69,121 [-2,201]
		Excess growth .....		
168	0605813M	JOINT LIGHT TACTICAL VEHICLE (JLTV) SYS- TEM DEVELOPMENT & DEMONSTRATION.	2,105	2,105 [-6,000]
169	0204202N	DDG-1000 .....	111,435	111,435
172	0304785N	TACTICAL CRYPTOLOGIC SYSTEMS .....	101,339	101,339
173	0306250M	CYBER OPERATIONS TECHNOLOGY DEVELOP- MENT.	26,406	26,406
		<b>SUBTOTAL SYSTEM DEVELOPMENT &amp; DEMONSTRATION.</b>	<b>6,332,033</b>	<b>6,130,663</b>
		<b>MANAGEMENT SUPPORT</b>		



SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
174	0604256N	THREAT SIMULATOR DEVELOPMENT .....	66,678	66,678
175	0604258N	TARGET SYSTEMS DEVELOPMENT .....	12,027	12,027
176	0604759N	MAJOR T&E INVESTMENT .....	85,348	85,348
178	0605152N	STUDIES AND ANALYSIS SUPPORT—NAVY .....	3,908	3,908
179	0605154N	CENTER FOR NAVAL ANALYSES .....	47,669	47,669
180	0605285N	NEXT GENERATION FIGHTER .....	20,698	20,698
182	0605804N	TECHNICAL INFORMATION SERVICES .....	988	988
183	0605853N	MANAGEMENT, TECHNICAL & INTER- NATIONAL SUPPORT.	102,401	102,401
184	0605856N	STRATEGIC TECHNICAL SUPPORT .....	3,742	3,742
186	0605863N	RDT&E SHIP AND AIRCRAFT SUPPORT .....	93,872	93,872
187	0605864N	TEST AND EVALUATION SUPPORT .....	394,020	394,020
188	0605865N	OPERATIONAL TEST AND EVALUATION CAPA- BILITY.	25,145	25,145
189	0605866N	NAVY SPACE AND ELECTRONIC WARFARE (SEW) SUPPORT.	15,773	15,773
190	0605867N	SEW SURVEILLANCE/RECONNAISSANCE SUP- PORT.	8,402	8,402
191	0605873M	MARINE CORPS PROGRAM WIDE SUPPORT .....	37,265	29,265
		Unjustified growth .....		[-8,000]
192	0605898N	MANAGEMENT HQ—R&D .....	39,673	39,673
193	0606355N	WARFARE INNOVATION MANAGEMENT .....	28,750	28,750
196	0305327N	INSIDER THREAT .....	2,645	2,645
197	0902498N	MANAGEMENT HEADQUARTERS (DEPART- MENTAL SUPPORT ACTIVITIES).	1,460	1,460
		<b>SUBTOTAL MANAGEMENT SUPPORT .....</b>	<b>990,464</b>	<b>982,464</b>
<b>OPERATIONAL SYSTEMS DEVELOPMENT UNDISTRIBUTED</b>				
202	0604227N	HARPOON MODIFICATIONS .....	2,302	2,302
203	0604840M	F-35 C2D2 .....	422,881	422,881
204	0604840N	F-35 C2D2 .....	383,741	383,741
205	0607658N	COOPERATIVE ENGAGEMENT CAPABILITY (CEC).	127,924	127,924
207	0101221N	STRATEGIC SUB & WEAPONS SYSTEM SUP- PORT.	157,676	113,492
		D5LE2 unjustified request .....		[-44,184]
208	0101224N	SSBN SECURITY TECHNOLOGY PROGRAM .....	43,354	43,354
209	0101226N	SUBMARINE ACOUSTIC WARFARE DEVELOP- MENT.	6,815	6,815
210	0101402N	NAVY STRATEGIC COMMUNICATIONS .....	31,174	31,174
211	0204136N	F/A-18 SQUADRONS .....	213,715	208,215
		Block III support prior year carryover .....		[-7,500]
		Jet noise reduction research .....		[2,000]
213	0204228N	SURFACE SUPPORT .....	36,389	36,389
214	0204229N	TOMAHAWK AND TOMAHAWK MISSION PLAN- NING CENTER (TMPC).	320,134	286,799
		JMEWS schedule delays .....		[-12,098]
		Maritime strike schedule delays .....		[-21,237]
215	0204311N	INTEGRATED SURVEILLANCE SYSTEM .....	88,382	103,382
		Additional TRAPS units .....		[15,000]
216	0204313N	SHIP-TOWED ARRAY SURVEILLANCE SYSTEMS	14,449	14,449
217	0204413N	AMPHIBIOUS TACTICAL SUPPORT UNITS (DIS- PLACEMENT CRAFT).	6,931	6,931
218	0204460M	GROUND/AIR TASK ORIENTED RADAR (G/ATOR)	23,891	23,891
219	0204571N	CONSOLIDATED TRAINING SYSTEMS DEVEL- OPMENT.	129,873	129,873
221	0204575N	ELECTRONIC WARFARE (EW) READINESS SUP- PORT.	82,325	62,434
		Prior year carryover .....		[-19,891]
222	0205601N	HARM IMPROVEMENT .....	138,431	132,371
		AARGM ER test schedule discrepancy .....		[-6,060]
224	0205620N	SURFACE ASW COMBAT SYSTEM INTEGRA- TION.	29,572	29,572
225	0205632N	MK-48 ADCAP .....	85,973	85,973
226	0205633N	AVIATION IMPROVEMENTS .....	125,461	125,461
227	0205675N	OPERATIONAL NUCLEAR POWER SYSTEMS .....	106,192	106,192

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
228	0206313M	MARINE CORPS COMMUNICATIONS SYSTEMS .. Program delay .....	143,317	134,317 [-9,000]
229	0206335M	COMMON AVIATION COMMAND AND CONTROL SYSTEM (CAC2S).	4,489	4,489
230	0206623M	MARINE CORPS GROUND COMBAT/SUP- PORTING ARMS SYSTEMS.	51,788	51,788
231	0206624M	MARINE CORPS COMBAT SERVICES SUPPORT .. Airborne Power Generation Tech Development ..	37,761	42,761 [5,000]
232	0206625M	USMC INTELLIGENCE/ELECTRONIC WARFARE SYSTEMS (MIP).	21,458	21,458
233	0206629M	AMPHIBIOUS ASSAULT VEHICLE .....	5,476	5,476
234	0207161N	TACTICAL AIM MISSILES .....	19,488	19,488
235	0207163N	ADVANCED MEDIUM RANGE AIR-TO-AIR MIS- SILE (AMRAAM).	39,029	39,029
239	0303109N	SATELLITE COMMUNICATIONS (SPACE) .....	34,344	34,344
240	0303138N	CONSOLIDATED AFLOAT NETWORK ENTER- PRISE SERVICES (CANES).	22,873	22,873
241	0303140N	INFORMATION SYSTEMS SECURITY PROGRAM	41,853	41,853
243	0305192N	MILITARY INTELLIGENCE PROGRAM (MIP) AC- TIVITIES.	8,913	8,913
244	0305204N	TACTICAL UNMANNED AERIAL VEHICLES .....	9,451	9,451
245	0305205N	UAS INTEGRATION AND INTEROPERABILITY ...	42,315	42,315
246	0305208M	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS.	22,042	22,042
248	0305220N	MQ-4C TRITON .....	11,784	11,784
249	0305231N	MQ-8 UAV .....	29,618	29,618
250	0305232M	RQ-11 UAV .....	509	509
251	0305234N	SMALL (LEVEL 0) TACTICAL UAS (STUASLO) .....	11,545	11,545
252	0305239M	RQ-21A .....	10,914	10,914
253	0305241N	MULTI-INTELLIGENCE SENSOR DEVELOP- MENT.	70,612	70,612
254	0305242M	UNMANNED AERIAL SYSTEMS (UAS) PAY- LOADS (MIP).	3,704	3,704
255	0305421N	RQ-4 MODERNIZATION .....	202,346	185,446 [-16,900]
		IFC 5.0 concurrency .....		7,119
256	0308601N	MODELING AND SIMULATION SUPPORT .....	7,119	7,119
257	0702207N	DEPOT MAINTENANCE (NON-IF) .....	38,182	38,182
258	0708730N	MARITIME TECHNOLOGY (MARITECH) .....	6,779	6,779
259	1203109N	SATELLITE COMMUNICATIONS (SPACE) .....	15,868	15,868
259A	9999999999	CLASSIFIED PROGRAMS .....	1,613,137	1,613,137
		<b>SUBTOTAL OPERATIONAL SYSTEMS DE- VELOPMENT.</b>	<b>5,104,299</b>	<b>4,989,429</b>
		<b>SUBTOTAL UNDISTRIBUTED .....</b>		<b>-114,870</b>
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, NAVY.</b>	<b>20,270,499</b>	<b>19,674,604</b>
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, AF</b>		
		<b>BASIC RESEARCH</b>		
001	0601102F	DEFENSE RESEARCH SCIENCES .....	356,107	356,107
002	0601103F	UNIVERSITY RESEARCH INITIATIVES .....	158,859	163,859 [5,000]
		Program increase .....		14,795
003	0601108F	HIGH ENERGY LASER RESEARCH INITIATIVES	14,795	14,795
		<b>SUBTOTAL BASIC RESEARCH .....</b>	<b>529,761</b>	<b>534,761</b>
		<b>APPLIED RESEARCH</b>		
004	0602102F	MATERIALS .....	128,851	152,851 [4,000]
		Advanced materials high energy x-ray .....		[5,000]
		Advanced materials manufacturing flexible biosensors.		[5,000]
		Advanced thermal protection systems .....		[10,000]
		Program increase .....		
005	0602201F	AEROSPACE VEHICLE TECHNOLOGIES .....	147,724	147,724
006	0602202F	HUMAN EFFECTIVENESS APPLIED RESEARCH	131,795	131,795
007	0602203F	AEROSPACE PROPULSION .....	198,775	208,775

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Educational partnership agreements for next generation liquid propulsion.		[5,000]
		Electrical power/thermal management systems ..		[5,000]
008	0602204F	AEROSPACE SENSORS .....	202,912	202,912
010	0602298F	SCIENCE AND TECHNOLOGY MANAGEMENT—MAJOR HEADQUARTERS ACTIVITIES.	7,968	7,968
012	0602602F	CONVENTIONAL MUNITIONS .....	142,772	142,772
013	0602605F	DIRECTED ENERGY TECHNOLOGY .....	124,379	124,379
014	0602788F	DOMINANT INFORMATION SCIENCES AND METHODS.	181,562	199,562
		Detection and countering of adversarial UAS .....		[5,000]
		Quantum Information Science Innovation Center.		[8,000]
		Quantum science .....		[5,000]
015	0602890F	HIGH ENERGY LASER RESEARCH .....	44,221	44,221
016	1206601F	SPACE TECHNOLOGY .....	124,667	124,667
		<b>SUBTOTAL APPLIED RESEARCH .....</b>	<b>1,435,626</b>	<b>1,487,626</b>
		<b>ADVANCED TECHNOLOGY DEVELOPMENT</b>		
017	0603112F	ADVANCED MATERIALS FOR WEAPON SYSTEMS.	36,586	41,586
		Metals affordability initiative .....		[5,000]
018	0603199F	SUSTAINMENT SCIENCE AND TECHNOLOGY (S&T).	16,249	16,249
019	0603203F	ADVANCED AEROSPACE SENSORS .....	38,292	38,292
020	0603211F	AEROSPACE TECHNOLOGY DEV/DEMO .....	102,949	202,949
		Low cost attributable aircraft technology .....		[100,000]
021	0603216F	AEROSPACE PROPULSION AND POWER TECHNOLOGY.	113,973	128,973
		Advanced turbine engine gas generator .....		[10,000]
		Electrical power systems .....		[5,000]
022	0603270F	ELECTRONIC COMBAT TECHNOLOGY .....	48,408	48,408
023	0603401F	ADVANCED SPACECRAFT TECHNOLOGY .....	70,525	73,525
		Strategic radiation hardened microelectronic processors.		[3,000]
024	0603444F	MAUI SPACE SURVEILLANCE SYSTEM (MSSS) ..	11,878	11,878
025	0603456F	HUMAN EFFECTIVENESS ADVANCED TECHNOLOGY DEVELOPMENT.	37,542	37,542
026	0603601F	CONVENTIONAL WEAPONS TECHNOLOGY .....	225,817	225,817
027	0603605F	ADVANCED WEAPONS TECHNOLOGY .....	37,404	37,404
028	0603680F	MANUFACTURING TECHNOLOGY PROGRAM .....	43,116	66,116
		Advanced materials and materials manufacturing.		[7,000]
		Aerospace composites manufacturing .....		[10,000]
		Program increase .....		[6,000]
029	0603788F	BATTLESPACE KNOWLEDGE DEVELOPMENT AND DEMONSTRATION.	56,414	56,414
		<b>SUBTOTAL ADVANCED TECHNOLOGY DEVELOPMENT.</b>	<b>839,153</b>	<b>985,153</b>
		<b>ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES</b>		
031	0603260F	INTELLIGENCE ADVANCED DEVELOPMENT .....	5,672	5,672
032	0603742F	COMBAT IDENTIFICATION TECHNOLOGY .....	27,085	27,085
033	0603790F	NATO RESEARCH AND DEVELOPMENT .....	4,955	4,955
034	0603851F	INTERCONTINENTAL BALLISTIC MISSILE—DEM/VAL.	44,109	44,109
036	0604002F	AIR FORCE WEATHER SERVICES RESEARCH .....	772	772
037	0604004F	ADVANCED ENGINE DEVELOPMENT .....	878,442	878,442
038	0604015F	LONG RANGE STRIKE—BOMBER .....	3,003,899	3,003,899
039	0604032F	DIRECTED ENERGY PROTOTYPING .....	10,000	20,000
		High-value airborne asset protection .....		[10,000]
040	0604033F	HYPERSONICS PROTOTYPING .....	576,000	576,000
041	0604201F	PNT RESILIENCY, MODS, AND IMPROVEMENTS	92,600	124,600
		Program increase .....		[32,000]
042	0604257F	ADVANCED TECHNOLOGY AND SENSORS .....	23,145	23,145

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
043	0604288F	NATIONAL AIRBORNE OPS CENTER (NAOC) RECAP.	16,669	16,669
044	0604317F	TECHNOLOGY TRANSFER .....	23,614	23,614
045	0604327F	HARD AND DEEPLY BURIED TARGET DEFEAT SYSTEM (HDBTDS) PROGRAM.	113,121	113,121
046	0604414F	CYBER RESILIENCY OF WEAPON SYSTEMS-ACS	56,325	56,325
047	0604776F	DEPLOYMENT & DISTRIBUTION ENTERPRISE R&D.	28,034	28,034
048	0604858F	TECH TRANSITION PROGRAM .....	128,476	134,476
		Rapid repair .....		[6,000]
049	0605230F	GROUND BASED STRATEGIC DETERRENT .....	570,373	552,395
		Program reduction .....		[-40,000]
		Technical adjustment for NC3 .....		[22,022]
050	0207100F	LIGHT ATTACK ARMED RECONNAISSANCE (LAAR) SQUADRONS.	35,000	35,000
051	0207110F	NEXT GENERATION AIR DOMINANCE .....	1,000,000	955,000
		Cost-risk associated with development profile ....		[-45,000]
052	0207455F	THREE DIMENSIONAL LONG-RANGE RADAR (3DELRR).	37,290	37,290
053	0208099F	UNIFIED PLATFORM (UP) .....	10,000	10,000
054	0305236F	COMMON DATA LINK EXECUTIVE AGENT (CDL EA).	36,910	36,910
055	0305251F	CYBERSPACE OPERATIONS FORCES AND FORCE SUPPORT.	35,000	35,000
056	0305601F	MISSION PARTNER ENVIRONMENTS .....	8,550	8,550
057	0306250F	CYBER OPERATIONS TECHNOLOGY DEVELOPMENT.	198,864	240,064
		Accelerate development of Cyber National Mission Force capabilities.		[13,600]
		ETERNALDARKNESS .....		[7,100]
		Joint Common Access Platform .....		[20,500]
058	0306415F	ENABLED CYBER ACTIVITIES .....	16,632	16,632
060	0901410F	CONTRACTING INFORMATION TECHNOLOGY SYSTEM.	20,830	20,830
061	1203164F	NAVSTAR GLOBAL POSITIONING SYSTEM (USER EQUIPMENT) (SPACE).	329,948	329,948
062	1203710F	EO/IR WEATHER SYSTEMS .....	101,222	101,222
063	1206422F	WEATHER SYSTEM FOLLOW-ON .....	225,660	205,660
		Unjustified growth .....		[-20,000]
064	1206425F	SPACE SITUATION AWARENESS SYSTEMS .....	29,776	29,776
065	1206427F	SPACE SYSTEMS PROTOTYPE TRANSITIONS (SSPT).	142,045	142,045
067	1206438F	SPACE CONTROL TECHNOLOGY .....	64,231	59,231
		Unjustified growth .....		[-5,000]
068	1206730F	SPACE SECURITY AND DEFENSE PROGRAM .....	56,385	56,385
069	1206760F	PROTECTED TACTICAL ENTERPRISE SERVICE (PTES).	105,003	105,003
070	1206761F	PROTECTED TACTICAL SERVICE (PTS) .....	173,694	163,694
		Unjustified growth .....		[-10,000]
071	1206855F	EVOLVED STRATEGIC SATCOM (ESS) .....	172,206	172,206
072	1206857F	SPACE RAPID CAPABILITIES OFFICE .....	33,742	23,742
		Program decrease .....		[-10,000]
		<b>SUBTOTAL ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES.</b>	<b>8,436,279</b>	<b>8,417,501</b>
		<b>SYSTEM DEVELOPMENT &amp; DEMONSTRATION</b>		
073	0604200F	FUTURE ADVANCED WEAPON ANALYSIS & PROGRAMS.	246,200	0
		Excess to need .....		[-246,200]
074	0604201F	PNT RESILIENCY, MODS, AND IMPROVEMENTS UPL M-Code Acceleration .....	67,782	148,782
				[81,000]
075	0604222F	NUCLEAR WEAPONS SUPPORT .....	4,406	4,406
076	0604270F	ELECTRONIC WARFARE DEVELOPMENT .....	2,066	2,066
077	0604281F	TACTICAL DATA NETWORKS ENTERPRISE .....	229,631	210,331
		Prior-year carryover .....		[-19,300]
078	0604287F	PHYSICAL SECURITY EQUIPMENT .....	9,700	9,700

**SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION**  
(In Thousands of Dollars)

Line	Program Element	Item	FY 2020 Request	Conference Authorized
079	0604329F	SMALL DIAMETER BOMB (SDB)—EMD .....	31,241	41,241
		Program efficiency initiative .....		[10,000]
080	0604429F	AIRBORNE ELECTRONIC ATTACK .....	2	2
081	0604602F	ARMAMENT/ORDNANCE DEVELOPMENT .....	28,043	28,043
082	0604604F	SUBMUNITIONS .....	3,045	3,045
083	0604617F	AGILE COMBAT SUPPORT .....	19,944	19,944
084	0604706F	LIFE SUPPORT SYSTEMS .....	8,624	8,624
085	0604735F	COMBAT TRAINING RANGES .....	37,365	37,365
086	0604800F	F-35—EMD .....	7,628	7,628
087	0604932F	LONG RANGE STANDOFF WEAPON .....	712,539	712,539
088	0604933F	ICBM FUZE MODERNIZATION .....	161,199	161,199
089	0605030F	JOINT TACTICAL NETWORK CENTER (JTNC) .....	2,414	2,414
091	0605056F	OPEN ARCHITECTURE MANAGEMENT .....	30,000	30,000
093	0605221F	KC-46 .....	59,561	59,561
094	0605223F	ADVANCED PILOT TRAINING .....	348,473	348,473
095	0605229F	COMBAT RESCUE HELICOPTER .....	247,047	247,047
098	0605931F	B-2 DEFENSIVE MANAGEMENT SYSTEM .....	294,400	294,400
099	0101125F	NUCLEAR WEAPONS MODERNIZATION .....	27,564	27,564
100	0101213F	MINUTEMAN SQUADRONS .....	1	1
101	0207171F	F-15 EPAWSS .....	47,322	47,322
102	0207328F	STAND IN ATTACK WEAPON .....	162,840	162,840
103	0207701F	FULL COMBAT MISSION TRAINING .....	9,797	9,797
106	0401310F	C-32 EXECUTIVE TRANSPORT RECAPITALIZATION.	9,930	9,930
107	0401319F	VC-25B .....	757,923	757,923
108	0701212F	AUTOMATED TEST SYSTEMS .....	2,787	2,787
109	1203176F	COMBAT SURVIVOR EVADER LOCATOR .....	2,000	2,000
110	1203269F	GPS III FOLLOW-ON (GPS IIIF) .....	462,875	452,875
		Unjustified growth .....		[-10,000]
111	1203940F	SPACE SITUATION AWARENESS OPERATIONS ..	76,829	56,829
		GBOSS unjustified growth .....		[-20,000]
112	1206421F	COUNTERSPACE SYSTEMS .....	29,037	29,037
113	1206422F	WEATHER SYSTEM FOLLOW-ON .....	2,237	2,237
114	1206425F	SPACE SITUATION AWARENESS SYSTEMS .....	412,894	412,894
116	1206431F	ADVANCED EHF MILSATCOM (SPACE) .....	117,290	117,290
117	1206432F	POLAR MILSATCOM (SPACE) .....	427,400	401,400
		Prior year carryover .....		[-26,000]
118	1206433F	WIDEBAND GLOBAL SATCOM (SPACE) .....	1,920	1,920
119	1206441F	SPACE BASED INFRARED SYSTEM (SBIRS) HIGH EMD.	1	1
120	1206442F	NEXT GENERATION OPIR .....	1,395,278	1,395,278
121	1206445F	COMMERCIAL SATCOM (COMSATCOM) INTEGRATION.		5,000
		Accelerate integration of COMSATCOM capabilities.		[5,000]
122	1206853F	NATIONAL SECURITY SPACE LAUNCH PROGRAM (SPACE)—EMD.	432,009	432,009
		<b>SUBTOTAL SYSTEM DEVELOPMENT &amp; DEMONSTRATION.</b>	<b>6,929,244</b>	<b>6,703,744</b>
		<b>MANAGEMENT SUPPORT</b>		
123	0604256F	THREAT SIMULATOR DEVELOPMENT .....	59,693	59,693
124	0604759F	MAJOR T&E INVESTMENT .....	181,663	219,663
		Telemetry extension SATCOM relay .....		[2,000]
		UPL M-Code Acceleration .....		[36,000]
125	0605101F	RAND PROJECT AIR FORCE .....	35,258	35,258
127	0605712F	INITIAL OPERATIONAL TEST & EVALUATION ...	13,793	13,793
128	0605807F	TEST AND EVALUATION SUPPORT .....	717,895	717,895
129	0605826F	ACQ WORKFORCE- GLOBAL POWER .....	258,667	258,667
130	0605827F	ACQ WORKFORCE- GLOBAL VIG & COMBAT SYS.	251,992	251,992
131	0605828F	ACQ WORKFORCE- GLOBAL REACH .....	149,191	149,191
132	0605829F	ACQ WORKFORCE- CYBER, NETWORK, & BUS SYS.	235,360	235,360
133	0605830F	ACQ WORKFORCE- GLOBAL BATTLE MGMT .....	160,196	160,196
134	0605831F	ACQ WORKFORCE- CAPABILITY INTEGRATION	220,255	220,255

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
135	0605832F	ACQ WORKFORCE- ADVANCED PRGM TECH- NOLOGY.	42,392	42,392
136	0605833F	ACQ WORKFORCE- NUCLEAR SYSTEMS .....	133,231	133,231
137	0605898F	MANAGEMENT HQ—R&D .....	5,590	5,590
138	0605976F	FACILITIES RESTORATION AND MODERNIZA- TION—TEST AND EVALUATION SUPPORT.	88,445	88,445
139	0605978F	FACILITIES SUSTAINMENT—TEST AND EVAL- UATION SUPPORT.	29,424	29,424
140	0606017F	REQUIREMENTS ANALYSIS AND MATURATION	62,715	62,715
141	0606398F	MANAGEMENT HQ—T&E .....	5,013	5,013
142	0308602F	ENTPERISE INFORMATION SERVICES (EIS) .....	17,128	17,128
143	0702806F	ACQUISITION AND MANAGEMENT SUPPORT ....	5,913	5,913
144	0804731F	GENERAL SKILL TRAINING .....	1,475	1,475
146	1001004F	INTERNATIONAL ACTIVITIES .....	4,071	4,071
147	1206116F	SPACE TEST AND TRAINING RANGE DEVELOP- MENT.	19,942	19,942
148	1206392F	SPACE AND MISSILE CENTER (SMC) CIVILIAN WORKFORCE.	167,810	167,810
149	1206398F	SPACE & MISSILE SYSTEMS CENTER—MHA .....	10,170	10,170
150	1206860F	ROCKET SYSTEMS LAUNCH PROGRAM (SPACE)	13,192	13,192
151	1206864F	SPACE TEST PROGRAM (STP) .....	26,097	26,097
		<b>SUBTOTAL MANAGEMENT SUPPORT .....</b>	<b>2,916,571</b>	<b>2,954,571</b>
<b>OPERATIONAL SYSTEMS DEVELOPMENT</b>				
<b>UNDISTRIBUTED</b>				
152	0604003F	ADVANCED BATTLE MANAGEMENT SYSTEM (ABMS).	35,611	33,611
		Program increase—sensor fusion and artificial intelligence technology.		[8,000]
		Unjustified request .....		[-10,000]
154	0604233F	SPECIALIZED UNDERGRADUATE FLIGHT TRAINING.	2,584	2,584
156	0604776F	DEPLOYMENT & DISTRIBUTION ENTERPRISE R&D.	903	903
157	0604840F	F-35 C2D2 .....	694,455	694,455
158	0605018F	AF INTEGRATED PERSONNEL AND PAY SYS- TEM (AF-IPPS).	40,567	40,567
159	0605024F	ANTI-TAMPER TECHNOLOGY EXECUTIVE AGENCY.	47,193	47,193
160	0605117F	FOREIGN MATERIEL ACQUISITION AND EX- PLOITATION.	70,083	70,083
161	0605278F	HC/MC-130 RECAP RDT&E .....	17,218	17,218
162	0606018F	NC3 INTEGRATION .....	25,917	25,917
164	0101113F	B-52 SQUADRONS .....	325,974	325,974
165	0101122F	AIR-LAUNCHED CRUISE MISSILE (ALCM) .....	10,217	10,217
166	0101126F	B-1B SQUADRONS .....	1,000	1,000
167	0101127F	B-2 SQUADRONS .....	97,276	97,276
168	0101213F	MINUTEMAN SQUADRONS .....	128,961	128,961
170	0101316F	WORLDWIDE JOINT STRATEGIC COMMUNICA- TIONS.	18,177	18,177
171	0101324F	INTEGRATED STRATEGIC PLANNING & ANAL- YSIS NETWORK.	24,261	24,261
172	0101328F	ICBM REENTRY VEHICLES .....	75,571	41,271
		Program delay .....		[-34,300]
174	0102110F	UH-1N REPLACEMENT PROGRAM .....	170,975	170,975
176	0205219F	MQ-9 UAV .....	154,996	127,296
		Program reduction .....		[-27,700]
178	0207131F	A-10 SQUADRONS .....	36,816	36,816
179	0207133F	F-16 SQUADRONS .....	193,013	193,013
180	0207134F	F-15E SQUADRONS .....	336,079	319,829
		Unjustified F-15C requirements .....		[-16,250]
181	0207136F	MANNED DESTRUCTIVE SUPPRESSION .....	15,521	15,521
182	0207138F	F-22A SQUADRONS .....	496,298	496,298
183	0207142F	F-35 SQUADRONS .....	99,943	99,943
184	0207161F	TACTICAL AIM MISSILES .....	10,314	10,314
185	0207163F	ADVANCED MEDIUM RANGE AIR-TO-AIR MIS- SILE (AMRAAM).	55,384	55,384

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION  
(In Thousands of Dollars)

Line	Program Element	Item	FY 2020 Request	Conference Authorized
186	0207227F	COMBAT RESCUE—PARARESCUE .....	281	281
187	0207247F	AF TENCAP .....	21,365	21,365
188	0207249F	PRECISION ATTACK SYSTEMS PROCUREMENT	10,696	10,696
189	0207253F	COMPASS CALL .....	15,888	15,888
190	0207268F	AIRCRAFT ENGINE COMPONENT IMPROVE- MENT PROGRAM.	112,505	112,505
191	0207325F	JOINT AIR-TO-SURFACE STANDOFF MISSILE (JASSM).	78,498	78,498
192	0207410F	AIR & SPACE OPERATIONS CENTER (AOC) .....	114,864	114,864
193	0207412F	CONTROL AND REPORTING CENTER (CRC) .....	8,109	8,109
194	0207417F	AIRBORNE WARNING AND CONTROL SYSTEM (AWACS).	67,996	67,996
195	0207418F	TACTICAL AIRBORNE CONTROL SYSTEMS .....	2,462	2,462
197	0207431F	COMBAT AIR INTELLIGENCE SYSTEM ACTIVI- TIES.	13,668	13,668
198	0207444F	TACTICAL AIR CONTROL PARTY-MOD .....	6,217	6,217
200	0207452F	DCAPES .....	19,910	19,910
201	0207573F	NATIONAL TECHNICAL NUCLEAR FORENSICS	1,788	1,788
202	0207590F	SEEK EAGLE .....	28,237	28,237
203	0207601F	USAF MODELING AND SIMULATION .....	15,725	15,725
204	0207605F	WARGAMING AND SIMULATION CENTERS .....	4,316	4,316
205	0207610F	BATTLEFIELD ABN COMM NODE (BACN) .....	26,946	26,946
206	0207697F	DISTRIBUTED TRAINING AND EXERCISES .....	4,303	4,303
207	0208006F	MISSION PLANNING SYSTEMS .....	71,465	71,465
208	0208007F	TACTICAL DECEPTION .....	7,446	7,446
209	0208064F	OPERATIONAL HQ—CYBER .....	7,602	7,602
210	0208087F	DISTRIBUTED CYBER WARFARE OPERATIONS	35,178	35,178
211	0208088F	AF DEFENSIVE CYBERSPACE OPERATIONS .....	16,609	16,609
212	0208097F	JOINT CYBER COMMAND AND CONTROL (JCC2)	11,603	11,603
213	0208099F	UNIFIED PLATFORM (UP) .....	84,702	84,702
219	0301025F	GEOBASE .....	2,723	2,723
220	0301112F	NUCLEAR PLANNING AND EXECUTION SYS- TEM (NPES).	44,190	44,190
226	0301401F	AIR FORCE SPACE AND CYBER NON-TRADI- TIONAL ISR FOR BATTLESPACE AWARENESS.	3,575	3,575
227	0302015F	E-4B NATIONAL AIRBORNE OPERATIONS CEN- TER (NAOC).	70,173	42,623
		Unclear acquisition strategy .....		[-27,550]
228	0303131F	MINIMUM ESSENTIAL EMERGENCY COMMU- NICATIONS NETWORK (MEECN).	13,543	13,543
229	0303133F	HIGH FREQUENCY RADIO SYSTEMS .....	15,881	15,881
230	0303140F	INFORMATION SYSTEMS SECURITY PROGRAM	27,726	27,726
232	0303142F	GLOBAL FORCE MANAGEMENT—DATA INITIA- TIVE.	2,210	2,210
234	0304115F	MULTI DOMAIN COMMAND AND CONTROL (MDC2).	150,880	150,880
235	0304260F	AIRBORNE SIGINT ENTERPRISE .....	102,667	85,167
		Common development ahead of need .....		[-8,500]
		Program reduction .....		[-9,000]
236	0304310F	COMMERCIAL ECONOMIC ANALYSIS .....	3,431	3,431
239	0305015F	C2 AIR OPERATIONS SUITE—C2 INFO SERV- ICES.	9,313	9,313
240	0305020F	CCMD INTELLIGENCE INFORMATION TECH- NOLOGY.	1,121	1,121
241	0305022F	ISR MODERNIZATION & AUTOMATION DVMT (IMAD).	19,000	3,000
		Unjustified request .....		[-16,000]
242	0305099F	GLOBAL AIR TRAFFIC MANAGEMENT (GATM) ...	4,544	4,544
243	0305111F	WEATHER SERVICE .....	25,461	27,461
		Commercial weather data pilot .....		[2,000]
244	0305114F	AIR TRAFFIC CONTROL, APPROACH, AND LANDING SYSTEM (ATCALs).	5,651	5,651
245	0305116F	AERIAL TARGETS .....	7,448	7,448
248	0305128F	SECURITY AND INVESTIGATIVE ACTIVITIES .....	425	425
249	0305145F	ARMS CONTROL IMPLEMENTATION .....	54,546	54,546
250	0305146F	DEFENSE JOINT COUNTERINTELLIGENCE AC- TIVITIES.	6,858	6,858

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
252	0305179F	INTEGRATED BROADCAST SERVICE (IBS) .....	8,728	8,728
253	0305202F	DRAGON U-2 .....	38,939	38,939
255	0305206F	AIRBORNE RECONNAISSANCE SYSTEMS .....	122,909	132,909
		Program increase for Gorgon Stare sensor en- hancements.		[10,000]
256	0305207F	MANNED RECONNAISSANCE SYSTEMS .....	11,787	11,787
257	0305208F	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS.	25,009	25,009
258	0305220F	RQ-4 UAV .....	191,733	191,733
259	0305221F	NETWORK-CENTRIC COLLABORATIVE TAR- GETING.	10,757	10,757
260	0305238F	NATO AGS .....	32,567	32,567
261	0305240F	SUPPORT TO DCGS ENTERPRISE .....	37,774	37,774
262	0305600F	INTERNATIONAL INTELLIGENCE TECH- NOLOGY AND ARCHITECTURES.	13,515	13,515
263	0305881F	RAPID CYBER ACQUISITION .....	4,383	4,383
264	0305984F	PERSONNEL RECOVERY COMMAND & CTRL (PRC2).	2,133	2,133
265	0307577F	INTELLIGENCE MISSION DATA (IMD) .....	8,614	8,614
266	0401115F	C-130 AIRLIFT SQUADRON .....	140,425	101,425
		Contract award savings .....		[-39,000]
267	0401119F	C-5 AIRLIFT SQUADRONS (IF) .....	10,223	10,223
268	0401130F	C-17 AIRCRAFT (IF) .....	25,101	25,101
269	0401132F	C-130J PROGRAM .....	8,640	8,640
270	0401134F	LARGE AIRCRAFT IR COUNTERMEASURES (LAIRCM).	5,424	5,424
272	0401219F	KC-10S .....	20	20
274	0401318F	CV-22 .....	17,906	17,906
276	0408011F	SPECIAL TACTICS / COMBAT CONTROL .....	3,629	3,629
277	0702207F	DEPOT MAINTENANCE (NON-IF) .....	1,890	1,890
278	0708055F	MAINTENANCE, REPAIR & OVERHAUL SYSTEM	10,311	10,311
279	0708610F	LOGISTICS INFORMATION TECHNOLOGY (LOGIT).	16,065	16,065
280	0708611F	SUPPORT SYSTEMS DEVELOPMENT .....	539	539
281	0804743F	OTHER FLIGHT TRAINING .....	2,057	2,057
282	0808716F	OTHER PERSONNEL ACTIVITIES .....	10	10
283	0901202F	JOINT PERSONNEL RECOVERY AGENCY .....	2,060	2,060
284	0901218F	CIVILIAN COMPENSATION PROGRAM .....	3,809	3,809
285	0901220F	PERSONNEL ADMINISTRATION .....	6,476	6,476
286	0901226F	AIR FORCE STUDIES AND ANALYSIS AGENCY ..	1,443	1,443
287	0901538F	FINANCIAL MANAGEMENT INFORMATION SYS- TEMS DEVELOPMENT.	9,323	9,323
288	0901554F	DEFENSE ENTERPRISE ACNTNG AND MGT SYS (DEAMS).	46,789	46,789
289	1201017F	GLOBAL SENSOR INTEGRATED ON NETWORK (GSIN).	3,647	3,647
290	1201921F	SERVICE SUPPORT TO STRATCOM—SPACE AC- TIVITIES.	988	988
291	1202140F	SERVICE SUPPORT TO SPACECOM ACTIVITIES	11,863	11,863
293	1203001F	FAMILY OF ADVANCED BLOS TERMINALS (FAB-T).	197,388	177,388
		FET schedule slip .....		[-15,000]
		Unjustified growth .....		[-5,000]
294	1203110F	SATELLITE CONTROL NETWORK (SPACE) .....	61,891	61,891
297	1203173F	SPACE AND MISSILE TEST AND EVALUATION CENTER.	4,566	4,566
298	1203174F	SPACE INNOVATION, INTEGRATION AND RAPID TECHNOLOGY DEVELOPMENT.	43,292	43,292
300	1203182F	SPACELIFT RANGE SYSTEM (SPACE) .....	10,837	10,837
301	1203265F	GPS III SPACE SEGMENT .....	42,440	42,440
302	1203400F	SPACE SUPERIORITY INTELLIGENCE .....	14,428	14,428
303	1203614F	JSPOC MISSION SYSTEM .....	72,762	72,762
304	1203620F	NATIONAL SPACE DEFENSE CENTER .....	2,653	2,653
306	1203873F	BALLISTIC MISSILE DEFENSE RADARS .....	15,881	15,881
308	1203913F	NUDET DETECTION SYSTEM (SPACE) .....	49,300	49,300
309	1203940F	SPACE SITUATION AWARENESS OPERATIONS ..	17,834	17,834



SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
310	1206423F	GLOBAL POSITIONING SYSTEM III-OPERATIONAL CONTROL SEGMENT.	445,302	445,302
311	1206770F	ENTERPRISE GROUND SERVICES .....	138,870	99,070
		Contract award delay .....		[-39,800]
311A	999999999	CLASSIFIED PROGRAMS .....	18,351,506	18,229,506
		Classified reduction .....		[-122,000]
		<b>SUBTOTAL OPERATIONAL SYSTEMS DEVELOPMENT.</b>	<b>24,851,488</b>	<b>24,501,388</b>
		<b>SUBTOTAL UNDISTRIBUTED .....</b>		<b>-350,100</b>
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, AF.</b>	<b>45,938,122</b>	<b>45,584,744</b>
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, DW</b>		
		<b>BASIC RESEARCH</b>		
001	0601000BR	DTRA BASIC RESEARCH .....	26,000	26,000
002	0601101E	DEFENSE RESEARCH SCIENCES .....	432,284	432,284
003	0601110D8Z	BASIC RESEARCH INITIATIVES .....	48,874	68,874
		DEPSCOR .....		[10,000]
		Program increase .....		[10,000]
004	0601117E	BASIC OPERATIONAL MEDICAL RESEARCH SCIENCE.	54,122	54,122
005	0601120D8Z	NATIONAL DEFENSE EDUCATION PROGRAM ....	92,074	102,074
		Civics education grant program .....		[2,000]
		Submarine industrial base workforce training and education.		[8,000]
006	0601228D8Z	HISTORICALLY BLACK COLLEGES AND UNIVERSITIES/MINORITY INSTITUTIONS.	30,708	46,708
		Aerospace research and education .....		[2,000]
		Program increase .....		[14,000]
007	0601384BP	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM.	45,238	45,238
		<b>SUBTOTAL BASIC RESEARCH .....</b>	<b>729,300</b>	<b>775,300</b>
		<b>APPLIED RESEARCH</b>		
008	0602000D8Z	JOINT MUNITIONS TECHNOLOGY .....	19,306	19,306
009	0602115E	BIOMEDICAL TECHNOLOGY .....	97,771	97,771
011	0602234D8Z	LINCOLN LABORATORY RESEARCH PROGRAM	52,317	52,317
012	0602251D8Z	APPLIED RESEARCH FOR THE ADVANCEMENT OF S&T PRIORITIES.	62,200	55,400
		Computer modeling of PFAS .....		[2,000]
		Excess growth .....		[-8,800]
013	0602303E	INFORMATION & COMMUNICATIONS TECHNOLOGY.	442,556	437,556
		Unjustified growth .....		[-5,000]
014	0602383E	BIOLOGICAL WARFARE DEFENSE .....	34,588	34,588
015	0602384BP	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM.	202,587	215,087
		Program increase .....		[12,500]
016	0602668D8Z	CYBER SECURITY RESEARCH .....	15,118	25,118
		Academic cyber institutes .....		[10,000]
017	0602702E	TACTICAL TECHNOLOGY .....	337,602	337,602
018	0602715E	MATERIALS AND BIOLOGICAL TECHNOLOGY ...	223,976	223,976
019	0602716E	ELECTRONICS TECHNOLOGY .....	332,192	326,192
		Unjustified growth .....		[-6,000]
020	0602718BR	COUNTER WEAPONS OF MASS DESTRUCTION APPLIED RESEARCH.	179,096	174,096
		Unjustified growth .....		[-5,000]
021	0602751D8Z	SOFTWARE ENGINEERING INSTITUTE (SEI) APPLIED RESEARCH.	9,580	9,580
022	1160401BB	SOF TECHNOLOGY DEVELOPMENT .....	40,569	40,569
		<b>SUBTOTAL APPLIED RESEARCH .....</b>	<b>2,049,458</b>	<b>2,049,158</b>
		<b>ADVANCED TECHNOLOGY DEVELOPMENT</b>		
023	0603000D8Z	JOINT MUNITIONS ADVANCED TECHNOLOGY ..	25,779	25,779
024	0603121D8Z	SO/LIC ADVANCED DEVELOPMENT .....	5,000	5,000

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
025	0603122D8Z	COMBATING TERRORISM TECHNOLOGY SUPPORT. Program increase .....	70,517	75,517 [5,000]
026	0603133D8Z	FOREIGN COMPARATIVE TESTING .....	24,970	24,970
028	0603160BR	COUNTER WEAPONS OF MASS DESTRUCTION ADVANCED TECHNOLOGY DEVELOPMENT. Excess growth .....	340,065	338,575 [-1,490]
029	0603176C	ADVANCED CONCEPTS AND PERFORMANCE ASSESSMENT.	14,208	14,208
030	0603178C	WEAPONS TECHNOLOGY .....	10,000	0
		MD72 program termination .....		[-10,000]
031	0603180C	ADVANCED RESEARCH .....	20,674	27,674
		Advanced carbon-carbon composites manufacturing.		[7,000]
032	0603225D8Z	JOINT DOD-DOE MUNITIONS TECHNOLOGY DEVELOPMENT.	18,773	18,773
033	0603286E	ADVANCED AEROSPACE SYSTEMS .....	279,741	279,741
034	0603287E	SPACE PROGRAMS AND TECHNOLOGY .....	202,606	172,606
		RSGS program delays .....		[-30,000]
035	0603288D8Z	ANALYTIC ASSESSMENTS .....	19,429	19,429
036	0603289D8Z	ADVANCED INNOVATIVE ANALYSIS AND CON- CEPTS.	37,645	37,645
037	0603291D8Z	ADVANCED INNOVATIVE ANALYSIS AND CON- CEPTS—MHA.	14,668	14,668
038	0603294C	COMMON KILL VEHICLE TECHNOLOGY .....	13,600	13,600
040	0603342D8Z	DEFENSE INNOVATION UNIT (DIU) .....	29,398	29,398
041	0603375D8Z	TECHNOLOGY INNOVATION .....	60,000	30,000
		Insufficient justification .....		[-30,000]
042	0603384BP	CHEMICAL AND BIOLOGICAL DEFENSE PRO- GRAM—ADVANCED DEVELOPMENT.	172,486	172,486
043	0603527D8Z	RETRACT LARCH .....	159,688	159,688
044	0603618D8Z	JOINT ELECTRONIC ADVANCED TECHNOLOGY	12,063	12,063
045	0603648D8Z	JOINT CAPABILITY TECHNOLOGY DEM- ONSTRATIONS. Program reduction .....	107,359	89,859 [-17,500]
046	0603662D8Z	NETWORKED COMMUNICATIONS CAPABILI- TIES.	2,858	2,858
047	0603680D8Z	DEFENSE-WIDE MANUFACTURING SCIENCE AND TECHNOLOGY PROGRAM. Additive manufacturing .....	96,397	116,397 [10,000]
		Integrated silicon based lasers .....		[5,000]
		Program increase .....		[5,000]
048	0603680S	MANUFACTURING TECHNOLOGY PROGRAM .....	42,834	42,834
049	0603699D8Z	EMERGING CAPABILITIES TECHNOLOGY DE- VELOPMENT.	80,911	80,911
050	0603712S	GENERIC LOGISTICS R&D TECHNOLOGY DEM- ONSTRATIONS.	10,817	10,817
051	0603716D8Z	STRATEGIC ENVIRONMENTAL RESEARCH PRO- GRAM.	66,157	66,157
052	0603720S	MICROELECTRONICS TECHNOLOGY DEVELOP- MENT AND SUPPORT.	171,771	171,771
053	0603727D8Z	JOINT WARFIGHTING PROGRAM .....	4,846	4,846
054	0603739E	ADVANCED ELECTRONICS TECHNOLOGIES .....	128,616	128,616
055	0603760E	COMMAND, CONTROL AND COMMUNICATIONS SYSTEMS.	232,134	232,134
056	0603766E	NETWORK-CENTRIC WARFARE TECHNOLOGY .. Unjustified increase .....	512,424	507,424 [-5,000]
057	0603767E	SENSOR TECHNOLOGY .....	163,903	163,903
058	0603769D8Z	DISTRIBUTED LEARNING ADVANCED TECH- NOLOGY DEVELOPMENT.	13,723	13,723
059	0603781D8Z	SOFTWARE ENGINEERING INSTITUTE .....	15,111	15,111
060	0603826D8Z	QUICK REACTION SPECIAL PROJECTS .....	47,147	47,147
061	0603833D8Z	ENGINEERING SCIENCE & TECHNOLOGY .....	19,376	19,376
062	0603924D8Z	HIGH ENERGY LASER ADVANCED TECH- NOLOGY PROGRAM.	85,223	85,223
063	0603941D8Z	TEST & EVALUATION SCIENCE & TECH- NOLOGY.	175,574	185,574

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Program increase to support NDS technologies ..		[10,000]
064	0603950D8Z	NATIONAL SECURITY INNOVATION NETWORK	25,000	25,000
065	0604055D8Z	OPERATIONAL ENERGY CAPABILITY IMPROVEMENT.	70,536	53,900
		Excess growth .....		[-16,636]
066	0303310D8Z	CWMD SYSTEMS .....	28,907	28,907
068	1160402BB	SOF ADVANCED TECHNOLOGY DEVELOPMENT	89,154	89,154
069	1206310SDA	SPACE SCIENCE AND TECHNOLOGY RESEARCH AND DEVELOPMENT.	20,000	20,000
		<b>SUBTOTAL ADVANCED TECHNOLOGY DEVELOPMENT.</b>	<b>3,742,088</b>	<b>3,673,462</b>
		<b>ADVANCED COMPONENT DEVELOPMENT AND PROTOTYPES</b>		
070	0603161D8Z	NUCLEAR AND CONVENTIONAL PHYSICAL SECURITY EQUIPMENT RDT&E ADC&P.	42,695	42,695
071	0603600D8Z	WALKOFF .....	92,791	92,791
072	0603821D8Z	ACQUISITION ENTERPRISE DATA & INFORMATION SERVICES.	5,659	5,659
073	0603851D8Z	ENVIRONMENTAL SECURITY TECHNICAL CERTIFICATION PROGRAM.	66,572	68,572
		ESTCP .....		[2,000]
074	0603881C	BALLISTIC MISSILE DEFENSE TERMINAL DEFENSE SEGMENT.	302,761	302,761
075	0603882C	BALLISTIC MISSILE DEFENSE MIDCOURSE DEFENSE SEGMENT.	1,156,506	1,237,606
		Common booster engineering early to need .....		[-15,000]
		Homeland Defense Radar-Hawaii delay .....		[-30,400]
		RKV cancellation—on demand communications		[-13,500]
		RKV Program Termination—Trasfer from RD,DW 109 for SLEP program.		[140,000]
076	0603884BP	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM—DEM/VAL.	83,662	83,662
077	0603884C	BALLISTIC MISSILE DEFENSE SENSORS .....	283,487	283,487
078	0603890C	BMD ENABLING PROGRAMS .....	571,507	571,507
079	0603891C	SPECIAL PROGRAMS—MDA .....	377,098	512,098
		Classified unfunded priority .....		[135,000]
080	0603892C	AEGIS BMD .....	727,479	699,479
		Unjustified growth .....		[-28,000]
081	0603896C	BALLISTIC MISSILE DEFENSE COMMAND AND CONTROL, BATTLE MANAGEMENT AND COMMUNICATI.	564,206	562,706
		IBCS integration delays .....		[-1,500]
082	0603898C	BALLISTIC MISSILE DEFENSE JOINT WARFIGHTER SUPPORT.	51,532	51,532
083	0603904C	MISSILE DEFENSE INTEGRATION & OPERATIONS CENTER (MDIOC).	56,161	56,161
084	0603906C	REGARDING TRENCH .....	22,424	22,424
085	0603907C	SEA BASED X-BAND RADAR (SBX) .....	128,156	128,156
086	0603913C	ISRAELI COOPERATIVE PROGRAMS .....	300,000	300,000
087	0603914C	BALLISTIC MISSILE DEFENSE TEST .....	395,924	395,924
088	0603915C	BALLISTIC MISSILE DEFENSE TARGETS .....	554,171	554,171
089	0603920D8Z	HUMANITARIAN DEMINING .....	10,820	14,700
		Program increase .....		[3,880]
090	0603923D8Z	COALITION WARFARE .....	11,316	11,316
091	0604016D8Z	DEPARTMENT OF DEFENSE CORROSION PROGRAM.	3,365	3,365
092	0604115C	TECHNOLOGY MATURATION INITIATIVES .....	303,458	269,458
		Cancel Neutral Particle Beam .....		[-34,000]
093	0604132D8Z	MISSILE DEFEAT PROJECT .....	17,816	10,000
		Unjustified budget request—program transitioned to services.		[-7,816]
095	0604181C	HYPERSONIC DEFENSE .....	157,425	157,425
096	0604250D8Z	ADVANCED INNOVATIVE TECHNOLOGIES .....	1,312,735	1,312,735
		Hypervelocity Gun Weapon System .....		[80,000]
		Insufficient justification .....		[-80,000]
097	0604294D8Z	TRUSTED & ASSURED MICROELECTRONICS .....	542,421	547,421

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Trusted and assured microelectronics research ..		[5,000]
098	0604331D8Z	RAPID PROTOTYPING PROGRAM .....	100,957	50,957
		Uncoordinated prototyping efforts .....		[-50,000]
099	0604341D8Z	DEFENSE INNOVATION UNIT (DIU) PROTO- TYPING.	92,000	92,000
100	0604400D8Z	DEPARTMENT OF DEFENSE (DOD) UNMANNED SYSTEM COMMON DEVELOPMENT.	3,021	3,021
102	0604672C	HOMELAND DEFENSE RADAR—HAWAII (HDR- H).	274,714	173,598
		Funding acceleration early to need .....		[-60,000]
		Radar foundation and thermal control system early to need.		[-41,116]
103	0604673C	PACIFIC DISCRIMINATING RADAR .....	6,711	6,711
104	0604682D8Z	WARGAMING AND SUPPORT FOR STRATEGIC ANALYSIS (SSA).	3,751	3,751
105	0604775BR	DEFENSE RAPID INNOVATION PROGRAM .....	14,021	14,021
107	0604826J	JOINT C5 CAPABILITY DEVELOPMENT, INTE- GRATION AND INTEROPERABILITY ASSESS- MENTS.	20,062	20,062
108	0604873C	LONG RANGE DISCRIMINATION RADAR (LRDR)	136,423	136,423
109	0604874C	IMPROVED HOMELAND DEFENSE INTERCEP- TORS.	412,363	272,363
		RKV Termination – transfer to RD,DW 075 for SLEP program.		[-140,000]
110	0604876C	BALLISTIC MISSILE DEFENSE TERMINAL DE- FENSE SEGMENT TEST.	25,137	25,137
111	0604878C	AEGIS BMD TEST .....	169,822	169,822
112	0604879C	BALLISTIC MISSILE DEFENSE SENSOR TEST ....	105,530	105,530
113	0604880C	LAND-BASED SM–3 (LBSM3) .....	38,352	38,352
115	0604887C	BALLISTIC MISSILE DEFENSE MIDCOURSE SEGMENT TEST.	98,139	98,139
117	0300206R	ENTERPRISE INFORMATION TECHNOLOGY SYSTEMS.	1,600	1,600
118	0303191D8Z	JOINT ELECTROMAGNETIC TECHNOLOGY (JET) PROGRAM.	3,191	3,191
119	0305103C	CYBER SECURITY INITIATIVE .....	1,138	1,138
120	1206410SDA	SPACE TECHNOLOGY DEVELOPMENT AND PROTOTYPING.	85,000	55,000
		Missile defense studies realignment .....		[-30,000]
121	1206893C	SPACE TRACKING & SURVEILLANCE SYSTEM ..	35,849	35,849
122	1206895C	BALLISTIC MISSILE DEFENSE SYSTEM SPACE PROGRAMS.	27,565	135,565
		Hypersonic and Ballistic Tracking Space Sensor		[108,000]
122A	0604011D8Z	NEXT GENERATION INFORMATION COMMU- NICATIONS TECHNOLOGY (5G).		275,000
		NTRR and additional AF installation 5G net- work.		[100,000]
		Program increase .....		[175,000]
		<b>SUBTOTAL ADVANCED COMPONENT DE- VELOPMENT AND PROTOTYPES.</b>	<b>9,797,493</b>	<b>10,015,041</b>
		<b>SYSTEM DEVELOPMENT AND DEMONSTRATION</b>		
123	0604161D8Z	NUCLEAR AND CONVENTIONAL PHYSICAL SE- CURITY EQUIPMENT RDT&E SDD.	11,276	11,276
124	0604165D8Z	PROMPT GLOBAL STRIKE CAPABILITY DEVEL- OPMENT.	107,000	76,000
		Transfer to RDTE, Army Line 100 .....		[-31,000]
125	0604384BP	CHEMICAL AND BIOLOGICAL DEFENSE PRO- GRAM—EMD.	384,047	374,047
		Excess growth .....		[-10,000]
126	0604771D8Z	JOINT TACTICAL INFORMATION DISTRIBU- TION SYSTEM (JTIDS).	40,102	40,102
127	0605000BR	COUNTER WEAPONS OF MASS DESTRUCTION SYSTEMS DEVELOPMENT.	13,100	13,100
128	0605013BL	INFORMATION TECHNOLOGY DEVELOPMENT	3,070	3,070

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
129	0605021SE	HOMELAND PERSONNEL SECURITY INITIATIVE.	7,295	7,295
130	0605022D8Z	DEFENSE EXPORTABILITY PROGRAM .....	17,615	17,615
131	0605027D8Z	OUS(D) IT DEVELOPMENT INITIATIVES .....	15,653	15,653
132	0605070S	DOD ENTERPRISE SYSTEMS DEVELOPMENT AND DEMONSTRATION.	2,378	2,378
133	0605075D8Z	CMO POLICY AND INTEGRATION .....	1,618	1,618
134	0605080S	DEFENSE AGENCY INITIATIVES (DAD)—FINANCIAL SYSTEM.	27,944	27,944
135	0605090S	DEFENSE RETIRED AND ANNUITANT PAY SYSTEM (DRAS).	6,609	6,609
136	0605210D8Z	DEFENSE-WIDE ELECTRONIC PROCUREMENT CAPABILITIES.	9,619	9,619
137	0605294D8Z	TRUSTED & ASSURED MICROELECTRONICS .....	175,032	175,032
138	0303140BL	INFORMATION SYSTEMS SECURITY PROGRAM	425	425
139	0303141K	GLOBAL COMBAT SUPPORT SYSTEM .....	1,578	1,578
140	0305304D8Z	DOD ENTERPRISE ENERGY INFORMATION MANAGEMENT (EEIM).	4,373	4,373
141	0305310D8Z	CWMD SYSTEMS: SYSTEM DEVELOPMENT AND DEMONSTRATION.	12,854	12,854
		<b>SUBTOTAL SYSTEM DEVELOPMENT AND DEMONSTRATION.</b>	<b>841,588</b>	<b>800,588</b>
		<b>MANAGEMENT SUPPORT</b>		
142	0603829J	JOINT CAPABILITY EXPERIMENTATION .....	13,000	13,000
143	0604774D8Z	DEFENSE READINESS REPORTING SYSTEM (DRRS).	9,724	9,724
144	0604875D8Z	JOINT SYSTEMS ARCHITECTURE DEVELOPMENT.	9,593	9,593
145	0604940D8Z	CENTRAL TEST AND EVALUATION INVESTMENT DEVELOPMENT (CTEIP).	260,267	260,267
146	0604942D8Z	ASSESSMENTS AND EVALUATIONS .....	30,834	30,834
147	0605001E	MISSION SUPPORT .....	68,498	68,498
148	0605100D8Z	JOINT MISSION ENVIRONMENT TEST CAPABILITY (JMETC).	83,091	89,091
		Cyber range development .....		[6,000]
149	0605104D8Z	TECHNICAL STUDIES, SUPPORT AND ANALYSIS.	18,079	18,079
150	0605126J	JOINT INTEGRATED AIR AND MISSILE DEFENSE ORGANIZATION (JIAMDO).	70,038	70,038
152	0605142D8Z	SYSTEMS ENGINEERING .....	37,140	37,140
153	0605151D8Z	STUDIES AND ANALYSIS SUPPORT—OSD .....	4,759	4,759
154	0605161D8Z	NUCLEAR MATTERS-PHYSICAL SECURITY .....	8,307	8,307
155	0605170D8Z	SUPPORT TO NETWORKS AND INFORMATION INTEGRATION.	9,441	9,441
156	0605200D8Z	GENERAL SUPPORT TO USD (INTELLIGENCE) ..	1,700	1,700
157	0605384BP	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM.	110,363	110,363
166	0605790D8Z	SMALL BUSINESS INNOVATION RESEARCH (SBIR)/ SMALL BUSINESS TECHNOLOGY TRANSFER.	3,568	3,568
167	0605797D8Z	MAINTAINING TECHNOLOGY ADVANTAGE .....	19,936	19,936
168	0605798D8Z	DEFENSE TECHNOLOGY ANALYSIS .....	16,875	19,875
		National Science, Technology, and Security Roundtable with Academia.		[3,000]
169	0605801KA	DEFENSE TECHNICAL INFORMATION CENTER (DTIC).	57,716	57,716
170	0605803SE	R&D IN SUPPORT OF DOD ENLISTMENT, TESTING AND EVALUATION.	34,448	34,448
171	0605804D8Z	DEVELOPMENT TEST AND EVALUATION .....	22,203	22,203
172	0605898E	MANAGEMENT HQ—R&D .....	13,208	13,208
173	0605998KA	MANAGEMENT HQ—DEFENSE TECHNICAL INFORMATION CENTER (DTIC).	3,027	3,027
174	0606100D8Z	BUDGET AND PROGRAM ASSESSMENTS .....	8,017	8,017
175	0606225D8Z	ODNA TECHNOLOGY AND RESOURCE ANALYSIS.	3,194	3,194

SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
176	0606589D8W	DEFENSE DIGITAL SERVICE (DDS) DEVELOPMENT SUPPORT.	1,000	1,000
179	0203345D8Z	DEFENSE OPERATIONS SECURITY INITIATIVE (DOSI).	3,037	3,037
180	0204571J	JOINT STAFF ANALYTICAL SUPPORT .....	9,216	9,216
183	0303166J	SUPPORT TO INFORMATION OPERATIONS (IO) CAPABILITIES.	553	553
184	0303260D8Z	DEFENSE MILITARY DECEPTION PROGRAM OFFICE (DMDPO).	1,014	1,014
185	0305172K	COMBINED ADVANCED APPLICATIONS .....	58,667	48,667
		Unjustified growth .....		[-10,000]
187	0305245D8Z	INTELLIGENCE CAPABILITIES AND INNOVATION INVESTMENTS.	21,081	21,081
189	0307588D8Z	ALGORITHMIC WARFARE CROSS FUNCTIONAL TEAMS.	221,235	221,235
191	0804768J	COCOM EXERCISE ENGAGEMENT AND TRAINING TRANSFORMATION (CE2T2)—NON-MHA.	40,073	40,073
192	0808709SE	DEFENSE EQUAL OPPORTUNITY MANAGEMENT INSTITUTE (DEOMI).	100	100
193	0901598C	MANAGEMENT HQ—MDA .....	27,065	27,065
194	0903235K	JOINT SERVICE PROVIDER (JSP) .....	3,090	3,090
194A	9999999999	CLASSIFIED PROGRAMS .....	51,471	51,471
		<b>SUBTOTAL MANAGEMENT SUPPORT .....</b>	<b>1,354,628</b>	<b>1,353,628</b>
<b>OPERATIONAL SYSTEM DEVELOPMENT</b>				
<b>UNDISTRIBUTED</b>				
195	0604130V	ENTERPRISE SECURITY SYSTEM (ESS) .....	7,945	7,945
196	0604532K	JOINT ARTIFICIAL INTELLIGENCE .....	208,834	208,834
197	0605127T	REGIONAL INTERNATIONAL OUTREACH (RIO) AND PARTNERSHIP FOR PEACE INFORMATION MANA.	1,947	1,947
198	0605147T	OVERSEAS HUMANITARIAN ASSISTANCE SHARED INFORMATION SYSTEM (OHAIS).	310	310
199	0607210D8Z	INDUSTRIAL BASE ANALYSIS AND SUSTAINMENT SUPPORT.	10,051	18,551
		Advanced systems manufacturing .....		[5,000]
		Rare earth element production .....		[3,500]
200	0607310D8Z	CWMD SYSTEMS: OPERATIONAL SYSTEMS DEVELOPMENT.	12,734	12,734
201	0607327T	GLOBAL THEATER SECURITY COOPERATION MANAGEMENT INFORMATION SYSTEMS (G-TSCMIS).	14,800	10,350
		Excess growth .....		[-4,450]
202	0607384BP	CHEMICAL AND BIOLOGICAL DEFENSE (OPERATIONAL SYSTEMS DEVELOPMENT).	54,023	54,023
203	0208043J	PLANNING AND DECISION AID SYSTEM (PDAS)	4,537	4,537
204	0208045K	C4I INTEROPERABILITY .....	64,122	64,122
210	0302019K	DEFENSE INFO INFRASTRUCTURE ENGINEERING AND INTEGRATION.	15,798	15,798
211	0303126K	LONG-HAUL COMMUNICATIONS—DCS .....	11,166	11,166
212	0303131K	MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (MEECN).	17,383	17,383
214	0303136G	KEY MANAGEMENT INFRASTRUCTURE (KMI) ...	54,516	54,516
215	0303140D8Z	INFORMATION SYSTEMS SECURITY PROGRAM	67,631	92,631
		AI and Cyber Center of Excellence .....		[25,000]
216	0303140G	INFORMATION SYSTEMS SECURITY PROGRAM	289,080	287,198
		Realignment to DISA for Sharkseer .....		[-1,882]
217	0303140K	INFORMATION SYSTEMS SECURITY PROGRAM	42,796	44,678
		Realignment for Sharkseer .....		[1,882]
218	0303150K	GLOBAL COMMAND AND CONTROL SYSTEM .....	25,218	25,218
219	0303153K	DEFENSE SPECTRUM ORGANIZATION .....	21,698	21,698
220	0303228K	JOINT REGIONAL SECURITY STACKS (JRSS) .....	18,077	18,077
222	0303430K	FEDERAL INVESTIGATIVE SERVICES INFORMATION TECHNOLOGY.	44,001	44,001
228	0305128V	SECURITY AND INVESTIGATIVE ACTIVITIES .....	2,400	2,400
232	0305186D8Z	POLICY R&D PROGRAMS .....	6,301	6,301
233	0305199D8Z	NET CENTRICITY .....	21,384	21,384

<b>SEC. 4201. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION</b> (In Thousands of Dollars)						
<b>Line</b>	<b>Program Element</b>	<b>Item</b>			<b>FY 2020 Request</b>	<b>Conference Authorized</b>
235	0305208BB	DISTRIBUTED	COMMON	GROUND/SURFACE SYSTEMS.	6,359	6,359
238	0305208K	DISTRIBUTED	COMMON	GROUND/SURFACE SYSTEMS.	2,981	2,981
241	0305327V	INSIDER THREAT .....			1,964	1,964
242	0305387D8Z	HOMELAND DEFENSE TECHNOLOGY TRANSFER PROGRAM.			2,221	2,221
250	0708012K	LOGISTICS SUPPORT ACTIVITIES .....			1,361	1,361
251	0708012S	PACIFIC DISASTER CENTERS .....			1,770	1,770
252	0708047S	DEFENSE PROPERTY ACCOUNTABILITY SYSTEM.			3,679	3,679
254	1105219BB	MQ–9 UAV .....			20,697	20,697
256	1160403BB	AVIATION SYSTEMS .....			245,795	262,995
		Program increase—Future Vertical Lift .....				[8,800]
		UPL FVL realignment from RFCM .....				[8,400]
257	1160405BB	INTELLIGENCE SYSTEMS DEVELOPMENT .....			15,484	15,484
258	1160408BB	OPERATIONAL ENHANCEMENTS .....			166,922	166,922
259	1160431BB	WARRIOR SYSTEMS .....			62,332	62,332
260	1160432BB	SPECIAL PROGRAMS .....			21,805	21,805
261	1160434BB	UNMANNED ISR .....			37,377	37,377
262	1160480BB	SOF TACTICAL VEHICLES .....			11,150	11,150
263	1160483BB	MARITIME SYSTEMS .....			72,626	72,626
264	1160489BB	GLOBAL VIDEO SURVEILLANCE ACTIVITIES .....			5,363	5,363
265	1160490BB	OPERATIONAL ENHANCEMENTS INTEL-LIGENCE.			12,962	12,962
266	1203610K	TELEPORT PROGRAM .....			6,158	6,158
266A	9999999999	CLASSIFIED PROGRAMS .....			4,542,640	4,542,640
		<b>SUBTOTAL OPERATIONAL SYSTEM DEVELOPMENT.</b>			<b>6,258,398</b>	<b>6,304,648</b>
		<b>SUBTOTAL UNDISTRIBUTED .....</b>				<b>46,250</b>
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, DW.</b>			<b>24,772,953</b>	<b>24,971,825</b>
		<b>OPERATIONAL TEST &amp; EVAL, DEFENSE MANAGEMENT SUPPORT</b>				
001	0605118OTE	OPERATIONAL TEST AND EVALUATION .....			93,291	93,291
002	0605131OTE	LIVE FIRE TEST AND EVALUATION .....			69,172	69,172
003	0605814OTE	OPERATIONAL TEST ACTIVITIES AND ANALYSES.			58,737	58,737
		<b>SUBTOTAL MANAGEMENT SUPPORT .....</b>			<b>221,200</b>	<b>221,200</b>
		<b>TOTAL OPERATIONAL TEST &amp; EVAL, DEFENSE.</b>			<b>221,200</b>	<b>221,200</b>
		<b>TOTAL RDT&amp;E .....</b>			<b>103,395,545</b>	<b>102,309,846</b>

**SEC. 4202. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR OVERSEAS CONTINGENCY OPERATIONS.**

<b>SEC. 4202. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR OVERSEAS CONTINGENCY OPERATIONS</b> (In Thousands of Dollars)						
<b>Line</b>	<b>Program Element</b>	<b>Item</b>			<b>FY 2020 Request</b>	<b>Conference Authorized</b>
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, ARMY</b>				
		<b>ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES</b>				
074	0603327A	AIR AND MISSILE DEFENSE SYSTEMS ENGINEERING.			500	500
079	0603747A	SOLDIER SUPPORT AND SURVIVABILITY .....			3,000	3,000
085	0603804A	LOGISTICS AND ENGINEER EQUIPMENT—ADV DEV			1,085	1,085
095	0604117A	MANEUVER—SHORT RANGE AIR DEFENSE (M-SHORAD).			6,000	0

<b>SEC. 4202. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR OVERSEAS CONTINGENCY OPERATIONS</b>				
<b>(In Thousands of Dollars)</b>				
<b>Line</b>	<b>Program Element</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
		Unjustified request .....		[-6,000]
097	0604119A	ARMY ADVANCED COMPONENT DEVELOPMENT & PROTOTYPING.	4,529	4,529
105	0604785A	INTEGRATED BASE DEFENSE (BUDGET ACTIVITY 4)	2,000	2,000
		<b>SUBTOTAL ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES.</b>	<b>17,114</b>	<b>17,114</b>
		<b>SYSTEM DEVELOPMENT &amp; DEMONSTRATION</b>		
151	0605035A	COMMON INFRARED COUNTERMEASURES (CIRCM)	11,770	11,770
159	0605051A	AIRCRAFT SURVIVABILITY DEVELOPMENT .....	77,420	77,420
163	0605203A	ARMY SYSTEM DEVELOPMENT & DEMONSTRATION	19,527	19,527
174	0304270A	ELECTRONIC WARFARE DEVELOPMENT .....	3,200	3,200
		<b>SUBTOTAL SYSTEM DEVELOPMENT &amp; DEMONSTRATION.</b>	<b>111,917</b>	<b>111,917</b>
		<b>RDT&amp;E MANAGEMENT SUPPORT</b>		
200	0606003A	COUNTERINTEL AND HUMAN INTEL MODERNIZATION.	1,875	1,875
		<b>SUBTOTAL RDT&amp;E MANAGEMENT SUPPORT .....</b>	<b>1,875</b>	<b>1,875</b>
		<b>OPERATIONAL SYSTEMS DEVELOPMENT UNDISTRIBUTED</b>		
238	0303028A	SECURITY AND INTELLIGENCE ACTIVITIES .....	22,904	22,904
246	0305204A	TACTICAL UNMANNED AERIAL VEHICLES .....	34,100	34,100
247	0305206A	AIRBORNE RECONNAISSANCE SYSTEMS .....	14,000	14,000
252	0307665A	BIOMETRICS ENABLED INTELLIGENCE .....	2,214	2,214
		<b>SUBTOTAL OPERATIONAL SYSTEMS DEVELOPMENT.</b>	<b>73,218</b>	<b>73,218</b>
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, ARMY.</b>	<b>204,124</b>	<b>198,124</b>
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, NAVY ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES</b>		
028	0603207N	AIR/OCEAN TACTICAL APPLICATIONS .....	2,400	2,400
038	0603527N	RETRACT LARCH .....	22,000	22,000
057	0603654N	JOINT SERVICE EXPLOSIVE ORDNANCE DEVELOPMENT.	14,178	14,178
069	0603795N	LAND ATTACK TECHNOLOGY .....	1,428	1,428
		<b>SUBTOTAL ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES.</b>	<b>40,006</b>	<b>40,006</b>
		<b>SYSTEM DEVELOPMENT &amp; DEMONSTRATION</b>		
143	0604755N	SHIP SELF DEFENSE (DETECT & CONTROL) .....	1,122	1,122
		<b>SUBTOTAL SYSTEM DEVELOPMENT &amp; DEMONSTRATION.</b>	<b>1,122</b>	<b>1,122</b>
		<b>OPERATIONAL SYSTEMS DEVELOPMENT UNDISTRIBUTED</b>		
228	0206313M	MARINE CORPS COMMUNICATIONS SYSTEMS .....	15,000	15,000
259A	9999999999	CLASSIFIED PROGRAMS .....	108,282	108,282
		<b>SUBTOTAL OPERATIONAL SYSTEMS DEVELOPMENT.</b>	<b>123,282</b>	<b>123,282</b>
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, NAVY.</b>	<b>164,410</b>	<b>164,410</b>
		<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, AF ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES</b>		
048	0604858F	TECH TRANSITION PROGRAM .....	26,450	26,450
072	1206857F	SPACE RAPID CAPABILITIES OFFICE .....	17,885	17,885
		<b>SUBTOTAL ADVANCED COMPONENT DEVELOPMENT &amp; PROTOTYPES.</b>	<b>44,335</b>	<b>44,335</b>



<b>SEC. 4202. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR OVERSEAS CONTINGENCY OPERATIONS</b>				
<b>(In Thousands of Dollars)</b>				
<b>Line</b>	<b>Program Element</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>OPERATIONAL SYSTEMS DEVELOPMENT</b>				
<b>UNDISTRIBUTED</b>				
177	0205671F	JOINT COUNTER RCIED ELECTRONIC WARFARE .....	4,000	4,000
217	0208288F	INTEL DATA APPLICATIONS .....	1,200	1,200
311A	999999999	CLASSIFIED PROGRAMS .....	78,713	78,713
<b>SUBTOTAL OPERATIONAL SYSTEMS DEVELOPMENT.</b>			<b>83,913</b>	<b>83,913</b>
<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, AF.</b>			<b>128,248</b>	<b>128,248</b>
<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, DW</b>				
<b>APPLIED RESEARCH</b>				
010	0602134BR	COUNTER IMPROVISED-THREAT ADVANCED STUDIES.	1,677	1,677
<b>SUBTOTAL APPLIED RESEARCH .....</b>			<b>1,677</b>	<b>1,677</b>
<b>ADVANCED TECHNOLOGY DEVELOPMENT</b>				
025	0603122D8Z	COMBATING TERRORISM TECHNOLOGY SUPPORT ..	25,230	25,230
027	0603134BR	COUNTER IMPROVISED-THREAT SIMULATION .....	49,528	49,528
<b>SUBTOTAL ADVANCED TECHNOLOGY DEVELOPMENT.</b>			<b>74,758</b>	<b>74,758</b>
<b>ADVANCED COMPONENT DEVELOPMENT AND PROTOTYPES</b>				
094	0604134BR	COUNTER IMPROVISED-THREAT DEMONSTRATION, PROTOTYPE DEVELOPMENT, AND TESTING.	113,590	113,590
<b>SUBTOTAL ADVANCED COMPONENT DEVELOPMENT AND PROTOTYPES.</b>			<b>113,590</b>	<b>113,590</b>
<b>OPERATIONAL SYSTEM DEVELOPMENT</b>				
<b>UNDISTRIBUTED</b>				
258	1160408BB	OPERATIONAL ENHANCEMENTS .....	726	726
259	1160431BB	WARRIOR SYSTEMS .....	6,000	6,000
261	1160434BB	UNMANNED ISR .....	5,000	5,000
266A	999999999	CLASSIFIED PROGRAMS .....	200,199	200,199
<b>SUBTOTAL OPERATIONAL SYSTEM DEVELOPMENT.</b>			<b>211,925</b>	<b>211,925</b>
<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, DW.</b>			<b>401,950</b>	<b>401,950</b>
<b>TOTAL RDT&amp;E .....</b>			<b>898,732</b>	<b>892,732</b>

**SEC. 4203. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR EMERGENCY REQUIREMENTS.**

<b>SEC. 4203. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR EMERGENCY REQUIREMENTS</b>				
<b>(In Thousands of Dollars)</b>				
<b>Line</b>	<b>Program Element</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, NAVY</b>				
<b>MANAGEMENT SUPPORT</b>				
187	0605864N	TEST AND EVALUATION SUPPORT .....	0	129,000
Earthquake damage recovery .....				[129,000]
<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, NAVY.</b>			<b>0</b>	<b>129,000</b>
<b>RESEARCH, DEVELOPMENT, TEST &amp; EVAL, AF</b>				
<b>MANAGEMENT SUPPORT</b>				
128	0605807F	TEST AND EVALUATION SUPPORT .....	0	14,436
Earthquake damage recovery .....				[14,436]
138	0605976F	FACILITIES RESTORATION AND MODERNIZATION—TEST AND EVALUATION SUPPORT.	0	1,060

SEC. 4203. RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR EMERGENCY REQUIREMENTS				
(In Thousands of Dollars)				
Line	Program Element	Item	FY 2020 Request	Conference Authorized
		Earthquake damage recovery .....		[1,060]
		<b>TOTAL RESEARCH, DEVELOPMENT, TEST &amp; EVAL, AF.</b>	<b>0</b>	<b>15,496</b>
		<b>TOTAL RDT&amp;E .....</b>	<b>0</b>	<b>144,496</b>

## TITLE XLIII—OPERATION AND MAINTENANCE

Sec. 4301. Operation and maintenance.  
 Sec. 4302. Operation and maintenance for overseas contingency operations.  
 Sec. 4303. Operation and maintenance for emergency requirements.

### SEC. 4301. OPERATION AND MAINTENANCE.

SEC. 4301. OPERATION AND MAINTENANCE				
(In Thousands of Dollars)				
Line	Item	FY 2020 Request	Conference Authorized	
<b>OPERATION &amp; MAINTENANCE, ARMY</b>				
<b>OPERATING FORCES</b>				
010	MANEUVER UNITS .....	1,735,922	1,398,674	
	Realignment to OCO .....		[-260,548]	
	Unjustified growth .....		[-76,700]	
020	MODULAR SUPPORT BRIGADES .....	127,815	124,665	
	Unjustified growth .....		[-3,150]	
030	ECHELONS ABOVE BRIGADE .....	716,356	709,356	
	Unjustified growth .....		[-7,000]	
040	THEATER LEVEL ASSETS .....	890,891	878,891	
	Unjustified growth .....		[-12,000]	
050	LAND FORCES OPERATIONS SUPPORT .....	1,232,477	1,222,977	
	Unjustified growth .....		[-9,500]	
060	AVIATION ASSETS .....	1,355,606	1,269,106	
	Excess to need .....		[-86,500]	
070	FORCE READINESS OPERATIONS SUPPORT .....	3,882,315	2,664,315	
	Female personal protective equipment .....		[2,000]	
	Realignment to OCO .....		[-1,100,000]	
	Unjustified growth .....		[-120,000]	
080	LAND FORCES SYSTEMS READINESS .....	417,069	446,269	
	UPL MDTF INDOPACOM .....		[29,200]	
090	LAND FORCES DEPOT MAINTENANCE .....	1,633,327	1,608,327	
	Unjustified growth .....		[-25,000]	
100	BASE OPERATIONS SUPPORT .....	8,047,933	8,002,933	
	Unjustified growth .....		[-45,000]	
110	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	4,326,840	4,326,840	
120	MANAGEMENT AND OPERATIONAL HEAD-QUARTERS .....	405,612	405,612	
160	US AFRICA COMMAND .....	251,511	243,011	
	Unjustified growth .....		[-8,500]	
170	US EUROPEAN COMMAND .....	146,358	146,358	
180	US SOUTHERN COMMAND .....	191,840	209,840	
	Multi-Mission Support Vessel .....		[18,000]	
190	US FORCES KOREA .....	57,603	57,603	
200	CYBERSPACE ACTIVITIES—CYBERSPACE OPERATIONS .....	423,156	423,156	

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
210	CYBERSPACE ACTIVITIES—CYBERSECURITY .....	551,185	551,185
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>26,393,816</b>	<b>24,689,118</b>
<b>MOBILIZATION</b>			
220	STRATEGIC MOBILITY .....	380,577	380,577
230	ARMY PREPOSITIONED STOCKS .....	362,942	362,942
240	INDUSTRIAL PREPAREDNESS .....	4,637	5,637
	Advanced Manufacturing COE Tech Roadmapping .....		[1,000]
	<b>SUBTOTAL MOBILIZATION .....</b>	<b>748,156</b>	<b>749,156</b>
<b>TRAINING AND RECRUITING</b>			
250	OFFICER ACQUISITION .....	157,175	157,175
260	RECRUIT TRAINING .....	55,739	55,739
270	ONE STATION UNIT TRAINING .....	62,300	62,300
280	SENIOR RESERVE OFFICERS TRAINING CORPS ..	538,357	538,357
290	SPECIALIZED SKILL TRAINING .....	969,813	969,813
300	FLIGHT TRAINING .....	1,234,049	1,234,049
310	PROFESSIONAL DEVELOPMENT EDUCATION ....	218,338	218,338
320	TRAINING SUPPORT .....	554,659	552,659
	Excess travel request .....		[-2,000]
330	RECRUITING AND ADVERTISING .....	716,056	706,056
	Unjustified growth for recruiting .....		[-10,000]
340	EXAMINING .....	185,034	185,034
350	OFF-DUTY AND VOLUNTARY EDUCATION .....	214,275	214,275
360	CIVILIAN EDUCATION AND TRAINING .....	147,647	147,647
370	JUNIOR RESERVE OFFICER TRAINING CORPS ...	173,812	173,812
	<b>SUBTOTAL TRAINING AND RECRUITING ..</b>	<b>5,227,254</b>	<b>5,215,254</b>
<b>ADMIN &amp; SRVWIDE ACTIVITIES</b>			
390	SERVICEWIDE TRANSPORTATION .....	559,229	559,229
400	CENTRAL SUPPLY ACTIVITIES .....	929,944	928,944
	Excess personnel .....		[-1,000]
410	LOGISTIC SUPPORT ACTIVITIES .....	629,981	629,981
420	AMMUNITION MANAGEMENT .....	458,771	451,771
	Unjustified growth .....		[-7,000]
430	ADMINISTRATION .....	428,768	418,768
	Unjustified growth .....		[-10,000]
440	SERVICEWIDE COMMUNICATIONS .....	1,512,736	1,472,736
	Program decrease unaccounted for .....		[-40,000]
450	MANPOWER MANAGEMENT .....	272,738	272,738
460	OTHER PERSONNEL SUPPORT .....	391,869	361,869
	Unjustified growth .....		[-30,000]
470	OTHER SERVICE SUPPORT .....	1,901,165	1,881,165
	Unjustified headquarters growth .....		[-20,000]
480	ARMY CLAIMS ACTIVITIES .....	198,765	191,265
	Historical underexecution .....		[-7,500]
490	REAL ESTATE MANAGEMENT .....	226,248	226,248
500	FINANCIAL MANAGEMENT AND AUDIT READI- NESS .....	315,489	292,489
	Program decrease unaccounted for .....		[-23,000]
510	INTERNATIONAL MILITARY HEADQUARTERS ....	427,254	427,254
520	MISC. SUPPORT OF OTHER NATIONS .....	43,248	43,248
565	CLASSIFIED PROGRAMS .....	1,347,053	1,347,053
	<b>SUBTOTAL ADMIN &amp; SRVWIDE ACTIVI- TIES .....</b>	<b>9,643,258</b>	<b>9,504,758</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ARMY .....</b>	<b>42,012,484</b>	<b>40,158,286</b>

<b>SEC. 4301. OPERATION AND MAINTENANCE</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
<b>OPERATION &amp; MAINTENANCE, ARMY RES</b>			
<b>OPERATING FORCES</b>			
010	MODULAR SUPPORT BRIGADES .....	11,927	11,927
020	ECHELONS ABOVE BRIGADE .....	533,015	533,015
030	THEATER LEVEL ASSETS .....	119,517	118,101
	Insufficient justification .....		[-1,416]
040	LAND FORCES OPERATIONS SUPPORT .....	550,468	543,468
	Insufficient justification .....		[-7,000]
050	AVIATION ASSETS .....	86,670	85,170
	Unjustified growth .....		[-1,500]
060	FORCE READINESS OPERATIONS SUPPORT .....	390,061	388,661
	Excess civilian increase .....		[-1,400]
070	LAND FORCES SYSTEMS READINESS .....	101,890	101,890
080	LAND FORCES DEPOT MAINTENANCE .....	48,503	48,503
090	BASE OPERATIONS SUPPORT .....	598,907	594,707
	Insufficient justification .....		[-4,200]
100	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	444,376	444,376
110	MANAGEMENT AND OPERATIONAL HEAD- QUARTERS .....	22,095	22,095
120	CYBERSPACE ACTIVITIES—CYBERSPACE OPER- ATIONS .....	3,288	3,288
130	CYBERSPACE ACTIVITIES—CYBERSECURITY .....	7,655	7,655
	<b>SUBTOTAL OPERATING FORCES</b> .....	<b>2,918,372</b>	<b>2,902,856</b>
<b>ADMIN &amp; SRVWD ACTIVITIES</b>			
<b>UNDISTRIBUTED</b>			
140	SERVICEWIDE TRANSPORTATION .....	14,533	14,533
150	ADMINISTRATION .....	17,231	17,231
160	SERVICEWIDE COMMUNICATIONS .....	14,304	14,304
170	MANPOWER MANAGEMENT .....	6,129	6,129
180	RECRUITING AND ADVERTISING .....	58,541	58,541
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b> .....	<b>110,738</b>	<b>110,738</b>
200	UNDISTRIBUTED .....		-25,000
	Overestimation of civilian FTE targets .....		[-25,000]
	<b>SUBTOTAL UNDISTRIBUTED</b> .....		<b>-25,000</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE,</b> <b>ARMY RES</b> .....	<b>3,029,110</b>	<b>2,988,594</b>
<b>OPERATION &amp; MAINTENANCE, ARNG</b>			
<b>UNDISTRIBUTED</b>			
010	MANEUVER UNITS .....	805,671	775,671
	Excess growth .....		[-30,000]
020	MODULAR SUPPORT BRIGADES .....	195,334	193,334
	Excess growth .....		[-2,000]
030	ECHELONS ABOVE BRIGADE .....	771,048	770,548
	Excess growth .....		[-500]
040	THEATER LEVEL ASSETS .....	94,726	94,226
	Excess growth .....		[-500]
050	LAND FORCES OPERATIONS SUPPORT .....	33,696	35,185
	Program increase—advanced trauma training program .....		[1,489]
060	AVIATION ASSETS .....	981,819	973,819
	Insufficient justification .....		[-8,000]
070	FORCE READINESS OPERATIONS SUPPORT .....	743,206	743,206
080	LAND FORCES SYSTEMS READINESS .....	50,963	50,963
090	LAND FORCES DEPOT MAINTENANCE .....	258,278	254,028

<b>SEC. 4301. OPERATION AND MAINTENANCE</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Insufficient justification .....		[–4,250]
100	BASE OPERATIONS SUPPORT .....	1,153,076	1,133,076
	Insufficient justification .....		[–20,000]
110	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	1,113,475	1,113,475
120	MANAGEMENT AND OPERATIONAL HEAD- QUARTERS .....	1,001,042	987,042
	Insufficient justification .....		[–14,000]
130	CYBERSPACE ACTIVITIES—CYBERSPACE OPER- ATIONS .....	8,448	8,448
140	CYBERSPACE ACTIVITIES—CYBERSECURITY .....	7,768	7,768
	<b>SUBTOTAL OPERATING FORCES</b> .....	<b>7,218,550</b>	<b>7,140,789</b>
210	UNDISTRIBUTED .....		–20,000
	Overestimation of civilian FTE targets .....		[–20,000]
	<b>SUBTOTAL UNDISTRIBUTED</b> .....		<b>–20,000</b>
<b>ADMIN &amp; SRVWD ACTIVITIES</b>			
150	SERVICEWIDE TRANSPORTATION .....	9,890	9,890
160	ADMINISTRATION .....	71,070	71,070
170	SERVICEWIDE COMMUNICATIONS .....	68,213	62,213
	Program decrease unaccounted for .....		[–6,000]
180	MANPOWER MANAGEMENT .....	8,628	8,628
190	OTHER PERSONNEL SUPPORT .....	250,376	250,376
200	REAL ESTATE MANAGEMENT .....	2,676	2,676
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b>	<b>410,853</b>	<b>404,853</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ARNG</b> .....	<b>7,629,403</b>	<b>7,525,642</b>
<b>OPERATION &amp; MAINTENANCE, NAVY</b>			
<b>OPERATING FORCES</b>			
010	MISSION AND OTHER FLIGHT OPERATIONS .....	5,309,109	4,659,109
	Projected underexecution .....		[–50,000]
	Realignment to OCO .....		[–600,000]
020	FLEET AIR TRAINING .....	2,284,828	2,249,828
	Projected underexecution .....		[–35,000]
030	AVIATION TECHNICAL DATA & ENGINEERING SERVICES .....	59,299	59,299
040	AIR OPERATIONS AND SAFETY SUPPORT .....	155,896	155,896
050	AIR SYSTEMS SUPPORT .....	719,107	719,107
060	AIRCRAFT DEPOT MAINTENANCE .....	1,154,181	1,154,181
070	AIRCRAFT DEPOT OPERATIONS SUPPORT .....	60,402	59,202
	Excess growth .....		[–1,200]
080	AVIATION LOGISTICS .....	1,241,421	1,219,421
	Projected underexecution .....		[–22,000]
090	MISSION AND OTHER SHIP OPERATIONS .....	4,097,262	3,547,262
	Realignment to OCO .....		[–450,000]
	Unjustified growth .....		[–100,000]
100	SHIP OPERATIONS SUPPORT & TRAINING .....	1,031,792	1,029,792
	Excess civilian growth .....		[–2,000]
110	SHIP DEPOT MAINTENANCE .....	8,061,298	8,714,298
	Program increase .....		[653,000]
120	SHIP DEPOT OPERATIONS SUPPORT .....	2,073,641	2,066,141
	Insufficient justification .....		[–7,500]
130	COMBAT COMMUNICATIONS AND ELECTRONIC WARFARE .....	1,378,856	1,364,856
	Unjustified growth .....		[–14,000]
140	SPACE SYSTEMS AND SURVEILLANCE .....	276,245	273,745
	Unjustified growth .....		[–2,500]

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
150	WARFARE TACTICS .....	675,209	675,209
160	OPERATIONAL METEOROLOGY AND OCEANOGRAPHY .....	389,516	389,516
170	COMBAT SUPPORT FORCES .....	1,536,310	1,126,310
	Realignment to OCO .....		[-400,000]
	Unjustified growth .....		[-10,000]
180	EQUIPMENT MAINTENANCE AND DEPOT OPERATIONS SUPPORT .....	161,579	161,579
190	COMBATANT COMMANDERS CORE OPERATIONS SUPPORT .....	59,521	59,521
200	COMBATANT COMMANDERS DIRECT MISSION SUPPORT .....	93,978	98,978
	Posture site assessments INDOPACOM .....		[5,000]
210	MILITARY INFORMATION SUPPORT OPERATIONS .....	8,641	8,641
220	CYBERSPACE ACTIVITIES .....	496,385	496,385
230	FLEET BALLISTIC MISSILE .....	1,423,339	1,423,339
240	WEAPONS MAINTENANCE .....	924,069	895,032
	Insufficient justification .....		[-29,037]
250	OTHER WEAPON SYSTEMS SUPPORT .....	540,210	540,210
260	ENTERPRISE INFORMATION .....	1,131,627	1,111,627
	Unjustified growth .....		[-20,000]
270	SUSTAINMENT, RESTORATION AND MODERNIZATION .....	3,029,634	3,029,634
280	BASE OPERATING SUPPORT .....	4,414,943	4,414,943
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>42,788,298</b>	<b>41,703,061</b>
	<b>MOBILIZATION</b>		
290	SHIP PREPOSITIONING AND SURGE .....	942,902	942,902
300	READY RESERVE FORCE .....	352,044	352,044
310	SHIP ACTIVATIONS/INACTIVATIONS .....	427,555	427,555
320	EXPEDITIONARY HEALTH SERVICES SYSTEMS ..	137,597	137,597
330	COAST GUARD SUPPORT .....	24,604	24,604
	<b>SUBTOTAL MOBILIZATION .....</b>	<b>1,884,702</b>	<b>1,884,702</b>
	<b>TRAINING AND RECRUITING</b>		
340	OFFICER ACQUISITION .....	150,765	150,765
350	RECRUIT TRAINING .....	11,584	11,584
360	RESERVE OFFICERS TRAINING CORPS .....	159,133	159,133
370	SPECIALIZED SKILL TRAINING .....	911,316	891,316
	Insufficient justification .....		[-20,000]
380	PROFESSIONAL DEVELOPMENT EDUCATION ....	185,211	186,261
	Program increase: Sea Cadets .....		[1,050]
390	TRAINING SUPPORT .....	267,224	267,224
400	RECRUITING AND ADVERTISING .....	209,252	204,252
	Insufficient justification .....		[-5,000]
410	OFF-DUTY AND VOLUNTARY EDUCATION .....	88,902	88,902
420	CIVILIAN EDUCATION AND TRAINING .....	67,492	67,492
430	JUNIOR ROTC .....	55,164	55,164
	<b>SUBTOTAL TRAINING AND RECRUITING ..</b>	<b>2,106,043</b>	<b>2,082,093</b>
	<b>ADMIN &amp; SRVWD ACTIVITIES</b>		
440	ADMINISTRATION .....	1,143,358	1,103,358
	Unjustified growth .....		[-40,000]
450	CIVILIAN MANPOWER AND PERSONNEL MANAGEMENT .....	178,342	175,342
	Excess civilian growth .....		[-3,000]
460	MILITARY MANPOWER AND PERSONNEL MANAGEMENT .....	418,413	418,413
490	SERVICEWIDE TRANSPORTATION .....	157,465	157,465

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
510	PLANNING, ENGINEERING, AND PROGRAM SUP- PORT .....	485,397	490,397
	REPO .....		[5,000]
520	ACQUISITION, LOGISTICS, AND OVERSIGHT .....	654,137	647,137
	Unjustified growth .....		[-7,000]
530	INVESTIGATIVE AND SECURITY SERVICES .....	718,061	718,061
645	CLASSIFIED PROGRAMS .....	591,535	591,535
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b>	<b>4,346,708</b>	<b>4,301,708</b>
	<b>UNDISTRIBUTED</b>		
650	UNDISTRIBUTED .....		-20,000
	Overestimation of civilian FTE targets .....		[-20,000]
	<b>SUBTOTAL UNDISTRIBUTED</b> .....		<b>-20,000</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, NAVY</b> .....	<b>51,125,751</b>	<b>49,951,564</b>
	<b>OPERATION &amp; MAINTENANCE, MARINE CORPS</b>		
	<b>OPERATING FORCES</b>		
010	OPERATIONAL FORCES .....	968,224	727,224
	Excess civilian growth .....		[-1,000]
	Realignment to OCO .....		[-200,000]
	Unjustified growth .....		[-40,000]
020	FIELD LOGISTICS .....	1,278,533	1,064,533
	Realignment to OCO .....		[-200,000]
	Unjustified growth .....		[-14,000]
030	DEPOT MAINTENANCE .....	232,991	232,991
040	MARITIME PREPOSITIONING .....	100,396	100,396
050	CYBERSPACE ACTIVITIES .....	203,580	203,580
060	SUSTAINMENT, RESTORATION & MODERNIZA- TION .....	1,559,034	1,559,034
070	BASE OPERATING SUPPORT .....	2,253,776	2,223,776
	Unjustified growth .....		[-30,000]
	<b>SUBTOTAL OPERATING FORCES</b> .....	<b>6,596,534</b>	<b>6,111,534</b>
	<b>TRAINING AND RECRUITING</b>		
080	RECRUIT TRAINING .....	21,240	21,240
090	OFFICER ACQUISITION .....	1,168	1,168
100	SPECIALIZED SKILL TRAINING .....	106,601	106,601
110	PROFESSIONAL DEVELOPMENT EDUCATION .....	49,095	49,095
120	TRAINING SUPPORT .....	407,315	407,315
130	RECRUITING AND ADVERTISING .....	210,475	210,475
140	OFF-DUTY AND VOLUNTARY EDUCATION .....	42,810	42,810
150	JUNIOR ROTC .....	25,183	25,183
	<b>SUBTOTAL TRAINING AND RECRUITING</b> ..	<b>863,887</b>	<b>863,887</b>
	<b>ADMIN &amp; SRVWD ACTIVITIES</b>		
160	SERVICEWIDE TRANSPORTATION .....	29,894	29,894
170	ADMINISTRATION .....	384,352	384,352
225	CLASSIFIED PROGRAMS .....	52,057	52,057
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b>	<b>466,303</b>	<b>466,303</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, MARINE CORPS</b> .....	<b>7,926,724</b>	<b>7,441,724</b>
	<b>OPERATION &amp; MAINTENANCE, NAVY RES OPERATING FORCES</b>		
010	MISSION AND OTHER FLIGHT OPERATIONS .....	654,220	629,220

<b>SEC. 4301. OPERATION AND MAINTENANCE</b> (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Unjustified growth .....		[-25,000]
020	INTERMEDIATE MAINTENANCE .....	8,767	8,767
030	AIRCRAFT DEPOT MAINTENANCE .....	108,236	108,236
040	AIRCRAFT DEPOT OPERATIONS SUPPORT .....	463	463
050	AVIATION LOGISTICS .....	26,014	26,014
060	SHIP OPERATIONS SUPPORT & TRAINING .....	583	583
070	COMBAT COMMUNICATIONS .....	17,883	17,883
080	COMBAT SUPPORT FORCES .....	128,079	128,079
090	CYBERSPACE ACTIVITIES .....	356	356
100	ENTERPRISE INFORMATION .....	26,133	26,133
110	SUSTAINMENT, RESTORATION AND MOD- ERNIZATION .....	35,397	35,397
120	BASE OPERATING SUPPORT .....	101,376	101,376
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>1,107,507</b>	<b>1,082,507</b>
	<b>ADMIN &amp; SRVWD ACTIVITIES</b>		
130	ADMINISTRATION .....	1,888	1,888
140	MILITARY MANPOWER AND PERSONNEL MAN- AGEMENT .....	12,778	12,778
150	ACQUISITION AND PROGRAM MANAGEMENT .....	2,943	2,943
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b>	<b>17,609</b>	<b>17,609</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, NAVY RES .....</b>	<b>1,125,116</b>	<b>1,100,116</b>
	<b>OPERATION &amp; MAINTENANCE, MC RESERVE OPERATING FORCES</b>		
010	OPERATING FORCES .....	106,484	106,484
020	DEPOT MAINTENANCE .....	18,429	18,429
030	SUSTAINMENT, RESTORATION AND MOD- ERNIZATION .....	47,516	47,516
040	BASE OPERATING SUPPORT .....	106,073	106,073
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>278,502</b>	<b>278,502</b>
	<b>ADMIN &amp; SRVWD ACTIVITIES</b>		
050	ADMINISTRATION .....	13,574	13,574
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b>	<b>13,574</b>	<b>13,574</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, MC RESERVE .....</b>	<b>292,076</b>	<b>292,076</b>
	<b>OPERATION &amp; MAINTENANCE, AIR FORCE OPERATING FORCES</b>		
010	PRIMARY COMBAT FORCES .....	729,127	729,127
020	COMBAT ENHANCEMENT FORCES .....	1,318,770	918,770
	Realignment to OCO .....		[-400,000]
030	AIR OPERATIONS TRAINING (OJT, MAINTAIN SKILLS) .....	1,486,790	1,446,790
	Unjustified growth .....		[-40,000]
040	DEPOT PURCHASE EQUIPMENT MAINTENANCE .....	3,334,792	3,299,792
	Unjustified growth .....		[-35,000]
050	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	4,142,435	4,142,435
060	CYBERSPACE SUSTAINMENT .....	228,811	228,811
070	CONTRACTOR LOGISTICS SUPPORT AND SYS- TEM SUPPORT .....	8,329,364	8,347,364
	Expansion of Conditions Based Maintenance Plus (CBM+) .....		[18,000]
080	FLYING HOUR PROGRAM .....	4,048,773	3,418,773



SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Realignment to OCO .....		[-550,000]
	Unjustified growth .....		[-80,000]
090	BASE OPERATIONS SUPPORT .....	7,223,982	6,933,982
	Insufficient justification .....		[-90,000]
	Realignment to OCO .....		[-200,000]
100	GLOBAL C3I AND EARLY WARNING .....	964,553	964,553
110	OTHER COMBAT OPS SPT PROGRAMS .....	1,032,307	1,026,161
	Unjustified growth .....		[-6,146]
120	CYBERSPACE ACTIVITIES .....	670,076	670,076
140	LAUNCH FACILITIES .....	179,980	179,980
150	SPACE CONTROL SYSTEMS .....	467,990	464,390
	Insufficient justification .....		[-3,600]
160	US NORTHCOM/NORAD .....	184,655	184,655
170	US STRATCOM .....	478,357	478,357
180	US CYBERCOM .....	323,121	347,921
	Accelerate development of Cyber National Mis- sion Force capabilities .....		[1,500]
	Cyber National Mission Force mobile & modular hunt forward kit .....		[5,300]
	ETERNALDARKNESS .....		[18,000]
190	US CENTCOM .....	160,989	160,989
200	US SOCOM .....	6,225	6,225
210	US TRANSCOM .....	544	544
220	CENTCOM CYBERSPACE SUSTAINMENT .....	2,073	2,073
230	USSPACECOM .....	70,588	70,588
235	CLASSIFIED PROGRAMS .....	1,322,944	1,316,694
	Unjustified increase .....		[-6,250]
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>36,707,246</b>	<b>35,339,050</b>
<b>MOBILIZATION</b>			
240	AIRLIFT OPERATIONS .....	1,158,142	1,158,142
250	MOBILIZATION PREPAREDNESS .....	138,672	130,172
	Unjustified growth .....		[-8,500]
	<b>SUBTOTAL MOBILIZATION .....</b>	<b>1,296,814</b>	<b>1,288,314</b>
<b>TRAINING AND RECRUITING</b>			
260	OFFICER ACQUISITION .....	130,835	130,835
270	RECRUIT TRAINING .....	26,021	26,021
280	RESERVE OFFICERS TRAINING CORPS (ROTC) ...	121,391	121,391
290	SPECIALIZED SKILL TRAINING .....	454,539	414,539
	Unjustified growth .....		[-40,000]
300	FLIGHT TRAINING .....	600,565	600,565
310	PROFESSIONAL DEVELOPMENT EDUCATION ....	282,788	282,788
320	TRAINING SUPPORT .....	123,988	113,988
	Unjustified growth .....		[-10,000]
330	RECRUITING AND ADVERTISING .....	167,731	162,731
	Unjustified growth .....		[-5,000]
340	EXAMINING .....	4,576	4,576
350	OFF-DUTY AND VOLUNTARY EDUCATION .....	211,911	211,911
360	CIVILIAN EDUCATION AND TRAINING .....	219,021	219,021
370	JUNIOR ROTC .....	62,092	62,092
	<b>SUBTOTAL TRAINING AND RECRUITING ..</b>	<b>2,405,458</b>	<b>2,350,458</b>
<b>ADMIN &amp; SRVWD ACTIVITIES</b>			
<b>UNDISTRIBUTED</b>			
380	LOGISTICS OPERATIONS .....	664,926	664,926
390	TECHNICAL SUPPORT ACTIVITIES .....	101,483	101,483
400	ADMINISTRATION .....	892,480	892,480
410	SERVICEWIDE COMMUNICATIONS .....	152,532	122,532

<b>SEC. 4301. OPERATION AND MAINTENANCE</b> (In Thousands of Dollars)			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
	Insufficient justification .....		[-30,000]
420	OTHER SERVICEWIDE ACTIVITIES .....	1,254,089	1,204,089
	Program decrease unaccounted for .....		[-20,000]
	Remove one-time fiscal year 2019 increase .....		[-30,000]
430	CIVIL AIR PATROL .....	30,070	37,200
	Improved emergency crew readiness .....		[7,130]
460	INTERNATIONAL SUPPORT .....	136,110	136,110
465	CLASSIFIED PROGRAMS .....	1,269,624	1,269,624
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES</b>	<b>4,501,314</b>	<b>4,428,444</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, AIR FORCE</b> .....	<b>44,910,832</b>	<b>43,406,266</b>
	<b>OPERATION &amp; MAINTENANCE, SPACE FORCE UNDISTRIBUTED</b>		
010	BASE SUPPORT .....	72,436	72,436
	<b>SUBTOTAL OPERATING FORCES</b> .....	<b>72,436</b>	<b>72,436</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, SPACE FORCE</b> .....	<b>72,436</b>	<b>72,436</b>
	<b>OPERATION &amp; MAINTENANCE, AF RESERVE OPERATING FORCES</b>		
010	PRIMARY COMBAT FORCES .....	1,781,413	1,756,413
	Delay in KC-46 aircraft delivery .....		[-25,000]
020	MISSION SUPPORT OPERATIONS .....	209,650	204,150
	Unjustified growth .....		[-5,500]
030	DEPOT PURCHASE EQUIPMENT MAINTENANCE	494,235	484,235
	Excess growth .....		[-10,000]
040	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	128,746	128,746
050	CONTRACTOR LOGISTICS SUPPORT AND SYS- TEM SUPPORT .....	256,512	256,512
060	BASE SUPPORT .....	414,626	414,626
070	CYBERSPACE ACTIVITIES .....	1,673	1,673
	<b>SUBTOTAL OPERATING FORCES</b> .....	<b>3,286,855</b>	<b>3,246,355</b>
	<b>ADMINISTRATION AND SERVICEWIDE AC- TIVITIES UNDISTRIBUTED</b>		
080	ADMINISTRATION .....	69,436	69,436
090	RECRUITING AND ADVERTISING .....	22,124	22,124
100	MILITARY MANPOWER AND PERS MGMT (ARPC)	10,946	10,946
110	OTHER PERS SUPPORT (DISABILITY COMP) .....	7,009	7,009
120	AUDIOVISUAL .....	448	448
	<b>SUBTOTAL ADMINISTRATION AND SERVICEWIDE ACTIVITIES</b> .....	<b>109,963</b>	<b>109,963</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, AF RESERVE</b> .....	<b>3,396,818</b>	<b>3,356,318</b>
	<b>OPERATION &amp; MAINTENANCE, ANG OPERATING FORCES</b>		
010	AIRCRAFT OPERATIONS .....	2,497,967	2,472,967
	Delay in KC-46 aircraft delivery .....		[-25,000]
020	MISSION SUPPORT OPERATIONS .....	600,377	585,377
	Insufficient justification .....		[-15,000]
030	DEPOT PURCHASE EQUIPMENT MAINTENANCE	879,467	879,467
040	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	400,734	400,734

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
050	CONTRACTOR LOGISTICS SUPPORT AND SYSTEM SUPPORT .....	1,299,089	1,299,089
060	BASE SUPPORT .....	911,775	911,775
070	CYBERSPACE SUSTAINMENT .....	24,742	24,742
080	CYBERSPACE ACTIVITIES .....	25,507	25,507
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>6,639,658</b>	<b>6,599,658</b>
<b>ADMINISTRATION AND SERVICE-WIDE ACTIVITIES</b>			
<b>UNDISTRIBUTED</b>			
090	ADMINISTRATION .....	47,215	47,215
100	RECRUITING AND ADVERTISING .....	40,356	40,356
	<b>SUBTOTAL ADMINISTRATION AND SERVICE-WIDE ACTIVITIES .....</b>	<b>87,571</b>	<b>87,571</b>
110	UNDISTRIBUTED .....		–30,000
	Maintain program affordability: Overestimation of civilian FTE targets .....		[–30,000]
	<b>SUBTOTAL UNDISTRIBUTED .....</b>		<b>–30,000</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ANG .....</b>	<b>6,727,229</b>	<b>6,657,229</b>
<b>OPERATION AND MAINTENANCE, DEFENSE-WIDE</b>			
<b>OPERATING FORCES</b>			
010	JOINT CHIEFS OF STAFF .....	409,542	392,542
	Program decrease unaccounted for .....		[–12,000]
	Remove one-time fiscal year 2019 costs .....		[–5,000]
020	JOINT CHIEFS OF STAFF—CE2T2 .....	579,179	579,179
030	JOINT CHIEFS OF STAFF—CYBER .....	24,598	24,598
040	SPECIAL OPERATIONS COMMAND COMBAT DEVELOPMENT ACTIVITIES .....	1,075,762	1,070,262
	Classified adjustment .....		[–5,500]
050	SPECIAL OPERATIONS COMMAND CYBERSPACE ACTIVITIES .....	14,409	14,409
060	SPECIAL OPERATIONS COMMAND INTELLIGENCE .....	501,747	486,953
	DCGS—SOF - excess to need .....		[–5,794]
	Program decrease—SOCRATES .....		[–9,000]
070	SPECIAL OPERATIONS COMMAND MAINTENANCE .....	559,300	544,300
	Projected underexecution .....		[–15,000]
080	SPECIAL OPERATIONS COMMAND MANAGEMENT/OPERATIONAL HEADQUARTERS .....	177,928	177,928
090	SPECIAL OPERATIONS COMMAND OPERATIONAL SUPPORT .....	925,262	899,762
	Base support underexecution .....		[–5,900]
	Operational support underexecution .....		[–9,600]
	Unjustified growth—C4IAS Saas .....		[–10,000]
100	SPECIAL OPERATIONS COMMAND THEATER FORCES .....	2,764,738	2,250,038
	Program decrease .....		[–14,700]
	Realignment to OCO .....		[–500,000]
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>7,032,465</b>	<b>6,439,971</b>
<b>TRAINING AND RECRUITING</b>			
120	DEFENSE ACQUISITION UNIVERSITY .....	180,250	180,250
130	JOINT CHIEFS OF STAFF .....	100,610	100,610
140	PROFESSIONAL DEVELOPMENT EDUCATION .....	33,967	33,967

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	<b>SUBTOTAL TRAINING AND RECRUITING ..</b>	<b>314,827</b>	<b>314,827</b>
	<b>ADMIN &amp; SRVWIDE ACTIVITIES</b>		
160	CIVIL MILITARY PROGRAMS .....	165,707	260,007
	IRT Increase .....		[14,300]
	National Guard Youth Challenge Program sup- port .....		[50,000]
	Program increase—STARBASE .....		[30,000]
180	DEFENSE CONTRACT AUDIT AGENCY .....	627,467	627,467
190	DEFENSE CONTRACT AUDIT AGENCY—CYBER ...	3,362	3,362
200	DEFENSE CONTRACT MANAGEMENT AGENCY ...	1,438,068	1,418,068
	Program decrease .....		[-20,000]
210	DEFENSE CONTRACT MANAGEMENT AGENCY— CYBER .....	24,391	24,391
220	DEFENSE HUMAN RESOURCES ACTIVITY .....	892,438	882,438
	Defense Manpower Data Center—Excess Growth		[-5,000]
	Enterprise Operations Center—Excess Growth ...		[-5,000]
230	DEFENSE INFORMATION SYSTEMS AGENCY .....	2,012,885	1,992,885
	Unjustified growth .....		[-20,000]
240	DEFENSE INFORMATION SYSTEMS AGENCY— CYBER .....	601,223	636,360
	Sharkseer transfer .....		[35,137]
270	DEFENSE LEGAL SERVICES AGENCY .....	34,632	34,632
280	DEFENSE LOGISTICS AGENCY .....	415,699	435,199
	Program increase—PTAP .....		[19,500]
290	DEFENSE MEDIA ACTIVITY .....	202,792	202,792
300	DEFENSE PERSONNEL ACCOUNTING AGENCY ...	144,881	144,881
310	DEFENSE SECURITY COOPERATION AGENCY .....	696,884	666,884
	Assessment, monitoring, and evaluation .....		[11,000]
	Security cooperation account .....		[-11,000]
	Unjustified growth .....		[-30,000]
320	DEFENSE SECURITY SERVICE .....	889,664	889,664
340	DEFENSE SECURITY SERVICE—CYBER .....	9,220	9,220
360	DEFENSE TECHNICAL INFORMATION CENTER ..	3,000	3,000
370	DEFENSE TECHNOLOGY SECURITY ADMINIS- TRATION .....	35,626	35,626
380	DEFENSE THREAT REDUCTION AGENCY .....	568,133	568,133
400	DEFENSE THREAT REDUCTION AGENCY— CYBER .....	13,339	13,339
410	DEPARTMENT OF DEFENSE EDUCATION ACTIV- ITY .....	2,932,226	2,912,226
	Remove one-time fiscal year 2019 increase .....		[-50,000]
	Overestimation of civilian FTE targets .....		[-20,000]
	Program increase—impact aid for children with severe disabilities .....		[10,000]
	Program increase—impact aid to schools with military dependents .....		[40,000]
420	MISSILE DEFENSE AGENCY .....	522,529	509,859
	THAAD prior year under-execution .....		[-12,670]
450	OFFICE OF ECONOMIC ADJUSTMENT .....	59,513	134,513
	Defense Community Infrastructure Program (DCIP) .....		[75,000]
460	OFFICE OF THE SECRETARY OF DEFENSE .....	1,604,738	1,625,738
	Bien Hoa dioxin cleanup .....		[15,000]
	CDC study .....		[10,000]
	Emerging contaminants .....		[1,000]
	Excess growth .....		[-37,000]
	Interstate compacts for licensure and credentialing .....		[4,000]

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Military aviation safety commission .....		[3,000]
	Readiness and Environmental Protection Initia- tive increase .....		[25,000]
470	OFFICE OF THE SECRETARY OF DEFENSE— CYBER .....	48,783	48,783
480	SPACE DEVELOPMENT AGENCY .....	44,750	34,750
	Insufficient justification .....		[-10,000]
500	WASHINGTON HEADQUARTERS SERVICES .....	324,001	296,201
	Insufficient justification .....		[-27,800]
505	CLASSIFIED PROGRAMS .....	15,816,598	15,757,457
	Classified adjustment .....		[-24,004]
	Realignment to DISA for Sharkseer .....		[-35,137]
	<b>SUBTOTAL ADMIN &amp; SRVWIDE ACTIVI- TIES</b> .....	<b>30,132,549</b>	<b>30,167,875</b>
	<b>TOTAL OPERATION AND MAINTENANCE, DEFENSE-WIDE</b> .....	<b>37,479,841</b>	<b>36,922,673</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, DEFENSE-WIDE</b> .....		<b>-557,168</b>
	<b>US COURT OF APPEALS FOR ARMED FORCES, DEF ADMINISTRATION AND ASSOCIATED ACTIVI- TIES</b>		
010	US COURT OF APPEALS FOR THE ARMED FORCES, DEFENSE .....	14,771	14,771
	<b>SUBTOTAL ADMINISTRATION AND ASSO- CIATED ACTIVITIES</b> .....	<b>14,771</b>	<b>14,771</b>
	<b>TOTAL US COURT OF APPEALS FOR ARMED FORCES, DEF</b> .....	<b>14,771</b>	<b>14,771</b>
	<b>DOD ACQUISITION WORKFORCE DEVELOP- MENT FUND</b>		
	<b>ACQUISITION WORKFORCE DEVELOPMENT</b>		
010	ACQ WORKFORCE DEV FD .....	400,000	400,000
	<b>SUBTOTAL ACQUISITION WORKFORCE DEVELOPMENT</b> .....	<b>400,000</b>	<b>400,000</b>
	<b>TOTAL DOD ACQUISITION WORKFORCE DEVELOPMENT FUND</b> .....	<b>400,000</b>	<b>400,000</b>
	<b>OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID</b>		
	<b>HUMANITARIAN ASSISTANCE</b>		
010	OVERSEAS HUMANITARIAN, DISASTER AND CIVIC AID .....	108,600	117,663
	Increase for foreign disaster relief .....		[6,822]
	Increase for humanitarian mine action program ..		[2,241]
	<b>SUBTOTAL HUMANITARIAN ASSISTANCE</b>	<b>108,600</b>	<b>117,663</b>
	<b>TOTAL OVERSEAS HUMANITARIAN, DIS- ASTER, AND CIVIC AID</b> .....	<b>108,600</b>	<b>117,663</b>
	<b>COOPERATIVE THREAT REDUCTION AC- COUNT</b>		
	<b>COOPERATIVE THREAT REDUCTION</b>		
010	COOPERATIVE THREAT REDUCTION .....	338,700	358,700

SEC. 4301. OPERATION AND MAINTENANCE (In Thousands of Dollars)			
Line	Item	FY 2020 Request	Conference Authorized
	Cooperative biological engagement .....		[20,000]
	<b>SUBTOTAL COOPERATIVE THREAT REDUC-</b> <b>DUCTION .....</b>	<b>338,700</b>	<b>358,700</b>
	<b>TOTAL COOPERATIVE THREAT REDUC-</b> <b>TION ACCOUNT .....</b>	<b>338,700</b>	<b>358,700</b>
	<b>ENVIRONMENTAL RESTORATION, ARMY</b> <b>DEPARTMENT OF THE ARMY</b>		
050	ENVIRONMENTAL RESTORATION, ARMY .....	207,518	212,518
	Perfluorinated chemicals .....		[5,000]
	<b>SUBTOTAL DEPARTMENT OF THE ARMY ..</b>	<b>207,518</b>	<b>212,518</b>
	<b>TOTAL ENVIRONMENTAL RESTORA-</b> <b>TION, ARMY .....</b>	<b>207,518</b>	<b>290,582</b>
	<b>ENVIRONMENTAL RESTORATION, NAVY</b> <b>DEPARTMENT OF THE NAVY</b>		
060	ENVIRONMENTAL RESTORATION, NAVY .....	335,932	350,932
	Perfluorinated chemicals .....		[5,000]
	Unexploded ordnance remediation .....		[10,000]
	<b>SUBTOTAL DEPARTMENT OF THE NAVY ...</b>	<b>335,932</b>	<b>350,932</b>
	<b>TOTAL ENVIRONMENTAL RESTORA-</b> <b>TION, NAVY .....</b>	<b>335,932</b>	<b>418,996</b>
	<b>ENVIRONMENTAL RESTORATION, AIR FORCE</b> <b>DEPARTMENT OF THE AIR FORCE</b>		
070	ENVIRONMENTAL RESTORATION, AIR FORCE ...	302,744	365,808
	Perfluorinated chemicals .....		[63,064]
	<b>SUBTOTAL DEPARTMENT OF THE AIR</b> <b>FORCE .....</b>	<b>302,744</b>	<b>365,808</b>
	<b>TOTAL ENVIRONMENTAL RESTORA-</b> <b>TION, AIR FORCE .....</b>	<b>302,744</b>	<b>385,808</b>
	<b>ENVIRONMENTAL RESTORATION, DEFENSE-</b> <b>WIDE</b>		
080	ENVIRONMENTAL RESTORATION, DEFENSE- WIDE .....	9,105	9,105
	<b>SUBTOTAL DEFENSE-WIDE .....</b>	<b>9,105</b>	<b>9,105</b>
	<b>TOTAL ENVIRONMENTAL RESTORA-</b> <b>TION, DEFENSE-WIDE .....</b>	<b>9,105</b>	<b>92,169</b>
	<b>ENVIRONMENTAL RESTORATION FORMERLY</b> <b>USED SITES</b> <b>DEFENSE-WIDE</b>		
090	ENVIRONMENTAL RESTORATION FORMERLY USED SITES .....	216,499	216,499
	<b>SUBTOTAL DEFENSE-WIDE .....</b>	<b>216,499</b>	<b>216,499</b>
	<b>TOTAL ENVIRONMENTAL RESTORA-</b> <b>TION FORMERLY USED SITES .....</b>	<b>216,499</b>	<b>216,499</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE ....</b>	<b>207,661,689</b>	<b>201,610,944</b>

**SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS.**

<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>OPERATION &amp; MAINTENANCE, ARMY</b>			
<b>OPERATING FORCES</b>			
010	MANEUVER UNITS .....	1,410,874	1,671,422
	Realignment from base .....		[260,548]
030	ECHELONS ABOVE BRIGADE .....	26,502	26,502
040	THEATER LEVEL ASSETS .....	2,274,490	2,259,490
	Unjustified growth .....		[-15,000]
050	LAND FORCES OPERATIONS SUPPORT .....	136,288	136,288
060	AVIATION ASSETS .....	300,240	300,240
070	FORCE READINESS OPERATIONS SUPPORT .....	3,415,009	4,510,009
	Insufficient justification .....		[-5,000]
	Realignment from base .....		[1,100,000]
080	LAND FORCES SYSTEMS READINESS .....	29,985	29,985
090	LAND FORCES DEPOT MAINTENANCE .....	86,931	86,931
100	BASE OPERATIONS SUPPORT .....	115,706	115,706
110	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	72,657	72,657
130	ADDITIONAL ACTIVITIES .....	6,397,586	6,385,586
	Insufficient justification .....		[-12,000]
140	COMMANDER'S EMERGENCY RESPONSE PROGRAM .....	5,000	2,500
	Insufficient justification .....		[-2,500]
150	RESET .....	1,048,896	1,048,896
160	US AFRICA COMMAND .....	203,174	203,174
170	US EUROPEAN COMMAND .....	173,676	173,676
200	CYBERSPACE ACTIVITIES—CYBERSPACE OPERATIONS .....	188,529	188,529
210	CYBERSPACE ACTIVITIES—CYBERSECURITY .....	5,682	5,682
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>15,891,225</b>	<b>17,217,273</b>
<b>MOBILIZATION</b>			
230	ARMY PREPOSITIONED STOCKS .....	131,954	131,954
	<b>SUBTOTAL MOBILIZATION .....</b>	<b>131,954</b>	<b>131,954</b>
<b>ADMIN &amp; SRVWIDE ACTIVITIES</b>			
390	SERVICEWIDE TRANSPORTATION .....	721,014	721,014
400	CENTRAL SUPPLY ACTIVITIES .....	66,845	66,845
410	LOGISTIC SUPPORT ACTIVITIES .....	9,309	9,309
420	AMMUNITION MANAGEMENT .....	23,653	23,653
460	OTHER PERSONNEL SUPPORT .....	109,019	109,019
490	REAL ESTATE MANAGEMENT .....	251,355	251,355
565	CLASSIFIED PROGRAMS .....	1,568,564	1,568,564
	<b>SUBTOTAL ADMIN &amp; SRVWIDE ACTIVITIES .....</b>	<b>2,749,759</b>	<b>2,749,759</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ARMY .....</b>	<b>18,772,938</b>	<b>20,098,986</b>
<b>OPERATION &amp; MAINTENANCE, ARMY RES OPERATING FORCES</b>			
020	ECHELONS ABOVE BRIGADE .....	20,440	20,440
060	FORCE READINESS OPERATIONS SUPPORT .....	689	689
090	BASE OPERATIONS SUPPORT .....	16,463	16,463
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>37,592</b>	<b>37,592</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ARMY RES .....</b>	<b>37,592</b>	<b>37,592</b>

<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>OPERATION &amp; MAINTENANCE, ARNG</b>			
<b>UNDISTRIBUTED</b>			
010	MANEUVER UNITS .....	45,896	45,896
020	MODULAR SUPPORT BRIGADES .....	180	180
030	ECHELONS ABOVE BRIGADE .....	2,982	2,982
040	THEATER LEVEL ASSETS .....	548	548
060	AVIATION ASSETS .....	9,229	9,229
070	FORCE READINESS OPERATIONS SUPPORT .....	1,584	1,584
100	BASE OPERATIONS SUPPORT .....	22,063	22,063
120	MANAGEMENT AND OPERATIONAL HEAD- QUARTERS .....	606	606
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>83,088</b>	<b>83,088</b>
<b>ADMIN &amp; SRVWD ACTIVITIES</b>			
170	SERVICEWIDE COMMUNICATIONS .....	203	203
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES .....</b>	<b>203</b>	<b>203</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ARNG .....</b>	<b>83,291</b>	<b>83,291</b>
<b>AFGHANISTAN SECURITY FORCES FUND</b>			
<b>AFGHAN NATIONAL ARMY</b>			
090	SUSTAINMENT .....	1,313,047	1,313,047
100	INFRASTRUCTURE .....	37,152	37,152
110	EQUIPMENT AND TRANSPORTATION .....	120,868	120,868
120	TRAINING AND OPERATIONS .....	118,591	118,591
	<b>SUBTOTAL AFGHAN NATIONAL ARMY .....</b>	<b>1,589,658</b>	<b>1,589,658</b>
<b>AFGHAN NATIONAL POLICE</b>			
130	SUSTAINMENT .....	422,806	422,806
140	INFRASTRUCTURE .....	2,358	2,358
150	EQUIPMENT AND TRANSPORTATION .....	127,081	127,081
160	TRAINING AND OPERATIONS .....	108,112	108,112
	<b>SUBTOTAL AFGHAN NATIONAL POLICE .....</b>	<b>660,357</b>	<b>660,357</b>
<b>AFGHAN AIR FORCE</b>			
170	SUSTAINMENT .....	893,829	893,829
180	INFRASTRUCTURE .....	8,611	8,611
190	EQUIPMENT AND TRANSPORTATION .....	566,967	566,967
200	TRAINING AND OPERATIONS .....	356,108	356,108
	<b>SUBTOTAL AFGHAN AIR FORCE .....</b>	<b>1,825,515</b>	<b>1,825,515</b>
<b>AFGHAN SPECIAL SECURITY FORCES</b>			
210	SUSTAINMENT .....	437,909	437,909
220	INFRASTRUCTURE .....	21,131	21,131
230	EQUIPMENT AND TRANSPORTATION .....	153,806	153,806
240	TRAINING AND OPERATIONS .....	115,602	115,602
	<b>SUBTOTAL AFGHAN SPECIAL SECURITY FORCES .....</b>	<b>728,448</b>	<b>728,448</b>
<b>UNDISTRIBUTED</b>			
245	UNDISTRIBUTED .....		-300,000
	Unjustified request .....		[-300,000]
	<b>SUBTOTAL UNDISTRIBUTED .....</b>		<b>-300,000</b>
	<b>TOTAL AFGHANISTAN SECURITY FORCES FUND .....</b>	<b>4,803,978</b>	<b>4,503,978</b>
<b>COUNTER ISIS TRAIN AND EQUIP FUND (CTEF)</b>			



<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>COUNTER ISIS TRAIN AND EQUIP FUND (CTEF)</b>			
010	IRAQ .....	745,000	545,000
	Program decrease .....		[-100,000]
	Transfer to DSCA Security Cooperation .....		[-100,000]
020	SYRIA .....	300,000	300,000
	<b>SUBTOTAL COUNTER ISIS TRAIN AND EQUIP FUND (CTEF) .....</b>	<b>1,045,000</b>	<b>845,000</b>
	<b>TOTAL COUNTER ISIS TRAIN AND EQUIP FUND (CTEF) .....</b>	<b>1,045,000</b>	<b>845,000</b>
<b>OPERATION &amp; MAINTENANCE, NAVY OPERATING FORCES</b>			
010	MISSION AND OTHER FLIGHT OPERATIONS .....	373,047	973,047
	Realignment from base .....		[600,000]
030	AVIATION TECHNICAL DATA & ENGINEERING SERVICES .....	816	816
040	AIR OPERATIONS AND SAFETY SUPPORT .....	9,582	9,582
050	AIR SYSTEMS SUPPORT .....	197,262	197,262
060	AIRCRAFT DEPOT MAINTENANCE .....	168,246	168,246
070	AIRCRAFT DEPOT OPERATIONS SUPPORT .....	3,594	3,594
080	AVIATION LOGISTICS .....	10,618	10,618
090	MISSION AND OTHER SHIP OPERATIONS .....	1,485,108	1,935,108
	Realignment from base .....		[450,000]
100	SHIP OPERATIONS SUPPORT & TRAINING .....	20,334	20,334
110	SHIP DEPOT MAINTENANCE .....	2,365,615	2,365,615
130	COMBAT COMMUNICATIONS AND ELECTRONIC WARFARE .....	58,092	58,092
140	SPACE SYSTEMS AND SURVEILLANCE .....	18,000	18,000
150	WARFARE TACTICS .....	16,984	16,984
160	OPERATIONAL METEOROLOGY AND OCEANOGRAPHY .....	29,382	29,382
170	COMBAT SUPPORT FORCES .....	608,870	1,008,870
	Realignment from base .....		[400,000]
180	EQUIPMENT MAINTENANCE AND DEPOT OPERATIONS SUPPORT .....	7,799	7,799
200	COMBATANT COMMANDERS DIRECT MISSION SUPPORT .....	24,800	24,800
220	CYBERSPACE ACTIVITIES .....	363	363
240	WEAPONS MAINTENANCE .....	486,188	486,188
250	OTHER WEAPON SYSTEMS SUPPORT .....	12,189	12,189
270	SUSTAINMENT, RESTORATION AND MODERNIZATION .....	68,667	68,667
280	BASE OPERATING SUPPORT .....	219,099	219,099
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>6,184,655</b>	<b>7,634,655</b>
<b>MOBILIZATION</b>			
320	EXPEDITIONARY HEALTH SERVICES SYSTEMS .....	17,580	17,580
330	COAST GUARD SUPPORT .....	190,000	190,000
	<b>SUBTOTAL MOBILIZATION .....</b>	<b>207,580</b>	<b>207,580</b>
<b>TRAINING AND RECRUITING</b>			
370	SPECIALIZED SKILL TRAINING .....	52,161	52,161
	<b>SUBTOTAL TRAINING AND RECRUITING .....</b>	<b>52,161</b>	<b>52,161</b>
<b>ADMIN &amp; SRVWD ACTIVITIES</b>			
440	ADMINISTRATION .....	8,475	8,475
460	MILITARY MANPOWER AND PERSONNEL MANAGEMENT .....	7,653	7,653

<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
490	SERVICEWIDE TRANSPORTATION .....	70,683	70,683
520	ACQUISITION, LOGISTICS, AND OVERSIGHT .....	11,130	11,130
530	INVESTIGATIVE AND SECURITY SERVICES .....	1,559	1,559
645	CLASSIFIED PROGRAMS .....	17,754	17,754
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES .....</b>	<b>117,254</b>	<b>117,254</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, NAVY .....</b>	<b>6,561,650</b>	<b>8,011,650</b>
	<b>OPERATION &amp; MAINTENANCE, MARINE CORPS OPERATING FORCES</b>		
010	OPERATIONAL FORCES .....	714,653	914,653
	Realignment from base .....		[200,000]
020	FIELD LOGISTICS .....	232,508	432,508
	Realignment from base .....		[200,000]
030	DEPOT MAINTENANCE .....	54,101	54,101
050	CYBERSPACE ACTIVITIES .....	2,000	2,000
070	BASE OPERATING SUPPORT .....	24,570	24,570
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>1,027,832</b>	<b>1,427,832</b>
	<b>TRAINING AND RECRUITING</b>		
120	TRAINING SUPPORT .....	30,459	30,459
	<b>SUBTOTAL TRAINING AND RECRUITING .....</b>	<b>30,459</b>	<b>30,459</b>
	<b>ADMIN &amp; SRVWD ACTIVITIES</b>		
160	SERVICEWIDE TRANSPORTATION .....	61,400	61,400
225	CLASSIFIED PROGRAMS .....	5,100	5,100
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES .....</b>	<b>66,500</b>	<b>66,500</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, MARINE CORPS .....</b>	<b>1,124,791</b>	<b>1,524,791</b>
	<b>OPERATION &amp; MAINTENANCE, NAVY RES OPERATING FORCES</b>		
020	INTERMEDIATE MAINTENANCE .....	510	510
030	AIRCRAFT DEPOT MAINTENANCE .....	11,628	11,628
080	COMBAT SUPPORT FORCES .....	10,898	10,898
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>23,036</b>	<b>23,036</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, NAVY RES .....</b>	<b>23,036</b>	<b>23,036</b>
	<b>OPERATION &amp; MAINTENANCE, MC RESERVE OPERATING FORCES</b>		
010	OPERATING FORCES .....	7,627	7,627
040	BASE OPERATING SUPPORT .....	1,080	1,080
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>8,707</b>	<b>8,707</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, MC RESERVE .....</b>	<b>8,707</b>	<b>8,707</b>
	<b>OPERATION &amp; MAINTENANCE, AIR FORCE OPERATING FORCES</b>		
010	PRIMARY COMBAT FORCES .....	163,632	163,632
020	COMBAT ENHANCEMENT FORCES .....	1,049,170	1,449,170
	Realignment from base .....		[400,000]
030	AIR OPERATIONS TRAINING (OJT, MAINTAIN SKILLS) .....	111,808	111,808
040	DEPOT PURCHASE EQUIPMENT MAINTENANCE ...	408,699	408,699

<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b>			
<b>(In Thousands of Dollars)</b>			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
050	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION .....	147,264	147,264
060	CYBERSPACE SUSTAINMENT .....	10,061	10,061
070	CONTRACTOR LOGISTICS SUPPORT AND SYSTEM SUPPORT .....	953,594	953,594
080	FLYING HOUR PROGRAM .....	2,495,266	3,045,266
	Realignment from base .....		[550,000]
090	BASE OPERATIONS SUPPORT .....	1,538,120	1,738,120
	Realignment from base .....		[200,000]
100	GLOBAL C3I AND EARLY WARNING .....	13,863	13,863
110	OTHER COMBAT OPS SPT PROGRAMS .....	272,020	272,020
120	CYBERSPACE ACTIVITIES .....	17,657	17,657
130	TACTICAL INTEL AND OTHER SPECIAL ACTIVITIES .....	36,098	36,098
140	LAUNCH FACILITIES .....	391	391
150	SPACE CONTROL SYSTEMS .....	39,990	39,990
160	US NORTHCOM/NORAD .....	725	725
170	US STRATCOM .....	926	926
180	US CYBERCOM .....	35,189	35,189
190	US CENTCOM .....	163,015	163,015
200	US SOCOM .....	19,000	19,000
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>7,476,488</b>	<b>8,626,488</b>
	<b>MOBILIZATION</b>		
240	AIRLIFT OPERATIONS .....	1,271,439	1,271,439
250	MOBILIZATION PREPAREDNESS .....	109,682	109,682
	<b>SUBTOTAL MOBILIZATION .....</b>	<b>1,381,121</b>	<b>1,381,121</b>
	<b>TRAINING AND RECRUITING</b>		
260	OFFICER ACQUISITION .....	200	200
270	RECRUIT TRAINING .....	352	352
290	SPECIALIZED SKILL TRAINING .....	26,802	26,802
300	FLIGHT TRAINING .....	844	844
310	PROFESSIONAL DEVELOPMENT EDUCATION .....	1,199	1,199
320	TRAINING SUPPORT .....	1,320	1,320
	<b>SUBTOTAL TRAINING AND RECRUITING .....</b>	<b>30,717</b>	<b>30,717</b>
	<b>ADMIN &amp; SRVWD ACTIVITIES</b>		
	<b>UNDISTRIBUTED</b>		
380	LOGISTICS OPERATIONS .....	164,701	164,701
390	TECHNICAL SUPPORT ACTIVITIES .....	11,608	11,608
400	ADMINISTRATION .....	4,814	4,814
410	SERVICEWIDE COMMUNICATIONS .....	145,204	145,204
420	OTHER SERVICEWIDE ACTIVITIES .....	98,841	98,841
460	INTERNATIONAL SUPPORT .....	29,890	29,890
465	CLASSIFIED PROGRAMS .....	52,995	52,995
	<b>SUBTOTAL ADMIN &amp; SRVWD ACTIVITIES .....</b>	<b>508,053</b>	<b>508,053</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, AIR FORCE .....</b>	<b>9,396,379</b>	<b>10,546,379</b>
	<b>OPERATION &amp; MAINTENANCE, AF RESERVE OPERATING FORCES</b>		
030	DEPOT PURCHASE EQUIPMENT MAINTENANCE ...	24,188	24,188
060	BASE SUPPORT .....	5,570	5,570
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>29,758</b>	<b>29,758</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, AF RESERVE .....</b>	<b>29,758</b>	<b>29,758</b>

<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b> (In Thousands of Dollars)			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>OPERATION &amp; MAINTENANCE, ANG</b>			
<b>OPERATING FORCES</b>			
020	MISSION SUPPORT OPERATIONS .....	3,666	3,666
030	DEPOT PURCHASE EQUIPMENT MAINTENANCE ...	66,944	66,944
050	CONTRACTOR LOGISTICS SUPPORT AND SYSTEM SUPPORT .....	93,620	93,620
060	BASE SUPPORT .....	12,679	12,679
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>176,909</b>	<b>176,909</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, ANG .....</b>	<b>176,909</b>	<b>176,909</b>
<b>OPERATION AND MAINTENANCE, DEFENSE- WIDE</b>			
<b>OPERATING FORCES</b>			
010	JOINT CHIEFS OF STAFF .....	21,866	21,866
020	JOINT CHIEFS OF STAFF—CE2T2 .....	6,634	6,634
040	SPECIAL OPERATIONS COMMAND COMBAT DE- VELOPMENT ACTIVITIES .....	1,121,580	1,111,580
	Classified adjustment .....		[-10,000]
060	SPECIAL OPERATIONS COMMAND INTELLIGENCE	1,328,201	1,328,201
070	SPECIAL OPERATIONS COMMAND MAINTENANCE	399,845	399,845
090	SPECIAL OPERATIONS COMMAND OPERATIONAL SUPPORT .....	138,458	103,458
	Projected underexecution—communications .....		[-35,000]
100	SPECIAL OPERATIONS COMMAND THEATER FORCES .....	808,729	1,308,729
	Realignment from base .....		[500,000]
	<b>SUBTOTAL OPERATING FORCES .....</b>	<b>3,825,313</b>	<b>4,280,313</b>
<b>ADMIN &amp; SRVWIDE ACTIVITIES</b>			
180	DEFENSE CONTRACT AUDIT AGENCY .....	1,810	1,810
200	DEFENSE CONTRACT MANAGEMENT AGENCY .....	21,723	21,723
230	DEFENSE INFORMATION SYSTEMS AGENCY .....	81,133	81,133
240	DEFENSE INFORMATION SYSTEMS AGENCY— CYBER .....	3,455	3,455
270	DEFENSE LEGAL SERVICES AGENCY .....	196,124	196,124
290	DEFENSE MEDIA ACTIVITY .....	14,377	14,377
310	DEFENSE SECURITY COOPERATION AGENCY .....	1,927,217	1,677,217
	Security cooperation account, unjustified growth ...		[-37,030]
	Transfer from CTEF Iraq .....		[100,000]
	Transfer of funds to Ukraine Security Assistance Initiative .....		[-250,000]
	Unjustified growth .....		[-62,970]
380	DEFENSE THREAT REDUCTION AGENCY .....	317,558	317,558
410	DEPARTMENT OF DEFENSE EDUCATION ACTIV- ITY .....	31,620	31,620
460	OFFICE OF THE SECRETARY OF DEFENSE .....	16,666	16,666
500	WASHINGTON HEADQUARTERS SERVICES .....	6,331	6,331
505	CLASSIFIED PROGRAMS .....	1,924,785	1,924,785
	<b>SUBTOTAL ADMIN &amp; SRVWIDE ACTIVITIES</b>	<b>4,542,799</b>	<b>4,292,799</b>
	<b>TOTAL OPERATION AND MAINTENANCE, DEFENSE-WIDE .....</b>	<b>8,368,112</b>	<b>8,573,112</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE, DE- FENSE-WIDE .....</b>		<b>205,000</b>

<b>SEC. 4302. OPERATION AND MAINTENANCE FOR OVERSEAS CONTINGENCY OPERATIONS</b> (In Thousands of Dollars)			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>UKRAINE SECURITY ASSISTANCE</b>			
<b>UKRAINE SECURITY ASSISTANCE</b>			
010	UKRAINE SECURITY ASSISTANCE INITIATIVE .....		300,000
	Program increase .....		[50,000]
	Transfer of funds from Defense Security Coopera- tion Agency .....		[250,000]
	<b>SUBTOTAL UKRAINE SECURITY ASSIST-     ANCE .....</b>		<b>300,000</b>
	<b>TOTAL UKRAINE SECURITY ASSISTANCE</b>		<b>300,000</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE .....</b>	<b>50,432,141</b>	<b>54,968,189</b>

**SEC. 4303. OPERATION AND MAINTENANCE FOR EMERGENCY REQUIREMENTS.**

<b>SEC. 4303. OPERATION AND MAINTENANCE FOR EMERGENCY REQUIREMENTS</b> (In Thousands of Dollars)			
<b>Line</b>	<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>OPERATION &amp; MAINTENANCE, NAVY</b>			
<b>OPERATING FORCES</b>			
270	SUSTAINMENT, RESTORATION AND MODERNIZA- TION .....	0	462,000
	Earthquake damage repair .....		[370,000]
	Navy Working Capital Fund earthquake recovery losses .....		[92,000]
280	BASE OPERATING SUPPORT .....	0	9,000
	Earthquake damage recovery .....		[9,000]
	<b>TOTAL OPERATION &amp; MAINTENANCE, NAVY .....</b>	<b>0</b>	<b>471,000</b>
<b>OPERATION &amp; MAINTENANCE, MARINE CORPS</b>			
<b>OPERATING FORCES</b>			
060	SUSTAINMENT, RESTORATION & MODERNIZATION Earthquake damage repair .....	0	6,000
			[6,000]
	<b>TOTAL OPERATION &amp; MAINTENANCE, MARINE     CORPS .....</b>	<b>0</b>	<b>6,000</b>
<b>OPERATION &amp; MAINTENANCE, ANG</b>			
<b>OPERATING FORCES</b>			
040	FACILITIES SUSTAINMENT, RESTORATION & MOD- ERNIZATION .....	0	58,900
	Hurricane recovery .....		[58,900]
	<b>TOTAL OPERATION &amp; MAINTENANCE, ANG .....</b>	<b>0</b>	<b>58,900</b>
	<b>TOTAL OPERATION &amp; MAINTENANCE .....</b>	<b>0</b>	<b>535,900</b>

**TITLE XLIV—MILITARY PERSONNEL**

Sec. 4401. Military personnel.

Sec. 4402. Military personnel for overseas contingency operations.

**SEC. 4401. MILITARY PERSONNEL.**

<b>SEC. 4401. MILITARY PERSONNEL</b> (In Thousands of Dollars)		
<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
Military Personnel Appropriations .....	143,476,503	142,676,503
Historical unobligated balances .....		[-800,000]
Medicare-Eligible Retiree Health Fund Contributions .....	7,816,815	7,816,815

**SEC. 4402. MILITARY PERSONNEL FOR OVERSEAS CONTINGENCY OPERATIONS.**

<b>SEC. 4402. MILITARY PERSONNEL FOR OVERSEAS CONTINGENCY OPERATIONS</b> (In Thousands of Dollars)		
<b>Item</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
Military Personnel Appropriations .....	4,485,808	4,485,808
<b>Total, Military Personnel Appropriations .....</b>	<b>4,485,808</b>	<b>4,485,808</b>

**TITLE XLV—OTHER AUTHORIZATIONS**

Sec. 4501. Other authorizations.

Sec. 4502. Other authorizations for overseas contingency operations.

**SEC. 4501. OTHER AUTHORIZATIONS.**

<b>SEC. 4501. OTHER AUTHORIZATIONS</b> (In Thousands of Dollars)		
<b>Program Title</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>WORKING CAPITAL FUND, ARMY</b>		
INDUSTRIAL OPERATIONS .....	57,467	57,467
SUPPLY MANAGEMENT—ARMY .....	32,130	32,130
<b>TOTAL WORKING CAPITAL FUND, ARMY .....</b>	<b>89,597</b>	<b>89,597</b>
<b>WORKING CAPITAL FUND, AIR FORCE</b>		
<b>TRANSPORTATION</b>		
SUPPLIES AND MATERIALS .....	92,499	92,499
<b>TOTAL WORKING CAPITAL FUND, AIR FORCE .....</b>	<b>92,499</b>	<b>92,499</b>
<b>WORKING CAPITAL FUND, DEFENSE-WIDE</b>		
SUPPLY CHAIN MANAGEMENT—DEF .....	49,085	49,085
<b>TOTAL WORKING CAPITAL FUND, DEFENSE-WIDE .....</b>	<b>49,085</b>	<b>49,085</b>
<b>WORKING CAPITAL FUND, DECA</b>		
WORKING CAPITAL FUND, DECA .....	995,030	995,030
<b>TOTAL WORKING CAPITAL FUND, DECA .....</b>	<b>995,030</b>	<b>995,030</b>
<b>WCF, DEF COUNTERINTELLIGENCE &amp; SECURITY AGENCY</b>		
DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY .....	200,000	200,000
<b>TOTAL WCF, DEF COUNTERINTELLIGENCE &amp; SECURITY AGENCY .....</b>	<b>200,000</b>	<b>200,000</b>
<b>CHEM AGENTS &amp; MUNITIONS DESTRUCTION</b>		
OPERATION & MAINTENANCE .....	107,351	107,351
RDT&E .....	875,930	875,930

<b>SEC. 4501. OTHER AUTHORIZATIONS</b> (In Thousands of Dollars)		
Program Title	FY 2020 Request	Conference Authorized
PROCUREMENT .....	2,218	2,218
<b>TOTAL CHEM AGENTS &amp; MUNITIONS DESTRUCTION</b> .....	<b>985,499</b>	<b>985,499</b>
<b>DRUG INTERDICTION &amp; CTR-DRUG ACTIVITIES, DEF</b>		
COUNTER-NARCOTICS SUPPORT .....	581,739	532,818
Realignment of National Guard Bureau funding .....		[-30,921]
Unjustified growth .....		[-18,000]
DRUG DEMAND REDUCTION PROGRAM .....	120,922	120,922
NATIONAL GUARD COUNTER-DRUG PROGRAM .....	91,370	122,291
Realignment of National Guard Bureau funding .....		[30,921]
NATIONAL GUARD COUNTER-DRUG SCHOOLS .....	5,371	5,371
<b>TOTAL DRUG INTERDICTION &amp; CTR-DRUG ACTIVITIES, DEF</b> .....	<b>799,402</b>	<b>781,402</b>
<b>OFFICE OF THE INSPECTOR GENERAL</b>		
OFFICE OF THE INSPECTOR GENERAL .....	359,022	359,022
OFFICE OF THE INSPECTOR GENERAL—CYBER .....	1,179	1,179
OFFICE OF THE INSPECTOR GENERAL .....	2,965	2,965
OFFICE OF THE INSPECTOR GENERAL .....	333	333
<b>TOTAL OFFICE OF THE INSPECTOR GENERAL</b> .....	<b>363,499</b>	<b>363,499</b>
<b>DEFENSE HEALTH PROGRAM</b>		
IN-HOUSE CARE .....	9,570,615	9,320,615
Unjustified growth .....		[-250,000]
PRIVATE SECTOR CARE .....	15,041,006	15,002,506
Historical underexecution .....		[-38,500]
CONSOLIDATED HEALTH SUPPORT .....	1,975,536	1,986,536
Wounded Warrior Service Dog program .....		[11,000]
INFORMATION MANAGEMENT .....	2,004,588	1,998,938
Historical underexecution .....		[-5,650]
MANAGEMENT ACTIVITIES .....	333,246	333,246
EDUCATION AND TRAINING .....	793,810	793,310
Other costs excess growth .....		[-3,000]
Program increase—specialized medical pilot program .....		[2,500]
BASE OPERATIONS/COMMUNICATIONS .....	2,093,289	2,093,289
R&D RESEARCH .....	12,621	12,621
R&D EXPLORATORY DEVELOPMENT .....	84,266	84,266
R&D ADVANCED DEVELOPMENT .....	279,766	279,766
R&D DEMONSTRATION/VALIDATION .....	128,055	128,055
R&D ENGINEERING DEVELOPMENT .....	143,527	143,527
R&D MANAGEMENT AND SUPPORT .....	67,219	67,219
R&D CAPABILITIES ENHANCEMENT .....	16,819	16,819
PROC INITIAL OUTFITTING .....	26,135	26,135
PROC REPLACEMENT & MODERNIZATION .....	225,774	225,774
PROC JOINT OPERATIONAL MEDICINE INFORMATION SYSTEM .....	314	314
PROC MILITARY HEALTH SYSTEM—DESKTOP TO DATACENTER .....	73,010	73,010
PROC DOD HEALTHCARE MANAGEMENT SYSTEM MODERNIZATION .....	129,091	129,091
<b>TOTAL DEFENSE HEALTH PROGRAM</b> .....	<b>32,998,687</b>	<b>32,715,037</b>
<b>TOTAL OTHER AUTHORIZATIONS</b> .....	<b>36,573,298</b>	<b>36,271,648</b>

**SEC. 4502. OTHER AUTHORIZATIONS FOR OVERSEAS CONTINGENCY OPERATIONS.**

<b>SEC. 4502. OTHER AUTHORIZATIONS FOR OVERSEAS CONTINGENCY OPERATIONS</b> (In Thousands of Dollars)		
<b>Program Title</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
<b>WORKING CAPITAL FUND, ARMY</b>		
<b>INDUSTRIAL OPERATIONS</b>		
SUPPLY MANAGEMENT—ARMY .....	20,100	20,100
<b>TOTAL WORKING CAPITAL FUND, ARMY .....</b>	<b>20,100</b>	<b>20,100</b>
<b>DRUG INTERDICTION &amp; CTR-DRUG ACTIVITIES, DEF</b>		
COUNTER-NARCOTICS SUPPORT .....	163,596	163,596
<b>TOTAL DRUG INTERDICTION &amp; CTR-DRUG ACTIVITIES, DEF .....</b>	<b>163,596</b>	<b>163,596</b>
<b>OFFICE OF THE INSPECTOR GENERAL</b>		
OFFICE OF THE INSPECTOR GENERAL .....	24,254	24,254
<b>TOTAL OFFICE OF THE INSPECTOR GENERAL .....</b>	<b>24,254</b>	<b>24,254</b>
<b>DEFENSE HEALTH PROGRAM</b>		
IN-HOUSE CARE .....	57,459	57,459
PRIVATE SECTOR CARE .....	287,487	287,487
CONSOLIDATED HEALTH SUPPORT .....	2,800	2,800
<b>TOTAL DEFENSE HEALTH PROGRAM .....</b>	<b>347,746</b>	<b>347,746</b>
<b>TOTAL OTHER AUTHORIZATIONS .....</b>	<b>555,696</b>	<b>555,696</b>

**TITLE XLVI—MILITARY CONSTRUCTION**

Sec. 4601. Military construction.

Sec. 4602. Military construction for overseas contingency operations.

Sec. 4603. Military construction for emergency requirements.

**SEC. 4601. MILITARY CONSTRUCTION.**

<b>SEC. 4601. MILITARY CONSTRUCTION</b> (In Thousands of Dollars)				
<b>Account</b>	<b>State/Country and Installation</b>	<b>Project Title</b>	<b>FY 2020 Request</b>	<b>Conference Authorized</b>
Army	Alabama Redstone Arsenal	Aircraft and Flight Equipment Building	38,000	38,000
Army	Colorado Fort Carson	Company Operations Facility .....	71,000	71,000
Army	Georgia Fort Gordon	Cyber Instructional Fac (Admin/Command).	107,000	67,000
Army	Hunter Army Airfield	Aircraft Maintenance Hangar .....	62,000	62,000
Army	Hawaii Fort Shafter	Command and Control Facility, Incr 5 ...	60,000	60,000
Army	Honduras Soto Cano Air Base	Aircraft Maintenance Hangar .....	34,000	34,000
Army	Kentucky Fort Campbell	Automated Infantry Platoon Battle Course.	7,100	7,100
Army	Fort Campbell	Easements .....	3,200	3,200
Army	Fort Campbell	General Purpose Maintenance Shop .....	51,000	51,000
Army	Kwajalein Kwajalein Atoll	Air Traffic Control Tower and Terminal	0	40,000
	Massachusetts			



**SEC. 4601. MILITARY CONSTRUCTION**  
(In Thousands of Dollars)

Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Army	U.S. Army Natick Soldier Systems Center Michigan	Human Engineering Lab .....	50,000	50,000
Army	Detroit Arsenal New York	Substation .....	24,000	24,000
Army	Fort Drum	Railhead .....	0	21,000
Army	Fort Drum	Unmanned Aerial Vehicle Hangar .....	23,000	23,000
Army	North Carolina Fort Bragg	Dining Facility .....	12,500	12,500
Army	Oklahoma Fort Sill	Adv Individual Training Barracks Cplx, Ph2.	73,000	73,000
Army	Pennsylvania Carlisle Barracks	General Instruction Building .....	98,000	60,000
Army	South Carolina Fort Jackson	Reception Complex, Ph2 .....	54,000	54,000
Army	Texas Corpus Christi Army Depot	Powertrain Facility (Machine Shop) .....	86,000	86,000
Army	Fort Hood	Barracks .....	32,000	32,000
Army	Fort Hood	Vehicle Bridge .....	0	18,500
Army	Virginia Fort Belvoir	Secure Operations and Admin Facility ...	60,000	60,000
Army	Joint Base Langley-Eustis	Adv Individual Training Barracks Cplx, Ph4.	55,000	55,000
Army	Washington Joint Base Lewis-McChord	Information Systems Facility .....	46,000	46,000
Army	Worldwide Unspecified Unspecified Worldwide Locations	Child Development Centers .....	0	27,000
Army	Unspecified Worldwide Locations	Host Nation Support .....	31,000	31,000
Army	Unspecified Worldwide Locations	Planning and Design .....	94,099	94,099
Army	Unspecified Worldwide Locations	Unspecified Minor Construction .....	70,600	70,600
Army	Unspecified Worldwide Locations	Unspecified Worldwide Construction .....	211,000	0
<b>Military Construction, Army Total .....</b>			<b>1,453,499</b>	<b>1,270,999</b>
Navy	Arizona Marine Corps Air Station Yuma	Bachelor Enlisted Quarters .....	0	99,600
Navy	Marine Corps Air Station Yuma	Hangar 95 Renovation & Addition .....	90,160	90,160
Navy	Australia Darwin	Aircraft Parking Apron .....	0	50,000
Navy	Bahrain Island SW Asia	Electrical System Upgrade .....	53,360	0
Navy	California Camp Pendleton	62 Area Mess Hall and Consolidated Warehouse.	71,700	71,700
Navy	Camp Pendleton	I MEF Consolidated Information Center	113,869	38,869
Navy	Marine Corps Air Station Miramar	Child Development Center .....	0	37,400

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Navy	Naval Air Weapons Station China Lake	Runway & Taxiway Extension .....	64,500	64,500
Navy	Naval Air Weapons Station China Lake	Unspecified Military Construction— Earthquake Damage Recovery.	0	0
Navy	Naval Base Coronado	Aircraft Paint Complex .....	0	79,000
Navy	Naval Base Coronado	Navy V-22 Hangar .....	86,830	86,830
Navy	Naval Base San Diego	Pier 8 Replacement (Inc) .....	59,353	59,353
Navy	Naval Base San Diego	PMO Facility Repair .....	0	9,900
Navy	Naval Weapons Station Seal Beach	Ammunition Pier .....	95,310	60,310
Navy	Naval Weapons Station Seal Beach	Missile Magazine .....	0	28,000
Navy	Travis Air Force Base	Alert Force Complex .....	64,000	64,000
Navy	Connecticut Naval Submarine Base New London	SSN Berthing Pier 32 .....	72,260	72,260
Navy	District of Columbia Naval Observatory	Master Time Clocks & Operations Fac (Inc).	75,600	20,000
Navy	Florida Blount Island	Police Station and EOC Facility .....	0	18,700
Navy	Naval Air Station Jacksonville	Targeting & Surveillance Syst Prod Supp Fac.	32,420	32,420
Navy	Guam Joint Region Marianas	Bachelor Enlisted Quarters H .....	164,100	34,100
Navy	Joint Region Marianas	EOD Compound Facilities .....	61,900	61,900
Navy	Joint Region Marianas	Machine Gun Range (Inc) .....	91,287	91,287
Navy	Hawaii Marine Corps Air Station Kaneohe Bay	Bachelor Enlisted Quarters .....	13,4050	65,490
Navy	Naval Ammunition Depot West Loch	Magazine Consolidation, Phase 1 .....	53,790	53,790
Navy	Italy Naval Air Station Sigonella	Communications Station .....	77,400	0
Navy	Japan Fleet Activities Yokosuka	Pier 5 (Berths 2 and 3) .....	17,4692	100,000
Navy	Marine Corps Air Station Iwakuni	VTOL Pad—South .....	15,870	15,870
Navy	Maryland Saint Inigoes	Air Traffic Control Tower .....	0	15,000
Navy	North Carolina Camp Lejeune	10th Marines Himars Complex .....	35,110	35,110
Navy	Camp Lejeune	2nd MARDIV/2nd MLG Ops Center Re- placement.	60,130	60,130
Navy	Camp Lejeune	2nd Radio BN Complex, Phase 2 (Inc) ....	25,650	25,650
Navy	Camp Lejeune	ACV-AAV Maintenance Facility Up- grades.	11,570	11,570
Navy	Camp Lejeune	II MEF Operations Center Replacement	12,2200	92,200

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Navy	Marine Corps Air Station Cherry Point	Aircraft Maintenance Hangar (Inc) .....	73,970	73,970
Navy	Marine Corps Air Station Cherry Point	ATC Tower & Airfield Operations .....	61,340	61,340
Navy	Marine Corps Air Station Cherry Point	F-35 Training and Simulator Facility ....	53,230	53,230
Navy	Marine Corps Air Station Cherry Point	Flightline Utility Modernization (Inc) ....	51,860	51,860
Navy	Marine Corps Air Station New River	CH-53K Cargo Loading Trainer .....	11,320	11,320
Navy	Pennsylvania Philadelphia	Machinery Control Development Center	0	74,630
Navy	South Carolina Parris Island	Range Improvements & Modernization Phase 3.	0	37,200
Navy	Utah Hill Air Force Base	D5 Missile Motor Receipt/Storage Fac (Inc).	50,520	50,520
Navy	Virginia Marine Corps Base Quantico	Wargaming Center .....	143,350	33,350
Navy	Naval Station Norfolk	Mariner Skills Training Center .....	79,100	79,100
Navy	Naval Station Norfolk	MH-60 & CMV-22B Corrosion Control and Paint Facility.	0	60,000
Navy	Portsmouth Naval Shipyard	Dry Dock Flood Protection Improvements.	48,930	48,930
Navy	Yorktown Naval Weapons Station	NMC Ordnance Facilities Recapitalization Phase 1.	0	59,000
Navy	Washington Bremerton	Dry Dock 4 & Pier 3 Modernization .....	51,010	51,010
Navy	Keyport	Undersea Vehicle Maintenance Facility	25,050	25,050
Navy	Naval Base Kitsap	Seawolf Service Pier Cost-to-Complete ...	0	48,000
Navy	Worldwide Unspecified	Child Development Centers .....	0	62,400
Navy	Worldwide Locations	Planning and Design .....	167,715	167,715
Navy	Worldwide Locations	Unspecified Minor Construction .....	81,237	81,237
<b>Military Construction, Navy Total .....</b>			<b>2,805,743</b>	<b>2,774,961</b>
AF	Alaska Eielson Air Force Base	F-35 AME Storage Facility .....	8,600	8,600
AF	Arkansas Little Rock Air Force Base	C-130H/J Fuselage Trainer Facility .....	47,000	47,000
AF	Little Rock Air Force Base	Dormitory Cost-to-Complete .....	0	7,000
AF	Australia Tindal	APR-RAAF Tindal/Earth Covered Magazine.	11,600	11,600
AF	Tindal California	APR-RAAF Tindal/Bulk Storage Tanks ..	59,000	59,000

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)						
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized		
AF	Travis Air Force Base	ADAL Aerial Port Squadron Materiel Warehouse.	0	17,000		
AF	Travis Air Force Base	KC-46A Alter B181/B185/B187 Squad Ops/AMU.	6,600	6,600		
AF	Travis Air Force Base	KC-46A Regional Maintenance Training Facility.	19,500	19,500		
	Colorado					
AF	Peterson Air Force Base	SOCNORTH Theater Operational Support Facility.	0	54,000		
AF	Schriever Air Force Base	Consolidated Space Operations Facility	148,000	73,449		
AF	United States Air Force Academy	Consolidate Cadet Prep School Dormitory.	0	49,000		
	Cyprus					
AF	Royal Air Force Akrotiri	New Dormitory for 1 ERS .....	27,000	27,000		
	Georgia					
AF	Moody Air Force Base	41 RQS HH-60W Apron .....	0	12,500		
	Guam					
AF	Joint Region Marianas	Munitions Storage Igloos III .....	65,000	65,000		
	Illinois					
AF	Scott Air Force Base	Joint Operations & Mission Planning Center.	100,000	100,000		
	Japan					
AF	Yokota Air Base	Fuel Receipt & Distribution Upgrade .....	12,400	12,400		
	Jordan					
AF	Azraq	Air Traffic Control Tower .....	24,000	0		
AF	Azraq	Munitions Storage Area .....	42,000	0		
	Mariana Islands					
AF	Tinian	Airfield Development Phase 1 .....	109,000	10,000		
AF	Tinian	Fuel Tanks W/ Pipeline/Hydrant System	109,000	10,000		
AF	Tinian	Parking Apron .....	98,000	25,000		
	Maryland					
AF	Joint Base Andrews	Presidential Aircraft Recap Complex Inc 3.	86,000	86,000		
	Massachusetts					
AF	Hanscom Air Force Base	MIT-Lincoln Lab (West Lab CSL/MIF) Inc 2.	135,000	80,000		
	Missouri					
AF	Whiteman Air Force Base	Consolidated Vehicle Ops and MX Facility.	0	27,000		
	Montana					
AF	Malmstrom Air Force Base	Weapons Storage and Maintenance Facility.	235,000	59,000		
	Nevada					
AF	Nellis Air Force Base	365th ISR Group Facility .....	57,000	57,000		
AF	Nellis Air Force Base	F-35 Munitions Maintenance Facilities Cost-to-Complete.	0	3,100		
AF	Nellis Air Force Base	F-35A Munitions Assembly Conveyor Facility.	8,200	8,200		
	New Mexico					
AF	Holloman Air Force Base	NC3 Support WRM Storage/Shipping Facility.	0	20,000		
AF	Kirtland Air Force Base	Combat Rescue Helicopter Simulator (CRH) ADAL.	15,500	15,500		
AF	Kirtland Air Force Base	UH-1 Replacement Facility .....	22,400	22,400		
	North Dakota					
AF	Minot Air Force Base	Helo/Trfops/AMUfacility .....	5,500	5,500		
	Ohio					
AF	Wright-Patterson Air Force Base	ADAL Intelligence Prod. Complex (NASIC) Inc 2.	120,900	120,900		
	Texas					

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
AF	Joint Base San Antonio	AFPC B-Wing .....	0	36,000
AF	Joint Base San Antonio	Aquatics Tank .....	69,000	69,000
AF	Joint Base San Antonio	BMT Recruit Dormitory 8 .....	110,000	110,000
AF	Joint Base San Antonio	T-X ADAL Ground Based Trng Sys (GBTS) Sim.	9,300	9,300
AF	Joint Base San Antonio	T-X MX Trng Sys Centralized Trng Fac	19,000	19,000
AF	United Kingdom Royal Air Force Lakenheath	F-35A PGM Facility .....	14,300	14,300
AF	Utah Hill Air Force Base	GBSD Mission Integration Facility .....	108,000	33,000
AF	Hill Air Force Base	Joint Advanced Tactical Missile Storage Fac.	6,500	6,500
AF	Washington Fairchild Air Force Base	Consolidated TFI Base Operations .....	31,000	31,000
AF	Fairchild Air Force Base	SERE Pipeline Dormitory Cost-to-Com- plete.	0	4,800
AF	Worldwide Unspec- ified	Child Development Centers .....	0	31,500
AF	Worldwide Lo- cations	Planning and Design .....	142,148	142,148
AF	Worldwide Unspec- ified	Unspecified Minor Construction .....	79,682	79,682
AF	Wyoming F. E. Warren Air Force Base	Consolidated Helo/TRF Ops/AMU and Alert Fac.	18,100	18,100
<b>Military Construction, Air Force Total .....</b>			<b>2,179,230</b>	<b>1,723,579</b>
Def-Wide	California Beale Air Force Base	Hydrant Fuel System Replacement .....	33,700	33,700
Def-Wide	Camp Pendleton	Ambul Care Center/Dental Clinic Re- placement.	17,700	17,700
Def-Wide	Mountain View— 63 RSC	Install Microgrid Controller, 750 Kw PV, and 750 Kwh Battery Storage.	0	9,700
Def-Wide	Naval Air Weap- ons Station China Lake	Energy Storage System .....	0	8,950
Def-Wide	NSA Monterey	Cogeneration Plant at B236 .....	0	10,540
Def-Wide	CONUS Classified Classified Loca- tion	Battalion Complex, Ph 3 .....	82,200	82,200
Def-Wide	Florida Eglin Air Froce Base	SOF Combined Squadron Ops Facility ...	16,500	16,500
Def-Wide	Hurlburt Field	SOF AMU & Weapons Hangar .....	72,923	72,923
Def-Wide	Hurlburt Field	SOF Combined Squadron Operations Fa- cility.	16,513	16,513
Def-Wide	Hurlburt Field	SOF Maintenance Training Facility .....	18,950	18,950
Def-Wide	Naval Air Station Key West	SOF Watercraft Maintenance Facility ...	16,000	16,000
Def-Wide	Germany Geilenkirchen Air Base	Ambulatory Care Center/Dental Clinic ...	30,479	30,479
Def-Wide	Ramstein	Landstuhl Elementary School .....	0	66,800
	Guam			

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Def-Wide	Joint Region Marianas	Xray Wharf Refueling Facility .....	19,200	19,200
Def-Wide	Naval Base Guam	NSA Anderson Smart Grid and ICS Infrastructure.	0	16,970
Hawaii				
Def-Wide	Joint Base Pearl Harbor-Hickam	Install 500kw Covered Parking PV System & Electric Vehicle Charging Stations B479.	0	4,000
Def-Wide	Joint Base Pearl Harbor-Hickam	SOF Undersea Operational Training Facility.	67,700	67,700
Japan				
Def-Wide	Yokosuka	Kinnick High School Inc 2 .....	130,386	0
Def-Wide	Yokota Air Base	Bulk Storage Tanks PH1 .....	116,305	20,000
Def-Wide	Yokota Air Base	Pacific East District Superintendent's Office.	20,106	20,106
Maryland				
Def-Wide	Bethesda Naval Hospital	MEDCEN Addition/Altertion Incr 3 .....	96,900	33,000
Def-Wide	Fort Detrick	Medical Research Acquisition Building ..	27,846	27,846
Def-Wide	Fort Meade	NSAW Recapitalize Building #3 Inc 2 ....	426,000	426,000
Def-Wide	NSA Bethesda	Chiller 3–9 Replacement .....	0	13,840
Def-Wide	South Potomac	IH Water Project—CBIRF/IHEODTD/Housing.	0	18,460
Mississippi				
Def-Wide	Columbus Air Force Base	Fuel Facilities Replacement .....	16,800	16,800
Missouri				
Def-Wide	Fort Leonard Wood	Hospital Replacement Incr 2 .....	50,000	50,000
Def-Wide	St. Louis	Next NGA West (N2W) Complex Phase 2 Inc. 2.	218,800	118,800
New Mexico				
Def-Wide	White Sands Missile Range	Install Microgrid, 700kw PV, 150 Kw Generator, and Batteries.	0	5,800
North Carolina				
Def-Wide	Camp Lejeune	SOF Marine Raider Regiment HQ .....	13,400	13,400
Def-Wide	Fort Bragg	SOF Assessment and Selection Training Complex.	12,103	12,103
Def-Wide	Fort Bragg	SOF Human Platform-Force Generation Facility.	43,000	43,000
Def-Wide	Fort Bragg	SOF Operations Support Bldg .....	29,000	29,000
Oklahoma				
Def-Wide	Tulsa IAP	Fuels Storage Complex .....	18,900	18,900
Rhode Island				
Def-Wide	Quonset State Airport	Fuels Storage Complex Replacement .....	11,600	11,600
South Carolina				
Def-Wide	Joint Base Charleston	Medical Consolidated Storage & Distrib Center.	33,300	33,300
South Dakota				
Def-Wide	Ellsworth Air Force Base	Hydrant Fuel System Replacement .....	24,800	24,800
Texas				
Def-Wide	Camp Swift	Install Microgrid, 650KW OV, & 500 KW Generator.	0	4,500
Def-Wide	Fort Hood	Install a Central Energy Plant .....	0	16,500
Virginia				
Def-Wide	Defense Distribution Depot Richmond	Operations Center Phase 2 .....	98,800	33,000
Def-Wide	Joint Expeditionary Base Little Creek—Fort Story	SOF NSWG–10 Operations Support Facility.	32,600	32,600

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Def-Wide	Joint Expeditionary Base Little Creek—Fort Story	SOF NSWG2 JSOTF Ops Training Facility.	13,004	13,004
Def-Wide	NRO Headquarters	Intergration System Upgrades .....	0	66
Def-Wide	Pentagon	Backup Generator .....	8,670	8,670
Def-Wide	Pentagon	Control Tower & Fire Day Station .....	20,132	20,132
Def-Wide	Training Center Dam Neck Washington	SOF Demolition Training Compound Expansion.	12,770	12,770
Def-Wide	Joint Base Lewis-McChord	SOF 22 STS Operations Facility .....	47,700	47,700
Def-Wide	Naval Base Kitsap	Keyport Main Substation Replacement ..	0	23,670
Def-Wide	Wisconsin Gen Mitchell IAP	POL Facilities Replacement .....	25,900	25,900
Def-Wide	Worldwide Classified Location	Mission Support Compound .....	52,000	52,000
Def-Wide	Worldwide Unspecified	Contingency Construction .....	10,000	0
Def-Wide	Worldwide Locations	Energy Resilience and Conserv. Invest. Prog..	150,000	150,000
Def-Wide	Worldwide Locations	ERCIP Design .....	10,000	10,000
Def-Wide	Worldwide Locations	Exercise Related Minor Construction .....	11,770	11,770
Def-Wide	Worldwide Locations	Planning and Design .....	15,000	15,000
Def-Wide	Worldwide Locations	Planning and Design .....	29,679	29,679
Def-Wide	Worldwide Locations	Planning and Design .....	35,472	35,472
Def-Wide	Worldwide Locations	Planning and Design .....	4,890	4,890
Def-Wide	Worldwide Locations	Planning and Design .....	14,400	14,400
Def-Wide	Worldwide Locations	Unspecified Minor Construction .....	3,000	3,000
Def-Wide	Worldwide Locations	Unspecified Minor Construction .....	31,464	31,464
Def-Wide	Worldwide Locations	Unspecified Minor Construction .....	3,228	3,228
Def-Wide	Worldwide Locations	Unspecified Minor Construction .....	10,000	10,000
Def-Wide	Worldwide Locations	Unspecified Minor Construction .....	8,000	8,000

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Def-Wide	Unspecified Worldwide Locations	Unspecified Minor Construction .....	4,950	4,950
Def-Wide	Various Worldwide Locations	Planning and Design .....	52,532	52,532
Def-Wide	Various Worldwide Locations	Planning and Design .....	63,382	63,382
Def-Wide	Various Worldwide Locations	Planning and Design .....	27,000	27,000
Def-Wide	Various Worldwide Locations	Planning and Design: Military Installation Resiliency.	0	30,000
Def-Wide	Various Worldwide Locations	Unspecified Minor Construction .....	10,000	10,000
Def-Wide	Various Worldwide Locations	Unspecified Minor Construction .....	16,736	16,736
<b>Military Construction, Defense-Wide Total .....</b>			<b>2,504,190</b>	<b>2,267,595</b>
NATO	Worldwide Unspecified NATO Security Investment Program	NATO Security Investment Program .....	144,040	144,040
<b>NATO Security Investment Program Total .....</b>			<b>144,040</b>	<b>144,040</b>
Army NG	Alabama Anniston Army Depot	Enlisted Transient Barracks .....	0	34,000
Army NG	California Foley	National Guard Readiness Center .....	12,000	12,000
Army NG	California Camp Roberts	Automated Multipurpose Machine Gun Range.	12,000	12,000
Army NG	Idaho Orchard Combat Training Center	Railroad Tracks .....	29,000	29,000
Army NG	Maryland Havre de Grace	Combined Support Maintenance Shop .....	12,000	12,000
Army NG	Massachusetts Camp Edwards	Automated Multipurpose Machine Gun Range.	9,700	9,700
Army NG	Minnesota New Ulm	National Guard Vehicle Maintenance Shop.	11,200	11,200
Army NG	Mississippi Camp Shelby	Automated Multipurpose Machine Gun Range.	8,100	8,100
Army NG	Missouri Springfield	National Guard Readiness Center .....	12,000	12,000
Army NG	Nebraska Bellevue	National Guard Readiness Center .....	29,000	29,000
Army NG	New Hampshire Concord	National Guard Readiness Center .....	5,950	5,950
Army NG	New York Jamaica Armory	National Guard Readiness Center .....	0	91,000
Army NG	Pennsylvania Moon Township	Combined Support Maintenance Shop .....	23,000	23,000
Army NG	Vermont Jericho	General Instruction Building .....	0	30,000
Army NG	Washington Richland	National Guard Readiness Center .....	11,400	11,400
Army NG	Worldwide Unspecified Unspecified Worldwide Locations	Planning and Design .....	20,469	20,469



SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
Army NG	Unspecified Worldwide Locations	Unspecified Minor Construction .....	15,000	15,000
<b>Military Construction, Army National Guard Total .....</b>			<b>210,819</b>	<b>365,819</b>
Army Res	Delaware Newark	Army Reserve Center/BMA .....	21,000	21,000
Army Res	Wisconsin Fort McCoy	Transient Training Barracks .....	25,000	25,000
Army Res	Worldwide Unspecified	Planning and Design .....	6,000	6,000
Army Res	Worldwide Locations	Unspecified Minor Construction .....	8,928	8,928
<b>Military Construction, Army Reserve Total .....</b>			<b>60,928</b>	<b>60,928</b>
N/MC Res	Louisiana New Orleans	Entry Control Facility Upgrades .....	25,260	25,260
N/MC Res	Worldwide Unspecified	Planning and Design .....	4,780	4,780
N/MC Res	Worldwide Locations	Unspecified Minor Construction .....	24,915	24,915
<b>Military Construction, Naval Reserve Total .....</b>			<b>54,955</b>	<b>54,955</b>
Air NG	California Moffett Air National Guard Base	Fuels/Corrosion Control Hanger and Shops.	0	57,000
Air NG	Georgia Savannah/Hilton Head IAP	Consolidated Joint Air Dominance Hangar/Shops.	24,000	24,000
Air NG	Missouri Rosecrans Memorial Airport	C–130 Flight Simulator Facility .....	9,500	9,500
Air NG	Puerto Rico Luis Munoz-Marin IAP	Communications Facility .....	12,500	12,500
Air NG	Luis Munoz-Marin IAP	Maintenance Hangar .....	37,500	36,000
Air NG	Wisconsin Truax Field	F–35 Simulator Facility .....	14,000	14,000
Air NG	Worldwide Unspecified	Fighter Alert Shelters .....	20,000	20,000
Air NG	Worldwide Locations	Unspecified Minor Construction .....	31,471	31,471
Air NG	Various Worldwide Locations	Planning and Design .....	17,000	17,000
<b>Military Construction, Air National Guard Total .....</b>			<b>165,971</b>	<b>221,471</b>
AF Res	Georgia Robins Air Force Base	Consolidated Mission Complex Phase 3	43,000	43,000
	Maryland			

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
AF Res	Joint Base Andrews Minnesota	AES Training Admin Facility .....	0	15,000
AF Res	Minneapolis-St.paul IAP	Aerial Port Facility .....	0	9,800
AF Res	Worldwide Unspecified	Planning and Design .....	4,604	4,604
AF Res	Worldwide Locations	Unspecified Minor Construction .....	12,146	12,146
<b>Military Construction, Air Force Reserve Total .....</b>			<b>59,750</b>	<b>84,550</b>
FH Con Army	Germany Baumholder	Family Housing Improvements .....	29,983	29,983
FH Con Army	Korea Camp Humphreys	Family Housing New Construction Incr 4.	83,167	83,167
FH Con Army	Pennsylvania Tobyhanna Army Depot	Family Housing Replacement Construction.	19,000	19,000
FH Con Army	Worldwide Unspecified	Family Housing P & D .....	9,222	14,222
<b>Family Housing Construction, Army Total .....</b>			<b>141,372</b>	<b>146,372</b>
FH Ops Army	Worldwide Unspecified	Furnishings .....	24,027	24,027
FH Ops Army	Worldwide Locations	Housing Privatization Support .....	18,627	63,627
FH Ops Army	Worldwide Locations	Leasing .....	128,938	128,938
FH Ops Army	Worldwide Locations	Maintenance .....	81,065	135,798
FH Ops Army	Worldwide Locations	Management .....	38,898	38,898
FH Ops Army	Worldwide Locations	Miscellaneous .....	484	484
FH Ops Army	Worldwide Locations	Services .....	10,156	10,156
FH Ops Army	Worldwide Locations	Utilities .....	55712	55712
<b>Family Housing Operation And Maintenance, Army Total .....</b>			<b>357,907</b>	<b>457,640</b>
FH Con Navy	Worldwide Unspecified	Construction Improvements .....	41,798	41,798
	Worldwide Locations			

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
FH Con Navy	Unspecified Worldwide Locations	Planning & Design .....	3,863	3,863
FH Con Navy	Unspecified Worldwide Locations	USMC DPRI/Guam Planning and Design.	2,000	2,000
<b>Family Housing Construction, Navy And Marine Corps Total .....</b>			<b>47,661</b>	<b>47,661</b>
FH Ops Navy	Worldwide Unspecified Worldwide Locations	Furnishings .....	19,009	19,009
FH Ops Navy	Unspecified Worldwide Locations	Housing Privatization Support .....	21,975	81,575
FH Ops Navy	Unspecified Worldwide Locations	Leasing .....	64,126	64,126
FH Ops Navy	Unspecified Worldwide Locations	Maintenance .....	82,611	137,344
FH Ops Navy	Unspecified Worldwide Locations	Management .....	50,122	50,122
FH Ops Navy	Unspecified Worldwide Locations	Miscellaneous .....	151	151
FH Ops Navy	Unspecified Worldwide Locations	Services .....	16,647	16,647
FH Ops Navy	Unspecified Worldwide Locations	Utilities .....	63,229	63,229
<b>Family Housing Operation And Maintenance, Navy And Marine Corps Total.</b>			<b>317,870</b>	<b>432,203</b>
FH Con AF	Germany Spangdahlem Air Base	Construct Deficit Military Family Housing.	53,584	53,584
FH Con AF	Worldwide Unspecified Worldwide Locations	Construction Improvements .....	46,638	46,638
FH Con AF	Unspecified Worldwide Locations	Planning & Design .....	3,409	3,409
<b>Family Housing Construction, Air Force Total .....</b>			<b>103,631</b>	<b>103,631</b>
FH Ops AF	Worldwide Unspecified Worldwide Locations	Furnishings .....	30,283	30,283
FH Ops AF	Unspecified Worldwide Locations	Housing Privatization .....	22,593	53,793
FH Ops AF	Unspecified Worldwide Locations	Leasing .....	15,768	15,768
FH Ops AF	Unspecified Worldwide Locations	Maintenance .....	117,704	172,437

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
FH Ops AF	Unspecified Worldwide Locations	Management .....	56,022	56,022
FH Ops AF	Unspecified Worldwide Locations	Miscellaneous .....	2,144	2,144
FH Ops AF	Unspecified Worldwide Locations	Services .....	7,770	7,770
FH Ops AF	Unspecified Worldwide Locations	Utilities .....	42,732	42,732
<b>Family Housing Operation And Maintenance, Air Force Total .....</b>			<b>295,016</b>	<b>380,949</b>
FH Ops DW	Worldwide Unspecified Worldwide Locations	Furnishings .....	82	82
FH Ops DW	Unspecified Worldwide Locations	Furnishings .....	645	645
FH Ops DW	Unspecified Worldwide Locations	Leasing .....	12,906	12,906
FH Ops DW	Unspecified Worldwide Locations	Leasing .....	39,222	39,222
FH Ops DW	Unspecified Worldwide Locations	Maintenance .....	32	32
FH Ops DW	Unspecified Worldwide Locations	Utilities .....	13	13
FH Ops DW	Unspecified Worldwide Locations	Utilities .....	4,100	4,100
<b>Family Housing Operation And Maintenance, Defense-Wide Total ...</b>			<b>57,000</b>	<b>57,000</b>
FHIF	Worldwide Unspecified Worldwide Locations	Administrative Expenses—FHIF .....	3,045	3,045
<b>DOD Family Housing Improvement Fund Total .....</b>			<b>3,045</b>	<b>3,045</b>
UHIF	Worldwide Unspecified Worldwide Locations	Administrative Expenses—UHIF .....	500	500
<b>Unaccompanied Housing Improvement Fund Total .....</b>			<b>500</b>	<b>500</b>
BRAC	Worldwide Unspecified Locations	Base Realignment and Closure .....	66,111	94,111
<b>Base Realignment and Closure—Army Total .....</b>			<b>66,111</b>	<b>94,111</b>
Worldwide Unspecified				

SEC. 4601. MILITARY CONSTRUCTION (In Thousands of Dollars)				
Account	State/Country and Installation	Project Title	FY 2020 Request	Conference Authorized
BRAC	Unspecified Worldwide Locations	Base Realignment & Closure .....	158,349	216,349
<b>Base Realignment and Closure—Navy Total .....</b>			<b>158,349</b>	<b>216,349</b>
BRAC	Worldwide Unspecified Unspecified Worldwide Locations	Dod BRAC Activities—Air Force .....	54,066	82,066
<b>Base Realignment and Closure—Air Force Total .....</b>			<b>54,066</b>	<b>82,066</b>
PYS	Prior Year Savings Prior Year Savings	Prior Year Savings .....	0	-64685
<b>Prior Year Savings Total .....</b>			<b>0</b>	<b>-64,685</b>
<b>Total, Military Construction .....</b>			<b>11,241,653</b>	<b>10,925,739</b>

**SEC. 4602. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS.**

SEC. 4602. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS (In Thousands of Dollars)				
Service	State/Country and Installation	Project	FY 2020 Request	Conference Authorized
Army	Guantanamo Bay, Cuba Guantanamo Bay Naval Station	OCO: Communications Facility .....	22,000	22,000
Army	Guantanamo Bay Naval Station	OCO: Detention Legal Office and Comms Ctr.	11,800	11,800
Army	Guantanamo Bay Naval Station	OCO: High Value Detention Facility .....	88,500	0
Army	Worldwide Unspecified Unspecified Worldwide Locations	EDI/OCO Planning and Design .....	19,498	19,498
Army	Unspecified Worldwide Locations	EDI: Bulk Fuel Storage .....	36,000	36,000
Army	Unspecified Worldwide Locations	EDI: Information Systems Facility .....	6,200	6,200
Army	Unspecified Worldwide Locations	EDI: Minor Construction .....	5,220	5,220
Army	Unspecified Worldwide Locations	Unspecified Worldwide Construction .....	9,200,000	0
Army	Various Worldwide Locations	EDI: Various Worldwide Locations Europe ..	0	36,212
<b>Military Construction, Army Total .....</b>			<b>9,389,218</b>	<b>136,930</b>
Navy	Bahrain SW Asia	Electrical System Upgrade .....	0	53,360
Navy	Italy Sigonella	Communications Station .....	0	77,400
Navy	Spain Rota	EDI: In-Transit Munitions Facility .....	9,960	9,960
Navy	Rota	EDI: Joint Mobility Center .....	46,840	46,840
Navy	Rota	EDI: Small Craft Berthing Facility .....	12,770	12,770
Navy	Worldwide Unspecified Unspecified Worldwide Locations	Planning and Design .....	25,000	25,000
Navy	Various Worldwide Locations	EDI: Various Worldwide Locations Europe ..	0	36,211

**SEC. 4602. MILITARY CONSTRUCTION FOR OVERSEAS CONTINGENCY OPERATIONS**  
(In Thousands of Dollars)

Service	State/Country and Installation	Project	FY 2020 Request	Conference Authorized
		Military Construction, Navy Total .....	94,570	261,541
	Iceland			
AF	Keflavik	EDI: Airfield Upgrades—Dangerous Cargo Pad.	18,000	18,000
AF	Keflavik	EDI: Beddown Site Prep .....	7,000	7,000
AF	Keflavik	EDI: Expand Parking Apron .....	32,000	32,000
	Jordan			
AF	Azraq	Air Traffic Control Tower .....	0	24,000
AF	Azraq	Munitions Storage Area .....	0	42,000
	Spain			
AF	Moron	EDI: Hot Cargo Pad .....	8,500	8,500
	Worldwide Unspecified			
AF	Unspecified	Planning & Design .....	0	60,000
AF	Unspecified World-wide Locations	EDI: ECAOS DABS/FEV EMEDS Storage ...	107,000	107,000
AF	Unspecified World-wide Locations	EDI: Hot Cargo Pad .....	29,000	29,000
AF	Unspecified World-wide Locations	EDI: Munitions Storage Area .....	39,000	39,000
AF	Various Worldwide Locations	EDI: Various Worldwide Locations Europe ..	0	36,211
AF	Various Worldwide Locations	EDI: P&D .....	61,438	61,438
AF	Various Worldwide Locations	EDI: UMMC .....	12,800	12,800
		Military Construction, Air Force Total .....	314,738	476,949
	Germany			
Def-Wide	Gemersheim	EDI: Logistics Distribution Center Annex ...	46,000	46,000
		Military Construction, Defense-Wide Total .....	46,000	46,000
		<b>Total, Military Construction .....</b>	<b>9,844,526</b>	<b>921,420</b>

**SEC. 4603. MILITARY CONSTRUCTION FOR EMERGENCY REQUIREMENTS.**

**SEC. 4603. MILITARY CONSTRUCTION FOR EMERGENCY REQUIREMENTS**  
(In Thousands of Dollars)

Service	State/Country and Installation	Project	FY 2020 Request	Conference Authorized
	California			
Navy	Naval Air Weapons Station China Lake	Planning and Design .....	0	89,320
Navy	Naval Air Weapons Station China Lake	Hanger 3 Replacement, Apron, Taxiway & Utilities for RDT&E.	0	514,600
Navy	Naval Air Weapons Station China Lake	Aircraft Parking Apron in Support of Hanger 2 Replacement.	0	50,800
Navy	Naval Air Weapons Station China Lake	Michelson Mission Systems Intergration Laboratory.	0	202,340
Navy	Naval Air Weapons Station China Lake	Magazines & Inert Storage Facility .....	0	138,930
Navy	Naval Air Weapons Station China Lake	Air Operations Facility & Air Traffic Control Tower.	0	70,900
Navy	Naval Air Weapons Station China Lake	Community Support Facilities .....	0	85,790
	North Carolina			
Navy	Camp Lejeune	Courthouse Bay Fire Station Replacement ..	0	21,336
Navy	Camp Lejeune	Hadnot Point Fire Station Replacement .....	0	21,931
Navy	Camp Lejeune	Hadnot Point Mess Hall Replacement .....	0	66,023
Navy	Camp Lejeune	II MEF Simulation/Training Center Replacement.	0	74,487

SEC. 4603. MILITARY CONSTRUCTION FOR EMERGENCY REQUIREMENTS (In Thousands of Dollars)				
Service	State/Country and Installation	Project	FY 2020 Request	Conference Authorized
Navy	Camp Lejeune	LOGCOM CSP Warehouse Replacement .....	0	35,874
Navy	Camp Lejeune	LSSS Facility Replacement .....	0	26,815
Navy	Camp Lejeune	MC Advisor Battalion HQS Replacement .....	0	30,109
Navy	Camp Lejeune	MCCSSS Log Ops School .....	0	179,617
Navy	Camp Lejeune	MCES Applied Instruction Facility Replacement.	0	95,599
Navy	Camp Lejeune	NCIS Facilities Replacement .....	0	22,594
Navy	Camp Lejeune	PMO Facility Replacement .....	0	34,718
Navy	Camp Lejeune	WTBN Headquarters Replacement .....	0	18,644
Navy	MCAS Cherry Point	Physical Security Compliance .....	0	52,300
Navy	MCAS Cherry Point	BT–11 Range Operations Center Replacement.	0	14,251
Navy	MCAS New River	C–12W Aircraft Maintenance Hangar Replacement.	0	36,295
Navy	MCAS New River	Bachelor Enlisted Quarters Replacement ....	0	62,104
Navy	MCAS New River	CNATT Classroom Building Replacement ...	0	114,706
Navy	MCAS New River	CH–53K Maintenance Hangar Replacement	0	252,717
Military Construction, Navy Total .....			0	2,312,800
Florida				
AF	Tyndall Air Force Base	325th Fighting Wing HQ Facility .....	0	38,000
AF	Tyndall Air Force Base	Aerospace & Operational Physiology Facility.	0	12,000
AF	Tyndall Air Force Base	Aircraft MX Fuel Cell Hangar .....	0	37,000
AF	Tyndall Air Force Base	Aircraft Wash Rack .....	0	9,100
AF	Tyndall Air Force Base	Airfield Drainage .....	0	144,000
AF	Tyndall Air Force Base	Auxiliary Ground Equipment Facility .....	0	22,000
AF	Tyndall Air Force Base	Chapel .....	0	26,000
AF	Tyndall Air Force Base	Community Commons Facility .....	0	64,000
AF	Tyndall Air Force Base	Deployment Center/Flight Line Dining/AAFES.	0	43,000
AF	Tyndall Air Force Base	Dorm Complex Phase 1 .....	0	145,000
AF	Tyndall Air Force Base	Dorm Complex Phase 2 .....	0	131,000
AF	Tyndall Air Force Base	Emergency Management, EOC, Alt CP .....	0	20,000
AF	Tyndall Air Force Base	Flightline—Muns Storage, 7000 Area .....	0	36,000
AF	Tyndall Air Force Base	Lodging Facilities Phase 1 .....	0	90,000
AF	Tyndall Air Force Base	Lodging Facilities Phase 2 .....	0	89,000
AF	Tyndall Air Force Base	Operations Group/Maintenance Group HQ ..	0	24,000
AF	Tyndall Air Force Base	Ops/Aircraft Maintenance Unit/Hangar #2 ..	0	74,000
AF	Tyndall Air Force Base	Ops/Aircraft Maintenance Unit/Hangar #3 ..	0	75,000
AF	Tyndall Air Force Base	OSS/Radar Approach Control Facility .....	0	37,000
AF	Tyndall Air Force Base	Planning and Design .....	0	52,400
AF	Tyndall Air Force Base	Security Forces Mobility Storage Facility ....	0	6,700
AF	Tyndall Air Force Base	Simulator Facility .....	0	38,000
AF	Tyndall Air Force Base	Site Development, Utilities & Demo Phase 2	0	141,000

SEC. 4603. MILITARY CONSTRUCTION FOR EMERGENCY REQUIREMENTS (In Thousands of Dollars)				
Service	State/Country and Installation	Project	FY 2020 Request	Conference Authorized
AF	Tyndall Air Force Base	Small Arms Range .....	0	26,000
AF	Tyndall Air Force Base	Special Purpose Vehicle Maintenance .....	0	20,000
AF	Tyndall Air Force Base	Tyndall AFB Gate Complexes .....	0	75,000
AF	Tyndall Air Force Base	Weapons Load Training Hangar .....	0	25,000
	Nebraska			
AF	Offutt Air Force Base	Emergency Power Microgrid .....	0	43,000
AF	Offutt Air Force Base	Flightline Hangars Campus .....	0	10,000
AF	Offutt Air Force Base	Lake Campus .....	0	6,000
AF	Offutt Air Force Base	Logistics Readiness Squadron Campus .....	0	18,500
AF	Offutt Air Force Base	Security Campus .....	0	63,000
	Virginia			
AF	Joint Base Langley-Eustis	Dormitory .....	0	31,000
	Military Construction, Air Force Total .....		0	1,671,700
	North Carolina			
Def-Wide	Camp Lejeune	Ambulatory Care Center (Camp Geiger) .....	0	17,821
Def-Wide	Camp Lejeune	Ambulatory Care Center (Camp Johnson) .....	0	27,492
Def-Wide	Camp Lejeune	MARSOC ITC Team Facility Replacement .....	0	30,000
	Military Construction, Defense-Wide Total .....		0	75,313
	Louisiana			
Army NG	Pineville	National Guard Readiness Center .....	0	16,500
	Nebraska			
Army NG	Ashland	Training Site, Various Facilities .....	0	35,000
Army NG	Ashland	Flood Control Levee/Floodwall .....	0	8,500
	Military Construction, Army National Guard Total .....		0	60,000
	<b>Total, Military Construction</b> .....		<b>0</b>	<b>4,119,813</b>

## TITLE XLVII—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Sec. 4701. Department of Energy national security programs.

### SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS.

SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)			
Program	FY 2020 Request	Conference Authorized	
<b>Discretionary Summary By Appropriation</b>			
<b>Energy And Water Development, And Related Agencies</b>			
<b>Appropriation Summary:</b>			
<b>Energy Programs</b>			
Nuclear Energy .....	137,808	137,808	
<b>Atomic Energy Defense Activities</b>			
<b>National nuclear security administration:</b>			
Weapons activities .....	12,408,603	12,444,780	
Defense nuclear nonproliferation .....	1,993,302	2,020,814	



SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)		
Program	FY 2020 Request	Conference Authorized
Naval reactors .....	1,648,396	1,633,396
Federal salaries and expenses .....	434,699	434,699
<b>Total, National nuclear security administration</b>	<b>16,485,000</b>	<b>16,533,689</b>
<b>Environmental and other defense activities:</b>		
Defense environmental cleanup .....	5,506,501	5,527,732
Other defense activities .....	1,035,339	885,839
Defense nuclear waste disposal .....	26,000	0
<b>Total, Environmental &amp; other defense activities</b>	<b>6,567,840</b>	<b>6,413,571</b>
<b>Total, Atomic Energy Defense Activities</b> .....	<b>23,052,840</b>	<b>22,947,260</b>
<b>Total, Discretionary Funding</b> .....	<b>23,190,648</b>	<b>23,085,068</b>
<b>Nuclear Energy</b>		
Idaho sitewide safeguards and security .....	137,808	137,808
<b>Total, Nuclear Energy</b> .....	<b>137,808</b>	<b>137,808</b>
<b>Weapons Activities</b>		
<b>Directed stockpile work</b>		
<b>Life extension programs and major alterations</b>		
B61–12 Life extension program .....	792,611	792,611
W76–2 Modification program .....	10,000	10,000
W88 Alt 370 .....	304,186	304,186
W80–4 Life extension program .....	898,551	898,551
W87–1 Modification Program (formerly IW1) .....	112,011	112,011
<b>Total, Life extension programs and major alterations</b> .....	<b>2,117,359</b>	<b>2,117,359</b>
<b>Stockpile systems</b>		
B61 Stockpile systems .....	71,232	71,232
W76 Stockpile systems .....	89,804	89,804
W78 Stockpile systems .....	81,299	81,299
W80 Stockpile systems .....	85,811	85,811
B83 Stockpile systems .....	51,543	51,543
W87 Stockpile systems .....	98,262	98,262
W88 Stockpile systems .....	157,815	157,815
<b>Total, Stockpile systems</b> .....	<b>635,766</b>	<b>635,766</b>
<b>Weapons dismantlement and disposition</b>		
Operations and maintenance .....	47,500	47,500
<b>Program increase</b>		
<b>Stockpile services</b>		
Production support .....	543,964	543,964
Research and development support .....	39,339	39,339
R&D certification and safety .....	236,235	236,235
Management, technology, and production .....	305,000	305,000
<b>Total, Stockpile services</b> .....	<b>1,124,538</b>	<b>1,124,538</b>
<b>Strategic materials</b>		
Uranium sustainment .....	94,146	94,146
Plutonium sustainment .....	712,440	712,440
Tritium sustainment .....	269,000	269,000
Lithium sustainment .....	28,800	28,800
Domestic uranium enrichment .....	140,000	140,000
Strategic materials sustainment .....	256,808	256,808
<b>Total, Strategic materials</b> .....	<b>1,501,194</b>	<b>1,501,194</b>
<b>Total, Directed stockpile work</b> .....	<b>5,426,357</b>	<b>5,426,357</b>
<b>Research, development, test and evaluation (RDT&amp;E)</b>		

SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)		
Program	FY 2020 Request	Conference Authorized
<b>Science</b>		
Advanced certification .....	57,710	57,710
Primary assessment technologies .....	95,169	95,169
Dynamic materials properties .....	133,800	133,800
Advanced radiography .....	32,544	32,544
Secondary assessment technologies .....	77,553	77,553
Academic alliances and partnerships .....	44,625	44,625
Enhanced Capabilities for Subcritical Experiments ...	145,160	145,160
<b>Total, Science</b> .....	<b>586,561</b>	<b>586,561</b>
<b>Engineering</b>		
Enhanced surety .....	46,500	46,500
Delivery Environments (formerly Weapons Systems Engineering Assessment Technology) .....	35,945	35,945
Nuclear survivability .....	53,932	53,932
Enhanced surveillance .....	57,747	57,747
Stockpile Responsiveness .....	39,830	80,630
Program expansion .....		[40,800]
<b>Total, Engineering</b> .....	<b>233,954</b>	<b>274,754</b>
<b>Inertial confinement fusion ignition and high yield</b>		
Ignition and Other Stockpile Programs .....	55,649	55,649
Diagnostics, cryogenics and experimental support .....	66,128	66,128
Pulsed power inertial confinement fusion .....	8,571	8,571
Joint program in high energy density laboratory plasmas .....	12,000	12,000
Facility operations and target production .....	338,247	343,247
Program increase .....		[5,000]
<b>Total, Inertial confinement fusion and high yield</b> ....	<b>480,595</b>	<b>485,595</b>
<b>Advanced simulation and computing</b>		
Advanced simulation and computing .....	789,849	789,849
<b>Construction:</b>		
18–D–620, Exascale Computing Facility Mod- ernization Project, LLNL .....	50,000	50,000
<b>Total, Construction</b> .....	<b>50,000</b>	<b>50,000</b>
<b>Total, Advanced simulation and computing</b> .....	<b>839,849</b>	<b>839,849</b>
<b>Advanced manufacturing</b>		
Additive manufacturing .....	18,500	18,500
Component manufacturing development .....	48,410	52,000
UFR list—technology maturation .....		[3,590]
Process technology development .....	69,998	69,998
<b>Total, Advanced manufacturing</b> .....	<b>136,908</b>	<b>140,498</b>
<b>Total, RDT&amp;E</b> .....	<b>2,277,867</b>	<b>2,327,257</b>
<b>Infrastructure and operations</b>		
Operations of facilities .....	905,000	905,000
Safety and environmental operations .....	119,000	119,000
Maintenance and repair of facilities .....	456,000	456,000
<b>Recapitalization:</b>		
Infrastructure and safety .....	447,657	447,657
Capability based investments .....	135,341	135,341
<b>Total, Recapitalization</b> .....	<b>582,998</b>	<b>582,998</b>
<b>Construction:</b>		
19–D–670, 138kV Power Transmission System Re- placement, NNSS .....	6,000	6,000
18–D–690, Lithium Processing Facility, Y–12 (for- merly Lithium Production Capability, Y–12) .....	32,000	32,000

SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)		
Program	FY 2020 Request	Conference Authorized
18–D–650, Tritium Finishing Facility, SRS .....	27,000	27,000
17–D–640, U1a Complex Enhancements Project, NNSS .....	35,000	35,000
15–D–612, Emergency Operations Center, LLNL .....	5,000	5,000
15–D–611, Emergency Operations Center, SNL .....	4,000	4,000
15–D–301, HE Science & Engineering Facility, PX ....	123,000	123,000
06–D–141 Uranium processing facility Y–12, Oak Ridge, TN .....	745,000	745,000
04–D–125, Chemistry and Metallurgy Research Replacement Project, LANL .....	168,444	168,444
<b>Total, Construction</b> .....	<b>1,145,444</b>	<b>1,145,444</b>
<b>Total, Infrastructure and operations</b> .....	<b>3,208,442</b>	<b>3,208,442</b>
<b>Secure transportation asset</b>		
Operations and equipment .....	209,502	209,502
Program direction .....	107,660	107,660
<b>Total, Secure transportation asset</b> .....	<b>317,162</b>	<b>317,162</b>
<b>Defense nuclear security</b>		
Operations and maintenance .....	778,213	765,000
Excess to need .....		[–13,213]
<b>Total, Defense nuclear security</b> .....	<b>778,213</b>	<b>765,000</b>
Information technology and cybersecurity .....	309,362	309,362
Legacy contractor pensions .....	91,200	91,200
<b>Total, Weapons Activities</b> .....	<b>12,408,603</b>	<b>12,444,780</b>
<b>Defense Nuclear Nonproliferation</b>		
<b>Defense Nuclear Nonproliferation Programs</b>		
<b>Global material security</b>		
International nuclear security .....	48,839	48,839
Domestic radiological security .....	90,513	90,513
International radiological security .....	60,827	78,907
Secure additional radiologic materials .....		[18,080]
Nuclear smuggling detection and deterrence .....	142,171	142,171
<b>Total, Global material security</b> .....	<b>342,350</b>	<b>360,430</b>
<b>Material management and minimization</b>		
HEU reactor conversion .....	114,000	99,000
Program decrease .....		[–15,000]
Nuclear material removal .....	32,925	32,925
Material disposition .....	186,608	186,608
<b>Total, Material management &amp; minimization</b> .....	<b>333,533</b>	<b>318,533</b>
Nonproliferation and arms control .....	137,267	137,267
Defense nuclear nonproliferation R&D .....	495,357	499,789
Additional verification and detection effort .....		[4,432]
<b>Nonproliferation Construction:</b>		
18–D–150 Surplus Plutonium Disposition Project .....	79,000	79,000
99–D–143 Mixed Oxide (MOX) Fuel Fabrication Facility, SRS .....	220,000	220,000
Low-enriched uranium research and development .....	0	20,000
Program increase .....		[20,000]
<b>Total, Nonproliferation construction</b> .....	<b>299,000</b>	<b>299,000</b>
<b>Total, Defense Nuclear Nonproliferation Programs</b> .....	<b>1,607,507</b>	<b>1,635,019</b>
Legacy contractor pensions .....	13,700	13,700

SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)		
Program	FY 2020 Request	Conference Authorized
Nuclear counterterrorism and incident response program .....	372,095	372,095
DPRK phased denuclearization long-term monitoring and verification .....	0	
<b>Total, Defense Nuclear Nonproliferation .....</b>	<b>1,993,302</b>	<b>2,020,814</b>
<b>Naval Reactors</b>		
Naval reactors development .....	531,205	516,205
Unjustified growth .....		[-15,000]
Columbia-Class reactor systems development .....	75,500	75,500
SSG Prototype refueling .....	155,000	155,000
Naval reactors operations and infrastructure .....	553,591	553,591
<b>Construction:</b>		
20-D-931, KL Fuel Development Laboratory .....	23,700	23,700
19-D-930, KS Overhead Piping .....	20,900	20,900
14-D-901 Spent fuel handling recapitalization project, NRF .....	238,000	238,000
<b>Total, Construction .....</b>	<b>282,600</b>	<b>282,600</b>
Program direction .....	50,500	50,500
<b>Total, Naval Reactors .....</b>	<b>1,648,396</b>	<b>1,633,396</b>
<b>Federal Salaries And Expenses</b>		
Program direction .....	434,699	434,699
<b>Total, Office Of The Administrator .....</b>	<b>434,699</b>	<b>434,699</b>
<b>Defense Environmental Cleanup</b>		
<b>Closure sites:</b>		
Closure sites administration .....	4,987	4,987
<b>Richland:</b>		
River corridor and other cleanup operations .....	139,750	139,750
Central plateau remediation .....	472,949	522,949
Program increase .....		[50,000]
Richland community and regulatory support .....	5,121	5,121
<b>Construction:</b>		
18-D-404 WESF Modifications and Capsule Storage .....	11,000	11,000
<b>Total, Construction .....</b>	<b>11,000</b>	<b>11,000</b>
<b>Total, Hanford site .....</b>	<b>628,820</b>	<b>678,820</b>
<b>Office of River Protection:</b>		
Waste Treatment Immobilization Plant Commissioning ...	15,000	15,000
Rad liquid tank waste stabilization and disposition .....	677,460	705,460
Program increase .....		[28,000]
<b>Construction:</b>		
18-D-16 Waste treatment and immobilization plant—LBL/Direct feed LAW .....	640,000	640,000
01-D-16 D, High-level waste facility .....	30,000	25,000
Program decrease .....		[-5,000]
01-D-16 E—Pretreatment Facility .....	20,000	15,000
Program decrease .....		[-5,000]
<b>Total, Construction .....</b>	<b>690,000</b>	<b>680,000</b>
ORP Low-level waste offsite disposal .....	10,000	10,000
<b>Total, Office of River Protection .....</b>	<b>1,392,460</b>	<b>1,410,460</b>
<b>Idaho National Laboratory:</b>		

SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)		
Program	FY 2020 Request	Conference Authorized
Idaho cleanup and waste disposition .....	331,354	331,354
Idaho community and regulatory support .....	3,500	3,500
<b>Total, Idaho National Laboratory .....</b>	<b>334,854</b>	<b>334,854</b>
<b>NNSA sites and Nevada off-sites</b>		
Lawrence Livermore National Laboratory .....	1,727	1,727
LLNL Excess facilities D&D .....	128,000	55,000
Program decrease .....		[-73,000]
<b>Nuclear facility D &amp; D</b>		
Separations Process Research Unit .....	15,300	15,300
Nevada .....	60,737	60,737
Sandia National Laboratories .....	2,652	2,652
Los Alamos National Laboratory .....	195,462	195,462
<b>Total, NNSA sites and Nevada off-sites .....</b>	<b>403,878</b>	<b>330,878</b>
<b>Oak Ridge Reservation:</b>		
OR Nuclear facility D & D .....	93,693	93,693
<b>Total, OR Nuclear facility D &amp; D .....</b>	<b>93,693</b>	<b>93,693</b>
U233 Disposition Program .....	45,000	45,000
<b>OR cleanup and waste disposition</b>		
OR cleanup and disposition .....	82,000	82,000
<b>Construction:</b>		
17-D-401 On-site waste disposal facility .....	15,269	10,000
Program decrease .....		[-5,269]
14-D-403 Outfall 200 Mercury Treatment Facility .....	49,000	49,000
<b>Total, Construction .....</b>	<b>64,269</b>	<b>59,000</b>
<b>Total, OR cleanup and waste disposition .....</b>	<b>146,269</b>	<b>141,000</b>
OR community & regulatory support .....	4,819	4,819
OR technology development and deployment .....	3,000	3,000
<b>Total, Oak Ridge Reservation .....</b>	<b>292,781</b>	<b>287,512</b>
<b>Savannah River Sites:</b>		
<b>Savannah River risk management operations</b>		
Savannah River risk management operations .....	490,613	515,613
<b>Construction:</b>		
18-D-402, Emergency Operations Center .....	6,792	6,792
<b>Total, risk management operations .....</b>	<b>497,405</b>	<b>522,405</b>
SR community and regulatory support .....	4,749	11,249
Radioactive liquid tank waste stabilization and disposition .....	797,706	797,706
<b>Construction:</b>		
20-D-402 Advanced Manufacturing Collaborative Facility (AMC) .....	50,000	50,000
20-D-401 Saltstone Disposal Unit #10, 11, 12 .....	500	500
19-D-701 SR Security sytem replacement .....	0	
18-D-402 Saltstone Disposal Unit #8/9 .....	51,750	51,750
17-D-402 Saltstone Disposal Unit #7 .....	40,034	40,034
05-D-405 Salt waste processing facility, Savannah River Site .....	20,988	20,988
<b>Total, Construction .....</b>	<b>163,272</b>	<b>163,272</b>
<b>Total, Savannah River site .....</b>	<b>1,463,132</b>	<b>1,494,632</b>
<b>Waste Isolation Pilot Plant</b>		
Waste Isolation Pilot Plant .....	299,088	299,088

SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars)		
Program	FY 2020 Request	Conference Authorized
<b>Construction:</b>		
15-D-411 Safety significant confinement ventilation system, WIPP .....	58,054	58,054
15-D-412 Exhaust shaft, WIPP .....	34,500	34,500
<b>Total, Construction</b> .....	<b>92,554</b>	<b>92,554</b>
<b>Total, Waste Isolation Pilot Plant</b> .....	<b>391,642</b>	<b>391,642</b>
Program direction .....	278,908	278,908
Program support .....	12,979	12,979
<b>Safeguards and Security</b>		
Safeguards and Security .....	317,622	317,622
<b>Total, Safeguards and Security</b> .....	<b>317,622</b>	<b>317,622</b>
Use of prior year balances .....	-15,562	-15,562
<b>Total, Defense Environmental Cleanup</b> .....	<b>5,506,501</b>	<b>5,527,732</b>
<b>Other Defense Activities</b>		
<b>Environment, health, safety and security</b>		
Environment, health, safety and security .....	139,628	139,628
Program direction .....	72,881	72,881
<b>Total, Environment, Health, Safety and Security</b> .....	<b>212,509</b>	<b>212,509</b>
<b>Independent enterprise assessments</b>		
Independent enterprise assessments .....	24,068	24,068
Program direction .....	57,211	54,711
Non-defense function realignment .....		[-2,500]
<b>Total, Independent enterprise assessments</b> .....	<b>81,279</b>	<b>78,779</b>
Specialized security activities .....	254,578	254,578
<b>Office of Legacy Management</b>		
Legacy management .....	283,767	142,767
Program decrease .....		[-141,000]
Program direction .....	19,262	19,262
<b>Total, Office of Legacy Management</b> .....	<b>303,029</b>	<b>162,029</b>
<b>Defense related administrative support</b>		
Chief financial officer .....	54,538	54,538
Chief information officer .....	124,554	118,554
Program decrease .....		[-6,000]
<b>Total, Defense related administrative support</b> .....	<b>179,092</b>	<b>173,092</b>
Office of Hearings and Appeals .....	4,852	4,852
<b>Subtotal, Other Defense Activities</b> .....	<b>1,035,339</b>	<b>885,839</b>
<b>Total, Other Defense Activities</b> .....	<b>1,035,339</b>	<b>885,839</b>
<b>Defense Nuclear Waste Disposal</b>		
Yucca Mountain and interim storage .....	26,000	0
Program cut .....	0	[-26,000]
<b>Total, Defense Nuclear Waste Disposal</b> .....	<b>26,000</b>	<b>0</b>

## DIVISION E—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEARS 2018, 2019, AND 2020

Damon Paul  
Nelson and  
Matthew Young  
Pollard  
Intelligence  
Authorization  
Act for Fiscal  
Years 2018, 2019,  
and 2020.

### SECTION 5001. SHORT TITLE.

This division may be cited as the “Damon Paul Nelson and Matthew Young Pollard Intelligence Authorization Act for Fiscal Years 2018, 2019, and 2020”.

### SEC. 5002. SUBDIVISIONS AND TABLE OF CONTENTS.

(a) DIVISIONS.—This division is organized into two subdivisions as follows:

(1) Subdivision 1—Intelligence Authorizations for Fiscal Year 2020.

(2) Subdivision 2—Intelligence Authorizations for Fiscal Years 2018 and 2019.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

#### DIVISION E—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEARS 2018, 2019, AND 2020

- Sec. 5001. Short title.
- Sec. 5002. Subdivisions and table of contents.
- Sec. 5003. Definitions.

#### SUBDIVISION 1—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEAR 2020

- Sec. 5100. Table of contents.

#### TITLE LI—INTELLIGENCE ACTIVITIES

- Sec. 5101. Authorization of appropriations.
- Sec. 5102. Classified schedule of authorizations.
- Sec. 5103. Intelligence community management account.

#### TITLE LII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

- Sec. 5201. Authorization of appropriations.

#### TITLE LIII—INTELLIGENCE COMMUNITY MATTERS

##### Subtitle A—General Intelligence Community Matters

- Sec. 5301. Restriction on conduct of intelligence activities.
- Sec. 5302. Increase in employee compensation and benefits authorized by law.
- Sec. 5303. Expansion of scope of protections for identities of covert agents.
- Sec. 5304. Required counterintelligence assessments, briefings, notifications, and reports.
- Sec. 5305. Inclusion of security risks in program management plans required for acquisition of major systems in National Intelligence Program.
- Sec. 5306. Intelligence community public-private talent exchange.
- Sec. 5307. Assessment of contracting practices to identify certain security and counterintelligence concerns.

##### Subtitle B—Office of the Director of National Intelligence

- Sec. 5321. Establishment of Climate Security Advisory Council.
- Sec. 5322. Foreign Malign Influence Response Center.
- Sec. 5323. Encouragement of cooperative actions to detect and counter foreign influence operations.
- Sec. 5324. Transfer of National Intelligence University to the Office of the Director of National Intelligence.

##### Subtitle C—Inspector General of the Intelligence Community

- Sec. 5331. Definitions.
- Sec. 5332. Inspector General external review panel.
- Sec. 5333. Harmonization of whistleblower processes and procedures.

- Sec. 5334. Oversight by Inspector General of the Intelligence Community over intelligence community whistleblower matters.
- Sec. 5335. Report on cleared whistleblower attorneys.

Subtitle D—Central Intelligence Agency

- Sec. 5341. Clarification of certain authority of the Central Intelligence Agency.

TITLE LIV—SECURITY CLEARANCES

- Sec. 5401. Improving visibility into the security clearance process.
- Sec. 5402. Making certain policies and execution plans relating to personnel clearances available to industry partners.

TITLE LV—MATTERS RELATING TO FOREIGN COUNTRIES

Subtitle A—Matters Relating to Russia

- Sec. 5501. Annual reports on influence operations and campaigns in the United States by the Russian Federation.
- Sec. 5502. Assessment of legitimate and illegitimate financial and other assets of Vladimir Putin.
- Sec. 5503. Assessments of intentions of political leadership of the Russian Federation.

Subtitle B—Matters Relating to China

- Sec. 5511. Annual reports on influence operations and campaigns in the United States by the Communist Party of China.
- Sec. 5512. Report on repression of ethnic Muslim minorities in the Xinjiang region of the People's Republic of China.
- Sec. 5513. Report on efforts by People's Republic of China to influence election in Taiwan.

Subtitle C—Matters Relating to Other Countries

- Sec. 5521. Sense of Congress and report on Iranian efforts in Syria and Lebanon.
- Sec. 5522. Assessments regarding the Northern Triangle and Mexico.

TITLE LVI—FEDERAL EFFORTS AGAINST DOMESTIC TERRORISM

- Sec. 5601. Definitions.
- Sec. 5602. Strategic intelligence assessment of and reports on domestic terrorism.

TITLE LVII—REPORTS AND OTHER MATTERS

Subtitle A—Reports and Briefings

- Sec. 5701. Modification of requirements for submission to Congress of certain reports.
- Sec. 5702. Increased transparency regarding counterterrorism budget of the United States.
- Sec. 5703. Study on role of retired and former personnel of intelligence community with respect to certain foreign intelligence operations.
- Sec. 5704. Collection, analysis, and dissemination of workforce data.
- Sec. 5705. Plan for strengthening the supply chain intelligence function.
- Sec. 5706. Comprehensive economic assessment of investment in key United States technologies by companies or organizations linked to China.
- Sec. 5707. Report by Director of National Intelligence on fifth-generation wireless network technology.
- Sec. 5708. Report on use by intelligence community of facial recognition technology.
- Sec. 5709. Report on deepfake technology, foreign weaponization of deepfakes, and related notifications.
- Sec. 5710. Annual report by Comptroller General of the United States on cybersecurity and surveillance threats to Congress.
- Sec. 5711. Analysis of and periodic briefings on major initiatives of intelligence community in artificial intelligence and machine learning.
- Sec. 5712. Report on best practices to protect privacy and civil liberties of Chinese Americans.
- Sec. 5713. Oversight of foreign influence in academia.
- Sec. 5714. Report on death of Jamal Khashoggi.
- Sec. 5715. Report on terrorist screening database.
- Sec. 5716. Report containing threat assessment on terrorist use of conventional and advanced conventional weapons.
- Sec. 5717. Assessment of homeland security vulnerabilities associated with certain retired and former personnel of the intelligence community.
- Sec. 5718. Study on feasibility and advisability of establishing Geospatial-Intelligence Museum and learning center.



## Subtitle B—Other Matters

- Sec. 5721. Whistleblower disclosures to Congress and committees of Congress.
- Sec. 5722. Task force on illicit financing of espionage and foreign influence operations.
- Sec. 5723. Establishment of fifth-generation technology prize competition.
- Sec. 5724. Establishment of deepfakes prize competition.
- Sec. 5725. Identification of and countermeasures against certain International Mobile Subscriber Identity-catchers.
- Sec. 5726. Securing energy infrastructure.

## SUBDIVISION 2—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEARS 2018 AND 2019

- Sec. 6100. Table of contents.

## TITLE LXI—INTELLIGENCE ACTIVITIES

- Sec. 6101. Authorization of appropriations.
- Sec. 6102. Intelligence Community Management Account.

## TITLE LXII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

- Sec. 6201. Authorization of appropriations.
- Sec. 6202. Computation of annuities for employees of the Central Intelligence Agency.

## TITLE LXIII—GENERAL INTELLIGENCE COMMUNITY MATTERS

- Sec. 6301. Restriction on conduct of intelligence activities.
- Sec. 6302. Increase in employee compensation and benefits authorized by law.
- Sec. 6303. Modification of special pay authority for science, technology, engineering, or mathematics positions and addition of special pay authority for cyber positions.
- Sec. 6304. Modification of appointment of Chief Information Officer of the Intelligence Community.
- Sec. 6305. Director of National Intelligence review of placement of positions within the intelligence community on the Executive Schedule.
- Sec. 6306. Supply Chain and Counterintelligence Risk Management Task Force.
- Sec. 6307. Consideration of adversarial telecommunications and cybersecurity infrastructure when sharing intelligence with foreign governments and entities.
- Sec. 6308. Cyber protection support for the personnel of the intelligence community in positions highly vulnerable to cyber attack.
- Sec. 6309. Elimination of sunset of authority relating to management of supply-chain risk.
- Sec. 6310. Limitations on determinations regarding certain security classifications.
- Sec. 6311. Joint Intelligence Community Council.
- Sec. 6312. Intelligence community information technology environment.
- Sec. 6313. Report on development of secure mobile voice solution for intelligence community.
- Sec. 6314. Policy on minimum insider threat standards.
- Sec. 6315. Submission of intelligence community policies.
- Sec. 6316. Expansion of intelligence community recruitment efforts.

## TITLE LXIV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

## Subtitle A—Office of the Director of National Intelligence

- Sec. 6401. Authority for protection of current and former employees of the Office of the Director of National Intelligence.
- Sec. 6402. Designation of the program manager-information-sharing environment.
- Sec. 6403. Technical modification to the executive schedule.
- Sec. 6404. Chief Financial Officer of the Intelligence Community.
- Sec. 6405. Chief Information Officer of the Intelligence Community.

## Subtitle B—Central Intelligence Agency

- Sec. 6411. Central Intelligence Agency subsistence for personnel assigned to austere locations.
- Sec. 6412. Special rules for certain monthly workers' compensation payments and other payments for Central Intelligence Agency personnel.
- Sec. 6413. Expansion of security protective service jurisdiction of the Central Intelligence Agency.
- Sec. 6414. Repeal of foreign language proficiency requirement for certain senior level positions in the Central Intelligence Agency.

Subtitle C—Office of Intelligence and Counterintelligence of Department of Energy

- Sec. 6421. Consolidation of Department of Energy Offices of Intelligence and Counterintelligence.
- Sec. 6422. Repeal of Department of Energy Intelligence Executive Committee and budget reporting requirement.

Subtitle D—Other Elements

- Sec. 6431. Plan for designation of counterintelligence component of Defense Security Service as an element of intelligence community.
- Sec. 6432. Notice not required for private entities.
- Sec. 6433. Establishment of advisory board for National Reconnaissance Office.
- Sec. 6434. Collocation of certain Department of Homeland Security personnel at field locations.

TITLE LXV—ELECTION MATTERS

- Sec. 6501. Report on cyber attacks by foreign governments against United States election infrastructure.
- Sec. 6502. Review of intelligence community's posture to collect against and analyze Russian efforts to influence the Presidential election.
- Sec. 6503. Assessment of foreign intelligence threats to Federal elections.
- Sec. 6504. Strategy for countering Russian cyber threats to United States elections.
- Sec. 6505. Assessment of significant Russian influence campaigns directed at foreign elections and referenda.
- Sec. 6506. Information sharing with State election officials.
- Sec. 6507. Notification of significant foreign cyber intrusions and active measures campaigns directed at elections for Federal offices.
- Sec. 6508. Designation of counterintelligence officer to lead election security matters.

TITLE LXVI—SECURITY CLEARANCES

- Sec. 6601. Definitions.
- Sec. 6602. Reports and plans relating to security clearances and background investigations.
- Sec. 6603. Improving the process for security clearances.
- Sec. 6604. Goals for promptness of determinations regarding security clearances.
- Sec. 6605. Security Executive Agent.
- Sec. 6606. Report on unified, simplified, Governmentwide standards for positions of trust and security clearances.
- Sec. 6607. Report on clearance in person concept.
- Sec. 6608. Reports on reciprocity for security clearances inside of departments and agencies.
- Sec. 6609. Intelligence community reports on security clearances.
- Sec. 6610. Periodic report on positions in the intelligence community that can be conducted without access to classified information, networks, or facilities.
- Sec. 6611. Information-sharing program for positions of trust and security clearances.
- Sec. 6612. Report on protections for confidentiality of whistleblower-related communications.
- Sec. 6613. Reports on costs of security clearance background investigations.

TITLE LXVII—REPORTS AND OTHER MATTERS

Subtitle A—Matters Relating to Russia and Other Foreign Powers

- Sec. 6701. Limitation relating to establishment or support of cybersecurity unit with the Russian Federation.
- Sec. 6702. Assessment of threat finance relating to Russia.
- Sec. 6703. Notification of an active measures campaign.
- Sec. 6704. Notification of travel by accredited diplomatic and consular personnel of the Russian Federation in the United States.
- Sec. 6705. Report and annual briefing on Iranian expenditures supporting foreign military and terrorist activities.
- Sec. 6706. Expansion of scope of committee to counter active measures.

Subtitle B—Reports

- Sec. 6711. Technical correction to Inspector General study.
- Sec. 6712. Reports on authorities of the Chief Intelligence Officer of the Department of Homeland Security.
- Sec. 6713. Review of intelligence community whistleblower matters.
- Sec. 6714. Report on role of Director of National Intelligence with respect to certain foreign investments.

- Sec. 6715. Report on surveillance by foreign governments against United States telecommunications networks.
- Sec. 6716. Biennial report on foreign investment risks.
- Sec. 6717. Modification of certain reporting requirement on travel of foreign diplomats.
- Sec. 6718. Semiannual reports on investigations of unauthorized disclosures of classified information.
- Sec. 6719. Congressional notification of designation of covered intelligence officer as persona non grata.
- Sec. 6720. Reports on intelligence community participation in vulnerabilities equities process of Federal Government.
- Sec. 6721. Inspectors General reports on classification.
- Sec. 6722. Reports and briefings on national security effects of global water insecurity and emerging infectious disease and pandemics.
- Sec. 6723. Annual report on memoranda of understanding between elements of intelligence community and other entities of the United States Government regarding significant operational activities or policy.
- Sec. 6724. Study on the feasibility of encrypting unclassified wireline and wireless telephone calls.
- Sec. 6725. Reports on intelligence community loan repayment and related programs.
- Sec. 6726. Repeal of certain reporting requirements.
- Sec. 6727. Inspector General of the Intelligence Community report on senior executives of the Office of the Director of National Intelligence.
- Sec. 6728. Briefing on Federal Bureau of Investigation offering permanent residence to sources and cooperators.
- Sec. 6729. Intelligence assessment of North Korea revenue sources.
- Sec. 6730. Report on possible exploitation of virtual currencies by terrorist actors.

Subtitle C—Other Matters

- Sec. 6741. Public Interest Declassification Board.
- Sec. 6742. Technical and clerical amendments to the National Security Act of 1947.
- Sec. 6743. Bug bounty programs.
- Sec. 6744. Technical amendments related to the Department of Energy.
- Sec. 6745. Sense of Congress on notification of certain disclosures of classified information.
- Sec. 6746. Sense of Congress on consideration of espionage activities when considering whether or not to provide visas to foreign individuals to be accredited to a United Nations mission in the United States.
- Sec. 6747. Sense of Congress on WikiLeaks.

**SEC. 5003. DEFINITIONS.**

50 USC 3003  
note.

In this division:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term “congressional intelligence committees” has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(2) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

## SUBDIVISION 1—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEAR 2020

**SEC. 5100. TABLE OF CONTENTS.**

The table of contents for this subdivision is as follows:

- Sec. 5100. Table of contents.

TITLE LI—INTELLIGENCE ACTIVITIES

- Sec. 5101. Authorization of appropriations.
- Sec. 5102. Classified schedule of authorizations.
- Sec. 5103. Intelligence community management account.

TITLE LII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND  
DISABILITY SYSTEM

Sec. 5201. Authorization of appropriations.

TITLE LIII—INTELLIGENCE COMMUNITY MATTERS

Subtitle A—General Intelligence Community Matters

- Sec. 5301. Restriction on conduct of intelligence activities.  
 Sec. 5302. Increase in employee compensation and benefits authorized by law.  
 Sec. 5303. Expansion of scope of protections for identities of covert agents.  
 Sec. 5304. Required counterintelligence assessments, briefings, notifications, and reports.  
 Sec. 5305. Inclusion of security risks in program management plans required for acquisition of major systems in National Intelligence Program.  
 Sec. 5306. Intelligence community public-private talent exchange.  
 Sec. 5307. Assessment of contracting practices to identify certain security and counterintelligence concerns.

Subtitle B—Office of the Director of National Intelligence

- Sec. 5321. Establishment of Climate Security Advisory Council.  
 Sec. 5322. Foreign Malign Influence Response Center.  
 Sec. 5323. Encouragement of cooperative actions to detect and counter foreign influence operations.  
 Sec. 5324. Transfer of National Intelligence University to the Office of the Director of National Intelligence.

Subtitle C—Inspector General of the Intelligence Community

- Sec. 5331. Definitions.  
 Sec. 5332. Inspector General external review panel.  
 Sec. 5333. Harmonization of whistleblower processes and procedures.  
 Sec. 5334. Oversight by Inspector General of the Intelligence Community over intelligence community whistleblower matters.  
 Sec. 5335. Report on cleared whistleblower attorneys.

Subtitle D—Central Intelligence Agency

- Sec. 5341. Clarification of certain authority of the Central Intelligence Agency.

TITLE LIV—SECURITY CLEARANCES

- Sec. 5401. Improving visibility into the security clearance process.  
 Sec. 5402. Making certain policies and execution plans relating to personnel clearances available to industry partners.

TITLE LV—MATTERS RELATING TO FOREIGN COUNTRIES

Subtitle A—Matters Relating to Russia

- Sec. 5501. Annual reports on influence operations and campaigns in the United States by the Russian Federation.  
 Sec. 5502. Assessment of legitimate and illegitimate financial and other assets of Vladimir Putin.  
 Sec. 5503. Assessments of intentions of political leadership of the Russian Federation.

Subtitle B—Matters Relating to China

- Sec. 5511. Annual reports on influence operations and campaigns in the United States by the Communist Party of China.  
 Sec. 5512. Report on repression of ethnic Muslim minorities in the Xinjiang region of the People's Republic of China.  
 Sec. 5513. Report on efforts by People's Republic of China to influence election in Taiwan.

Subtitle C—Matters Relating to Other Countries

- Sec. 5521. Sense of Congress and report on Iranian efforts in Syria and Lebanon.  
 Sec. 5522. Assessments regarding the Northern Triangle and Mexico.

TITLE LVI—FEDERAL EFFORTS AGAINST DOMESTIC TERRORISM

- Sec. 5601. Definitions.  
 Sec. 5602. Strategic intelligence assessment of and reports on domestic terrorism.

TITLE LVII—REPORTS AND OTHER MATTERS

Subtitle A—Reports and Briefings

- Sec. 5701. Modification of requirements for submission to Congress of certain reports.

- Sec. 5702. Increased transparency regarding counterterrorism budget of the United States.
- Sec. 5703. Study on role of retired and former personnel of intelligence community with respect to certain foreign intelligence operations.
- Sec. 5704. Collection, analysis, and dissemination of workforce data.
- Sec. 5705. Plan for strengthening the supply chain intelligence function.
- Sec. 5706. Comprehensive economic assessment of investment in key United States technologies by companies or organizations linked to China.
- Sec. 5707. Report by Director of National Intelligence on fifth-generation wireless network technology.
- Sec. 5708. Report on use by intelligence community of facial recognition technology.
- Sec. 5709. Report on deepfake technology, foreign weaponization of deepfakes, and related notifications.
- Sec. 5710. Annual report by Comptroller General of the United States on cybersecurity and surveillance threats to Congress.
- Sec. 5711. Analysis of and periodic briefings on major initiatives of intelligence community in artificial intelligence and machine learning.
- Sec. 5712. Report on best practices to protect privacy and civil liberties of Chinese Americans.
- Sec. 5713. Oversight of foreign influence in academia.
- Sec. 5714. Report on death of Jamal Khashoggi.
- Sec. 5715. Report on terrorist screening database.
- Sec. 5716. Report containing threat assessment on terrorist use of conventional and advanced conventional weapons.
- Sec. 5717. Assessment of homeland security vulnerabilities associated with certain retired and former personnel of the intelligence community.
- Sec. 5718. Study on feasibility and advisability of establishing Geospatial-Intelligence Museum and learning center.

Subtitle B—Other Matters

- Sec. 5721. Whistleblower disclosures to Congress and committees of Congress.
- Sec. 5722. Task force on illicit financing of espionage and foreign influence operations.
- Sec. 5723. Establishment of fifth-generation technology prize competition.
- Sec. 5724. Establishment of deepfakes prize competition.
- Sec. 5725. Identification of and countermeasures against certain International Mobile Subscriber Identity-catchers.
- Sec. 5726. Securing energy infrastructure.

## TITLE LI—INTELLIGENCE ACTIVITIES

### SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2020 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Office of the Director of National Intelligence.
- (2) The Central Intelligence Agency.
- (3) The Department of Defense.
- (4) The Defense Intelligence Agency.
- (5) The National Security Agency.
- (6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (7) The Coast Guard.
- (8) The Department of State.
- (9) The Department of the Treasury.
- (10) The Department of Energy.
- (11) The Department of Justice.
- (12) The Federal Bureau of Investigation.
- (13) The Drug Enforcement Administration.
- (14) The National Reconnaissance Office.
- (15) The National Geospatial-Intelligence Agency.
- (16) The Department of Homeland Security.

**SEC. 5102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) **SPECIFICATIONS OF AMOUNTS.**—The amounts authorized to be appropriated under section 5101 for the conduct of the intelligence activities of the elements listed in paragraphs (1) through (16) of section 5101, are those specified in the classified Schedule of Authorizations prepared to accompany this division.

President.

(b) **AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**—

(1) **AVAILABILITY.**—The classified Schedule of Authorizations referred to in subsection (a) shall be made available to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and to the President.

(2) **DISTRIBUTION BY THE PRESIDENT.**—Subject to paragraph (3), the President shall provide for suitable distribution of the classified Schedule of Authorizations referred to in subsection (a), or of appropriate portions of such Schedule, within the executive branch.

(3) **LIMITS ON DISCLOSURE.**—The President shall not publicly disclose the classified Schedule of Authorizations or any portion of such Schedule except—

(A) as provided in section 601(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (50 U.S.C. 3306(a));

(B) to the extent necessary to implement the budget;

or

(C) as otherwise required by law.

**SEC. 5103. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2020 the sum of \$565,637,000.

(b) **CLASSIFIED AUTHORIZATION OF APPROPRIATIONS.**—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2020 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 5102(a).

## **TITLE LII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DIS- ABILITY SYSTEM**

**SEC. 5201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund \$514,000,000 for fiscal year 2020.

## TITLE LIII—INTELLIGENCE COMMUNITY MATTERS

### Subtitle A—General Intelligence Community Matters

**SEC. 5301. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this subdivision shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

**SEC. 5302. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this subdivision for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

**SEC. 5303. EXPANSION OF SCOPE OF PROTECTIONS FOR IDENTITIES OF COVERT AGENTS.**

Section 605(4) of the National Security Act of 1947 (50 U.S.C. 3126(4)) is amended—

(1) in subparagraph (A)—

(A) by striking clause (ii);

(B) in clause (i), by striking “, and” and inserting “; or”; and

(C) by striking “agency—” and all that follows through “whose identity” and inserting “agency whose identity”; and

(2) in subparagraph (B)(i), by striking “resides and acts outside the United States” and inserting “acts”.

**SEC. 5304. REQUIRED COUNTERINTELLIGENCE ASSESSMENTS, BRIEFINGS, NOTIFICATIONS, AND REPORTS.** 50 USC 3371.

(a) FOREIGN COUNTERINTELLIGENCE AND CYBERSECURITY THREATS TO FEDERAL ELECTION CAMPAIGNS.—

(1) REPORTS REQUIRED.—

(A) IN GENERAL.—As provided in subparagraph (B), with respect to an election for Federal office, the Director of National Intelligence, in coordination with the Under Secretary of Homeland Security for Intelligence and Analysis and the Director of the Federal Bureau of Investigation, shall make publicly available on an internet website an advisory report on foreign counterintelligence and cybersecurity threats to campaigns of candidates for Federal office. Each such report, consistent with the protection of sources and methods, shall include the following:

(i) A description of foreign counterintelligence and cybersecurity threats to campaigns of candidates for Federal office.

(ii) A summary of best practices that campaigns of candidates for Federal office can employ in seeking to counter such threats.

Coordination.  
Public  
information.  
Web posting.

Summary.

(iii) An identification of publicly available resources, including United States Government resources, for countering such threats.

(B) SCHEDULE FOR SUBMITTAL.—

(i) IN GENERAL.—Except as provided by clause (ii), with respect to an election for Federal office, a report under this subsection shall be first made available not later than the date that is 1 year before the date of such election, and may be subsequently revised as the Director of National Intelligence determines appropriate.

(ii) 2020 ELECTIONS.—With respect to an election for Federal office that occurs during 2020, the report under this subsection shall be first made available not later than the date that is 60 days after the date of the enactment this Act, and may be subsequently revised as the Director of National Intelligence determines appropriate.

(C) INFORMATION TO BE INCLUDED.—A report under this subsection shall reflect the most current information available to the Director of National Intelligence regarding foreign counterintelligence and cybersecurity threats.

Determination.

(2) TREATMENT OF CAMPAIGNS SUBJECT TO HEIGHTENED THREATS.—If the Director of the Federal Bureau of Investigation and the Under Secretary of Homeland Security for Intelligence and Analysis jointly determine that a campaign of a candidate for Federal office is subject to a heightened foreign counterintelligence or cybersecurity threat, the Director and the Under Secretary, consistent with the protection of sources and methods, may make available additional information to the appropriate representatives of such campaign.

(b) BRIEFINGS ON COUNTERINTELLIGENCE ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION.—

(1) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.), is amended by adding at the end the following new section:

50 USC 3111.

**“SEC. 512. BRIEFINGS AND NOTIFICATIONS ON COUNTERINTELLIGENCE ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION.**

Update.

“(a) QUARTERLY BRIEFINGS.—In addition to, and without any derogation of, the requirement under section 501 to keep the congressional intelligence committees fully and currently informed of the intelligence and counterintelligence activities of the United States, not less frequently than once each quarter, or more frequently if requested by the congressional intelligence committees, the Director of the Federal Bureau of Investigation shall provide to the congressional intelligence committees a briefing on the counterintelligence activities of the Federal Bureau of Investigation. Such briefings shall include, at a minimum, an overview and update of—

“(1) the counterintelligence posture of the Bureau;

“(2) counterintelligence investigations; and

“(3) any other information relating to the counterintelligence activities of the Bureau that the Director determines necessary.



“(b) NOTIFICATIONS.—In addition to the quarterly briefings under subsection (a), the Director of the Federal Bureau of Investigation shall promptly notify the congressional intelligence committees of any counterintelligence investigation carried out by the Bureau with respect to any counterintelligence risk or threat that is related to an election or campaign for Federal office.

“(c) GUIDELINES.—

“(1) DEVELOPMENT AND CONSULTATION.—The Director shall develop guidelines governing the scope of the briefings provided under subsection (a), the notifications provided under subsection (b), and the information required by section 5304(a)(2) of the Damon Paul Nelson and Matthew Young Pollard Intelligence Authorization Act for Fiscal Years 2018, 2019, and 2020. The Director shall consult the congressional intelligence committees during such development.

“(2) SUBMISSION.—The Director shall submit to the congressional intelligence committees—

“(A) the guidelines under paragraph (1) upon issuance;

and

“(B) any updates to such guidelines by not later than 15 days after making such update.”

Updates.  
Deadline.

(2) CLERICAL AMENDMENT.—The table of contents at the beginning of such Act is amended by inserting after the item relating to section 511 the following new item:

“Sec. 512. Briefings and notifications on counterintelligence activities of the Federal Bureau of Investigation.”

(c) DIRECTOR OF NATIONAL INTELLIGENCE ASSESSMENT OF FOREIGN INTERFERENCE IN FEDERAL ELECTIONS.—

(1) ASSESSMENTS REQUIRED.—Not later than 45 days after the end of a Federal election cycle, the Director of National Intelligence, in consultation with the heads of such other executive departments and agencies as the Director considers appropriate, shall—

Deadline.  
Consultation.

(A) conduct an assessment of any information indicating that a foreign government, or any person acting as an agent of or on behalf of a foreign government, has acted with the intent or purpose of interfering in elections for Federal office occurring during the Federal election cycle; and

(B) transmit the findings of the Director with respect to the assessment conducted under subparagraph (A), along with such supporting information as the Director considers appropriate, to the following:

- (i) The President.
- (ii) The Secretary of State.
- (iii) The Secretary of the Treasury.
- (iv) The Secretary of Defense.
- (v) The Attorney General.
- (vi) The Secretary of Homeland Security.
- (vii) Congress.

(2) ELEMENTS.—An assessment conducted under paragraph (1)(A), with respect to an act described in such paragraph, shall identify, to the maximum extent ascertainable, the following:

(A) The nature of any foreign interference and any methods employed to execute the act.

	(B) The persons involved.
	(C) The foreign government or governments that authorized, directed, sponsored, or supported the act.
Deadline. Public information.	(3) PUBLICATION.—The Director shall, not later than 60 days after the end of a Federal election cycle, make available to the public, to the greatest extent possible consistent with the protection of sources and methods, the findings transmitted under paragraph (1)(B).
	(4) FEDERAL ELECTION CYCLE DEFINED.—In this section, the term “Federal election cycle” means the period which begins on the day after the date of a regularly scheduled general election for Federal office and which ends on the date of the first regularly scheduled general election for Federal office held after such date.
Applicability.	(5) EFFECTIVE DATE.—This subsection shall apply with respect to the Federal election cycle that began during November 2018, and each succeeding Federal election cycle.
	<b>SEC. 5305. INCLUSION OF SECURITY RISKS IN PROGRAM MANAGEMENT PLANS REQUIRED FOR ACQUISITION OF MAJOR SYSTEMS IN NATIONAL INTELLIGENCE PROGRAM.</b>
	Section 102A(q)(1)(A) of the National Security Act of 1947 (50 U.S.C. 3024(q)(1)(A)) is amended by inserting “security risks,” after “schedule.”.
50 USC 3334.	<b>SEC. 5306. INTELLIGENCE COMMUNITY PUBLIC-PRIVATE TALENT EXCHANGE.</b>
Deadline.	(a) POLICIES, PROCESSES, AND PROCEDURES REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Director of National Intelligence shall develop policies, processes, and procedures to facilitate the rotation of personnel of the intelligence community to the private sector, and personnel from the private sector to the intelligence community.
	(b) DETAIL AUTHORITY.—Under policies developed by the Director pursuant to subsection (a), pursuant to a written agreement with a private-sector organization, and with the consent of the employee, a head of an element of the intelligence community may arrange for the temporary detail of an employee of such element to such private-sector organization, or from such private-sector organization to such element under this section.
	(c) AGREEMENTS.—
	(1) IN GENERAL.—A head of an element of the intelligence community exercising the authority of the head under subsection (a) shall provide for a written agreement among the element of the intelligence community, the private-sector organization, and the employee concerned regarding the terms and conditions of the employee’s detail under this section. The agreement—
	(A) shall require that the employee of the element, upon completion of the detail, serve in the element, or elsewhere in the civil service if approved by the head of the element, for a period that is at least equal to the length of the detail;
	(B) shall provide that if the employee of the element fails to carry out the agreement, such employee shall be liable to the United States for payment of all nonsalary and benefit expenses of the detail, unless that failure was

for good and sufficient reason, as determined by the head of the element;

(C) shall contain language informing such employee of the prohibition on sharing, using, or otherwise improperly handling classified or unclassified nonpublic information for the benefit or advantage of the private-sector organization;

(D) shall contain language governing the handling of classified information by such employee during the detail; and

(E) shall contain language requiring the employee to acknowledge the obligations of the employee under section 1905 of title 18, United States Code.

(2) AMOUNT OF LIABILITY.—An amount for which an employee is liable under paragraph (1) shall be treated as a debt due the United States.

(3) WAIVER.—The head of an element of the intelligence community may waive, in whole or in part, collection of a debt described in paragraph (2) based on a determination that the collection would be against equity and good conscience and not in the best interests of the United States, after taking into account any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

Determination.

(d) TERMINATION.—A detail under this section may, at any time and for any reason, be terminated by the head of the element of the intelligence community concerned or the private-sector organization concerned.

(e) DURATION.—

(1) IN GENERAL.—A detail under this section shall be for a period of not less than 3 months and not more than 2 years, renewable up to a total of 3 years.

(2) LONGER PERIODS.—A detail under this section may be for a period in excess of 2 years, but not more than 3 years, if the head of the element making the detail determines that such detail is necessary to meet critical mission or program requirements.

Determination.

(3) LIMITATION.—No employee of an element of the intelligence community may be detailed under this section for more than a total of 5 years, inclusive of all such details.

(f) STATUS OF FEDERAL EMPLOYEES DETAILED TO PRIVATE-SECTOR ORGANIZATIONS.—

(1) IN GENERAL.—An employee of an element of the intelligence community who is detailed to a private-sector organization under this section shall be considered, during the period of detail, to be on a regular work assignment in the element. The written agreement established under subsection (c)(1) shall address the specific terms and conditions related to the employee's continued status as a Federal employee.

(2) REQUIREMENTS.—In establishing a temporary detail of an employee of an element of the intelligence community to a private-sector organization, the head of the element shall—

(A) certify that the temporary detail of such employee shall not have an adverse or negative impact on mission attainment or organizational capabilities associated with the detail; and

Certification.

(B) in the case of an element of the intelligence community in the Department of Defense, ensure that the normal

duties and functions of such employees are not, as a result of and during the course of such temporary detail, performed or augmented by contractor personnel in violation of the provisions of section 2461 of title 10, United States Code.

(g) **TERMS AND CONDITIONS FOR PRIVATE-SECTOR EMPLOYEES.**—An employee of a private-sector organization who is detailed to an element of the intelligence community under this section—

(1) shall continue to receive pay and benefits from the private-sector organization from which such employee is detailed and shall not receive pay or benefits from the element, except as provided in paragraph (2);

(2) is deemed to be an employee of the element for the purposes of—

(A) chapters 73 and 81 of title 5, United States Code;

(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code;

(C) sections 1343, 1344, and 1349(b) of title 31, United States Code;

(D) chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”) and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978 (5 U.S.C. App.); and

(F) chapter 21 of title 41, United States Code;

(3) may perform work that is considered inherently governmental in nature only when requested in writing by the head of the element;

(4) may not be used to circumvent any limitation or restriction on the size of the workforce of the element;

(5) shall be subject to the same requirements applicable to an employee performing the same functions and duties proposed for performance by the private-sector employee; and

(6) in the case of an element of the intelligence community in the Department of Defense, may not be used to circumvent the provisions of section 2461 of title 10, United States Code.

(h) **PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.**—A private-sector organization may not charge an element of the intelligence community or any other agency of the Federal Government, as direct costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee detailed to an element of the intelligence community under this section for the period of the detail and any subsequent renewal periods.

(i) **ADDITIONAL ADMINISTRATIVE MATTERS.**—In carrying out this section, the Director, pursuant to procedures developed under subsection (a)—

(1) shall, to the degree practicable, ensure that small business concerns are represented with respect to details authorized by this section;

(2) may, notwithstanding any other provision of law, establish criteria for elements of the intelligence community to use appropriated funds to reimburse small business concerns for the salaries and benefits of its employees during the periods when the small business concern agrees to detail its employees to the intelligence community under this section;

(3) shall take into consideration the question of how details under this section might best be used to help meet the needs of the intelligence community, including with respect to the training of employees;

(4) shall take into consideration areas of private-sector expertise that are critical to the intelligence community; and

(5) shall establish oversight mechanisms to determine whether the public-private exchange authorized by this section improves the efficiency and effectiveness of the intelligence community.

Determination.

(j) DEFINITIONS.—In this section:

(1) DETAIL.—The term “detail” means, as appropriate in the context in which such term is used—

(A) the assignment or loan of an employee of an element of the intelligence community to a private-sector organization without a change of position from the intelligence community element that employs the individual; or

(B) the assignment or loan of an employee of a private-sector organization to an element of the intelligence community without a change of position from the private-sector organization that employs the individual.

(2) PRIVATE-SECTOR ORGANIZATION.—The term “private-sector organization” means—

(A) a for-profit organization; or

(B) a not-for-profit organization.

(3) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given such term in section 3703(e)(2) of title 5, United States Code.

**SEC. 5307. ASSESSMENT OF CONTRACTING PRACTICES TO IDENTIFY CERTAIN SECURITY AND COUNTERINTELLIGENCE CONCERNS.**

(a) ASSESSMENT.—

(1) CONTRACTING PRACTICES.—The Director of National Intelligence shall conduct an assessment of the authorities, policies, processes, and standards used by the elements of the intelligence community to ensure that the elements appropriately weigh security and counterintelligence risks in awarding a contract to a contractor that—

(A) carries out any joint research and development activities with a covered foreign country; or

(B) performs any contract or other agreement entered into with a covered foreign country.

(2) ELEMENTS.—The assessment under paragraph (1) shall include the following:

(A) An assessment of whether the authorities, policies, processes, and standards specified in paragraph (1) sufficiently identify security and counterintelligence concerns.

(B) Identification of any authority gaps in such authorities, policies, processes, and standards that prevent the intelligence community from considering the activities specified in subparagraphs (A) and (B) of paragraph (1) when evaluating offers for a contract.

(3) CONSULTATION.—In carrying out paragraph (1), the Director shall consult with each head of an element of the intelligence community.

## (b) REPORT.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall submit to the congressional intelligence committees a report on the assessment under subsection (a)(1).

(2) MATTERS INCLUDED.—The report under paragraph (1) shall include the following:

(A) The assessment under subsection (a)(1).

(B) An identification of any known contractors that have—

(i) carried out activities specified in subparagraphs (A) and (B) of subsection (a)(1); and

(ii) submitted an offer for a contract with an element of the intelligence community.

(C) A description of the steps that the Director and the heads of the elements of the intelligence community took to identify contractors under subparagraph (B).

(3) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) COVERED FOREIGN COUNTRY DEFINED.—In this section, the term “covered foreign country” means the government, or any entity affiliated with the military or intelligence services of, the following foreign countries:

(1) The People’s Republic of China.

(2) The Russian Federation.

(3) The Democratic People’s Republic of Korea.

(4) The Islamic Republic of Iran.

(5) Such other countries as the Director considers appropriate.

## Subtitle B—Office of the Director of National Intelligence

### SEC. 5321. ESTABLISHMENT OF CLIMATE SECURITY ADVISORY COUNCIL.

(a) ESTABLISHMENT.—Title I of the National Security Act of 1947 (50 U.S.C. 3021 et seq.) is amended by adding at the end the following new section:

50 USC 3060.

#### “SEC. 120. CLIMATE SECURITY ADVISORY COUNCIL.

Analysis.

“(a) ESTABLISHMENT.—The Director of National Intelligence shall establish a Climate Security Advisory Council for the purpose of—

Coordination.

“(1) assisting intelligence analysts of various elements of the intelligence community with respect to analysis of climate security and its impact on the areas of focus of such analysts;

“(2) facilitating coordination between the elements of the intelligence community and elements of the Federal Government that are not elements of the intelligence community in collecting data on, and conducting analysis of, climate change and climate security; and

“(3) ensuring that the intelligence community is adequately prioritizing climate change in carrying out its activities.

“(b) COMPOSITION OF COUNCIL.—

“(1) MEMBERS.—The Council shall be composed of the following individuals appointed by the Director of National Intelligence: Appointments.

“(A) An appropriate official from the National Intelligence Council, who shall chair the Council.

“(B) The lead official with respect to climate and environmental security analysis from—

“(i) the Central Intelligence Agency;

“(ii) the Bureau of Intelligence and Research of the Department of State;

“(iii) the National Geospatial-Intelligence Agency;

“(iv) the Office of Intelligence and Counterintelligence of the Department of Energy;

“(v) the Office of the Under Secretary of Defense for Intelligence; and

“(vi) the Defense Intelligence Agency.

“(C) Three appropriate officials from elements of the Federal Government that are not elements of the intelligence community that are responsible for—

“(i) providing decision makers with a predictive understanding of the climate;

“(ii) making observations of our Earth system that can be used by the public, policymakers, and to support strategic decisions; or

“(iii) coordinating Federal research and investments in understanding the forces shaping the global environment, both human and natural, and their impacts on society. Coordination.

“(D) Any other officials as the Director of National Intelligence or the chair of the Council may determine appropriate.

“(2) RESPONSIBILITIES OF CHAIR.—The chair of the Council shall have responsibility for—

“(A) identifying agencies to supply individuals from elements of the Federal Government that are not elements of the intelligence community;

“(B) securing the permission of the relevant agency heads for the participation of such individuals on the Council; and

“(C) any other duties that the Director of National Intelligence may direct.

“(c) DUTIES AND RESPONSIBILITIES OF COUNCIL.—The Council shall carry out the following duties and responsibilities:

“(1) To meet at least quarterly to—

“(A) exchange appropriate data between elements of the intelligence community and elements of the Federal Government that are not elements of the intelligence community;

“(B) discuss processes for the routine exchange of such data and implementation of such processes; and

“(C) prepare summaries of the business conducted at each meeting. Summaries.

“(2) To assess and determine best practices with respect to the analysis of climate security, including identifying publicly available information and intelligence acquired through clandestine means that enables such analysis. Assessment. Determination. Analysis.

- Assessment. “(3) To assess and identify best practices with respect to prior efforts of the intelligence community to analyze climate security.
- Assessment. “(4) To assess and describe best practices for identifying and disseminating climate security indicators and warnings.
- Recommendations. “(5) To recommend methods of incorporating analysis of climate security and the best practices identified under paragraphs (2) through (4) into existing analytic training programs.
- Consultation. “(6) To consult, as appropriate, with other elements of the intelligence community that conduct analysis of climate change or climate security and elements of the Federal Government that are not elements of the intelligence community that conduct analysis of climate change or climate security, for the purpose of sharing information about ongoing efforts and avoiding duplication of existing efforts.
- “ (7) To work with elements of the intelligence community that conduct analysis of climate change or climate security and elements of the Federal Government that are not elements of the intelligence community that conduct analysis of climate change or climate security—
- Data. “(A) to exchange appropriate data between such elements, establish processes, procedures and practices for the routine exchange of such data, discuss the implementation of such processes; and
- Procedures. “(B) to enable and facilitate the sharing of findings and analysis between such elements.
- Assessment. “(8) To assess whether the elements of the intelligence community that conduct analysis of climate change or climate security may inform the research direction of academic work and the sponsored work of the United States Government.
- “ (9) At the discretion of the chair of the Council, to convene conferences of analysts and nonintelligence community personnel working on climate change or climate security on subjects that the chair shall direct.
- “(d) SUNSET.—The Council shall terminate on the date that is 4 years after the date of the enactment of this section.
- “(e) DEFINITIONS.—In this section:
- “ (1) CLIMATE SECURITY.—The term ‘climate security’ means the effects of climate change on the following:
- “ (A) The national security of the United States, including national security infrastructure.
- “ (B) Subnational, national, and regional political stability.
- “ (C) The security of allies and partners of the United States.
- “ (D) Ongoing or potential political violence, including unrest, rioting, guerrilla warfare, insurgency, terrorism, rebellion, revolution, civil war, and interstate war.
- “ (2) CLIMATE INTELLIGENCE INDICATIONS AND WARNINGS.—The term ‘climate intelligence indications and warnings’ means developments relating to climate security with the potential to—
- “ (A) imminently and substantially alter the political stability or degree of human security in a country or region; or
- “ (B) imminently and substantially threaten—
- “ (i) the national security of the United States;



“(ii) the military, political, or economic interests of allies and partners of the United States; or  
 “(iii) citizens of the United States abroad.”

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the National Security Act of 1947 is amended by inserting after the item relating to section 119B the following new item:

“Sec. 120. Climate Security Advisory Council.”

(c) INITIAL APPOINTMENTS.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence shall appoint the members of the Council under section 120 of the National Security Act of 1947, as added by subsection (a).

Deadline.  
50 USC 3060  
note.

**SEC. 5322. FOREIGN MALIGN INFLUENCE RESPONSE CENTER.**

(a) ESTABLISHMENT.—The National Security Act of 1947 (50 U.S.C. 3001 et seq.) is amended by inserting after section 119B the following new section:

**“SEC. 119C. FOREIGN MALIGN INFLUENCE RESPONSE CENTER.**

50 USC 3059.

“(a) ESTABLISHMENT.—There is within the Office of the Director of National Intelligence a Foreign Malign Influence Response Center (in this section referred to as the ‘Center’).

“(b) FUNCTIONS AND COMPOSITION.—The Center shall—

“(1) be comprised of analysts from all elements of the intelligence community, including elements with diplomatic and law enforcement functions;

“(2) have access to all intelligence and other reporting possessed or acquired by the United States Government pertaining to foreign malign influence;

“(3) serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to foreign malign influence; and

“(4) provide to employees and officers of the Federal Government in policy-making positions and Congress comprehensive assessments, and indications and warnings, of foreign malign influence.

“(c) DIRECTOR.—

“(1) APPOINTMENT.—There is a Director of the Center, who shall be the head of the Center, and who shall be appointed by the Director of National Intelligence.

“(2) ROLE.—The Director of the Center shall—

“(A) report directly to the Director of National Intelligence;

“(B) carry out the functions under subsection (b); and

“(C) at the request of the President or the Director of National Intelligence, develop and provide recommendations for potential responses by the United States to foreign malign influence.

“(d) ANNUAL REPORTS.—

“(1) IN GENERAL.—In addition to the matters submitted pursuant to subsection (b)(4), at the direction of the Director of National Intelligence, but not less than once each year, the Director of the Center shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on foreign malign influence.

Recommendations.  
Determinations.

“(2) **MATTERS INCLUDED.**—Each report under paragraph (1) shall include, with respect to the period covered by the report, a discussion of the following:

“(A) The most significant activities of the Center.

“(B) Any recommendations the Director determines necessary for legislative or other actions to improve the ability of the Center to carry out its functions, including recommendations regarding the protection of privacy and civil liberties.

“(e) **DEFINITIONS.**—In this section:

“(1) **COVERED FOREIGN COUNTRY.**—The term ‘covered foreign country’ means the following:

“(A) The Russian Federation.

“(B) The Islamic Republic of Iran.

“(C) The Democratic People’s Republic of Korea.

“(D) The People’s Republic of China.

“(E) Any other foreign country that the Director of the Center determines appropriate for purposes of this section.

“(2) **FOREIGN MALIGN INFLUENCE.**—The term ‘foreign malign influence’ means any hostile effort undertaken by, at the direction of, or on behalf of or with the substantial support of, the government of a covered foreign country with the objective of influencing, through overt or covert means—

“(A) the political, military, economic, or other policies or activities of the United States Government or State or local governments, including any election within the United States; or

“(B) the public opinion within the United States.”.

(b) **CLERICAL AMENDMENT.**—The table of contents at the beginning of such Act is amended by inserting after the item relating to section 119B the following new item:

“Sec. 119C. Foreign Malign Influence Response Center.”.

(c) **CONFORMING AMENDMENT.**—Section 507(a) of such Act (50 U.S.C. 3106) is amended by adding at the end the following new paragraph:

“(6) An annual report submitted under section 119C(d)(1).”.

50 USC 3369.

**SEC. 5323. ENCOURAGEMENT OF COOPERATIVE ACTIONS TO DETECT AND COUNTER FOREIGN INFLUENCE OPERATIONS.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) The Russian Federation, through military intelligence units, also known as the “GRU”, and Kremlin-linked troll organizations often referred to as the “Internet Research Agency”, deploy information warfare operations against the United States, its allies and partners, with the goal of advancing the strategic interests of the Russian Federation.

(2) One line of effort deployed as part of these information warfare operations is the weaponization of social media platforms with the goals of intensifying societal tensions, undermining trust in governmental institutions within the United States, its allies and partners in the West, and generally sowing division, fear, and confusion.

(3) These information warfare operations are a threat to the national security of the United States and that of the allies and partners of the United States. As former Director

of National Intelligence Dan Coats stated, “These actions are persistent, they are pervasive and they are meant to undermine America’s democracy.”

(4) These information warfare operations continue to evolve and increase in sophistication.

(5) Other foreign adversaries and hostile non-state actors are increasingly adopting similar tactics of deploying information warfare operations against the West, such as recent state-backed operations from China around the Hong Kong protests identified by social media companies.

(6) Technological advances, including artificial intelligence, will only make it more difficult in the future to detect fraudulent accounts, deceptive material posted on social media, and malign behavior on social media platforms.

(7) Because these information warfare operations are deployed within and across private social media platforms, the companies that own these platforms have a responsibility to detect and facilitate the removal or neutralization of foreign adversary networks operating clandestinely on their platforms.

(8) The social media companies are inherently technologically sophisticated and adept at rapidly analyzing large amounts of data and developing software-based solutions to diverse and ever-changing challenges on their platforms, which makes them well-equipped to address the threat occurring on their platforms.

(9) Independent analyses confirmed Kremlin-linked threat networks, based on data provided by several social media companies to the Select Committee on Intelligence of the Senate, thereby demonstrating that it is possible to discern both broad patterns of cross-platform information warfare operations and specific fraudulent behavior on social media platforms.

(10) General Paul Nakasone, Director of the National Security Agency, emphasized the importance of these independent analyses to the planning and conducting of military cyber operations to frustrate Kremlin-linked information warfare operations against the 2018 mid-term elections. General Nakasone stated that the reports “were very, very helpful in terms of being able to understand exactly what our adversary was trying to do to build dissent within our nation.”

(11) Institutionalizing ongoing robust, independent, and vigorous analysis of data related to foreign threat networks within and across social media platforms will help counter ongoing information warfare operations against the United States, its allies, and its partners.

(12) Archiving and disclosing to the public the results of these analyses by the social media companies and trusted third-party experts in a transparent manner will serve to demonstrate that the social media companies are detecting and removing foreign malign activities from their platforms while protecting the privacy of the people of the United States and will build public understanding of the scale and scope of these foreign threats to our democracy, since exposure is one of the most effective means to build resilience.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the social media companies should cooperate among themselves and with independent organizations and researchers

on a sustained and regular basis to share and analyze data and indicators relevant to foreign information warfare operations within and across their platforms in order to detect and counter foreign information warfare operations that threaten the national security of the United States and its allies and partners;

(2) information from law enforcement and the intelligence community is also important in assisting efforts by these social media companies to identify foreign information warfare operations;

(3) these analytic efforts should be organized in such a fashion as to meet the highest standards of ethics, confidentiality, and privacy protection of the people of the United States, while still allowing timely research access to relevant data;

(4) these analytic efforts should be undertaken as soon as possible to facilitate countering ongoing state or state-backed foreign information warfare operations and to aid in preparations for the United States Presidential and congressional elections in 2020 and beyond;

(5) the structure and operations of social media companies make them well positioned to work with independent organizations and researchers to address foreign adversary threat networks within and across their platforms, and these efforts could be conducted without direct Government involvement, direction, or regulation; and

(6) if the social media industry fails to take sufficient action to address foreign adversary threat networks operating within or across their platforms, Congress would have to consider additional safeguards for ensuring that this threat is effectively mitigated.

(c) **AUTHORITY TO FACILITATE ESTABLISHMENT OF SOCIAL MEDIA DATA AND THREAT ANALYSIS CENTER.**—

Coordination.  
Grants.  
Contracts.

(1) **AUTHORITY.**—The Director of National Intelligence, in coordination with the Secretary of Defense, may facilitate, by grant or contract or under an existing authority of the Director, the establishment of a Social Media Data and Threat Analysis Center with the functions described in paragraph (2) at an independent, nonprofit organization.

(2) **FUNCTIONS.**—The functions described in this paragraph are the following:

(A) Acting as a convening and sponsoring authority for cooperative social media data analysis of foreign threat networks involving social media companies and third-party experts, nongovernmental organizations, data journalists, Federally funded research and development centers, academic researchers, traditional media, and international counterparts, as appropriate.

Analysis.

(B) Facilitating analysis of foreign influence operation, within and across the individual social media platforms as well as hacking and leaking campaigns, and other tactics, and related unlawful activities that fund or subsidize such operations.

(C) Developing processes to share information from government entities on foreign influence operations with the individual social media companies to inform threat analysis, and working with the Office of the Director of National Intelligence as appropriate.

(D) Determining and making public criteria for identifying which companies, organizations, or researchers qualify for inclusion in the activities of the Center, and inviting entities that fit the criteria to join. Determination. Public information. Criteria.

(E) Determining jointly with the social media companies what data and metadata related to indicators of foreign adversary threat networks from their platforms and business operations will be made available for access and analysis. Determination.

(F) Developing and making public the criteria and standards that must be met for companies, other organizations, and individual researchers to access and analyze data relating to foreign adversary threat networks within and across social media platforms and publish or otherwise use the results. Public information. Criteria.

(G) Developing and making public the ethical standards for investigation of foreign threat networks and use of analytic results and for protection of the privacy of the customers and users of the social media platforms and of the proprietary information of the social media companies. Public information. Standards.

(H) Developing technical, contractual, and procedural controls to prevent misuse of data, including any necessary auditing procedures, compliance checks, and review mechanisms.

(I) Developing and making public criteria and conditions under which the Center shall share information with the appropriate Government agencies regarding threats to national security from, or violations of the law involving, foreign activities on social media platforms. Public information. Criteria.

(J) Hosting a searchable archive aggregating information related to foreign influence and disinformation operations to build a collective understanding of the threats and facilitate future examination consistent with privacy protections.

(K) Developing data standards to harmonize the sharing of information pursuant to this paragraph. Data standards.

(d) REPORTING AND NOTIFICATIONS.—If the Director of National Intelligence chooses to use funds under subsection (c)(1) to facilitate the establishment of the Center, the Director of the Center shall—

(1) not later than 180 days after the date of the enactment of this Act, submit to appropriate congressional committees a report on—

(A) the estimated funding needs of the Center for fiscal year 2021 and for subsequent years;

(B) such statutory protections from liability as the Director considers necessary for the Center, participating social media companies, and participating third-party analytical participants;

(C) such statutory penalties as the Director considers necessary to ensure against misuse of data by researchers; and

(D) such changes to the Center’s mission to fully capture broader unlawful activities that intersect with, complement, or support information warfare tactics; and

- (2) not less frequently than once each year, submit to the Director of National Intelligence, the Secretary of Defense, and the appropriate congressional committees a report—
- Assessments. (A) that assesses—
- (i) degree of cooperation and commitment from the social media companies to the mission of the Center; and
  - (ii) effectiveness of the Center in detecting and facilitating the removal or neutralization of clandestine foreign information warfare operations from social media platforms; and
- Recommendations. (B) includes such recommendations for legislative or administrative action as the Center considers appropriate to carry out the functions of the Center.
- (e) PERIODIC REPORTING TO THE PUBLIC.—The Director of the Center shall—
- (1) once each quarter, make available to the public a report on key trends in foreign influence and disinformation operations, including any threats to campaigns and elections, to inform the public of the United States; and
  - (2) as the Director considers necessary, provide more timely assessments relating to ongoing disinformation campaigns.
- Assessments. (f) FUNDING.—Of the amounts appropriated or otherwise made available to the National Intelligence Program (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)) in fiscal year 2020 and 2021, the Director of National Intelligence may use up to \$30,000,000 to carry out this section.
- (g) DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term “appropriate congressional committees” means—
- (1) the Committee on Armed Services of the Senate;
  - (2) the Committee on Homeland Security and Governmental Affairs of the Senate;
  - (3) the Committee on Foreign Relations of the Senate;
  - (4) the Committee on the Judiciary of the Senate;
  - (5) the Select Committee on Intelligence of the Senate;
  - (6) the Committee on Armed Services of the House of Representatives;
  - (7) the Committee on Homeland Security of the House of Representatives;
  - (8) the Committee on Foreign Affairs of the House of Representatives;
  - (9) the Committee on the Judiciary of the House of Representatives; and
  - (10) the Permanent Select Committee on Intelligence of the House of Representatives.
- 50 USC 3334a. **SEC. 5324. TRANSFER OF NATIONAL INTELLIGENCE UNIVERSITY TO THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.**
- Determination. (a) TRANSFER.—Upon the submission of the joint certifications under subsection (b)(1), the Secretary of Defense and the Director of National Intelligence shall take such actions that the Director determines necessary to transfer the National Intelligence University from the Defense Intelligence Agency to the Director of National Intelligence.
- (b) JOINT CERTIFICATIONS.—

(1) REQUIREMENT.—Except as provided by paragraph (2), as soon as practicable after the date of the enactment of this Act, but not later than 18 months after the date of such enactment, the Secretary of Defense and the Director of National Intelligence shall jointly submit to the appropriate congressional committees written certifications of each of the following: Deadline.

(A) The Middle States Commission on Higher Education has provided regional academic accreditation for the National Intelligence University before the date of the certification, or will provide such academic accreditation as of the date on which the University is transferred under subsection (a).

(B) Members of the Armed Forces attending the University will be eligible to receive credit for Phase I joint professional military education.

(C) The Secretary of Education has informed the Director of National Intelligence that the Secretary has recommended approval of the degrees to be conferred pursuant to subsection (e)(2) or will provide such recommended approval as of the date on which the University is transferred under subsection (a).

(D) The Director of National Intelligence, in collaboration with the Secretary of Defense, has established an appropriate governance model for the University.

(E) The Secretary of Defense shall use the University to provide personnel of the Department of Defense with advanced intelligence education.

(2) FAILURE TO CERTIFY.—

(A) ACTIONS REQUIRED.—If the Secretary of Defense and the Director of National Intelligence fail to submit the certifications under paragraph (1) by the date specified in such paragraph, the Secretary and the Director shall—

(i) jointly submit to the appropriate congressional committees a report on such failure by not later than 21 months after the date of the enactment of this Act; and Reports.

(ii) jointly submit such certifications as soon as practicable.

(B) CONTENTS OF REPORT.—The report under subparagraph (A)(i) shall contain the following:

(i) A description of the progress made toward fulfilling the conditions described in such paragraph as of the date of the report.

(ii) A description of any obstacles preventing the fulfillment of such conditions.

(iii) The estimated dates of completion for the fulfillment of such conditions and the submission of the certifications. Estimates.

(c) BRIEFING.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence, the Director of the Defense Intelligence Agency, and the President of the National Intelligence University shall jointly provide to the appropriate congressional committees a briefing on the plan to carry out the transfer under subsection (a), including with respect to— Deadline.

(1) ensuring the provision of services to all elements of the intelligence community;

- (2) employing a military cadre at the University; and
- (3) addressing the current accreditation status of the National Intelligence University with the Middle States Commission on Higher Education.
- (d) COST ESTIMATES OF TRANSFER.—
- Deadline. (1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Director of National Intelligence shall jointly submit to the appropriate congressional committees an estimate of—
- (A) the annual costs of operating the National Intelligence University; and
- (B) the costs to the Federal Government of transferring the National Intelligence University to the Director of National Intelligence.
- (2) INCLUSION OF INDIRECT COSTS.—The estimate submitted under paragraph (1) shall include all indirect costs, including with respect to human resources, security, facilities, and information technology.
- (e) DEGREE-GRANTING AUTHORITY.—
- Effective date. (1) REGULATIONS.—Beginning on the date on which the National Intelligence University is transferred under subsection (a), under regulations prescribed by the Director of National Intelligence, the President of the National Intelligence University may, upon the recommendation of the faculty of the University, confer appropriate degrees upon graduates who meet the degree requirements.
- (2) LIMITATION.—A degree may not be conferred under this section unless—
- (A) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and
- (B) the University is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.
- (f) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—
- Effective date. (1) ACTIONS ON NONACCREDITATION.—Beginning on the date on which the National Intelligence University is transferred under subsection (a), the Director of National Intelligence shall promptly—
- (A) notify the congressional intelligence committees of any action by the Middle States Commission on Higher Education, or other appropriate academic accrediting agency or organization, to not accredit the University to award any new or existing degree; and
- Reports. (B) submit to such committees a report containing an explanation of any such action.
- Effective date. Reports. (2) MODIFICATION OR REDESIGNATION OF DEGREE-GRANTING AUTHORITY.—Beginning on the date on which the National Intelligence University is transferred under subsection (a), upon any modification or redesignation of existing degree-granting authority, the Director shall submit to the congressional intelligence committees a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education with respect to the proposed modification or redesignation.



## (g) CONFORMING REPEAL.—

(1) IN GENERAL.—Section 2161 of title 10, United States Code, is repealed, and the table of sections at the beginning of chapter 108 of such title is amended by striking the item relating to such section 2161.

10 USC 2161  
prec.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date on which the Secretary of Defense and the Director of National Intelligence jointly submit the joint certifications under subsection (b)(1). The Secretary and the Director shall jointly notify the Law Revision Counsel of the House of Representatives of the submission of the certifications so that the Law Revision Counsel may execute the amendments made by paragraph (1).

10 USC 2161  
note.

Notification.

## (h) DEFINITIONS.—In this section:

50 USC 3334a.

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the congressional intelligence committees; and

(B) the Committees on Armed Services of the Senate and House of Representatives.

(2) PHASE I JOINT PROFESSIONAL MILITARY EDUCATION.—The term “Phase I joint professional military education” has the meaning given that term pursuant to section 2154 of title 10, United States Code.

## Subtitle C—Inspector General of the Intelligence Community

### SEC. 5331. DEFINITIONS.

50 USC 3033  
note.

In this subtitle:

(1) WHISTLEBLOWER.—The term “whistleblower” means a person who makes a whistleblower disclosure.

(2) WHISTLEBLOWER DISCLOSURE.—The term “whistleblower disclosure” means a disclosure that is protected under section 1104 of the National Security Act of 1947 (50 U.S.C. 3234) or section 3001(j)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)).

### SEC. 5332. INSPECTOR GENERAL EXTERNAL REVIEW PANEL.

(a) AUTHORITY TO CONVENE EXTERNAL REVIEW PANELS.—

(1) IN GENERAL.—Title XI of the National Security Act of 1947 (50 U.S.C. 3231 et seq.), as amended by section 6718, is amended by adding at the end the following new section:

#### “SEC. 1106. INSPECTOR GENERAL EXTERNAL REVIEW PANEL.

50 USC 3236.

“(a) REQUEST FOR REVIEW.—An individual with a claim described in subsection (b) may submit to the Inspector General of the Intelligence Community a request for a review of such claim by an external review panel convened under subsection (c).

“(b) CLAIMS AND INDIVIDUALS DESCRIBED.—A claim described in this subsection is any—

“(1) claim by an individual—

“(A) that the individual has been subjected to a personnel action that is prohibited under section 1104; and

“(B) who has exhausted the applicable review process for the claim pursuant to enforcement of such section; or

“(2) claim by an individual—

“(A) that he or she has been subjected to a reprisal prohibited by paragraph (1) of section 3001(j) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)); and

“(B) who received a decision on an appeal regarding that claim under paragraph (4) of such section.

“(c) EXTERNAL REVIEW PANEL CONVENED.—

“(1) DISCRETION TO CONVENE.—Upon receipt of a request under subsection (a) regarding a claim, the Inspector General of the Intelligence Community may, at the discretion of the Inspector General, convene an external review panel under this subsection to review the claim.

“(2) MEMBERSHIP.—

“(A) COMPOSITION.—An external review panel convened under this subsection shall be composed of three members as follows:

“(i) The Inspector General of the Intelligence Community.

“(ii) Except as provided in subparagraph (B), two members selected by the Inspector General as the Inspector General considers appropriate on a case-by-case basis from among inspectors general of the following:

“(I) The Department of Defense.

“(II) The Department of Energy.

“(III) The Department of Homeland Security.

“(IV) The Department of Justice.

“(V) The Department of State.

“(VI) The Department of the Treasury.

“(VII) The Central Intelligence Agency.

“(VIII) The Defense Intelligence Agency.

“(IX) The National Geospatial-Intelligence Agency.

“(X) The National Reconnaissance Office.

“(XI) The National Security Agency.

“(B) LIMITATION.—An inspector general of an agency may not be selected to sit on the panel under subparagraph (A)(ii) to review any matter relating to a decision made by such agency.

“(C) CHAIRPERSON.—

“(i) IN GENERAL.—Except as provided in clause (ii), the chairperson of any panel convened under this subsection shall be the Inspector General of the Intelligence Community.

“(ii) CONFLICTS OF INTEREST.—If the Inspector General of the Intelligence Community finds cause to recuse himself or herself from a panel convened under this subsection, the Inspector General of the Intelligence Community shall—

“(I) select a chairperson from inspectors general of the elements listed under subparagraph (A)(ii) whom the Inspector General of the Intelligence Community considers appropriate; and

“(II) notify the congressional intelligence committees of such selection.

“(3) PERIOD OF REVIEW.—Each external review panel convened under this subsection to review a claim shall complete review of the claim no later than 270 days after the date on which the Inspector General convenes the external review panel. Deadline.

“(d) REMEDIES.—

“(1) PANEL RECOMMENDATIONS.—If an external review panel convened under subsection (c) determines, pursuant to a review of a claim submitted by an individual under subsection (a), that the individual was the subject of a personnel action prohibited under section 1104 or was subjected to a reprisal prohibited by section 3001(j)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(1)), the panel may recommend that the agency head take corrective action— Determination.

“(A) in the case of an employee or former employee—

“(i) to return the employee or former employee, as nearly as practicable and reasonable, to the position such employee or former employee would have held had the reprisal not occurred; or

“(ii) reconsider the employee’s or former employee’s eligibility for access to classified information consistent with national security; or

“(B) in any other case, such other action as the external review panel considers appropriate.

“(2) AGENCY ACTION.—

“(A) IN GENERAL.—Not later than 90 days after the date on which the head of an agency receives a recommendation from an external review panel under paragraph (1), the head shall— Deadline.

“(i) give full consideration to such recommendation; and

“(ii) inform the panel and the Director of National Intelligence of what action the head has taken with respect to the recommendation. Notification.

“(B) FAILURE TO INFORM.—The Director shall notify the President of any failures to comply with subparagraph (A)(ii). Notification.

“(e) ANNUAL REPORTS.—

“(1) IN GENERAL.—Not less frequently than once each year, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees and the Director of National Intelligence a report on the activities under this section during the previous year.

“(2) CONTENTS.—Subject to such limitations as the Inspector General of the Intelligence Community considers necessary to protect the privacy of an individual who has made a claim described in subsection (b), each report submitted under paragraph (1) shall include, for the period covered by the report, the following:

“(A) The determinations and recommendations made by the external review panels convened under this section. Determination. Recommendations.

“(B) The responses of the heads of agencies that received recommendations from the external review panels.”.

“(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as

amended by section 6718, is amended by adding at the end the following new item:

“Sec. 1106. Inspector General external review panel.”.

(b) RECOMMENDATION ON ADDRESSING WHISTLEBLOWER APPEALS RELATING TO REPRISAL COMPLAINTS AGAINST INSPECTORS GENERAL.—

Deadline.  
Consultation.

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Intelligence Community, in consultation with the Intelligence Community Inspectors General Forum, shall submit to the congressional intelligence committees a recommendation on how to ensure that—

(A) a whistleblower in the intelligence community who has a complaint against an inspector general in the intelligence community and who alleges a reprisal, has available the adjudication and review provided under section 1104 of the National Security Act of 1947 (50 U.S.C. 3234); and

(B) any such whistleblower who has exhausted the applicable review process may request an external review panel and receive one, at the discretion of the Inspector General of the Intelligence Community.

(2) CONTENTS.—The recommendation submitted pursuant to paragraph (1) shall include the following:

(A) A discussion of whether and to what degree section 1106 of the National Security Act of 1947, as added by subsection (a)(1), provides appropriate authorities and mechanisms to provide an external review panel as described in paragraph (1) of this subsection and for the purposes described in such paragraph.

(B) Such recommendations for legislative or administrative action as the Inspector General may have with respect to providing an external review panel as described in paragraph (1) and for the purposes described in such paragraph.

**SEC. 5333. HARMONIZATION OF WHISTLEBLOWER PROCESSES AND PROCEDURES.**

Deadline.  
Coordination.  
Recommendations.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Intelligence Community, in coordination with the Intelligence Community Inspectors General Forum, shall develop recommendations, applicable to all inspectors general of elements of the intelligence community, regarding the harmonization, where appropriate, of instructions, policies, and directives relating to processes, procedures, and timelines for claims and appeals relating to allegations of personnel actions prohibited under section 1104 of the National Security Act of 1947 or reprisals prohibited by section 3001(j)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)(1)).

(b) TRANSPARENCY AND PROTECTION.—In developing recommendations under subsection (a), the Inspector General of the Intelligence Community shall make efforts to maximize transparency and protect whistleblowers.

**SEC. 5334. OVERSIGHT BY INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY OVER INTELLIGENCE COMMUNITY WHISTLEBLOWER MATTERS.** 50 USC 3033 note.

(a) **SYSTEM FOR NOTIFICATION OF INFORMATION RELATING TO COMPLAINTS BY WHISTLEBLOWERS WITHIN THE INTELLIGENCE COMMUNITY.**—Subject to subsection (b), not later than 1 year after the date of the enactment of this Act, the Inspector General of the Intelligence Community, in consultation with the Intelligence Community Inspectors General Forum, shall establish a system whereby the Inspector General of the Intelligence Community is notified in near real time of the following: Deadline.  
Consultation.

(1) Submission of complaints by whistleblowers to inspectors general of elements of the intelligence community relating to the programs and activities under the jurisdiction of the Director of National Intelligence, and information related to such complaints.

(2) Actions taken by an inspector general of an element of the Intelligence Community relating to such complaints.

(b) **POLICIES FOR IMPLEMENTATION.**—

(1) **IN GENERAL.**—The system established under subsection (a) may not be implemented until the Inspector General of the Intelligence Community, in consultation with the Intelligence Community Inspectors General Forum, has developed and released to each of the inspectors general of the elements of the intelligence community written policies regarding the implementation of such subsection. Consultation.

(2) **REQUIREMENTS.**—The policies required by paragraph (1) shall—

(A) protect the privacy of whistleblowers, including by preventing dissemination without the consent of the whistleblower, of any information submitted previously by a whistleblower to an inspector general of an element of the intelligence community; and

(B) ensure compliance with the requirements of subsection (a), while— Compliance.

(i) ensuring that the Inspector General of the Intelligence Community can oversee whistleblower policies and practices and identify matters that, in the judgment of the Inspector General of the Intelligence Community, may be the subject of an investigation, inspection, audit, or review by the Inspector General of the Intelligence Community; and

(ii) avoiding the imposition of inappropriate resource burdens on inspectors general of elements of the intelligence community.

**SEC. 5335. REPORT ON CLEARED WHISTLEBLOWER ATTORNEYS.**

(a) **REPORT REQUIRED.**—Not later than 1 year after the date of the enactment of this Act, the Director of National Intelligence shall, in coordination with the Inspector General of the Intelligence Community and the Intelligence Community Inspectors General Forum, submit to the congressional intelligence committees a report on access to cleared attorneys by whistleblowers in the intelligence community. Coordination.

(b) **CONTENTS.**—The report submitted pursuant to subsection (a) shall include the following with respect to the 3-year period preceding the date of the report: Time period.

(1) The number of whistleblowers in the intelligence community who requested, through formal submission or verbal request, to retain a cleared attorney and at what stage they requested an attorney.

(2) The number of such limited security agreements approved, rejected, or pending.

(3) The scope and clearance levels of such limited security agreements.

(4) The number of such whistleblowers represented by cleared counsel.

Recommendations.

(5) Recommendations for legislative or administrative action to ensure that whistleblowers in the intelligence community have access to cleared attorneys, including improvements to the limited security agreement process and such other options as the Inspector General of the Intelligence Community considers appropriate.

(c) SURVEY.—The Inspector General of the Intelligence Community shall ensure that the report submitted under subsection (a) is based on—

(1) data from a survey of whistleblowers whose identity may be shared, as appropriate, with the Inspector General of the Intelligence Community by means of the system established pursuant to section 5334;

(2) information obtained from the inspectors general of the intelligence community; or

(3) information from such other sources as may be identified by the Inspector General of the Intelligence Community.

## Subtitle D—Central Intelligence Agency

Determination.

### SEC. 5341. CLARIFICATION OF CERTAIN AUTHORITY OF THE CENTRAL INTELLIGENCE AGENCY.

Section 8(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3510(a)(1)) is amended by inserting before “rental of” the following: “payment of death benefits in cases in which the circumstances of the death of an employee of the Agency, a detailee of the Agency or other employee of another department or agency of the Federal Government assigned to the Agency, or an individual affiliated with the Agency (as determined by the Director), is not covered by section 11, other similar provisions of Federal law, or any regulation issued by the Director providing death benefits, but that the Director determines such payment appropriate;”.

## TITLE LIV—SECURITY CLEARANCES

50 USC 3162a note.

### SEC. 5401. IMPROVING VISIBILITY INTO THE SECURITY CLEARANCE PROCESS.

(a) DEFINITION OF SECURITY EXECUTIVE AGENT.—In this section, the term “Security Executive Agent” means the officer serving as the Security Executive Agent pursuant to section 803 of the National Security Act of 1947, as added by section 6605.

Deadlines.

(b) POLICY REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Security Executive Agent shall issue a policy that requires the head of each Federal agency to create, not later than December 31, 2023, an electronic portal

that can be used by human resources personnel and applicants for security clearances to view information about the status of an application for a security clearance and the average time required for each phase of the security clearance process.

**SEC. 5402. MAKING CERTAIN POLICIES AND EXECUTION PLANS RELATING TO PERSONNEL CLEARANCES AVAILABLE TO INDUSTRY PARTNERS.** 50 USC 3351a.

(a) DEFINITIONS.—In this section:

(1) SECURITY EXECUTIVE AGENT.—The term “Security Executive Agent” means the officer serving as the Security Executive Agent pursuant to section 803 of the National Security Act of 1947, as added by section 6605.

(2) APPROPRIATE INDUSTRY PARTNER.—The term “appropriate industry partner” means a contractor, licensee, or grantee (as defined in section 101(a) of Executive Order 12829 (50 U.S.C. 3161 note; relating to National Industrial Security Program), as in effect on the day before the date of the enactment of this Act) that is participating in the National Industrial Security Program established by such Executive Order.

(b) SHARING OF POLICIES AND PLANS REQUIRED.—Each head of a Federal agency shall share policies and plans relating to security clearances with appropriate industry partners directly affected by such policies and plans in a manner consistent with the protection of national security as well as the goals and objectives of the National Industrial Security Program administered pursuant to Executive Order 12829 (50 U.S.C. 3161 note; relating to the National Industrial Security Program).

(c) DEVELOPMENT OF POLICIES AND PROCEDURES REQUIRED.—  
Deadline.  
Not later than 90 days after the date of the enactment of this Act, the Security Executive Agent and the Director of the National Industrial Security Program shall jointly develop policies and procedures by which appropriate industry partners with proper security clearances and a need to know can have appropriate access to the policies and plans shared pursuant to subsection (b) that directly affect those industry partners.

## TITLE LV—MATTERS RELATING TO FOREIGN COUNTRIES

### Subtitle A—Matters Relating to Russia

**SEC. 5501. ANNUAL REPORTS ON INFLUENCE OPERATIONS AND CAMPAIGNS IN THE UNITED STATES BY THE RUSSIAN FEDERATION.**

(a) REPORTS.—Title XI of the National Security Act of 1947 (50 U.S.C. 3231 et seq.), as amended by section 5511, is further amended by adding at the end the following new section:

**“SEC. 1108. ANNUAL REPORTS ON INFLUENCE OPERATIONS AND CAMPAIGNS IN THE UNITED STATES BY THE RUSSIAN FEDERATION.** 50 USC 3238.

“(a) REQUIREMENT.—On an annual basis, the Director of the National Counterintelligence and Security Center shall submit to the congressional intelligence committees a report on the influence

operations and campaigns in the United States conducted by the Russian Federation.

Assessments.

“(b) CONTENTS.—Each report under subsection (a) shall include the following:

List.

“(1) A description and listing of the Russian organizations and persons involved in influence operations and campaigns operating in the United States as of the date of the report.

“(2) An assessment of organizations that are associated with or receive funding from organizations and persons identified in paragraph (1), particularly such entities operating in the United States.

“(3) A description of the efforts by the organizations and persons identified in paragraph (1) to target, coerce, and influence populations within the United States.

“(4) An assessment of the activities of the organizations and persons identified in paragraph (1) designed to influence the opinions of elected leaders of the United States or candidates for election in the United States.

“(5) With respect to reports submitted after the first report, an assessment of the change in goals, tactics, techniques, and procedures of the influence operations and campaigns conducted by the organizations and persons identified in paragraph (1).

“(c) COORDINATION.—In carrying out subsection (a), the Director shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, the Director of the National Security Agency, and any other relevant head of an element of the intelligence community.

“(d) FORM.—Each report submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.”

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 5511, is further amended by inserting after the item relating to section 1107 the following new item:

“Sec. 1108. Annual reports on influence operations and campaigns in the United States by the Russian Federation.”

50 USC 3238  
note.

(c) INITIAL REPORT.—The Director of the National Counterintelligence and Security Center shall submit to the congressional intelligence committees the first report under section 1108 of the National Security Act of 1947, as added by subsection (a), by not later than 180 days after the date of the enactment of this Act.

**SEC. 5502. ASSESSMENT OF LEGITIMATE AND ILLEGITIMATE FINANCIAL AND OTHER ASSETS OF VLADIMIR PUTIN.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should do more to expose the corruption of Vladimir Putin, whose ill-gotten wealth is perhaps the most powerful global symbol of his dishonesty and his persistent efforts to undermine the rule of law and democracy in the Russian Federation.

Deadline.

(b) ASSESSMENT.—Not later than 180 days after the date of the enactment of this Act, consistent with the protection of intelligence sources and methods, the Director of National Intelligence shall submit to the appropriate congressional committees an assessment, based on all sources of intelligence, on the net worth and financial and other assets, legitimate as well as illegitimate, of Vladimir Putin and his family members, including—



(1) the estimated net worth of Vladimir Putin and his family members;

(2) a description of their legitimately and illegitimately obtained assets, including all real, personal, and intellectual property, bank or investment or similar accounts, and any other financial or business interests or holdings, including those outside of Russia;

(3) the details of the legitimately and illegitimately obtained assets, including real, personal, and intellectual property, bank or investment or similar accounts, and any other financial or business interests or holdings, including those outside of Russia, that are owned or controlled by, accessible to, or otherwise maintained for the benefit of Vladimir Putin, including their nature, location, manner of acquisition, value, and publicly named owner (if other than Vladimir Putin);

(4) the methods used by Vladimir Putin or others acting at his direction, with his knowledge, or for his benefit, to conceal Putin’s interest in his accounts, holdings, or other assets, including the establishment of “front” or shell companies and the use of intermediaries; and

(5) an identification of the most significant senior Russian political figures, oligarchs, and any other persons who have engaged in activity intended to conceal the true financial condition of Vladimir Putin.

(c) FORM.—The assessment required under subsection (b) shall be submitted either—

(1) in unclassified form to the extent consistent with the protection of intelligence sources and methods, and may include a classified annex; or

(2) simultaneously as both an unclassified version and a classified version.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Select Committee on Intelligence, the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Finance of the Senate; and

(2) the Permanent Select Committee on Intelligence, Committee on Foreign Affairs, the Committee on Financial Services, and the Committee on Ways and Means of the House of Representatives.

**SEC. 5503. ASSESSMENTS OF INTENTIONS OF POLITICAL LEADERSHIP OF THE RUSSIAN FEDERATION.**

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, consistent with the protection of intelligence sources and methods, the Director of National Intelligence, and the head of any element of the intelligence community that the Director determines appropriate, shall submit to the appropriate congressional committees each of the assessments described in subsection (b). Deadline.

(b) ASSESSMENTS DESCRIBED.—The assessments described in this subsection are assessments based on intelligence obtained from all sources that assess the current intentions of the political leadership of the Russian Federation with respect to the following:

(1) Potential military action against members of the North Atlantic Treaty Organization (NATO).

(2) Potential responses to an enlarged United States or NATO military presence in eastern Europe or to increased United States military support for allies and partners in the region, such as the provision of additional lethal military equipment to Ukraine or Georgia.

(3) Potential actions taken for the purpose of exploiting perceived divisions among the governments of Russia’s Western adversaries.

(c) FORM.—Each assessment required under subsection (a) may be submitted in classified form but shall also include an unclassified executive summary, consistent with the protection of intelligence sources and methods.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term “appropriate congressional committees” means—

(1) the Permanent Select Committee on Intelligence, the Committee on Foreign Affairs, and the Committee on Armed Services of the House of Representatives; and

(2) the Select Committee on Intelligence, the Committee on Foreign Relations, and the Committee on Armed Services of the Senate.

## Subtitle B—Matters Relating to China

### SEC. 5511. ANNUAL REPORTS ON INFLUENCE OPERATIONS AND CAMPAIGNS IN THE UNITED STATES BY THE COMMUNIST PARTY OF CHINA.

(a) REPORTS.—Title XI of the National Security Act of 1947 (50 U.S.C. 3231 et seq.), as amended by section 5332, is further amended by adding at the end the following new section:

50 USC 3237.

#### “SEC. 1107. ANNUAL REPORTS ON INFLUENCE OPERATIONS AND CAMPAIGNS IN THE UNITED STATES BY THE COMMUNIST PARTY OF CHINA.

“(a) REQUIREMENT.—On an annual basis, consistent with the protection of intelligence sources and methods, the Director of the National Counterintelligence and Security Center shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on the influence operations and campaigns in the United States conducted by the Communist Party of China.

Assessments.

“(b) CONTENTS.—Each report under subsection (a) shall include the following:

“(1) A description of the organization of the United Front Work Department of the People’s Republic of China, or the successors of the United Front Work Department, and the links between the United Front Work Department and the Central Committee of the Communist Party of China.

“(2) An assessment of the degree to which organizations that are associated with or receive funding from the United Front Work Department, particularly such entities operating in the United States, are formally tasked by the Chinese Communist Party or the Government of China.

“(3) A description of the efforts by the United Front Work Department and subsidiary organizations of the United Front Work Department to target, coerce, and influence foreign populations, particularly those of ethnic Chinese descent.

“(4) An assessment of attempts by the Chinese Embassy, consulates, and organizations affiliated with the Chinese Communist Party (including, at a minimum, the United Front Work Department) to influence the United States-based Chinese Student Scholar Associations.

“(5) A description of the evolution of the role of the United Front Work Department under the leadership of the President of China.

“(6) An assessment of the activities of the United Front Work Department designed to influence the opinions of elected leaders of the United States, or candidates for elections in the United States, with respect to issues of importance to the Chinese Communist Party.

“(7) A listing of all known organizations affiliated with the United Front Work Department that are operating in the United States as of the date of the report. List.

“(8) With respect to reports submitted after the first report, an assessment of the change in goals, tactics, techniques, and procedures of the influence operations and campaigns conducted by the Chinese Communist Party.

“(c) COORDINATION.—In carrying out subsection (a), the Director shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, the Director of the National Security Agency, and any other relevant head of an element of the intelligence community.

“(d) FORM.—Each report submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.”

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 5332, is further amended by inserting after the item relating to section 1106 the following new item:

“Sec. 1107. Annual reports on influence operations and campaigns in the United States by the Communist Party of China.”

(c) INITIAL REPORT.—The Director of the National Counterintelligence and Security Center shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate the first report under section 1107 of the National Security Act of 1947, as added by subsection (a), by not later than 180 days after the date of the enactment of this Act.

50 USC 3237  
note.

**SEC. 5512. REPORT ON REPRESSION OF ETHNIC MUSLIM MINORITIES  
IN THE XINJIANG REGION OF THE PEOPLE'S REPUBLIC  
OF CHINA.**

(a) REPORT.—Not later than 150 days after the date of the enactment of this Act, consistent with the protection of intelligence sources and methods, the Director of National Intelligence shall, in consultation with the Secretary of State, submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on activity by the People's Republic

Consultation.

of China to repress ethnic Muslim minorities in the Xinjiang region of China.

Assessments.

(b) CONTENTS.—The report under subsection (a) shall include the following:

(1) An assessment of the number of individuals detained in “political reeducation camps”, and the conditions in such camps for detainees, in the Xinjiang region of China, including whether detainees endure torture, forced renunciation of faith, or other mistreatment.

(2) A description, as possible, of the geographic location of such camps.

(3) A description, as possible, of the methods used by China to “reeducate” detainees and the elements of China responsible for such “reeducation”.

(4) A description of any forced labor in such camps, and any labor performed in regional factories for low wages under the threat of being sent back to “political reeducation camps”.

(5) An assessment of the level of access China grants to foreign persons observing the situation in Xinjiang and a description of measures used to impede efforts to monitor the conditions in Xinjiang.

(6) An assessment of the surveillance, detection, and control methods used by China to target ethnic minorities, including new “high-tech” policing models and a description of any civil liberties or privacy protections provided under such models.

(7) An assessment and identification of the technological and financial support provided by United States-based companies, including technological support for the development of facial recognition capabilities or technologies for digital surveillance, social control, or censorship, and financial support, including from financial institutions, investment vehicles, and pension funds, to China-based companies or Chinese government entities providing material support to the digital surveillance or repression of Uyghur and other ethnic minorities in Xinjiang by the Xinjiang authorities.

(c) COORDINATION.—The Director of National Intelligence shall carry out subsection (a) in coordination with the Director of the Central Intelligence Agency, the Director of the National Security Agency, the Director of the National Geospatial-Intelligence Agency, and the head of any other agency of the Federal Government that the Director of National Intelligence determines appropriate.

(d) FORM.—The report submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 5513. REPORT ON EFFORTS BY PEOPLE’S REPUBLIC OF CHINA TO INFLUENCE ELECTION IN TAIWAN.**

(a) REPORT.—Consistent with section 3(c) of the Taiwan Relations Act (Public Law 96–8; 22 U.S.C. 3302(c)), and consistent with the protection of intelligence sources and methods, not later than 45 days after the date of the election for the President and Vice President of Taiwan in 2020, the Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on any—

(1) influence operations conducted by China to interfere in or undermine such election; and

(2) efforts by the United States to disrupt such operations.

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) A description of any significant efforts by the intelligence community to coordinate technical and material support for Taiwan to identify, disrupt, and combat influence operations specified in subsection (a)(1).

(2) A description of any efforts by the United States Government to build the capacity of Taiwan to disrupt external efforts that degrade a free and fair election process.

(3) An assessment of whether and to what extent China conducted influence operations specified in subsection (a)(1), and, if such operations occurred—

Assessment.

(A) a comprehensive list of specific governmental and nongovernmental entities of China that were involved in supporting such operations and a description of the role of each such entity; and

List.

(B) an identification of any tactics, techniques, and procedures used in such operations.

(c) FORM.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

## Subtitle C—Matters Relating to Other Countries

### SEC. 5521. SENSE OF CONGRESS AND REPORT ON IRANIAN EFFORTS IN SYRIA AND LEBANON.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, regardless of the ultimate number of United States military personnel deployed to Syria, it is a vital interest of the United States to prevent the Islamic Republic of Iran, Hizballah, and other Iranian-backed forces from establishing a strong and enduring presence in Syria that can be used to project power in the region and threaten the United States and its allies, including Israel.

(b) REPORT.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Secretary of State and the Secretary of Defense, shall submit to the appropriate congressional committees a report that assesses—

Coordination.  
Assessments.

(A) efforts by Iran to establish long-term influence in Syria through military, political, economic, social, and cultural means;

(B) the degree to which Iranian support of proxy forces in Syria and Lebanon contributes to Iranian strategy with respect to the region; and

(C) the threat posed by the efforts described in subparagraph (A) to United States interests and allies.

(2) ELEMENTS.—The report under paragraph (1) shall include each of the following:

(A) An assessment of—

Assessments.

(i) how Iran and Iranian-backed forces, including the Islamic Revolutionary Guard Corps and Hizballah, have provided or are currently providing manpower,

training, weapons, equipment, and funding to the Syrian government led by President Bashar al-Assad;

(ii) the support provided by Iran and Hizballah to Shia militias operating in Syria composed of domestic fighters from Syria and foreign fighters from countries such as Afghanistan, Iraq, Lebanon, and Pakistan;

(iii) operational lessons learned by Hizballah based on the recent experiences of Hizballah in Syria;

(iv) the threat posed by Iran and Iranian-backed forces to—

(I) the al-Tanf garrison; and

(II) areas of northeast Syria that are currently controlled by local partner forces of the United States;

(v) the degree to which efforts of the United States to sustain and strengthen Kurdish forces in Syria may undermine the influence of Iran and Iranian-backed forces in Syria;

(vi) how Iran and Iranian-backed forces seek to enhance the long-term influence of such entities in Syria through non-military means such as purchasing strategic real estate in Syria, constructing Shia religious centers and schools, securing loyalty from Sunni tribes in exchange for material assistance, and inducing the Assad government to open Farsi-language departments at Syrian universities;

(vii) whether the prominent role of Iran in Syria, including the influence of Iran over government institutions, may increase the likelihood of the reconstitution of the Islamic State of Iraq and Syria in Syria; and

(viii) the provision of goods, services, or technology transferred by Iran or its affiliates to Hizballah for the purpose of indigenously manufacturing or otherwise producing missiles.

(B) An analysis of—

(i) how Iran is working with the Russian Federation, Turkey, and other countries to increase the influence of Iran in Syria;

(ii) the goals of Iran in Syria, including, but not limited to, protecting the Assad government, increasing the regional influence of Iran, threatening Israel from a more proximate location, building weapon-production facilities and other military infrastructure, and securing a land bridge to connect Iran through Iraq and Syria to the stronghold of Hizballah in southern Lebanon; and

(iii) the foreign and domestic supply chains that significantly facilitate, support, or otherwise aid acquisition or development by Hizballah of missile production facilities, including the geographic distribution of such foreign and domestic supply chains.

(C) A description of—

(i) how the efforts of Iran to transfer advanced weapons to Hizballah and to establish a military presence in Syria has led to direct and repeated confrontations with Israel;

(ii) the intelligence and military support that the United States provides to Israel to help Israel identify and appropriately address specific threats to Israel from Iran and Iranian-backed forces in Syria;

(iii) the threat posed to Israel and other allies of the United States in the Middle East resulting from the transfer of arms or related material, or other support, by Iran to Hizballah and other proxies;

(iv) Iranian and Iranian-controlled personnel operating within Syria, including Hizballah, Shiite militias, and Revolutionary Guard Corps forces of Iran, and the number and geographic distribution of such personnel;

(v) any rocket-producing facilities in Lebanon for nonstate actors, including whether such facilities were assessed to be built at the direction of Hizballah leadership, Iranian leadership, or in consultation between Iranian leadership and Hizballah leadership; and

(vi) Iranian expenditures in the previous calendar year on military and terrorist activities outside the country, including the amount of such expenditures with respect to each of Hizballah, Houthi rebels in Yemen, Hamas, proxy forces in Iraq and Syria, ballistic missile research and testing, and any other entity, country, or activity that the Director determines as destabilizing to the Middle East region.

(3) FORM OF REPORT.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(4) DEFINITIONS.—In this subsection:

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—the term “appropriate congressional committees” means—

(i) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(ii) the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) ARMS OR RELATED MATERIAL.—The term “arms or related material” means—

(i) nuclear, biological, chemical, or radiological weapons or materials or components of such weapons;

(ii) ballistic or cruise missile weapons or materials or components of such weapons;

(iii) destabilizing numbers and types of advanced conventional weapons;

(iv) defense articles or defense services, as those terms are defined in paragraphs (3) and (4), respectively, of section 47 of the Arms Export Control Act (22 U.S.C. 2794);

(v) defense information, as that term is defined in section 644 of the Foreign Assistance Act of 1961 (22 U.S.C. 2403); or

(vi) items designated by the President for purposes of the United States Munitions List under section

38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).

**SEC. 5522. ASSESSMENTS REGARDING THE NORTHERN TRIANGLE AND MEXICO.**

(a) ASSESSMENT.—

Coordination.

(1) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State for Intelligence and Research, the Chief of Intelligence of the Drug Enforcement Administration, and other appropriate officials in the intelligence community, shall submit to the appropriate congressional committees a report containing a comprehensive assessment of drug trafficking, human trafficking, and human smuggling activities in the Northern Triangle and Mexico.

(2) MATTERS INCLUDED.—The report under paragraph (1) shall include, at a minimum, the following:

(A) An assessment of the effect of drug trafficking, human trafficking, and human smuggling on the security and economic situation in the Northern Triangle.

(B) An assessment of the effect of the activities of drug trafficking organizations on the migration of persons from the Northern Triangle to the United States-Mexico border.

Summary.

(C) A summary of any relevant activities by elements of the intelligence community in relation to drug trafficking, human trafficking, and human smuggling in the Northern Triangle and Mexico.

(D) An assessment of methods and routes used by drug trafficking organizations, human traffickers, and human smugglers to move drugs, persons, or both from the Northern Triangle and Mexico to the United States.

(E) An assessment of the intersection between the activities of drug trafficking organizations, human traffickers and human smugglers, and other organized criminal groups in the Northern Triangle and Mexico.

(F) An assessment of the illicit funds and financial transactions that support the activities of drug trafficking organizations, human traffickers, and human smugglers, and connected criminal enterprises, in the Northern Triangle and Mexico.

Review.

(G) A comprehensive review of the current collection priorities of the intelligence community for the Northern Triangle and Mexico, as of the date of the enactment of this Act, in order to identify whether such priorities are appropriate and sufficient in light of the threat posed by the activities of drug trafficking organizations and human traffickers and human smugglers to the security of the United States and the Western Hemisphere.

(3) FORM.—The report required by paragraph (1) may be submitted in classified form, but if so submitted, shall contain an unclassified summary.

Public information.

(4) AVAILABILITY.—The report under paragraph (1), or the unclassified summary of the report described in paragraph (3), shall be made publicly available.



## (b) BRIEFINGS.—

(1) SEMIANNUAL REQUIREMENT.—Not later than 90 days after the date on which the report under subsection (a) is submitted, and every 180 days thereafter for a 5-year period, the Director of National Intelligence shall provide to the congressional intelligence committees a briefing on the intelligence community’s collection priorities and activities in the Northern Triangle and Mexico with a focus on the threat posed by the activities of drug trafficking organizations and human traffickers and human smugglers to the security of the United States and the Western Hemisphere.

(2) MATTERS INCLUDED.—Each briefing under paragraph (1) shall include a description of the funds expended by the intelligence community on the efforts described in such paragraph during the preceding fiscal year, except the first such briefing shall cover fiscal years 2018 and 2019.

## (c) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs, the Committee on Homeland Security, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Select Committee on Intelligence of the Senate.

(2) HUMAN TRAFFICKING.—The term “human trafficking” has the meaning given the term “severe forms of trafficking in persons” by section 103 of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7102).

(3) NORTHERN TRIANGLE.—The term “Northern Triangle” means El Salvador, Guatemala, and Honduras.

Time periods.

Deadlines.

## TITLE LVI—FEDERAL EFFORTS AGAINST DOMESTIC TERRORISM

### SEC. 5601. DEFINITIONS.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Permanent Select Committee on Intelligence, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives; and

(B) the Select Committee on Intelligence, the Committee on Homeland Security and Governmental Affairs, and the Committee on the Judiciary of the Senate.

(2) DOMESTIC TERRORISM.—The term “domestic terrorism” has the meaning given that term in section 2331 of title 18, United States Code.

(3) HATE CRIME.—The term “hate crime” means a criminal offense under—

(A) sections 241, 245, 247, and 249 of title 18, United States Code; and

(B) section 3631 of title 42, United States Code.

(4) **INTERNATIONAL TERRORISM.**—The term “international terrorism” has the meaning given that term in section 2331 of title 18, United States Code.

(5) **TERMS IN ATTORNEY GENERAL’S GUIDELINES FOR DOMESTIC FBI OPERATIONS.**—The terms “assessments”, “full investigations”, “enterprise investigations”, “predicated investigations”, and “preliminary investigations” have the meanings given those terms in the most recent, approved version of the Attorney General’s Guidelines for Domestic FBI Operations (or successor).

(6) **TERMS IN FBI BUDGET MATERIALS.**—The terms “Consolidated Strategy Guide”, “Field Office Strategic Plan”, “Integrated Program Management Process”, and “Threat Review and Prioritization” have the meanings given those terms in the materials submitted to Congress by the Attorney General in support of the Federal Bureau of Investigation budget for fiscal year 2020.

(7) **TERRORISM.**—The term “terrorism” includes domestic terrorism and international terrorism.

(8) **TERRORISM INFORMATION.**—The term “terrorism information” has the meaning given that term in section 1016(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(9) **TIME UTILIZATION AND RECORDKEEPING DATA.**—The term “time utilization and recordkeeping data” means data collected on resource utilization and workload activity of personnel of the Federal Bureau of Investigation in accordance with Federal law.

**SEC. 5602. STRATEGIC INTELLIGENCE ASSESSMENT OF AND REPORTS ON DOMESTIC TERRORISM.**

Consultation.

(a) **REPORT ON STANDARDIZATION OF TERMINOLOGY AND PROCEDURES RELATING TO DOMESTIC TERRORISM.**—Not later than 90 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence in a manner consistent with the authorities and responsibilities of such Director, shall jointly—

(1) develop, to the fullest extent feasible and for purposes of internal recordkeeping and tracking, uniform and standardized—

(A) definitions of the terms “domestic terrorism”, “act of domestic terrorism”, “domestic terrorism groups”, and any other commonly used terms with respect to domestic terrorism;

(B) methodologies for tracking incidents of domestic terrorism; and

(C) descriptions of categories and subcategories of—  
(i) domestic terrorism; and  
(ii) ideologies relating to domestic terrorism;

(2) submit to the appropriate congressional committees a report containing the information developed under paragraph (1).

(b) **REPORT CONTAINING STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM.**—

Consultation.

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau

of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence in a manner consistent with the authorities and responsibilities of such Director, shall jointly submit to the appropriate congressional committees a report on domestic terrorism containing the following:

- (A) The strategic intelligence assessment under paragraph (2).
- (B) The discussion of activities under paragraph (3).
- (C) Data on domestic terrorism under paragraph (4).
- (D) Recommendations under paragraph (5).

(2) STRATEGIC INTELLIGENCE ASSESSMENT.—

Consultation.

(A) ASSESSMENT REQUIRED.—The Director of the Federal Bureau of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence in a manner consistent with the authorities and responsibilities of such Director, shall prepare and include in the report under paragraph (1) a strategic intelligence assessment of domestic terrorism in the United States during fiscal years 2017, 2018, and 2019.

(B) STANDARDS.—The Director of the Federal Bureau of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence in a manner consistent with the authorities and responsibilities of such Director, shall ensure that the strategic assessment under subparagraph (A) complies with the analytic integrity and tradecraft standards of the intelligence community.

Compliance.

(3) DISCUSSION OF ACTIVITIES.—The report under paragraph (1) shall discuss and compare the following with respect to each applicable element of the intelligence community:

(A) The criteria for opening, managing, and closing domestic and international terrorism investigations.

(B) Standards and procedures for the Federal Bureau of Investigation with respect to the review, prioritization, and mitigation of domestic and international terrorism threats in the United States.

(C) The planning (including plans of analysis of the Federal Bureau of Investigation, Department of Homeland Security, and National Counterterrorism Center), development, production, analysis, and evaluation of intelligence and intelligence products relating to terrorism, noting any differences with respect to domestic terrorism and international terrorism.

(D) The sharing of information relating to domestic and international terrorism by and between—

- (i) the Federal Government;
- (ii) State, local, Tribal, territorial, and foreign governments;
- (iii) the appropriate congressional committees;
- (iv) nongovernmental organizations; and
- (v) the private sector.

(E) The criteria and methodology used by the Federal Bureau of Investigation to identify or assign terrorism classifications to investigations of domestic terrorism.

(F) Compliance by the Federal Government with privacy, civil rights, and civil liberties policies and protections

applicable to the production of the report under paragraph (1), including protections against the public release of names or other personally identifiable information of individuals involved in incidents, investigations, indictments, prosecutions, or convictions for which data is reported under this section.

(G) Information regarding any training or resources provided by the Federal Bureau of Investigation, the Department of Homeland Security, or the National Counterterrorism Center, to assist Federal, State, local, and Tribal law enforcement agencies in understanding, detecting, deterring, and investigating acts of domestic terrorism, including the date, type, subject, and recipient agencies of such training or resources.

(4) DATA ON DOMESTIC TERRORISM.—

Time period.

(A) DATA REQUIRED.—In accordance with subparagraph (B), the report under paragraph (1) shall include the following data for the period beginning on January 1, 2009, and ending on the date of the enactment of this Act:

(i) For each completed or attempted incident of domestic terrorism that has occurred in the United States during such period—

(I) a description of such incident;

(II) the date and location of such incident;

(III) the number and type of completed and attempted Federal nonviolent crimes committed during such incident;

(IV) the number and type of completed and attempted Federal and State property crimes committed during such incident, including an estimate of economic damages resulting from such crimes; and

(V) the number and type of completed and attempted Federal violent crimes committed during such incident, including the number of people injured or killed as a result of such crimes.

(ii) For such period—

(I) an identification of each assessment, preliminary investigation, full investigation, and enterprise investigation with a nexus to domestic terrorism opened, pending, or closed by the Federal Bureau of Investigation;

(II) the number of assessments or investigations identified under subclause (I) associated with each domestic terrorism investigative classification (including subcategories);

(III) the number of assessments or investigations described in subclause (II) initiated as a result of a referral or investigation by a Federal, State, local, Tribal, territorial, or foreign government, of a hate crime;

(IV) the number of Federal criminal charges with a nexus to domestic terrorism, including the number of indictments and complaints associated with each domestic terrorism investigative classification (including subcategories), a summary of the allegations contained in each such indictment,

the disposition of the prosecution, and, if applicable, the sentence imposed as a result of a conviction on such charges;

(V) referrals of incidents of domestic terrorism by or to State, local, Tribal, territorial, or foreign governments, to or by departments or agencies of the Federal Government, for investigation or prosecution, including the number of such referrals associated with each domestic terrorism investigation classification (including any subcategories), and a summary of each such referral that includes the rationale for such referral and the disposition of the applicable Federal investigation or prosecution;

(VI) intelligence products produced by the intelligence community relating to domestic terrorism, including, with respect to the Federal Bureau of Investigation, the number of such products associated with each domestic terrorism investigative classification (including any subcategories);

(VII) with respect to the Federal Bureau of Investigation—

(aa) the number of staff (expressed in terms of full-time equivalents and positions) working on matters relating to domestic terrorism described in subclauses (I) through (VI); and

(bb) a summary of time utilization and recordkeeping data for personnel working on such matters, including the number or percentage of such personnel associated with each domestic terrorism investigative classification (including any subcategories) in the FBI Headquarters Operational Divisions and Field Divisions;

Summary.

(VIII) with respect to the Office of Intelligence and Analysis of the Department of Homeland Security, the number of staff (expressed in terms of full-time equivalents and positions) working on matters relating to domestic terrorism described in subclauses (I) through (VI); and

(IX) with respect to the National Counterterrorism Center, the number of staff (expressed in terms of full-time equivalents and positions) working on matters relating to domestic terrorism described in subclauses (I) through (VI), and the applicable legal authorities relating to the activities of such staff.

(B) COLLECTION AND COMPILATION.—The requirement to submit data under paragraph (1)—

Records.

(i) may not be construed to require the creation or maintenance of any record that the Federal Bureau of Investigation, the Department of Homeland Security, or the National Counterterrorism Center, as the case may be, does not maintain in the ordinary course of business or pursuant to another provision of law; and

(ii) shall be carried out by collecting, compiling, or otherwise using data and records that such entities otherwise maintain or create.

(C) **FORMAT.**—The information required under subparagraph (A) may be provided in a format that uses the marking associated with the Central Records System (or any successor system) of the Federal Bureau of Investigation.

(5) **RECOMMENDATIONS.**—

Analysis.

(A) **IN GENERAL.**—The report under paragraph (1) shall include recommendations, including any constitutional analysis conducted relating to such recommendations, with respect to the following:

(i) The necessity of changing authorities, roles, resources, or responsibilities within the Federal Government to more effectively prevent and counter domestic terrorism activities.

(ii) Measures necessary to ensure the protection of privacy and civil liberties in the carrying out of activities relating to countering domestic terrorism.

(B) **CONSULTATION.**—In developing recommendations pursuant to subparagraph (A)(ii), the Director of the Federal Bureau of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence, may seek the advice of the Privacy and Civil Liberties Oversight Board.

Consultation.

(c) **PROVISION OF OTHER DOCUMENTS AND MATERIALS.**—

(1) **IN GENERAL.**—Together with the report under subsection (b)(1), the Director of the Federal Bureau of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence in a manner consistent with the authorities and responsibilities of such Director, shall also submit to the appropriate congressional committees the following documents and materials in complete and unredacted form:

(A) With respect to the Federal Bureau of Investigation, at a minimum, the most recent, approved versions of—

(i) the Attorney General’s Guidelines for Domestic FBI Operations (or any successor);

(ii) the FBI Domestic Investigations and Operations Guide (or any successor);

(iii) the FBI Counterterrorism Policy Guide (or any successor); and

(iv) materials sufficient to show the rankings of domestic terrorism in relation to other threats within the Threat Review and Prioritization process, with respect to the headquarters and each field office of the Federal Bureau of Investigation.

(B) With respect to the intelligence community—

List.

(i) a list of all intelligence products described in subsection (b)(4)(A)(ii)(VI); and

(ii) a means of accessing each such product.

List.

(2) **NONDUPLICATION.**—If any documents or materials required under paragraph (1) have been previously submitted to the appropriate congressional committees under such paragraph and have not been modified since such submission, the

Director of the Federal Bureau of Investigation, the Secretary of Homeland Security, and the Director of National Intelligence may provide a list of such documents or materials in lieu of making the submission under paragraph (1) for those documents or materials.

(d) ANNUAL UPDATES.—During the 5-year period following the date of the submission of the reports under subsections (b) and (c), the Director of the Federal Bureau of Investigation and the Secretary of Homeland Security, in consultation with the Director of National Intelligence in a manner consistent with the authorities and responsibilities of such Director, shall jointly submit to the appropriate congressional committees annual updates to the reports submitted under subsections (a), (b), and (c).

Time period.  
Consultation.

(e) CLASSIFICATION AND PUBLIC RELEASE.—The reports under subsections (a), (b), and (d) shall be—

(1) unclassified, but may contain a classified annex;

(2) with respect to the unclassified portion of the report, made available on the public internet websites of the Federal Bureau of Investigation, the Department of Homeland Security, and the National Counterterrorism Center—

Web posting.

(A) not later than 30 days after submission to the appropriate congressional committees; and

Deadline.

(B) in an electronic format that is fully indexed and searchable; and

(3) with respect to a classified annex, submitted to the appropriate congressional committees in an electronic format that is fully indexed and searchable.

(f) INFORMATION QUALITY.—The reports under subsections (a), (b), and (d), to the extent applicable, shall comply with the guidelines issued by the Director of the Office of Management and Budget pursuant to section 515 of title V of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–154).

Compliance.

## TITLE LVII—REPORTS AND OTHER MATTERS

### Subtitle A—Reports and Briefings

#### SEC. 5701. MODIFICATION OF REQUIREMENTS FOR SUBMISSION TO CONGRESS OF CERTAIN REPORTS.

(a) MODIFICATION OF REPORTS RELATING TO GUANTANAMO BAY.—

(1) MODIFICATION.—Section 506I(b) of the National Security Act of 1947 (50 U.S.C. 3105(b)) is amended by striking “once every 6 months” and inserting “annually”.

(2) MODIFICATION.—Section 319(a) of the Supplemental Appropriations Act, 2009 (10 U.S.C. 801 note) is amended by striking “every 90 days” and inserting “annually”.

(b) MODIFICATION TO REPORTS ON ANALYTIC INTEGRITY.—Subsection (c) of section 1019 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3364) is amended—

(1) in the heading, by striking “REPORTS” and inserting “BRIEFINGS”; and

(2) by striking “submit to the congressional intelligence committees, the heads of the relevant elements of the intelligence community, and the heads of analytic training departments a report containing” and inserting “provide to the congressional intelligence committees, the heads of the relevant elements of the intelligence community, and the heads of analytic training departments a briefing with”.

(c) REPEAL OF REPORTS RELATING TO INTELLIGENCE FUNCTIONS.—Section 506J of the National Security Act of 1947 (50 U.S.C. 3105a) is repealed and the table of contents in the first section of such Act is amended by striking the item relating to section 506J.

(d) MODIFICATION OF REQUIRED REPORTS RELATING TO ENTERTAINMENT INDUSTRY.—Section 308 of the Intelligence Authorization Act for Fiscal Year 2017 (50 U.S.C. 3332) is amended—

(1) in subsection (b)(2)—

(A) by striking “paragraph (1) shall—” and all that follows through “permit an element” and insert “paragraph (1) shall permit an element”;

(B) by striking “approval; and” and inserting “approval.”; and

(C) by striking subparagraph (B); and

(2) by striking subsection (c) and inserting the following new subsection:

“(c) INFORMATION ON PRIOR YEAR ENGAGEMENTS.—At the written request of either of the congressional intelligence committees, the Director of National Intelligence shall submit to such committees information with respect to engagements occurring during the calendar year prior to the year during which such request is made. Such information may include—

“(1) a description of the nature and duration of each such engagement;

“(2) the cost incurred by the United States Government for each such engagement;

“(3) a description of the benefits to the United States Government for each such engagement;

“(4) a determination of whether any information was declassified, and whether any classified information was improperly disclosed, for each such engagement; and

“(5) a description of the work produced through each such engagement.”.

Determination.

50 USC 3306  
note.

**SEC. 5702. INCREASED TRANSPARENCY REGARDING COUNTERTERRORISM BUDGET OF THE UNITED STATES.**

(a) FINDINGS.—Congress finds the following:

(1) Consistent with section 601(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (50 U.S.C. 3306(a)), the recent practice of the intelligence community has been to release to the public—

(A) around the date on which the President submits to Congress a budget for a fiscal year pursuant to section 1105 of title 31, United States Code, the “top-line” amount of total funding requested for the National Intelligence Program for such fiscal year; and



(B) the amount of requested and appropriated funds for the National Intelligence Program and Military Intelligence Program for certain prior fiscal years, consistent with the protection of intelligence sources and methods.

(2) The Directorate of Strategic Operational Planning of the National Counterterrorism Center is responsible for producing an annual National Counterterrorism Budget report, which examines the alignment of intelligence and other resources in the applicable fiscal year budget with the counterterrorism goals and areas of focus in the National Strategy for Counterterrorism.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) despite the difficulty of compiling and releasing to the public comprehensive information on the resource commitments of the United States to counterterrorism activities and programs, including with respect to such activities and programs of the intelligence community, the United States Government could take additional steps to enhance the understanding of the public with respect to such resource commitments, in a manner consistent with the protection of intelligence sources and methods and other national security interests; and

(2) the United States Government should release to the public as much information as possible regarding the funding of counterterrorism activities and programs, including activities and programs of the intelligence community, in a manner consistent with the protection of intelligence sources and methods and other national security interests.

(c) BRIEFING ON PUBLIC RELEASE OF INFORMATION.—

(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, and not later than 90 days after the beginning of each fiscal year thereafter, the President shall ensure that the congressional intelligence committees receive a briefing from appropriate personnel of the United States Government on the feasibility of releasing to the public additional information relating to counterterrorism efforts of the intelligence community.

Deadlines.  
President.

(2) ELEMENTS.—Each briefing required by paragraph (1) shall include a discussion of the feasibility of—

(A) subject to paragraph (3), releasing to the public the National Counterterrorism Budget report described in subsection (a)(2) for the prior fiscal year; and

(B) declassifying other reports, documents, or activities of the intelligence community relating to counterterrorism and releasing such information to the public in a manner consistent with the protection of intelligence sources and methods and other national security interests.

(3) RELEASE OF NATIONAL COUNTERTERRORISM BUDGET REPORT.—The President may satisfy the requirement under paragraph (2)(A) during a fiscal year by, not later than 90 days after the beginning of the fiscal year, releasing to the public the National Counterterrorism Budget report (with any redactions the Director determines necessary to protect intelligence sources and methods and other national security interests) for the prior fiscal year.

50 USC 3334c  
note.

**SEC. 5703. STUDY ON ROLE OF RETIRED AND FORMER PERSONNEL OF INTELLIGENCE COMMUNITY WITH RESPECT TO CERTAIN FOREIGN INTELLIGENCE OPERATIONS.**

(a) **STUDY.**—The Director of National Intelligence shall conduct a study on former intelligence personnel providing covered intelligence assistance.

(b) **ELEMENTS.**—The study under subsection (a) shall include the following:

(1) An identification of, and discussion of the effectiveness of, existing laws, policies, procedures, and other measures relevant to the ability of elements of the intelligence community to prevent former intelligence personnel from providing covered intelligence assistance—

(A) without proper authorization; or

(B) in a manner that would violate legal or policy controls if the personnel performed such assistance while working for the United States Government; and

(2) Make recommendations for such legislative, regulatory, policy, or other changes as may be necessary to ensure that the United States consistently meets the objectives described in paragraph (1).

Recommendations.

(c) **REPORT AND PLAN.**—Not later than 90 days after the date of the enactment of this Act, the Director shall submit to the congressional intelligence committees, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives—

(1) a report on the findings of the Director with respect to each element of the study under subsection (a); and

(2) a plan to implement any recommendations made by the Director that the Director may implement without changes to Federal law.

Classified information.

(d) **FORM.**—The report and plan under subsection (c) may be submitted in classified form.

(e) **DEFINITIONS.**—In this section:

(1) **COVERED INTELLIGENCE ASSISTANCE.**—The term “covered intelligence assistance” means assistance—

(A) provided by former intelligence personnel directly to, or for the benefit of, the government of a foreign country or indirectly to, or for the benefit of, such a government through a company or other entity; and

(B) that relates to intelligence, military, or law enforcement activities of a foreign country, including with respect to operations that involve abuses of human rights, violations of the laws of the United States, or infringements on the privacy rights of United States persons.

(2) **FORMER INTELLIGENCE PERSONNEL.**—The term “former intelligence personnel” means retired or former personnel of the intelligence community, including civilian employees of elements of the intelligence community, members of the Armed Forces, and contractors of elements of the intelligence community.

50 USC 3334b.

**SEC. 5704. COLLECTION, ANALYSIS, AND DISSEMINATION OF WORKFORCE DATA.**

(a) **MODIFICATION OF REQUIREMENT FOR ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES.**—

(1) EXPANSION OF PERIOD OF REPORT.—Subsection (a) of section 114 of the National Security Act of 1947 (50 U.S.C. 3050) is amended by inserting “and the preceding 5 fiscal years” after “fiscal year”.

(2) CLARIFICATION ON DISAGGREGATION OF DATA.—Subsection (b) of such section is amended, in the matter before paragraph (1), by striking “disaggregated data by category of covered person from each element of the intelligence community” and inserting “data, disaggregated by category of covered person and by element of the intelligence community,”.

(b) INITIAL REPORTING.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and subject to paragraph (3), the Director of National Intelligence shall make available to the public, the appropriate congressional committees, and the workforce of the intelligence community a report which includes aggregate demographic data and other information regarding the diversity and inclusion efforts of the workforce of the intelligence community.

Public  
information.

(2) CONTENTS.—A report made available under paragraph (1)—

(A) shall include unclassified reports and barrier analyses relating to diversity and inclusion efforts;

(B) shall include aggregate demographic data—

(i) by segment of the workforce of the intelligence community and grade or rank;

(ii) relating to attrition and promotion rates;

(iii) that addresses the compliance of the intelligence community with validated inclusion metrics, such as the New Inclusion Quotient index score; and

(iv) that provides demographic comparisons to the relevant nongovernmental labor force and the relevant civilian labor force;

(C) shall include an analysis of applicant flow data, including the percentage and level of positions for which data are collected, and a discussion of any resulting policy changes or recommendations;

(D) shall include demographic data relating to participants in professional development programs of the intelligence community and the rate of placement into senior positions for participants in such programs;

(E) shall include any voluntarily collected demographic data relating to the membership of any external advisory committee or board to which individuals in senior positions in the intelligence community appoint members; and

(F) may include data in proportions or percentages to account for concerns relating to the protection of classified information.

(c) UPDATES.—After making available a report under subsection (b), the Director of National Intelligence shall annually provide a report (which may be provided as part of an annual report required under another provision of law) to the workforce of the intelligence community (including senior leadership), the public, and the appropriate congressional committees that includes—

Public  
information.

(1) demographic data and information on the status of diversity and inclusion efforts of the intelligence community;

(2) an analysis of applicant flow data, including the percentage and level of positions for which data are collected, and a discussion of any resulting policy changes or recommendations; and

(3) demographic data relating to participants in professional development programs of the intelligence community and the rate of placement into senior positions for participants in such programs.

(d) EXPAND THE COLLECTION AND ANALYSIS OF VOLUNTARY APPLICANT FLOW DATA.—

(1) IN GENERAL.—The Director of National Intelligence shall develop a system to collect and analyze applicant flow data for as many positions within the intelligence community as practicable, in order to identify areas for improvement in attracting diverse talent, with particular attention to senior and management positions.

(2) PHASED IMPLEMENTATION.—The collection of applicant flow data may be implemented by the Director of National Intelligence in a phased approach commensurate with the resources available to the intelligence community.

(e) IDENTIFY ADDITIONAL CATEGORIES FOR VOLUNTARY DATA COLLECTION OF CURRENT EMPLOYEES.—

Recommendation.

(1) IN GENERAL.—The Director of National Intelligence may submit to the Office of Management and Budget and to the appropriate congressional committees a recommendation regarding whether the intelligence community should voluntarily collect more detailed data on demographic categories in addition to the race and ethnicity categories specified in the statistical policy directive issued by the Office of Management and Budget entitled “Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity”.

(2) PROCESS.—In making a recommendation under paragraph (1), the Director of National Intelligence shall—

Consultation.

(A) engage in close consultation with internal stakeholders, such as employee resource or affinity groups;

(B) ensure that there is clear communication with the workforce of the intelligence community—

(i) to explain the purpose of the potential collection of such data; and

(ii) regarding legal protections relating to any anticipated use of such data; and

(C) ensure adherence to relevant standards and guidance issued by the Federal Government.

(f) DEFINITIONS.—In this section:

(1) APPLICANT FLOW DATA.—The term “applicant flow data” means data that tracks the rate of applications for job positions among demographic categories.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations, the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Select Committee on Intelligence, and the Committee on Appropriations of the Senate; and

(B) the Committee on Foreign Affairs, the Committee on Armed Services, the Committee on Homeland Security, the Permanent Select Committee on Intelligence, and the

Committee on Appropriations of the House of Representatives.

(3) DIVERSITY.—The term “diversity” means diversity of persons based on gender, race, ethnicity, disability status, veteran status, sexual orientation, gender identity, national origin, and other demographic categories.

**SEC. 5705. PLAN FOR STRENGTHENING THE SUPPLY CHAIN INTELLIGENCE FUNCTION.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Counterintelligence and Security Center, in coordination with the Director of the Defense Counterintelligence and Security Agency and other interagency partners, shall submit to the appropriate congressional committees a plan for strengthening the supply chain intelligence function.

Deadline.  
Coordination.

(b) ELEMENTS.—The plan submitted under subsection (a) shall address the following:

(1) The appropriate workforce model, including size, mix, and seniority, from the elements of the intelligence community and other interagency partners.

(2) The budgetary resources necessary to implement the plan.

(3) The appropriate governance structure within the intelligence community and with interagency partners.

(4) The authorities necessary to implement the plan.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—The term “appropriate congressional committees” means—

(1) the congressional intelligence committees; and

(2) the Committees on Armed Services of the House of Representatives and the Senate.

**SEC. 5706. COMPREHENSIVE ECONOMIC ASSESSMENT OF INVESTMENT IN KEY UNITED STATES TECHNOLOGIES BY COMPANIES OR ORGANIZATIONS LINKED TO CHINA.**

(a) ASSESSMENT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Director of the National Counterintelligence and Security Center, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, the Secretary of the Treasury, and the heads of such other Federal agencies as the Director of National Intelligence considers appropriate, shall submit to the congressional intelligence committees a comprehensive economic assessment of investment in key United States technologies, including emerging technologies, by companies or organizations linked to China, including the implications of these investments for the national security of the United States.

Deadline.  
Coordination.

(b) FORM OF ASSESSMENT.—The assessment submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 5707. REPORT BY DIRECTOR OF NATIONAL INTELLIGENCE ON FIFTH-GENERATION WIRELESS NETWORK TECHNOLOGY.**

(a) DEFINITION OF APPROPRIATE COMMITTEES OF CONGRESS.—In this section, the term “appropriate committees of Congress” means—

(1) the congressional intelligence committees;

(2) the Committee on Foreign Relations of the Senate; and

(3) Committee on Foreign Affairs of the House of Representatives.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the appropriate committees of Congress a report on—

(1) the threat to the national security of the United States posed by the global and regional adoption of fifth-generation wireless network (known as “5G”) technology built by foreign companies;

(2) the threat to the national security of the United States posed by telecommunications companies that are subject to the jurisdiction of a foreign adversary; and

(3) possible efforts to mitigate the threat.

(c) CONTENTS.—The report under subsection (b) shall include—

Timeline.

(1) the timeline and scale of global and regional adoption of foreign fifth-generation wireless network technology;

(2) the implications of such global and regional adoption on the cyber and espionage threat to the United States, the interests of the United States, and the cyber and collection capabilities of the United States;

(3) the threat to the national security of the United States from acquisition, importation, transfer, installation, or use of any communications technology by any person subject to the jurisdiction of the United States that involves communications technology designed, developed, manufactured or supplied by, controlled by, or subject to, the jurisdiction of a foreign adversary; and

(4) the effect of possible mitigation efforts, including with respect to—

(A) a policy of the United States Government promoting the use of strong, end-to-end encryption for data transmitted over fifth-generation wireless networks;

(B) a policy of the United States Government promoting or funding free, open-source implementation of fifth-generation wireless network technology;

(C) subsidies or incentives provided by the United States Government that could be used to promote the adoption of secure fifth-generation wireless network technology developed by companies of the United States or companies of allies of the United States; and

Strategy.

(D) a strategy by the United States Government to reduce foreign influence and political pressure in international standard-setting bodies.

(d) FORM.—The report submitted under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 5708. REPORT ON USE BY INTELLIGENCE COMMUNITY OF FACIAL RECOGNITION TECHNOLOGY.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the use of facial recognition technology for the purpose of suppressing or burdening criticism or dissent, or for disadvantaging persons based on their ethnicity, race, gender, sexual orientation, or religion, is contrary to the values of the United States;

(2) the United States Government should not engage in the sale or transfer of facial recognition technology to any country that is using such technology for the suppression of human rights; and

(3) it is incumbent upon the intelligence community to develop clear policies and procedures that prevent the abuse of facial recognition technology.

(b) REPORT REQUIRED.—Not later than 1 year after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the use of facial recognition technology by the intelligence community. Such report shall include each of the following:

(1) An analysis of the current use of facial recognition technology by the intelligence community. Analysis.

(2) An analysis of the accuracy of facial recognition technology, including a discussion of the appropriate threshold for use, and data disaggregated by race, gender, ethnicity, and age. Analysis.

(3) Whether the Government has adequate procedures in place to audit or test technology they purchase to assess its accuracy, including on the basis of race, gender, ethnicity, and age.

(4) The extent to which the intelligence community has codified policies governing the use of facial recognition technology that adequately prevent adverse impacts on privacy, civil rights, and civil liberties.

(5) An analysis of the ability of the intelligence community to use facial recognition technology to identify individuals in a way that respects constitutional rights, civil rights, civil liberties, and privacy of such individuals. Analysis.

(6) Identification of risks and safeguards to uphold the constitutional rights, civil rights, civil liberties, and privacy of individuals, including for communities of color and religious minorities.

(7) Whether such technology is deployed in public areas or on photos of public areas in a manner that could raise First Amendment concerns.

(8) An identification of existing policies, procedures, or practices that permit the sharing of facial recognition data and technology with foreign governments or other non-United States Government entities.

(9) An identification of measures in place to protect data security.

(10) An identification of any redress procedures to address complaints in cases where the use of facial recognition resulted in harm to an individual.

(11) An analysis of existing transparency, oversight, and audits of the use of facial recognition to measure the efficacy of the technology on an ongoing basis, as measured against the cost and impact on individual rights. Analysis.

(c) FORM.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) FACIAL RECOGNITION DATA DEFINED.—In this section, the term “facial recognition data” means any unique attribute or feature of the face of an end user that is used by facial recognition technology to assign a unique, persistent identifier, or for the unique personal identification of a specific individual.

50 USC 3369a. **SEC. 5709. REPORT ON DEEPPAKE TECHNOLOGY, FOREIGN WEAPONIZATION OF DEEPPAKES, AND RELATED NOTIFICATIONS.**

(a) **REPORT ON FOREIGN WEAPONIZATION OF DEEPPAKES AND DEEPPAKE TECHNOLOGY.—**

Consultation.

(1) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the heads of the elements of the intelligence community determined appropriate by the Director, shall submit to the congressional intelligence committees a report on—

(A) the potential national security impacts of machine-manipulated media (commonly known as “deepfakes”); and

(B) the actual or potential use of machine-manipulated media by foreign governments to spread disinformation or engage in other malign activities.

Assessments.  
China.  
Russia.

(2) **MATTERS TO BE INCLUDED.**—The report under subsection (a) shall include the following:

(A) An assessment of the technical capabilities of foreign governments, including foreign intelligence services, foreign government-affiliated entities, and foreign individuals, with respect to machine-manipulated media, machine-generated text, generative adversarial networks, and related machine-learning technologies, including—

(i) an assessment of the technical capabilities of the People’s Republic of China and the Russian Federation with respect to the production and detection of machine-manipulated media; and

(ii) an annex describing those governmental elements within China and Russia known to have supported or facilitated machine-manipulated media research, development, or dissemination, as well as any civil-military fusion, private-sector, academic, or nongovernmental entities which have meaningfully participated in such activities.

(B) An updated assessment of how foreign governments, including foreign intelligence services, foreign government-affiliated entities, and foreign individuals, could use or are using machine-manipulated media and machine-generated text to harm the national security interests of the United States, including an assessment of the historic, current, or potential future efforts of China and Russia to use machine-manipulated media, including with respect to—

(i) the overseas or domestic dissemination of misinformation;

(ii) the attempted discrediting of political opponents or disfavored populations; and

(iii) intelligence or influence operations directed against the United States, allies or partners of the United States, or other jurisdictions believed to be subject to Chinese or Russian interference.

Analysis.

(C) An updated identification of the countertechnologies that have been or could be developed and deployed by the United States Government, or by the private sector with Government support, to deter, detect, and attribute



the use of machine-manipulated media and machine-generated text by foreign governments, foreign-government affiliates, or foreign individuals, along with an analysis of the benefits, limitations and drawbacks of such identified counter-technologies, including any emerging concerns related to privacy.

(D) An identification of the offices within the elements of the intelligence community that have, or should have, lead responsibility for monitoring the development of, use of, and response to machine-manipulated media and machine-generated text, including—

(i) a description of the coordination of such efforts across the intelligence community;

(ii) a detailed description of the existing capabilities, tools, and relevant expertise of such elements to determine whether a piece of media has been machine manipulated or machine generated, including the speed at which such determination can be made, the confidence level of the element in the ability to make such a determination accurately, and how increasing volume and improved quality of machine-manipulated media or machine-generated text may negatively impact such capabilities; and

(iii) a detailed description of planned or ongoing research and development efforts intended to improve the ability of the intelligence community to detect machine-manipulated media and machine-generated text.

(E) A description of any research and development activities carried out or under consideration to be carried out by the intelligence community, including the Intelligence Advanced Research Projects Activity, relevant to machine-manipulated media and machine-generated text detection technologies.

(F) Updated recommendations regarding whether the intelligence community requires additional legal authorities, financial resources, or specialized personnel to address the national security threat posed by machine-manipulated media and machine-generated text.

(G) Other additional information the Director determines appropriate.

(b) FORM.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(c) REQUIREMENT FOR NOTIFICATION.—The Director of National Intelligence, in cooperation with the heads of any other relevant departments or agencies of the Federal Government, shall notify the congressional intelligence committees each time the Director of National Intelligence determines—

(1) there is credible information or intelligence that a foreign entity has attempted, is attempting, or will attempt to deploy machine-manipulated media or machine-generated text aimed at the elections or domestic political processes of the United States; and

(2) that such intrusion or campaign can be attributed to a foreign government, a foreign government-affiliated entity, or a foreign individual.

Consultation.

(d) **ANNUAL UPDATE.**—Upon submission of the report in subsection (a), on an annual basis, the Director of National Intelligence, in consultation with the heads of the elements of the intelligence community determined appropriate by the Director, shall submit to the congressional intelligence committees any significant updates with respect to the matters described in subsection (a).

(e) **DEFINITIONS.**—

(1) **MACHINE-GENERATED TEXT.**—The term “machine-generated text” means text generated using machine-learning techniques in order to resemble writing in natural language.

(2) **MACHINE-MANIPULATED MEDIA.**—The term “machine-manipulated media” has the meaning given that term in section 5724.

2 USC 4111.

**SEC. 5710. ANNUAL REPORT BY COMPTROLLER GENERAL OF THE UNITED STATES ON CYBERSECURITY AND SURVEILLANCE THREATS TO CONGRESS.**

(a) **ANNUAL REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act and not less frequently than once each year thereafter, the Comptroller General of the United States shall submit to the congressional intelligence committees a report on cybersecurity and surveillance threats to Congress.

(b) **STATISTICS.**—Each report submitted under subsection (a) shall include statistics on cyber attacks and other incidents of espionage or surveillance targeted against Senators or the immediate families or staff of the Senators, and Representatives, Delegates, and the Resident Commissioner, or the immediate families or staff of the Representatives, Delegates, and the Resident Commissioner, in which the nonpublic communications and other private information of such targeted individuals were lost, stolen, or otherwise subject to unauthorized access.

(c) **CONSULTATION.**—In preparing a report to be submitted under subsection (a), the Comptroller General shall consult with the Director of National Intelligence, the Secretary of Homeland Security, the Sergeant at Arms of the House of Representatives, and the Sergeant at Arms and Doorkeeper of the Senate.

(d) **FORM.**—The report under subsection (a), including the contents of the report in subsection (b), shall be submitted in unclassified form, but may include a classified annex to protect sources and methods and any appropriate redactions of personally identifiable information.

**SEC. 5711. ANALYSIS OF AND PERIODIC BRIEFINGS ON MAJOR INITIATIVES OF INTELLIGENCE COMMUNITY IN ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING.**

(a) **ANALYSIS.**—

Deadline.  
Coordination.

(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence shall, in coordination with the heads of such elements of the intelligence community as the Director considers appropriate—

(A) complete a comprehensive analysis of the major initiatives of the intelligence community in artificial intelligence and machine learning; and

(B) provide to the congressional intelligence committees a briefing on the findings of the Director with respect to the analysis conducted pursuant to subparagraph (A).

(2) ELEMENTS.—The analysis conducted under paragraph (1)(A) shall include analyses of how the initiatives described in such paragraph—

(A) correspond with the strategy of the intelligence community entitled “Augmenting Intelligence Using Machines”;

(B) complement each other and avoid unnecessary duplication;

(C) are coordinated with the efforts of the Defense Department on artificial intelligence, including efforts at the Joint Artificial Intelligence Center and Project Maven; and

(D) leverage advances in artificial intelligence and machine learning in the private sector.

(b) PERIODIC BRIEFINGS.—Not later than 30 days after the date of the enactment of this Act, not less frequently than twice each year thereafter until the date that is 2 years after the date of the enactment of this Act, and not less frequently than once each year thereafter until the date that is 7 years after the date of the enactment of this Act, the Director and the Chief Information Officer of the Department of Defense shall jointly provide to the congressional intelligence committees and congressional defense committees (as defined in section 101 of title 10, United States Code) briefings with updates on activities relating to, and the progress of, their respective artificial intelligence and machine learning initiatives, particularly the Augmenting Intelligence Using Machines initiative and the Joint Artificial Intelligence Center.

Deadlines.

**SEC. 5712. REPORT ON BEST PRACTICES TO PROTECT PRIVACY AND CIVIL LIBERTIES OF CHINESE AMERICANS.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the People’s Republic of China appears to be specifically targeting the Chinese-American community for intelligence purposes;

(2) such targeting carries a substantial risk that the loyalty of such Americans may be generally questioned and lead to unacceptable stereotyping, targeting, and racial profiling;

(3) the United States Government has a duty to warn and protect all Americans including those of Chinese descent from these intelligence efforts by the People’s Republic of China;

(4) the broad stereotyping, targeting, and racial profiling of Americans of Chinese descent is contrary to the values of the United States and reinforces the flawed narrative perpetuated by the People’s Republic of China that ethnically Chinese individuals worldwide have a duty to support the People’s Republic of China; and

(5) the United States efforts to combat the People’s Republic of China’s intelligence activities should actively safeguard and promote the constitutional rights of all Chinese Americans.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, acting through the Office of Civil Liberties, Privacy, and Transparency, in coordination with the civil liberties and privacy officers of the elements of the intelligence community, shall submit a report to the congressional intelligence committees containing—

Coordination.

(1) a review of how the policies, procedures, and practices of the intelligence community that govern the intelligence

Review.

activities and operations targeting the People’s Republic of China affect policies, procedures, and practices relating to the privacy and civil liberties of Americans of Chinese descent who may be targets of espionage and influence operations by China; and

Recommendations.

(2) recommendations to ensure that the privacy and civil liberties of Americans of Chinese descent are sufficiently protected.

(c) FORM.—The report under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

50 USC 3369b.

**SEC. 5713. OVERSIGHT OF FOREIGN INFLUENCE IN ACADEMIA.**

(a) DEFINITIONS.—In this section:

(1) COVERED INSTITUTION OF HIGHER EDUCATION.—The term “covered institution of higher education” means an institution described in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) that receives Federal funds in any amount and for any purpose.

(2) SENSITIVE RESEARCH SUBJECT.—The term “sensitive research subject” means a subject of research that is carried out at a covered institution of higher education that receives funds that were appropriated for—

(A) the National Intelligence Program; or

(B) any Federal agency the Director of National Intelligence deems appropriate.

Consultation.

(b) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act and not less frequently than once each year thereafter, the Director of National Intelligence, in consultation with such elements of the intelligence community as the Director considers appropriate and consistent with the privacy protections afforded to United States persons, shall submit to congressional intelligence committees a report on risks to sensitive research subjects posed by foreign entities in order to provide Congress and covered institutions of higher education with more complete information on these risks and to help ensure academic freedom.

Lists.

(c) CONTENTS.—The report required by subsection (b) shall include the following:

(1) A list of sensitive research subjects that could affect national security.

(2) A list of foreign entities, including governments, corporations, nonprofit organizations and for-profit organizations, and any subsidiary or affiliate of such an entity, that the Director determines pose a counterintelligence, espionage (including economic espionage), or other national security threat with respect to sensitive research subjects.

(3) A list of any known or suspected attempts by foreign entities to exert pressure on covered institutions of higher education, including attempts to limit freedom of speech, propagate misinformation or disinformation, or to influence professors, researchers, or students.

Recommendations.

(4) Recommendations for collaboration between covered institutions of higher education and the intelligence community to mitigate threats to sensitive research subjects associated with foreign influence in academia, including any necessary legislative or administrative action.

(d) CONGRESSIONAL NOTIFICATIONS REQUIRED.—Not later than 30 days after the date on which the Director identifies a change to either list described in paragraph (1) or (2) of subsection (c), the Director shall notify the congressional intelligence committees of the change. Deadline.

**SEC. 5714. REPORT ON DEATH OF JAMAL KHASHOGGI.**

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a report on the death of Jamal Khashoggi, consistent with protecting sources and methods. Such report shall include identification of those who carried out, participated in, ordered, or were otherwise complicit in or responsible for the death of Jamal Khashoggi.

(b) FORM.—The report submitted under subsection (a) shall be submitted in unclassified form.

**SEC. 5715. REPORT ON TERRORIST SCREENING DATABASE.**

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence and the Secretary of State shall jointly submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on the terrorist screening database of the Federal Bureau of Investigation.

(b) MATTERS INCLUDED.—The report under subsection (a) shall identify the following:

(1) Which foreign countries receive access to the terrorist screening database.

(2) Which foreign countries have successfully petitioned to add individuals to the terrorist screening database.

(3) What standards exist for determining which countries get access to the terrorist screening database.

(4) The extent to which the human rights record of the government of a foreign country is considered in the determination to give the country access to the terrorist screening database.

(5) What procedures, if any, exist to remove access to the terrorist screening database from a foreign country.

(6) What procedures, if any, exist to inform an individual, or the legal counsel of an individual, of the placement of the individual on the terrorist screening database.

(c) FORM.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 5716. REPORT CONTAINING THREAT ASSESSMENT ON TERRORIST USE OF CONVENTIONAL AND ADVANCED CONVENTIONAL WEAPONS.**

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter for a period of 4 years, the Under Secretary of Homeland Security for Intelligence and Analysis, in coordination with the Director of the Federal Bureau of Investigation, shall develop and submit to the entities in accordance with subsection (b) a report containing a threat assessment regarding the availability of conventional weapons, including conventional weapons lacking serial numbers, and advanced conventional weapons, for use in furthering acts of terrorism, including the provision of material support or resources

Time period.  
Coordination.

to a foreign terrorist organization and to individuals or groups supporting or engaging in domestic terrorism.

(b) **DISSEMINATION OF REPORT.**—Consistent with the protection of classified and confidential unclassified information, the Under Secretary shall—

(1) submit the initial report required under subsection (a) to Federal, State, local, and Tribal law enforcement officials, including officials who operate within State, local, and regional fusion centers under the Department of Homeland Security State, Local, and Regional Fusion Center Initiative established by section 210A of the Homeland Security Act of 2002 (6 U.S.C. 124h); and

(2) submit each report required under subsection (a) to the appropriate congressional committees.

(c) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Permanent Select Committee on Intelligence, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives; and

(B) the Select Committee on Intelligence, the Committee on Homeland Security and Governmental Affairs, and the Committee on the Judiciary of the Senate.

(2) **DOMESTIC TERRORISM.**—The term “domestic terrorism” has the meaning given that term in section 2331 of title 18, United States Code.

(3) **FOREIGN TERRORIST ORGANIZATION.**—The term “foreign terrorist organization” means an organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

50 USC 3334c.

**SEC. 5717. ASSESSMENT OF HOMELAND SECURITY VULNERABILITIES ASSOCIATED WITH CERTAIN RETIRED AND FORMER PERSONNEL OF THE INTELLIGENCE COMMUNITY.**

Deadline.  
Coordination.

(a) **ASSESSMENT REQUIRED.**—Not later than the date that is 120 days after submission of the report required under section 5703, and annually thereafter, the Director of National Intelligence, in coordination with the Under Secretary of Homeland Security for Intelligence and Analysis, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, and the Director of the Defense Counterintelligence and Security Agency, shall submit to the appropriate congressional committees an assessment of the homeland security vulnerabilities associated with retired and former personnel of the intelligence community providing covered intelligence assistance.

(b) **FORM.**—The assessment under subsection (a) may be submitted in classified form.

Classified  
information.

(c) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the congressional intelligence committees;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(C) the Committee on Homeland Security of the House of Representatives.

(2) COVERED INTELLIGENCE ASSISTANCE.—The term “covered intelligence assistance” has the meaning given that term in section 5703.

**SEC. 5718. STUDY ON FEASIBILITY AND ADVISABILITY OF ESTABLISHING GEOSPATIAL-INTELLIGENCE MUSEUM AND LEARNING CENTER.**

(a) STUDY REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Geospatial-Intelligence Agency shall complete a study on the feasibility and advisability of establishing a Geospatial-Intelligence Museum and learning center. Deadline.

(b) ELEMENTS.—The study required by subsection (a) shall include the following:

(1) Identifying the costs, opportunities, and challenges of establishing the museum and learning center as described in such subsection.

(2) Developing recommendations concerning such establishment. Recommendations.

(3) Identifying and reviewing lessons learned from the establishment of the Cyber Center for Education and Innovation-Home of the National Cryptologic Museum under section 7781(a) of title 10, United States Code. Review.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director shall submit to the congressional intelligence committees and the congressional defense committees (as defined in section 101 of title 10, United States Code) a report on the findings of the Director with respect to the study completed under subsection (a).

## Subtitle B—Other Matters

**SEC. 5721. WHISTLEBLOWER DISCLOSURES TO CONGRESS AND COMMITTEES OF CONGRESS.**

Section 2302 of title 5, United States Code, is amended—

(1) in subsection (b)(8)—

(A) in subparagraph (A), by striking “; or” and inserting a semicolon;

(B) in subparagraph (B)(ii), by striking the semicolon at the end and inserting “; or”; and

(C) by inserting after subparagraph (B) the following new subparagraph:

“(C) any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (B) that is—

“(i) not classified; or

“(ii) if classified—

“(I) has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and

“(II) does not reveal intelligence sources and methods.”; and

(2) in subsection (c)(2)(C)(iii)(III), by inserting after “Congress” the following: “(including any committee of Congress

with respect to information that is not classified or, if classified, has been classified by the head of an agency that is not an element of the intelligence community and does not reveal intelligence sources and methods”).

**SEC. 5722. TASK FORCE ON ILLICIT FINANCING OF ESPIONAGE AND FOREIGN INFLUENCE OPERATIONS.**

Deadline.  
Study.  
Assessment.

(a) **ESTABLISHMENT.**—Not later than 30 days after the date of the enactment of this Act, the Director of National Intelligence shall establish a task force to study and assess the illicit financing of espionage and foreign influence operations directed at the United States.

(b) **MEMBERSHIP.**—The task force shall be composed of the following individuals (or designees of the individual):

- (1) The Director of the Central Intelligence Agency.
- (2) The Director of the Federal Bureau of Investigation.
- (3) The Assistant Secretary of the Treasury for Intelligence and Analysis.

(4) The Assistant Secretary of State for Intelligence and Research.

(5) Such other heads of the elements of the intelligence community that the Director of National Intelligence determines appropriate.

(c) **CHAIRPERSON; MEETINGS.**—

Appointment.

(1) **CHAIRPERSON.**—The Director of National Intelligence shall appoint a senior official within the Office of the Director of National Intelligence to serve as the chairperson of the task force.

(2) **MEETINGS.**—The task force shall meet regularly but not less frequently than on a quarterly basis.

(d) **REPORTS.**—

(1) **INITIAL REPORT.**—Not later than 180 days after the date of the enactment of this Act, the task force shall submit to the appropriate congressional committees a report on the illicit financing of espionage and foreign influence operations directed at the United States. The report shall address the following:

(A) The extent of the collection by the intelligence community, from all sources (including the governments of foreign countries), of intelligence and information relating to illicit financing of espionage and foreign influence operations directed at the United States, and any gaps in such collection.

(B) Any specific legal, regulatory, policy, or other prohibitions, or financial, human, technical, or other resource limitations or constraints, that have affected the ability of the Director of National Intelligence or other heads of relevant elements of the intelligence community in collecting or analyzing intelligence or information relating to illicit financing of espionage and foreign influence operations directed at the United States.

(C) The methods, as of the date of the report, by which hostile governments of foreign countries or foreign organizations, and any groups or persons acting on behalf of or with the support of such governments or organizations, seek to disguise or obscure relationships between such governments, organizations, groups, or persons and



United States persons, for the purpose of conducting espionage or foreign influence operations directed at the United States, including by exploiting financial laws, systems, or instruments, of the United States.

(D) The existing practices of the intelligence community for ensuring that intelligence and information relating to the illicit financing of espionage and foreign influence operations is analyzed and shared with other elements of the intelligence community, and any recommendations for improving such analysis and sharing.

(2) ANNUAL UPDATE.—Not later than 1 year after the date of the enactment of this Act, and each year thereafter through the date specified in subsection (e), the task force shall submit to the appropriate congressional committees an update on the report.

(3) FORM.—Each report submitted under this subsection may be submitted in classified form, but if submitted in such form, shall include an unclassified summary.

Classified  
information.  
Summary.

(e) TERMINATION.—The task force shall terminate on January 1, 2025.

(f) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional intelligence committees.

(2) The Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives.

(3) The Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**SEC. 5723. ESTABLISHMENT OF FIFTH-GENERATION TECHNOLOGY PRIZE COMPETITION.**

50 USC 3024  
note.

(a) PRIZE COMPETITION.—Pursuant to section 24 of the Steven-son-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719), the Director of National Intelligence, acting through the Director of the Intelligence Advanced Research Projects Agency, shall carry out a program to award prizes competitively to stimulate research and development relevant to fifth-generation technology.

(b) PRIZE AMOUNT.—In carrying out the program under subsection (a), the Director may award not more than a total of \$5,000,000 to one or more winners of the prize competition.

(c) CONSULTATION.—In carrying out the program under subsection (a), the Director may consult with the heads of relevant departments and agencies of the Federal Government.

(d) FIFTH-GENERATION TECHNOLOGY DEFINED.—In this section, the term “fifth-generation technology” means hardware, software, or other technologies relating to fifth-generation wireless networks (known as “5G”).

**SEC. 5724. ESTABLISHMENT OF DEEPIKES PRIZE COMPETITION.**

50 USC 3024  
note.

(a) PRIZE COMPETITION.—Pursuant to section 24 of the Steven-son-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719), the Director of National Intelligence, acting through the Director of the Intelligence Advanced Research Projects Agency, shall carry out a program to award prizes competitively to stimulate the research, development, or commercialization of technologies to automatically detect machine-manipulated media.

(b) **PRIZE AMOUNT.**—In carrying out the program under subsection (a), the Director may award not more than a total of \$5,000,000 to one or more winners of the prize competition.

(c) **CONSULTATION.**—In carrying out the program under subsection (a), the Director may consult with the heads of relevant departments and agencies of the Federal Government.

(d) **MACHINE-MANIPULATED MEDIA DEFINED.**—In this section, the term “machine-manipulated media” means video, image, or audio recordings generated or substantially modified using machine-learning techniques in order to falsely depict events, to falsely depict the speech or conduct of an individual, or to depict individuals who do not exist.

50 USC 3024  
note.

**SEC. 5725. IDENTIFICATION OF AND COUNTERMEASURES AGAINST CERTAIN INTERNATIONAL MOBILE SUBSCRIBER IDENTITY-CATCHERS.**

(a) **IN GENERAL.**—The Director of National Intelligence and the Director of the Federal Bureau of Investigation, in collaboration with the Under Secretary of Homeland Security for Intelligence and Analysis, and the heads of such other Federal, State, or local agencies as the Directors determine appropriate, and in accordance with applicable law and policy, may—

(1) undertake an effort to identify International Mobile Subscriber Identity-catchers operated within the United States by—

(A) hostile foreign governments; and

(B) individuals who have violated a criminal law of the United States or of any State, or who have committed acts that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

(2) when appropriate, develop countermeasures against such International Mobile Subscriber Identity-catchers, with prioritization given to such International Mobile Subscriber Identity-catchers identified in the National Capital Region.

(b) **BRIEFING REQUIRED.**—Prior to developing countermeasures under subsection (a)(2), the Director of National Intelligence and the Director of the Federal Bureau of Investigation shall provide a briefing to the appropriate congressional committees on—

(1) the use of International Mobile Subscriber Identity-catchers operated within the United States by the individuals and governments described in subsection (a)(1);

(2) potential countermeasures by the intelligence community against such International Mobile Subscriber Identity-catchers; and

(3) any legal or policy limitations with respect to the development or carrying out of such countermeasures.

(c) **DEFINITIONS.**—

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the congressional intelligence committees;

(B) the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(C) the Committees on the Judiciary of the House of Representatives and the Senate.

(2) **INTERNATIONAL MOBILE SUBSCRIBER IDENTITY-CATCHER.**—The term “International Mobile Subscriber Identity-

catcher” means a device used for intercepting mobile phone identifying information and location data.

**SEC. 5726. SECURING ENERGY INFRASTRUCTURE.**

6 USC 189 note.

(a) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the congressional intelligence committees;

(B) the Committee on Homeland Security and Governmental Affairs and the Committee on Energy and Natural Resources of the Senate; and

(C) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

(2) **COVERED ENTITY.**—The term “covered entity” means an entity identified pursuant to section 9(a) of Executive Order No. 13636 of February 12, 2013 (78 Fed. Reg. 11742), relating to identification of critical infrastructure where a cybersecurity incident could reasonably result in catastrophic regional or national effects on public health or safety, economic security, or national security.

(3) **EXPLOIT.**—The term “exploit” means a software tool designed to take advantage of a security vulnerability.

(4) **INDUSTRIAL CONTROL SYSTEM.**—The term “industrial control system” means an operational technology used to measure, control, or manage industrial functions, and includes supervisory control and data acquisition systems, distributed control systems, and programmable logic or embedded controllers.

(5) **NATIONAL LABORATORY.**—The term “National Laboratory” has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

(6) **PROGRAM.**—The term “Program” means the pilot program established under subsection (b).

(7) **SECRETARY.**—Except as otherwise specifically provided, the term “Secretary” means the Secretary of Energy.

(8) **SECURITY VULNERABILITY.**—The term “security vulnerability” means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control.

(b) **PILOT PROGRAM FOR SECURING ENERGY INFRASTRUCTURE.**— Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish a 2-year control systems implementation pilot program within the National Laboratories for the purposes of—

Deadline.  
Time period.

(1) partnering with covered entities in the energy sector (including critical component manufacturers in the supply chain) that voluntarily participate in the Program to identify new classes of security vulnerabilities of the covered entities; and

(2) evaluating technology and standards, in partnership with covered entities, to isolate and defend industrial control systems of covered entities from security vulnerabilities and exploits in the most critical systems of the covered entities, including—

Evaluation.

(A) analog and nondigital control systems;

(B) purpose-built control systems; and

(C) physical controls.

(c) WORKING GROUP TO EVALUATE PROGRAM STANDARDS AND DEVELOP STRATEGY.—

(1) ESTABLISHMENT.—The Secretary shall establish a working group—

(A) to evaluate the technology and standards used in the Program under subsection (b)(2); and

(B) to develop a national cyber-informed engineering strategy to isolate and defend covered entities from security vulnerabilities and exploits in the most critical systems of the covered entities.

Appointments.

(2) MEMBERSHIP.—The working group established under paragraph (1) shall be composed of not fewer than 10 members, to be appointed by the Secretary, at least 1 member of which shall represent each of the following:

(A) The Department of Energy.

(B) The energy industry, including electric utilities and manufacturers recommended by the Energy Sector coordinating councils.

(C)(i) The Department of Homeland Security; or

(ii) the Industrial Control Systems Cyber Emergency Response Team.

(D) The North American Electric Reliability Corporation.

(E) The Nuclear Regulatory Commission.

(F)(i) The Office of the Director of National Intelligence;

or

(ii) the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)).

(G)(i) The Department of Defense; or

(ii) the Assistant Secretary of Defense for Homeland Security and America's Security Affairs.

(H) A State or regional energy agency.

(I) A national research body or academic institution.

(J) The National Laboratories.

(d) REPORTS ON THE PROGRAM.—

(1) INTERIM REPORT.—Not later than 180 days after the date on which funds are first disbursed under the Program, the Secretary shall submit to the appropriate congressional committees an interim report that—

(A) describes the results of the Program;

Analysis.

(B) includes an analysis of the feasibility of each method studied under the Program; and

(C) describes the results of the evaluations conducted by the working group established under subsection (c)(1).

(2) FINAL REPORT.—Not later than 2 years after the date on which funds are first disbursed under the Program, the Secretary shall submit to the appropriate congressional committees a final report that—

(A) describes the results of the Program;

Analysis.

(B) includes an analysis of the feasibility of each method studied under the Program; and

(C) describes the results of the evaluations conducted by the working group established under subsection (c)(1).

(e) EXEMPTION FROM DISCLOSURE.—Information shared by or with the Federal Government or a State, Tribal, or local government under this section—

(1) shall be deemed to be voluntarily shared information;

(2) shall be exempt from disclosure under section 552 of title 5, United States Code, or any provision of any State, Tribal, or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring the disclosure of information or records; and

(3) shall be withheld from the public, without discretion, under section 552(b)(3) of title 5, United States Code, and any provision of any State, Tribal, or local law requiring the disclosure of information or records.

(f) PROTECTION FROM LIABILITY.—

(1) IN GENERAL.—A cause of action against a covered entity for engaging in the voluntary activities authorized under subsection (b)—

(A) shall not lie or be maintained in any court; and

(B) shall be promptly dismissed by the applicable court.

(2) VOLUNTARY ACTIVITIES.—Nothing in this section subjects any covered entity to liability for not engaging in the voluntary activities authorized under subsection (b).

(g) NO NEW REGULATORY AUTHORITY FOR FEDERAL AGENCIES.—Nothing in this section authorizes the Secretary or the head of any other department or agency of the Federal Government to issue new regulations.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) PILOT PROGRAM.—There is authorized to be appropriated \$10,000,000 to carry out subsection (b).

(2) WORKING GROUP AND REPORT.—There is authorized to be appropriated \$1,500,000 to carry out subsections (c) and (d).

(3) AVAILABILITY.—Amounts made available under paragraphs (1) and (2) shall remain available until expended.

## **SUBDIVISION 2—INTELLIGENCE AUTHORIZATIONS FOR FISCAL YEARS 2018 AND 2019**

### **SEC. 6100. TABLE OF CONTENTS.**

The table of contents for this subdivision is as follows:

Sec. 6100. Table of contents.

#### TITLE LXI—INTELLIGENCE ACTIVITIES

Sec. 6101. Authorization of appropriations.

Sec. 6102. Intelligence Community Management Account.

#### TITLE LXII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 6201. Authorization of appropriations.

Sec. 6202. Computation of annuities for employees of the Central Intelligence Agency.

#### TITLE LXIII—GENERAL INTELLIGENCE COMMUNITY MATTERS

Sec. 6301. Restriction on conduct of intelligence activities.

Sec. 6302. Increase in employee compensation and benefits authorized by law.

Sec. 6303. Modification of special pay authority for science, technology, engineering, or mathematics positions and addition of special pay authority for cyber positions.

- Sec. 6304. Modification of appointment of Chief Information Officer of the Intelligence Community.
- Sec. 6305. Director of National Intelligence review of placement of positions within the intelligence community on the Executive Schedule.
- Sec. 6306. Supply Chain and Counterintelligence Risk Management Task Force.
- Sec. 6307. Consideration of adversarial telecommunications and cybersecurity infrastructure when sharing intelligence with foreign governments and entities.
- Sec. 6308. Cyber protection support for the personnel of the intelligence community in positions highly vulnerable to cyber attack.
- Sec. 6309. Elimination of sunset of authority relating to management of supply-chain risk.
- Sec. 6310. Limitations on determinations regarding certain security classifications.
- Sec. 6311. Joint Intelligence Community Council.
- Sec. 6312. Intelligence community information technology environment.
- Sec. 6313. Report on development of secure mobile voice solution for intelligence community.
- Sec. 6314. Policy on minimum insider threat standards.
- Sec. 6315. Submission of intelligence community policies.
- Sec. 6316. Expansion of intelligence community recruitment efforts.

TITLE LXIV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE  
COMMUNITY

Subtitle A—Office of the Director of National Intelligence

- Sec. 6401. Authority for protection of current and former employees of the Office of the Director of National Intelligence.
- Sec. 6402. Designation of the program manager-information-sharing environment.
- Sec. 6403. Technical modification to the executive schedule.
- Sec. 6404. Chief Financial Officer of the Intelligence Community.
- Sec. 6405. Chief Information Officer of the Intelligence Community.

Subtitle B—Central Intelligence Agency

- Sec. 6411. Central Intelligence Agency subsistence for personnel assigned to austere locations.
- Sec. 6412. Special rules for certain monthly workers' compensation payments and other payments for Central Intelligence Agency personnel.
- Sec. 6413. Expansion of security protective service jurisdiction of the Central Intelligence Agency.
- Sec. 6414. Repeal of foreign language proficiency requirement for certain senior level positions in the Central Intelligence Agency.

Subtitle C—Office of Intelligence and Counterintelligence of Department of Energy

- Sec. 6421. Consolidation of Department of Energy Offices of Intelligence and Counterintelligence.
- Sec. 6422. Repeal of Department of Energy Intelligence Executive Committee and budget reporting requirement.

Subtitle D—Other Elements

- Sec. 6431. Plan for designation of counterintelligence component of Defense Security Service as an element of intelligence community.
- Sec. 6432. Notice not required for private entities.
- Sec. 6433. Establishment of advisory board for National Reconnaissance Office.
- Sec. 6434. Collocation of certain Department of Homeland Security personnel at field locations.

TITLE LXV—ELECTION MATTERS

- Sec. 6501. Report on cyber attacks by foreign governments against United States election infrastructure.
- Sec. 6502. Review of intelligence community's posture to collect against and analyze Russian efforts to influence the Presidential election.
- Sec. 6503. Assessment of foreign intelligence threats to Federal elections.
- Sec. 6504. Strategy for countering Russian cyber threats to United States elections.
- Sec. 6505. Assessment of significant Russian influence campaigns directed at foreign elections and referenda.
- Sec. 6506. Information sharing with State election officials.
- Sec. 6507. Notification of significant foreign cyber intrusions and active measures campaigns directed at elections for Federal offices.
- Sec. 6508. Designation of counterintelligence officer to lead election security matters.

## TITLE LXVI—SECURITY CLEARANCES

- Sec. 6601. Definitions.
- Sec. 6602. Reports and plans relating to security clearances and background investigations.
- Sec. 6603. Improving the process for security clearances.
- Sec. 6604. Goals for promptness of determinations regarding security clearances.
- Sec. 6605. Security Executive Agent.
- Sec. 6606. Report on unified, simplified, Governmentwide standards for positions of trust and security clearances.
- Sec. 6607. Report on clearance in person concept.
- Sec. 6608. Reports on reciprocity for security clearances inside of departments and agencies.
- Sec. 6609. Intelligence community reports on security clearances.
- Sec. 6610. Periodic report on positions in the intelligence community that can be conducted without access to classified information, networks, or facilities.
- Sec. 6611. Information-sharing program for positions of trust and security clearances.
- Sec. 6612. Report on protections for confidentiality of whistleblower-related communications.
- Sec. 6613. Reports on costs of security clearance background investigations.

## TITLE LXVII—REPORTS AND OTHER MATTERS

## Subtitle A—Matters Relating to Russia and Other Foreign Powers

- Sec. 6701. Limitation relating to establishment or support of cybersecurity unit with the Russian Federation.
- Sec. 6702. Assessment of threat finance relating to Russia.
- Sec. 6703. Notification of an active measures campaign.
- Sec. 6704. Notification of travel by accredited diplomatic and consular personnel of the Russian Federation in the United States.
- Sec. 6705. Report and annual briefing on Iranian expenditures supporting foreign military and terrorist activities.
- Sec. 6706. Expansion of scope of committee to counter active measures.

## Subtitle B—Reports

- Sec. 6711. Technical correction to Inspector General study.
- Sec. 6712. Reports on authorities of the Chief Intelligence Officer of the Department of Homeland Security.
- Sec. 6713. Review of intelligence community whistleblower matters.
- Sec. 6714. Report on role of Director of National Intelligence with respect to certain foreign investments.
- Sec. 6715. Report on surveillance by foreign governments against United States telecommunications networks.
- Sec. 6716. Biennial report on foreign investment risks.
- Sec. 6717. Modification of certain reporting requirement on travel of foreign diplomats.
- Sec. 6718. Semiannual reports on investigations of unauthorized disclosures of classified information.
- Sec. 6719. Congressional notification of designation of covered intelligence officer as persona non grata.
- Sec. 6720. Reports on intelligence community participation in vulnerabilities equities process of Federal Government.
- Sec. 6721. Inspectors General reports on classification.
- Sec. 6722. Reports and briefings on national security effects of global water insecurity and emerging infectious disease and pandemics.
- Sec. 6723. Annual report on memoranda of understanding between elements of intelligence community and other entities of the United States Government regarding significant operational activities or policy.
- Sec. 6724. Study on the feasibility of encrypting unclassified wireline and wireless telephone calls.
- Sec. 6725. Reports on intelligence community loan repayment and related programs.
- Sec. 6726. Repeal of certain reporting requirements.
- Sec. 6727. Inspector General of the Intelligence Community report on senior executives of the Office of the Director of National Intelligence.
- Sec. 6728. Briefing on Federal Bureau of Investigation offering permanent residence to sources and cooperators.
- Sec. 6729. Intelligence assessment of North Korea revenue sources.
- Sec. 6730. Report on possible exploitation of virtual currencies by terrorist actors.

## Subtitle C—Other Matters

- Sec. 6741. Public Interest Declassification Board.

- Sec. 6742. Technical and clerical amendments to the National Security Act of 1947.  
Sec. 6743. Bug bounty programs.  
Sec. 6744. Technical amendments related to the Department of Energy.  
Sec. 6745. Sense of Congress on notification of certain disclosures of classified information.  
Sec. 6746. Sense of Congress on consideration of espionage activities when considering whether or not to provide visas to foreign individuals to be accredited to a United Nations mission in the United States.  
Sec. 6747. Sense of Congress on WikiLeaks.

## **TITLE LXI—INTELLIGENCE ACTIVITIES**

### **SEC. 6101. AUTHORIZATION OF APPROPRIATIONS.**

(a) FISCAL YEAR 2019.—Funds that were appropriated for fiscal year 2019 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government are hereby authorized:

- (1) The Office of the Director of National Intelligence.
- (2) The Central Intelligence Agency.
- (3) The Department of Defense.
- (4) The Defense Intelligence Agency.
- (5) The National Security Agency.
- (6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (7) The Coast Guard.
- (8) The Department of State.
- (9) The Department of the Treasury.
- (10) The Department of Energy.
- (11) The Department of Justice.
- (12) The Federal Bureau of Investigation.
- (13) The Drug Enforcement Administration.
- (14) The National Reconnaissance Office.
- (15) The National Geospatial-Intelligence Agency.
- (16) The Department of Homeland Security.

(b) FISCAL YEAR 2018.—Funds that were appropriated for fiscal year 2018 for the conduct of the intelligence and intelligence-related activities of the elements of the United States set forth in subsection (a) are hereby authorized.

### **SEC. 6102. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

The amounts that were appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal years 2018 and 2019 are hereby authorized.

## **TITLE LXII—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

### **SEC. 6201. AUTHORIZATION OF APPROPRIATIONS.**

The amounts that were appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal years 2018 and 2019 are hereby authorized.

### **SEC. 6202. COMPUTATION OF ANNUITIES FOR EMPLOYEES OF THE CENTRAL INTELLIGENCE AGENCY.**

(a) COMPUTATION OF ANNUITIES.—



(1) IN GENERAL.—Section 221 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2031) is amended—

(A) in subsection (a)(3)(B), by striking the period at the end and inserting “, as determined by using the annual rate of basic pay that would be payable for full-time service in that position.”;

(B) in subsection (b)(1)(C)(i), by striking “12-month” and inserting “2-year”;

(C) in subsection (f)(2), by striking “one year” and inserting “two years”;

(D) in subsection (g)(2), by striking “one year” each place such term appears and inserting “two years”;

(E) by redesignating subsections (h), (i), (j), (k), and (l) as subsections (i), (j), (k), (l), and (m), respectively; and

(F) by inserting after subsection (g) the following:

“(h) CONDITIONAL ELECTION OF INSURABLE INTEREST SURVIVOR ANNUITY BY PARTICIPANTS MARRIED AT THE TIME OF RETIREMENT.—

“(1) AUTHORITY TO MAKE DESIGNATION.—Subject to the rights of former spouses under subsection (b) and section 222, at the time of retirement a married participant found by the Director to be in good health may elect to receive an annuity reduced in accordance with subsection (f)(1)(B) and designate in writing an individual having an insurable interest in the participant to receive an annuity under the system after the participant’s death, except that any such election to provide an insurable interest survivor annuity to the participant’s spouse shall only be effective if the participant’s spouse waives the spousal right to a survivor annuity under this Act. The amount of the annuity shall be equal to 55 percent of the participant’s reduced annuity.

“(2) REDUCTION IN PARTICIPANT’S ANNUITY.—The annuity payable to the participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by an additional 5 percent for each full 5 years the designated individual is younger than the participant. The total reduction under this subparagraph may not exceed 40 percent.

“(3) COMMENCEMENT OF SURVIVOR ANNUITY.—The annuity payable to the designated individual shall begin on the day after the retired participant dies and terminate on the last day of the month before the designated individual dies.

“(4) RECOMPUTATION OF PARTICIPANT’S ANNUITY ON DEATH OF DESIGNATED INDIVIDUAL.—An annuity that is reduced under this subsection shall, effective the first day of the month following the death of the designated individual, be recomputed and paid as if the annuity had not been so reduced.”.

Effective date.

(2) CONFORMING AMENDMENTS.—

(A) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—The Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) is amended—

(i) in section 232(b)(1) (50 U.S.C. 2052(b)(1)), by striking “221(h),” and inserting “221(i),”; and

(ii) in section 252(h)(4) (50 U.S.C. 2082(h)(4)), by striking “221(k)” and inserting “221(l)”.

(B) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—Subsection (a) of section 14 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3514(a)) is amended by striking

“221(h)(2), 221(i), 221(l),” and inserting “221(i)(2), 221(j), 221(m),”.

(b) ANNUITIES FOR FORMER SPOUSES.—Subparagraph (B) of section 222(b)(5) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2032(b)(5)(B)) is amended by striking “one year” and inserting “two years”.

(c) PRIOR SERVICE CREDIT.—Subparagraph (A) of section 252(b)(3) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2082(b)(3)(A)) is amended by striking “October 1, 1990” both places that term appears and inserting “March 31, 1991”.

(d) REEMPLOYMENT COMPENSATION.—Section 273 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2113) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

“(b) PART-TIME REEMPLOYED ANNUITANTS.—The Director shall have the authority to reemploy an annuitant on a part-time basis in accordance with section 8344(l) of title 5, United States Code.”.

(e) EFFECTIVE DATE AND APPLICATION.—The amendments made by subsection (a)(1)(A) and subsection (c) shall take effect as if enacted on October 28, 2009, and shall apply to computations or participants, respectively, as of such date.

50 USC 2031  
note.

## TITLE LXIII—GENERAL INTELLIGENCE COMMUNITY MATTERS

### SEC. 6301. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this subdivision shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

### SEC. 6302. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this subdivision for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

### SEC. 6303. MODIFICATION OF SPECIAL PAY AUTHORITY FOR SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS POSITIONS AND ADDITION OF SPECIAL PAY AUTHORITY FOR CYBER POSITIONS.

Section 113B of the National Security Act of 1947 (50 U.S.C. 3049a) is amended—

(1) by amending subsection (a) to read as follows:

“(a) SPECIAL RATES OF PAY FOR POSITIONS REQUIRING EXPERTISE IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

“(1) IN GENERAL.—Notwithstanding part III of title 5, United States Code, the head of each element of the intelligence community may, for one or more categories of positions in such element that require expertise in science, technology, engineering, or mathematics—

“(A) establish higher minimum rates of pay; and

“(B) make corresponding increases in all rates of pay of the pay range for each grade or level, subject to subsection (b) or (c), as applicable.

“(2) TREATMENT.—The special rate supplements resulting from the establishment of higher rates under paragraph (1) shall be basic pay for the same or similar purposes as those specified in section 5305(j) of title 5, United States Code.”;

(2) by redesignating subsections (b) through (f) as subsections (c) through (g), respectively;

(3) by inserting after subsection (a) the following:

“(b) SPECIAL RATES OF PAY FOR CYBER POSITIONS.—

“(1) IN GENERAL.—Notwithstanding subsection (c), the Director of the National Security Agency may establish a special rate of pay—

Certifications.

“(A) not to exceed the rate of basic pay payable for level II of the Executive Schedule under section 5313 of title 5, United States Code, if the Director certifies to the Under Secretary of Defense for Intelligence, in consultation with the Under Secretary of Defense for Personnel and Readiness, that the rate of pay is for positions that perform functions that execute the cyber mission of the Agency; or

Consultation.

“(B) not to exceed the rate of basic pay payable for the Vice President of the United States under section 104 of title 3, United States Code, if the Director certifies to the Secretary of Defense, by name, individuals that have advanced skills and competencies and that perform critical functions that execute the cyber mission of the Agency.

“(2) PAY LIMITATION.—Employees receiving a special rate under paragraph (1) shall be subject to an aggregate pay limitation that parallels the limitation established in section 5307 of title 5, United States Code, except that—

“(A) any allowance, differential, bonus, award, or other similar cash payment in addition to basic pay that is authorized under title 10, United States Code, (or any other applicable law in addition to title 5 of such Code, excluding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)) shall also be counted as part of aggregate compensation; and

“(B) aggregate compensation may not exceed the rate established for the Vice President of the United States under section 104 of title 3, United States Code.

“(3) LIMITATION ON NUMBER OF RECIPIENTS.—The number of individuals who receive basic pay established under paragraph (1)(B) may not exceed 100 at any time.

“(4) LIMITATION ON USE AS COMPARATIVE REFERENCE.—Notwithstanding any other provision of law, special rates of pay and the limitation established under paragraph (1)(B) may not be used as comparative references for the purpose of fixing the rates of basic pay or maximum pay limitations of qualified positions under section 1599f of title 10, United States Code, or section 226 of the Homeland Security Act of 2002 (6 U.S.C. 147).”;

(4) in subsection (c), as redesignated by paragraph (2), by striking “A minimum” and inserting “Except as provided in subsection (b), a minimum”;

(5) in subsection (d), as redesignated by paragraph (2), by inserting “or (b)” after “by subsection (a)”; and

(6) in subsection (g), as redesignated by paragraph (2)—

(A) in paragraph (1), by striking “Not later than 90 days after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2017” and inserting “Not later than 90 days after the date of the enactment of the Damon Paul Nelson and Matthew Young Pollard Intelligence Authorization Act for Fiscal Years 2018 and 2019”; and

(B) in paragraph (2)(A), by inserting “or (b)” after “subsection (a)”.

**SEC. 6304. MODIFICATION OF APPOINTMENT OF CHIEF INFORMATION OFFICER OF THE INTELLIGENCE COMMUNITY.**

Section 103G(a) of the National Security Act of 1947 (50 U.S.C. 3032(a)) is amended by striking “President” and inserting “Director”.

**SEC. 6305. DIRECTOR OF NATIONAL INTELLIGENCE REVIEW OF PLACEMENT OF POSITIONS WITHIN THE INTELLIGENCE COMMUNITY ON THE EXECUTIVE SCHEDULE.**

Coordination.

(a) REVIEW.—The Director of National Intelligence, in coordination with the Director of the Office of Personnel Management, shall conduct a review of positions within the intelligence community regarding the placement of such positions on the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code. In carrying out such review, the Director of National Intelligence, in coordination with the Director of the Office of Personnel Management, shall determine—

Determination.

(1) the standards under which such review will be conducted;

(2) which positions should or should not be on the Executive Schedule; and

(3) for those positions that should be on the Executive Schedule, the level of the Executive Schedule at which such positions should be placed.

(b) REPORT.—Not later than 60 days after the date on which the review under subsection (a) is completed, the Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Reform of the House of Representatives an unredacted report describing the standards by which the review was conducted and the outcome of the review.

50 USC 3370.

**SEC. 6306. SUPPLY CHAIN AND COUNTERINTELLIGENCE RISK MANAGEMENT TASK FORCE.**

(a) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional intelligence committees.

(2) The Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate.

(3) The Committee on Armed Services, the Committee on Homeland Security, and the Committee on Oversight and Reform of the House of Representatives.

(b) **REQUIREMENT TO ESTABLISH.**—The Director of National Intelligence shall establish a Supply Chain and Counterintelligence Risk Management Task Force to standardize information sharing between the intelligence community and the acquisition community of the United States Government with respect to the supply chain and counterintelligence risks.

(c) **MEMBERS.**—The Supply Chain and Counterintelligence Risk Management Task Force established under subsection (b) shall be composed of—

- (1) a representative of the Defense Security Service of the Department of Defense;
- (2) a representative of the General Services Administration;
- (3) a representative of the Office of Federal Procurement Policy of the Office of Management and Budget;
- (4) a representative of the Department of Homeland Security;
- (5) a representative of the Federal Bureau of Investigation;
- (6) the Director of the National Counterintelligence and Security Center; and
- (7) any other members the Director of National Intelligence determines appropriate.

(d) **SECURITY CLEARANCES.**—Each member of the Supply Chain and Counterintelligence Risk Management Task Force established under subsection (b) shall have a security clearance at the top secret level and be able to access sensitive compartmented information.

(e) **ANNUAL REPORT.**—The Supply Chain and Counterintelligence Risk Management Task Force established under subsection (b) shall submit to the appropriate congressional committees an annual report that describes the activities of the Task Force during the previous year, including identification of the supply chain, cybersecurity, and counterintelligence risks shared with the acquisition community of the United States Government by the intelligence community.

**SEC. 6307. CONSIDERATION OF ADVERSARIAL TELECOMMUNICATIONS AND CYBERSECURITY INFRASTRUCTURE WHEN SHARING INTELLIGENCE WITH FOREIGN GOVERNMENTS AND ENTITIES.**

50 USC 3001  
note.

Whenever the head of an element of the intelligence community enters into an intelligence-sharing agreement with a foreign government or any other foreign entity, the head of the element shall consider the pervasiveness of telecommunications and cybersecurity infrastructure, equipment, and services provided by adversaries of the United States, particularly China and Russia, or entities of such adversaries in the country or region of the foreign government or other foreign entity entering into the agreement.

**SEC. 6308. CYBER PROTECTION SUPPORT FOR THE PERSONNEL OF THE INTELLIGENCE COMMUNITY IN POSITIONS HIGHLY VULNERABLE TO CYBER ATTACK.**

50 USC 3334d.

(a) **DEFINITIONS.**—In this section:

- (1) **PERSONAL ACCOUNTS.**—The term “personal accounts” means accounts for online and telecommunications services, including telephone, residential internet access, email, text and multimedia messaging, cloud computing, social media, health

care, and financial services, used by personnel of the intelligence community outside of the scope of their employment with elements of the intelligence community.

(2) **PERSONAL TECHNOLOGY DEVICES.**—The term “personal technology devices” means technology devices used by personnel of the intelligence community outside of the scope of their employment with elements of the intelligence community, including networks to which such devices connect.

(b) **AUTHORITY TO PROVIDE CYBER PROTECTION SUPPORT.**—

Determination.

(1) **IN GENERAL.**—Subject to a determination by the Director of National Intelligence, the Director may provide cyber protection support for the personal technology devices and personal accounts of the personnel described in paragraph (2).

(2) **AT-RISK PERSONNEL.**—The personnel described in this paragraph are personnel of the intelligence community—

(A) who the Director determines to be highly vulnerable to cyber attacks and hostile information collection activities because of the positions occupied by such personnel in the intelligence community; and

(B) whose personal technology devices or personal accounts are highly vulnerable to cyber attacks and hostile information collection activities.

(c) **NATURE OF CYBER PROTECTION SUPPORT.**—Subject to the availability of resources, the cyber protection support provided to personnel under subsection (b) may include training, advice, assistance, and other services relating to cyber attacks and hostile information collection activities.

(d) **LIMITATION ON SUPPORT.**—Nothing in this section shall be construed—

(1) to encourage personnel of the intelligence community to use personal technology devices for official business; or

(2) to authorize cyber protection support for senior intelligence community personnel using personal devices, networks, and personal accounts in an official capacity.

(e) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Director shall submit to the congressional intelligence committees a report on the provision of cyber protection support under subsection (b). The report shall include—

(1) a description of the methodology used to make the determination under subsection (b)(2); and

(2) guidance for the use of cyber protection support and tracking of support requests for personnel receiving cyber protection support under subsection (b).

**SEC. 6309. ELIMINATION OF SUNSET OF AUTHORITY RELATING TO MANAGEMENT OF SUPPLY-CHAIN RISK.**

Section 309 of the Intelligence Authorization Act for Fiscal Year 2012 (Public Law 112–87; 50 U.S.C. 3329 note) is amended by striking subsection (g).

50 USC 3351b.

**SEC. 6310. LIMITATIONS ON DETERMINATIONS REGARDING CERTAIN SECURITY CLASSIFICATIONS.**

(a) **PROHIBITION.**—An officer of an element of the intelligence community who has been nominated by the President for a position that requires the advice and consent of the Senate may not make a classification decision with respect to information related to such officer’s nomination.

(b) **CLASSIFICATION DETERMINATIONS.**—

(1) IN GENERAL.—Except as provided in paragraph (2), in a case in which an officer described in subsection (a) has been nominated as described in such subsection and classification authority rests with the officer or another officer who reports directly to such officer, a classification decision with respect to information relating to the officer shall be made by the Director of National Intelligence.

(2) NOMINATIONS OF DIRECTOR OF NATIONAL INTELLIGENCE.—In a case described in paragraph (1) in which the officer nominated is the Director of National Intelligence, the classification decision shall be made by the Principal Deputy Director of National Intelligence.

(c) REPORTS.—Whenever the Director or the Principal Deputy Director makes a decision under subsection (b), the Director or the Principal Deputy Director, as the case may be, shall submit to the congressional intelligence committees a report detailing the reasons for the decision.

**SEC. 6311. JOINT INTELLIGENCE COMMUNITY COUNCIL.**

(a) MEETINGS.—Section 101A(d) of the National Security Act of 1947 (50 U.S.C. 3022(d)) is amended—

(1) by striking “regular”; and

(2) by inserting “as the Director considers appropriate” after “Council”.

(b) REPORT ON FUNCTION AND UTILITY OF THE JOINT INTELLIGENCE COMMUNITY COUNCIL.—

(1) IN GENERAL.—No later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Executive Office of the President and members of the Joint Intelligence Community Council, shall submit to the congressional intelligence committees a report on the function and utility of the Joint Intelligence Community Council.

Coordination.

(2) CONTENTS.—The report required by paragraph (1) shall include the following:

(A) The number of physical or virtual meetings held by the Council per year since the Council’s inception.

(B) A description of the effect and accomplishments of the Council.

(C) An explanation of the unique role of the Council relative to other entities, including with respect to the National Security Council and the Executive Committee of the intelligence community.

(D) Recommendations for the future role and operation of the Council.

Recommendations.

(E) Such other matters relating to the function and utility of the Council as the Director considers appropriate.

(3) FORM.—The report submitted under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 6312. INTELLIGENCE COMMUNITY INFORMATION TECHNOLOGY ENVIRONMENT.**

Deadlines.  
50 USC 3024  
note.

(a) DEFINITIONS.—In this section:

(1) CORE SERVICE.—The term “core service” means a capability that is available to multiple elements of the intelligence community and required for consistent operation of the intelligence community information technology environment.

(2) INTELLIGENCE COMMUNITY INFORMATION TECHNOLOGY ENVIRONMENT.—The term “intelligence community information technology environment” means all of the information technology services across the intelligence community, including the data sharing and protection environment across multiple classification domains.

(b) ROLES AND RESPONSIBILITIES.—

Coordination.

(1) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National Intelligence shall be responsible for coordinating the performance by elements of the intelligence community of the intelligence community information technology environment, including each of the following:

Compliance.

(A) Ensuring compliance with all applicable environment rules and regulations of such environment.

(B) Ensuring measurable performance goals exist for such environment.

(C) Documenting standards and practices of such environment.

(D) Acting as an arbiter among elements of the intelligence community related to any disagreements arising out of the implementation of such environment.

(E) Delegating responsibilities to the elements of the intelligence community and carrying out such other responsibilities as are necessary for the effective implementation of such environment.

(2) CORE SERVICE PROVIDERS.—Providers of core services shall be responsible for—

Coordination.

(A) providing core services, in coordination with the Director of National Intelligence; and

(B) providing the Director with information requested and required to fulfill the responsibilities of the Director under paragraph (1).

(3) USE OF CORE SERVICES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each element of the intelligence community shall use core services when such services are available.

Determination.

(B) EXCEPTION.—The Director of National Intelligence may provide for a written exception to the requirement under subparagraph (A) if the Director determines there is a compelling financial or mission need for such exception.

Designation.

(c) MANAGEMENT ACCOUNTABILITY.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence shall designate and maintain one or more accountable executives of the intelligence community information technology environment to be responsible for—

(1) management, financial control, and integration of such environment;

(2) overseeing the performance of each core service, including establishing measurable service requirements and schedules;

(3) to the degree feasible, ensuring testing of each core service of such environment, including testing by the intended users, to evaluate performance against measurable service requirements and to ensure the capability meets user requirements; and

Coordination.

(4) coordinate transition or restructuring efforts of such environment, including phaseout of legacy systems.



(d) **SECURITY PLAN.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall develop and maintain a security plan for the intelligence community information technology environment.

(e) **LONG-TERM ROADMAP.**—Not later than 180 days after the date of the enactment of this Act, and during each of the second and fourth fiscal quarters thereafter, the Director of National Intelligence shall submit to the congressional intelligence committees a long-term roadmap that shall include each of the following:

(1) A description of the minimum required and desired core service requirements, including—

(A) key performance parameters; and

(B) an assessment of current, measured performance. Assessment.

(2) Implementation milestones for the intelligence community information technology environment, including each of the following:

(A) A schedule for expected deliveries of core service capabilities during each of the following phases: Schedule.

(i) Concept refinement and technology maturity demonstration.

(ii) Development, integration, and demonstration.

(iii) Production, deployment, and sustainment.

(iv) System retirement.

(B) Dependencies of such core service capabilities.

(C) Plans for the transition or restructuring necessary to incorporate core service capabilities. Plans.

(D) A description of any legacy systems and discontinued capabilities to be phased out.

(3) Such other matters as the Director determines appropriate.

(f) **BUSINESS PLAN.**—Not later than 180 days after the date of the enactment of this Act, and during each of the second and fourth fiscal quarters thereafter, the Director of National Intelligence shall submit to the congressional intelligence committees a business plan that includes each of the following:

(1) A systematic approach to identify core service funding requests for the intelligence community information technology environment within the proposed budget, including multiyear plans to implement the long-term roadmap required by subsection (e).

(2) A uniform approach by which each element of the intelligence community shall identify the cost of legacy information technology or alternative capabilities where services of the intelligence community information technology environment will also be available.

(3) A uniform effort by which each element of the intelligence community shall identify transition and restructuring costs for new, existing, and retiring services of the intelligence community information technology environment, as well as services of such environment that have changed designations as a core service.

(g) **QUARTERLY PRESENTATIONS.**—Beginning not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall provide to the congressional intelligence committees quarterly updates regarding ongoing implementation of the intelligence community information technology environment as compared to the requirements in the most Updates.

recently submitted security plan required by subsection (d), long-term roadmap required by subsection (e), and business plan required by subsection (f).

(h) **ADDITIONAL NOTIFICATIONS.**—The Director of National Intelligence shall provide timely notification to the congressional intelligence committees regarding any policy changes related to or affecting the intelligence community information technology environment, new initiatives or strategies related to or impacting such environment, and changes or deficiencies in the execution of the security plan required by subsection (d), long-term roadmap required by subsection (e), and business plan required by subsection (f).

(i) **SUNSET.**—The section shall have no effect on or after September 30, 2024.

**SEC. 6313. REPORT ON DEVELOPMENT OF SECURE MOBILE VOICE SOLUTION FOR INTELLIGENCE COMMUNITY.**

Coordination.  
Classified  
information.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Director of the Central Intelligence Agency and the Director of the National Security Agency, shall submit to the congressional intelligence committees a classified report on the feasibility, desirability, cost, and required schedule associated with the implementation of a secure mobile voice solution for the intelligence community.

(b) **CONTENTS.**—The report required by subsection (a) shall include, at a minimum, the following:

(1) The benefits and disadvantages of a secure mobile voice solution.

(2) Whether the intelligence community could leverage commercially available technology for classified voice communications that operates on commercial mobile networks in a secure manner and identifying the accompanying security risks to such networks.

(3) A description of any policies or community guidance that would be necessary to govern the potential solution, such as a process for determining the appropriate use of a secure mobile telephone and any limitations associated with such use.

Deadlines.  
50 USC 3024  
note.

**SEC. 6314. POLICY ON MINIMUM INSIDER THREAT STANDARDS.**

(a) **POLICY REQUIRED.**—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall establish a policy for minimum insider threat standards that is consistent with the National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs.

(b) **IMPLEMENTATION.**—Not later than 180 days after the date of the enactment of this Act, the head of each element of the intelligence community shall implement the policy established under subsection (a).

50 USC 3316  
note.

**SEC. 6315. SUBMISSION OF INTELLIGENCE COMMUNITY POLICIES.**

(a) **DEFINITIONS.**—In this section:

(1) **ELECTRONIC REPOSITORY.**—The term “electronic repository” means the electronic distribution mechanism, in use as of the date of the enactment of this Act, or any successor electronic distribution mechanism, by which the Director of National Intelligence submits to the congressional intelligence committees information.

(2) **POLICY.**—The term “policy”, with respect to the intelligence community, includes unclassified or classified—

(A) directives, policy guidance, and policy memoranda of the intelligence community;

(B) executive correspondence of the Director of National Intelligence; and

(C) any equivalent successor policy instruments.

(b) **SUBMISSION OF POLICIES.**—

Deadlines.

(1) **CURRENT POLICY.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees using the electronic repository all nonpublicly available policies issued by the Director of National Intelligence for the intelligence community that are in effect as of the date of the submission.

(2) **CONTINUOUS UPDATES.**—Not later than 15 days after the date on which the Director of National Intelligence issues, modifies, or rescinds a policy of the intelligence community, the Director shall—

(A) notify the congressional intelligence committees of such addition, modification, or removal; and

Notification.

(B) update the electronic repository with respect to such addition, modification, or removal.

**SEC. 6316. EXPANSION OF INTELLIGENCE COMMUNITY RECRUITMENT EFFORTS.**

Deadlines.  
50 USC 3334b.

In order to further increase the diversity of the intelligence community workforce, not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with heads of elements of the Intelligence Community, shall create, implement, and submit to the congressional intelligence committees a written plan to ensure that rural and underrepresented regions are more fully and consistently represented in such elements’ employment recruitment efforts. Upon receipt of the plan, the congressional committees shall have 60 days to submit comments to the Director of National Intelligence before such plan shall be implemented.

Consultation.  
Plan.

**TITLE LXIV—MATTERS RELATING TO  
ELEMENTS OF THE INTELLIGENCE  
COMMUNITY**

**Subtitle A—Office of the Director of  
National Intelligence**

**SEC. 6401. AUTHORITY FOR PROTECTION OF CURRENT AND FORMER  
EMPLOYEES OF THE OFFICE OF THE DIRECTOR OF  
NATIONAL INTELLIGENCE.**

Section 5(a)(4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3506(a)(4)) is amended by striking “such personnel of the Office of the Director of National Intelligence as the Director of National Intelligence may designate;” and inserting “current and former personnel of the Office of the Director of National

Intelligence and their immediate families as the Director of National Intelligence may designate;”.

**SEC. 6402. DESIGNATION OF THE PROGRAM MANAGER-INFORMATION-SHARING ENVIRONMENT.**

(a) INFORMATION-SHARING ENVIRONMENT.—Section 1016(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485(b)) is amended—

(1) in paragraph (1), by striking “President” and inserting “Director of National Intelligence”; and

(2) in paragraph (2), by striking “President” both places that term appears and inserting “Director of National Intelligence”.

(b) PROGRAM MANAGER.—Section 1016(f)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485(f)(1)) is amended by striking “The individual designated as the program manager shall serve as program manager until removed from service or replaced by the President (at the President’s sole discretion).” and inserting “Beginning on the date of the enactment of the Damon Paul Nelson and Matthew Young Pollard Intelligence Authorization Act for Fiscal Years 2018, 2019 and 2020, each individual designated as the program manager shall be appointed by the Director of National Intelligence.”.

**SEC. 6403. TECHNICAL MODIFICATION TO THE EXECUTIVE SCHEDULE.**

Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Director of the National Counterintelligence and Security Center.”.

**SEC. 6404. CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.**

Section 103I(a) of the National Security Act of 1947 (50 U.S.C. 3034(a)) is amended by adding at the end the following new sentence: “The Chief Financial Officer shall report directly to the Director of National Intelligence.”.

**SEC. 6405. CHIEF INFORMATION OFFICER OF THE INTELLIGENCE COMMUNITY.**

Section 103G(a) of the National Security Act of 1947 (50 U.S.C. 3032(a)) is amended by adding at the end the following new sentence: “The Chief Information Officer shall report directly to the Director of National Intelligence.”.

## **Subtitle B—Central Intelligence Agency**

**SEC. 6411. CENTRAL INTELLIGENCE AGENCY SUBSISTENCE FOR PERSONNEL ASSIGNED TO AUSTERE LOCATIONS.**

Subsection (a) of section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3506) is amended—

(1) in paragraph (1), by striking “(50 U.S.C. 403–4a).,” and inserting “(50 U.S.C. 403–4a).”;

(2) in paragraph (6), by striking “and” at the end;

(3) in paragraph (7), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following new paragraph:

“(8) Upon the approval of the Director, provide, during any fiscal year, with or without reimbursement, subsistence to any personnel assigned to an overseas location designated by the Agency as an austere location.”.

**SEC. 6412. SPECIAL RULES FOR CERTAIN MONTHLY WORKERS’ COMPENSATION PAYMENTS AND OTHER PAYMENTS FOR CENTRAL INTELLIGENCE AGENCY PERSONNEL.**

(a) **IN GENERAL.**—The Central Intelligence Agency Act of 1949 (50 U.S.C. 3501 et seq.) is amended by inserting after section 19 the following new section:

**“SEC. 19A. SPECIAL RULES FOR CERTAIN INDIVIDUALS INJURED BY REASON OF WAR, INSURGENCY, HOSTILE ACT, TERRORIST ACTIVITIES, OR INCIDENTS DESIGNATED BY THE DIRECTOR.**

50 USC 3519b.

“(a) **DEFINITIONS.**—In this section:

“(1) **COVERED DEPENDENT.**—The term ‘covered dependent’ means a family member (as defined by the Director) of a covered employee who, on or after September 11, 2001—

“(A) accompanies the covered employee to an assigned duty station in a foreign country; and

“(B) becomes injured by reason of a qualifying injury.

“(2) **COVERED EMPLOYEE.**—The term ‘covered employee’ means an officer or employee of the Central Intelligence Agency who, on or after September 11, 2001, becomes injured by reason of a qualifying injury.

“(3) **COVERED INDIVIDUAL.**—The term ‘covered individual’ means an individual who—

“(A)(i) is detailed to the Central Intelligence Agency from other agencies of the United States Government or from the Armed Forces; or

“(ii) is affiliated with the Central Intelligence Agency, as determined by the Director; and

“(B) who, on or after September 11, 2001, becomes injured by reason of a qualifying injury.

“(4) **QUALIFYING INJURY.**—The term ‘qualifying injury’ means the following:

“(A) With respect to a covered dependent, an injury incurred—

“(i) during a period in which the covered dependent is accompanying the covered employee to an assigned duty station in a foreign country;

“(ii) in connection with war, insurgency, hostile act, terrorist activity, or an incident designated for purposes of this section by the Director; and

“(iii) that was not the result of the willful misconduct of the covered dependent.

“(B) With respect to a covered employee or a covered individual—

“(i) an injury incurred—

“(I) during a period of assignment to a duty station in a foreign country;

“(II) in connection with war, insurgency, hostile act, or terrorist activity; and

“(III) that was not the result of the willful misconduct of the covered employee or the covered individual; or

“(ii) an injury incurred—

“(I) in connection with an incident designated for purposes of this section by the Director; and

“(II) that was not the result of the willful misconduct of the covered employee or the covered individual.

“(b) ADJUSTMENT OF COMPENSATION FOR CERTAIN INJURIES.—

Determination.

“(1) INCREASE.—The Director may increase the amount of monthly compensation paid to a covered employee under section 8105 of title 5, United States Code. Subject to paragraph (2), the Director may determine the amount of each such increase by taking into account—

“(A) the severity of the qualifying injury;

“(B) the circumstances by which the covered employee became injured; and

“(C) the seniority of the covered employee.

“(2) MAXIMUM.—Notwithstanding chapter 81 of title 5, United States Code, the total amount of monthly compensation increased under paragraph (1) may not exceed the monthly pay of the maximum rate of basic pay for GS–15 of the General Schedule under section 5332 of such title.

“(c) COSTS FOR TREATING QUALIFYING INJURIES.—The Director may pay the costs of treating a qualifying injury of a covered employee, a covered individual, or a covered dependent, or may reimburse a covered employee, a covered individual, or a covered dependent for such costs, that are not otherwise covered by chapter 81 of title 5, United States Code, or other provision of Federal law.”.

Deadline.  
50 USC 3519b  
note.

(b) REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall—

(1) prescribe regulations ensuring the fair and equitable implementation of section 19A of the Central Intelligence Agency Act of 1949, as added by subsection (a); and

(2) submit to the congressional intelligence committees such regulations.

50 USC 3519b  
note.

(c) APPLICATION.—Section 19A of the Central Intelligence Agency Act of 1949, as added by subsection (a), shall apply with respect to—

(1) payments made to covered employees (as defined in such section) under section 8105 of title 5, United States Code, beginning on or after the date of the enactment of this Act; and

(2) treatment described in subsection (b) of such section 19A occurring on or after the date of the enactment of this Act.

**SEC. 6413. EXPANSION OF SECURITY PROTECTIVE SERVICE JURISDICTION OF THE CENTRAL INTELLIGENCE AGENCY.**

Subsection (a)(1) of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3515(a)(1)) is amended—

(1) in subparagraph (B), by striking “500 feet;” and inserting “500 yards;”; and

(2) in subparagraph (D), by striking “500 feet.” and inserting “500 yards.”.

**SEC. 6414. REPEAL OF FOREIGN LANGUAGE PROFICIENCY REQUIREMENT FOR CERTAIN SENIOR LEVEL POSITIONS IN THE CENTRAL INTELLIGENCE AGENCY.**

(a) REPEAL OF FOREIGN LANGUAGE PROFICIENCY REQUIREMENT.—Section 104A of the National Security Act of 1947 (50 U.S.C. 3036) is amended by striking subsection (g).

(b) CONFORMING REPEAL OF REPORT REQUIREMENT.—Section 611 of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108–487) is amended by striking subsection (c).

118 Stat. 3955.

**Subtitle C—Office of Intelligence and Counterintelligence of Department of Energy**

**SEC. 6421. CONSOLIDATION OF DEPARTMENT OF ENERGY OFFICES OF INTELLIGENCE AND COUNTERINTELLIGENCE.**

(a) IN GENERAL.—Section 215 of the Department of Energy Organization Act (42 U.S.C. 7144b) is amended to read as follows:

“OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE

“SEC. 215. (a) DEFINITIONS.—In this section, the terms ‘intelligence community’ and ‘National Intelligence Program’ have the meanings given such terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

“(b) IN GENERAL.—There is in the Department an Office of Intelligence and Counterintelligence. Such office shall be under the National Intelligence Program.

“(c) DIRECTOR.—(1) The head of the Office shall be the Director of the Office of Intelligence and Counterintelligence, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

Coordination.

“(2) The Secretary shall select an individual to serve as the Director from among individuals who have substantial expertise in matters relating to the intelligence community, including foreign intelligence and counterintelligence.

“(d) DUTIES.—(1) Subject to the authority, direction, and control of the Secretary, the Director shall perform such duties and exercise such powers as the Secretary may prescribe.

“(2) The Director shall be responsible for establishing policy for intelligence and counterintelligence programs and activities at the Department.”.

(b) CONFORMING REPEAL.—Section 216 of the Department of Energy Organization Act (42 U.S.C. 7144c) is hereby repealed.

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of the Department of Energy Organization Act is amended by striking the items relating to sections 215 and 216 and inserting the following new item:

“Sec. 215. Office of Intelligence and Counterintelligence.”.

**SEC. 6422. REPEAL OF DEPARTMENT OF ENERGY INTELLIGENCE EXECUTIVE COMMITTEE AND BUDGET REPORTING REQUIREMENT.**

Section 214 of the Department of Energy Organization Act (42 U.S.C. 7144a) is amended—

- (1) by striking “(a)”; and
- (2) by striking subsections (b) and (c).

## Subtitle D—Other Elements

**SEC. 6431. PLAN FOR DESIGNATION OF COUNTERINTELLIGENCE COMPONENT OF DEFENSE SECURITY SERVICE AS AN ELEMENT OF INTELLIGENCE COMMUNITY.**

Deadlines.  
Coordination.

Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence and Under Secretary of Defense for Intelligence, in coordination with the Director of the National Counterintelligence and Security Center, shall submit to the congressional intelligence committees, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives a plan to designate the counterintelligence component of the Defense Security Service of the Department of Defense as an element of the intelligence community by not later than January 1, 2021. Such plan shall—

- (1) address the implications of such designation on the authorities, governance, personnel, resources, information technology, collection, analytic products, information sharing, and business processes of the Defense Security Service and the intelligence community; and
- (2) not address the personnel security functions of the Defense Security Service.

**SEC. 6432. NOTICE NOT REQUIRED FOR PRIVATE ENTITIES.**

Section 3553 of title 44, United States Code, is amended—

- (1) by redesignating subsection (j) as subsection (k); and
- (2) by inserting after subsection (i) the following:

“(j) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to require the Secretary to provide notice to any private entity before the Secretary issues a binding operational directive under subsection (b)(2).”.

**SEC. 6433. ESTABLISHMENT OF ADVISORY BOARD FOR NATIONAL RECONNAISSANCE OFFICE.**

(a) **ESTABLISHMENT.**—Section 106A of the National Security Act of 1947 (50 U.S.C. 3041a) is amended by adding at the end the following new subsection:

“(d) **ADVISORY BOARD.**—

“(1) **ESTABLISHMENT.**—There is established in the National Reconnaissance Office an advisory board (in this section referred to as the ‘Board’).

“(2) **DUTIES.**—The Board shall—

“(A) study matters relating to the mission of the National Reconnaissance Office, including with respect to promoting innovation, competition, and resilience in space, overhead reconnaissance, acquisition, and other matters; and

“(B) advise and report directly to the Director with respect to such matters.



## “(3) MEMBERS.—

## “(A) NUMBER AND APPOINTMENT.—

“(i) IN GENERAL.—The Board shall be composed of five members appointed by the Director from among individuals with demonstrated academic, government, business, or other expertise relevant to the mission and functions of the National Reconnaissance Office.

“(ii) NOTIFICATION.—Not later than 30 days after the date on which the Director appoints a member to the Board, the Director shall notify the congressional intelligence committees and the congressional defense committees (as defined in section 101(a) of title 10, United States Code) of such appointment.

Deadline.

“(B) TERMS.—Each member shall be appointed for a term of 2 years. Except as provided by subparagraph (C), a member may not serve more than three terms.

“(C) VACANCY.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor has taken office.

“(D) CHAIR.—The Board shall have a Chair, who shall be appointed by the Director from among the members.

“(E) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(F) EXECUTIVE SECRETARY.—The Director may appoint an executive secretary, who shall be an employee of the National Reconnaissance Office, to support the Board.

Appointment.

“(4) MEETINGS.—The Board shall meet not less than quarterly, but may meet more frequently at the call of the Director.

“(5) REPORTS.—Not later than March 31 of each year, the Board shall submit to the Director and to the congressional intelligence committees a report on the activities and significant findings of the Board during the preceding year.

“(6) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

“(7) TERMINATION.—The Board shall terminate on the date that is 3 years after the date of the first meeting of the Board.”.

(b) INITIAL APPOINTMENTS.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Reconnaissance Office shall appoint the initial five members to the advisory board under subsection (d) of section 106A of the National Security Act of 1947 (50 U.S.C. 3041a), as added by subsection (a).

Deadline.  
50 USC 3041a  
note.

**SEC. 6434. COLLOCATION OF CERTAIN DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT FIELD LOCATIONS.**

(a) IDENTIFICATION OF OPPORTUNITIES FOR COLLOCATION.—Not later than 60 days after the date of the enactment of this Act, the Under Secretary of Homeland Security for Intelligence and Analysis shall identify, in consultation with the Commissioner of U.S. Customs and Border Protection, the Administrator of the Transportation Security Administration, the Director of U.S.

Deadline.  
Consultation.

Immigration and Customs Enforcement, and the heads of such other elements of the Department of Homeland Security as the Under Secretary considers appropriate, opportunities for collocation of officers of the Office of Intelligence and Analysis in the field outside of the greater Washington, District of Columbia, area in order to support operational units from U.S. Customs and Border Protection, the Transportation Security Administration, U.S. Immigration and Customs Enforcement, and other elements of the Department of Homeland Security.

Deadline.

(b) **PLAN FOR COLLOCATION.**—Not later than 120 days after the date of the enactment of this Act, the Under Secretary shall submit to the congressional intelligence committees a report that includes a plan for collocation as described in subsection (a).

## **TITLE LXV—ELECTION MATTERS**

### **SEC. 6501. REPORT ON CYBER ATTACKS BY FOREIGN GOVERNMENTS AGAINST UNITED STATES ELECTION INFRASTRUCTURE.**

(a) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

- (A) the congressional intelligence committees;
  - (B) the Committee on Homeland Security and Governmental Affairs of the Senate;
  - (C) the Committee on Homeland Security of the House of Representatives;
  - (D) the Committee on Foreign Relations of the Senate;
- and

(E) the Committee on Foreign Affairs of the House of Representatives.

(2) **CONGRESSIONAL LEADERSHIP.**—The term “congressional leadership” includes the following:

- (A) The majority leader of the Senate.
- (B) The minority leader of the Senate.
- (C) The Speaker of the House of Representatives.
- (D) The minority leader of the House of Representatives.

(3) **STATE.**—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) **REPORT REQUIRED.**—Not later than 60 days after the date of the enactment of this Act, the Under Secretary of Homeland Security for Intelligence and Analysis shall submit to congressional leadership and the appropriate congressional committees a report on cyber attacks and attempted cyber attacks by foreign governments on United States election infrastructure in States and localities in connection with the 2016 Presidential election in the United States and such cyber attacks or attempted cyber attacks as the Under Secretary anticipates against such infrastructure. Such report shall identify the States and localities affected and shall include cyber attacks and attempted cyber attacks against voter registration databases, voting machines, voting-related computer networks, and the networks of Secretaries of State and other election officials of the various States.

(c) FORM.—The report submitted under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 6502. REVIEW OF INTELLIGENCE COMMUNITY’S POSTURE TO COLLECT AGAINST AND ANALYZE RUSSIAN EFFORTS TO INFLUENCE THE PRESIDENTIAL ELECTION.**

(a) REVIEW REQUIRED.—Not later than 1 year after the date of the enactment of this Act, the Director of National Intelligence shall—

Deadline.

(1) complete an after action review of the posture of the intelligence community to collect against and analyze efforts of the Government of Russia to interfere in the 2016 Presidential election in the United States; and

(2) submit to the congressional intelligence committees a report on the findings of the Director with respect to such review.

(b) ELEMENTS.—The review required by subsection (a) shall include, with respect to the posture and efforts described in paragraph (1) of such subsection, the following:

Assessments.

(1) An assessment of whether the resources of the intelligence community were properly aligned to detect and respond to the efforts described in subsection (a)(1).

(2) An assessment of the information sharing that occurred within elements of the intelligence community.

(3) An assessment of the information sharing that occurred between elements of the intelligence community.

(4) An assessment of applicable authorities necessary to collect on any such efforts and any deficiencies in those authorities.

(5) A review of the use of open source material to inform analysis and warning of such efforts.

(6) A review of the use of alternative and predictive analysis.

(c) FORM OF REPORT.—The report required by subsection (a)(2) shall be submitted to the congressional intelligence committees in a classified form.

Classified information.

**SEC. 6503. ASSESSMENT OF FOREIGN INTELLIGENCE THREATS TO FEDERAL ELECTIONS.**

50 USC 3371a.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the congressional intelligence committees;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(C) the Committee on Homeland Security of the House of Representatives.

(2) CONGRESSIONAL LEADERSHIP.—The term “congressional leadership” includes the following:

(A) The majority leader of the Senate.

(B) The minority leader of the Senate.

(C) The Speaker of the House of Representatives.

(D) The minority leader of the House of Representatives.

(3) SECURITY VULNERABILITY.—The term “security vulnerability” has the meaning given such term in section 102 of

the Cybersecurity Information Sharing Act of 2015 (6 U.S.C. 1501).

Coordination.  
Deadlines.

(b) IN GENERAL.—The Director of National Intelligence, in coordination with the Director of the Central Intelligence Agency, the Director of the National Security Agency, the Director of the Federal Bureau of Investigation, the Secretary of Homeland Security, and the heads of other relevant elements of the intelligence community, shall—

(1) commence not later than 1 year before any regularly scheduled Federal election occurring after December 31, 2018, and complete not later than 180 days before such election, an assessment of security vulnerabilities of State election systems; and

(2) not later than 180 days before any regularly scheduled Federal election occurring after December 31, 2018, submit a report on such security vulnerabilities and an assessment of foreign intelligence threats to the election to—

(A) congressional leadership; and

(B) the appropriate congressional committees.

Deadline.

(c) UPDATE.—Not later than 90 days before any regularly scheduled Federal election occurring after December 31, 2018, the Director of National Intelligence shall—

Assessment.

(1) update the assessment of foreign intelligence threats to that election; and

(2) submit the updated assessment to—

(A) congressional leadership; and

(B) the appropriate congressional committees.

**SEC. 6504. STRATEGY FOR COUNTERING RUSSIAN CYBER THREATS TO UNITED STATES ELECTIONS.**

(a) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional intelligence committees.

(2) The Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate.

(3) The Committee on Armed Services and the Committee on Homeland Security of the House of Representatives.

(4) The Committee on Foreign Relations of the Senate.

(5) The Committee on Foreign Affairs of the House of Representatives.

Deadline.  
Coordination.

(b) REQUIREMENT FOR A STRATEGY.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, and the Secretary of the Treasury, shall develop a whole-of-government strategy for countering the threat of Russian cyber attacks and attempted cyber attacks against electoral systems and processes in the United States, including Federal, State, and local election systems, voter registration databases, voting tabulation equipment, and equipment and processes for the secure transmission of election results.

(c) ELEMENTS OF THE STRATEGY.—The strategy required by subsection (b) shall include the following elements:

(1) A whole-of-government approach to protecting United States electoral systems and processes that includes the agencies and departments indicated in subsection (b) as well as any other agencies and departments of the United States, as determined appropriate by the Director of National Intelligence and the Secretary of Homeland Security.

(2) Input solicited from Secretaries of State of the various States and the chief election officials of the States.

(3) Technical security measures, including auditable paper trails for voting machines, securing wireless and internet connections, and other technical safeguards.

(4) Detection of cyber threats, including attacks and attempted attacks by Russian government or nongovernment cyber threat actors.

(5) Improvements in the identification and attribution of Russian government or nongovernment cyber threat actors.

(6) Deterrence, including actions and measures that could or should be undertaken against or communicated to the Government of Russia or other entities to deter attacks against, or interference with, United States election systems and processes.

(7) Improvements in Federal Government communications with State and local election officials.

(8) Public education and communication efforts.

(9) Benchmarks and milestones to enable the measurement of concrete steps taken and progress made in the implementation of the strategy.

(d) CONGRESSIONAL BRIEFING.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence and the Secretary of Homeland Security shall jointly brief the appropriate congressional committees on the strategy developed under subsection (b). Deadline.

**SEC. 6505. ASSESSMENT OF SIGNIFICANT RUSSIAN INFLUENCE CAMPAIGNS DIRECTED AT FOREIGN ELECTIONS AND REFERENDA.**

(a) RUSSIAN INFLUENCE CAMPAIGN DEFINED.—In this section, the term “Russian influence campaign” means any effort, covert or overt, and by any means, attributable to the Russian Federation directed at an election, referendum, or similar process in a country other than the Russian Federation or the United States.

(b) ASSESSMENT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report containing an analytical assessment of the most significant Russian influence campaigns, if any, conducted during the 3-year period preceding the date of the enactment of this Act, as well as the most significant current or planned such Russian influence campaigns, if any. Such assessment shall include— Deadline.  
Time period.  
Summaries.

(1) a summary of such significant Russian influence campaigns, including, at a minimum, the specific means by which such campaigns were conducted, are being conducted, or likely will be conducted, as appropriate, and the specific goal of each such campaign;

(2) a summary of any defenses against or responses to such Russian influence campaigns by the foreign state holding the elections or referenda;

(3) a summary of any relevant activities by elements of the intelligence community undertaken for the purpose of assisting the government of such foreign state in defending against or responding to such Russian influence campaigns; and

(4) an assessment of the effectiveness of such defenses and responses described in paragraphs (2) and (3).

Classified  
information.

(c) FORM.—The report required by subsection (b) may be submitted in classified form, but if so submitted, shall contain an unclassified summary.

50 USC 3371b.

**SEC. 6506. INFORMATION SHARING WITH STATE ELECTION OFFICIALS.**

(a) STATE DEFINED.—In this section, the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) SECURITY CLEARANCES.—

Deadline.

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Director of National Intelligence shall support the Under Secretary of Homeland Security for Intelligence and Analysis, and any other official of the Department of Homeland Security designated by the Secretary of Homeland Security, in sponsoring a security clearance up to the top secret level for each eligible chief election official of a State or the District of Columbia, and additional eligible designees of such election official as appropriate, at the time that such election official assumes such position.

Determination.

(2) INTERIM CLEARANCES.—Consistent with applicable policies and directives, the Director of National Intelligence may issue interim clearances, for a period to be determined by the Director, to a chief election official as described in paragraph (1) and up to one designee of such official under such paragraph.

(c) INFORMATION SHARING.—

(1) IN GENERAL.—The Director of National Intelligence shall assist the Under Secretary of Homeland Security for Intelligence and Analysis and the Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department (as specified in section 103(a)(1)(H) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(1)(H))) with sharing any appropriate classified information related to threats to election systems and to the integrity of the election process with chief election officials and such designees who have received a security clearance under subsection (b).

(2) COORDINATION.—The Under Secretary of Homeland Security for Intelligence and Analysis shall coordinate with the Director of National Intelligence and the Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department (as specified in section 103(a)(1)(H) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(1)(H))) to facilitate the sharing of information to the affected Secretaries of State or States.

**SEC. 6507. NOTIFICATION OF SIGNIFICANT FOREIGN CYBER INTRUSIONS AND ACTIVE MEASURES CAMPAIGNS DIRECTED AT ELECTIONS FOR FEDERAL OFFICES.** 50 USC 3371c.

(a) **DEFINITIONS.**—In this section:

(1) **ACTIVE MEASURES CAMPAIGN.**—The term “active measures campaign” means a foreign semi-covert or covert intelligence operation.

(2) **CANDIDATE, ELECTION, AND POLITICAL PARTY.**—The terms “candidate”, “election”, and “political party” have the meanings given those terms in section 301 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101).

(3) **CONGRESSIONAL LEADERSHIP.**—The term “congressional leadership” includes the following:

(A) The majority leader of the Senate.

(B) The minority leader of the Senate.

(C) The Speaker of the House of Representatives.

(D) The minority leader of the House of Representatives.

(4) **CYBER INTRUSION.**—The term “cyber intrusion” means an electronic occurrence that actually or imminently jeopardizes, without lawful authority, electronic election infrastructure, or the integrity, confidentiality, or availability of information within such infrastructure.

(5) **ELECTRONIC ELECTION INFRASTRUCTURE.**—The term “electronic election infrastructure” means an electronic information system of any of the following that is related to an election for Federal office:

(A) The Federal Government.

(B) A State or local government.

(C) A political party.

(D) The election campaign of a candidate.

(6) **FEDERAL OFFICE.**—The term “Federal office” has the meaning given that term in section 301 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101).

(7) **HIGH CONFIDENCE.**—The term “high confidence”, with respect to a determination, means that the determination is based on high-quality information from multiple sources.

(8) **MODERATE CONFIDENCE.**—The term “moderate confidence”, with respect to a determination, means that a determination is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence.

(9) **OTHER APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “other appropriate congressional committees” means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Homeland Security, and the Committee on Appropriations of the House of Representatives.

(b) **DETERMINATIONS OF SIGNIFICANT FOREIGN CYBER INTRUSIONS AND ACTIVE MEASURES CAMPAIGNS.**—The Director of National Intelligence, the Director of the Federal Bureau of Investigation, and the Secretary of Homeland Security shall jointly carry out

subsection (c) if such Directors and the Secretary jointly determine—

(1) that on or after the date of the enactment of this Act, a significant foreign cyber intrusion or active measures campaign intended to influence an upcoming election for any Federal office has occurred or is occurring; and

(2) with moderate or high confidence, that such intrusion or campaign can be attributed to a foreign state or to a foreign nonstate person, group, or other entity.

(c) BRIEFING.—

Deadline.  
Determination.

(1) IN GENERAL.—Not later than 14 days after making a determination under subsection (b), the Director of National Intelligence, the Director of the Federal Bureau of Investigation, and the Secretary of Homeland Security shall jointly provide a briefing to the congressional leadership, the congressional intelligence committees and, consistent with the protection of sources and methods, the other appropriate congressional committees. The briefing shall be classified and address, at a minimum, the following:

Classified  
information.

(A) A description of the significant foreign cyber intrusion or active measures campaign, as the case may be, covered by the determination.

(B) An identification of the foreign state or foreign nonstate person, group, or other entity, to which such intrusion or campaign has been attributed.

(C) The desirability and feasibility of the public release of information about the cyber intrusion or active measures campaign.

(D) Any other information such Directors and the Secretary jointly determine appropriate.

Consultation.

(2) ELECTRONIC ELECTION INFRASTRUCTURE BRIEFINGS.—With respect to a significant foreign cyber intrusion covered by a determination under subsection (b), the Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Director of the Federal Bureau of Investigation, shall offer to the owner or operator of any electronic election infrastructure directly affected by such intrusion, a briefing on such intrusion, including steps that may be taken to mitigate such intrusion. Such briefing may be classified and made available only to individuals with appropriate security clearances.

(3) PROTECTION OF SOURCES AND METHODS.—This subsection shall be carried out in a manner that is consistent with the protection of sources and methods.

50 USC 3371d.

**SEC. 6508. DESIGNATION OF COUNTERINTELLIGENCE OFFICER TO LEAD ELECTION SECURITY MATTERS.**

Coordination.

(a) IN GENERAL.—The Director of National Intelligence shall designate a national counterintelligence officer within the National Counterintelligence and Security Center to lead, manage, and coordinate counterintelligence matters relating to election security.

(b) ADDITIONAL RESPONSIBILITIES.—The person designated under subsection (a) shall also lead, manage, and coordinate counterintelligence matters relating to risks posed by interference from foreign powers (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) to the following:

(1) The Federal Government election security supply chain.



- (2) Election voting systems and software.
- (3) Voter registration databases.
- (4) Critical infrastructure related to elections.
- (5) Such other Government goods and services as the Director of National Intelligence considers appropriate.

## TITLE LXVI—SECURITY CLEARANCES

### SEC. 6601. DEFINITIONS.

50 USC 3352.

In this title:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

- (A) the congressional intelligence committees;
- (B) the Committee on Armed Services of the Senate;
- (C) the Committee on Appropriations of the Senate;
- (D) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (E) the Committee on Armed Services of the House of Representatives;
- (F) the Committee on Appropriations of the House of Representatives;
- (G) the Committee on Homeland Security of the House of Representatives; and
- (H) the Committee on Oversight and Reform of the House of Representatives.

(2) **APPROPRIATE INDUSTRY PARTNER.**—The term “appropriate industry partner” means a contractor, licensee, or grantee (as defined in section 101(a) of Executive Order No. 12829 (50 U.S.C. 3161 note; relating to National Industrial Security Program)) that is participating in the National Industrial Security Program established by such Executive order.

(3) **CONTINUOUS VETTING.**—The term “continuous vetting” has the meaning given such term in Executive Order No. 13467 (50 U.S.C. 3161 note; relating to reforming processes for determining suitability for government employment, fitness for contractor employees, and eligibility for access to classified national security information).

(4) **COUNCIL.**—The term “Council” means the Security, Suitability, and Credentialing Performance Accountability Council established pursuant to such Executive order, or any successor entity.

(5) **RECIPROCITY.**—The term “reciprocity” means reciprocal recognition by Federal departments and agencies of eligibility for access to classified information.

(6) **SECURITY EXECUTIVE AGENT.**—The term “Security Executive Agent” means the officer serving as the Security Executive Agent pursuant to section 803 of the National Security Act of 1947, as added by section 6605.

(7) **SUITABILITY AND CREDENTIALING EXECUTIVE AGENT.**—The term “Suitability and Credentialing Executive Agent” means the Director of the Office of Personnel Management acting as the Suitability and Credentialing Executive Agent in accordance with Executive Order No. 13467 (50 U.S.C. 3161 note; relating to reforming processes related to suitability for Government employment, fitness for contractor employees, and

eligibility for access to classified national security information), or any successor entity.

50 USC 3352a.

**SEC. 6602. REPORTS AND PLANS RELATING TO SECURITY CLEARANCES AND BACKGROUND INVESTIGATIONS.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) ensuring the trustworthiness and security of the workforce, facilities, and information of the Federal Government is of the highest priority to national security and public safety;

(2) the President and Congress should prioritize the modernization of the personnel security framework to improve its efficiency, effectiveness, and accountability;

(3) the current system for background investigations for security clearances, suitability and fitness for employment, and credentialing lacks efficiencies and capabilities to meet the current threat environment, recruit and retain a trusted workforce, and capitalize on modern technologies; and

(4) changes to policies or processes to improve this system should be vetted through the Council to ensure standardization, portability, and reciprocity in security clearances across the Federal Government.

(b) ACCOUNTABILITY PLANS AND REPORTS.—

(1) PLANS.—Not later than 90 days after the date of the enactment of this Act, the Council shall submit to the appropriate congressional committees and make available to appropriate industry partners the following:

(A) A plan, with milestones, to reduce the background investigation inventory to 200,000, or an otherwise sustainable steady-level, by the end of year 2020. Such plan shall include notes of any required changes in investigative and adjudicative standards or resources.

(B) A plan to consolidate the conduct of background investigations associated with the processing for security clearances in the most effective and efficient manner in the Defense Counterintelligence and Security Agency. Such plan shall address required funding, personnel, contracts, information technology, field office structure, policy, governance, schedule, transition costs, and effects on stakeholders.

(2) REPORT ON THE FUTURE OF PERSONNEL SECURITY.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Chairman of the Council, in coordination with the members of the Council, shall submit to the appropriate congressional committees and make available to appropriate industry partners a report on the future of personnel security to reflect changes in threats, the workforce, and technology.

(B) CONTENTS.—The report submitted under subparagraph (A) shall include the following:

(i) A risk framework for granting and renewing access to classified information.

(ii) A discussion of the use of technologies to prevent, detect, and monitor threats.

(iii) A discussion of efforts to address reciprocity and portability.

(iv) A discussion of the characteristics of effective insider threat programs.

(v) An analysis of how to integrate data from continuous vetting, insider threat programs, and human resources data.

Analysis.

(vi) Recommendations on interagency governance.

Recommendations.  
Coordination.

(3) **PLAN FOR IMPLEMENTATION.**—Not later than 180 days after the date of the enactment of this Act, the Chairman of the Council, in coordination with the members of the Council, shall submit to the appropriate congressional committees and make available to appropriate industry partners a plan to implement the report’s framework and recommendations submitted under paragraph (2)(A).

(4) **CONGRESSIONAL NOTIFICATIONS.**—Not less frequently than quarterly, the Security Executive Agent shall make available to the public a report regarding the status of the disposition of requests received from departments and agencies of the Federal Government for a change to, or approval under, the Federal investigative standards, the national adjudicative guidelines, continuous vetting, or other national policy regarding personnel security.

Public information.

**SEC. 6603. IMPROVING THE PROCESS FOR SECURITY CLEARANCES.**

50 USC 3352b.

(a) **REVIEWS.**—Not later than 180 days after the date of the enactment of this Act, the Security Executive Agent, in coordination with the members of the Council, shall submit to the appropriate congressional committees and make available to appropriate industry partners a report that includes the following:

Deadline.  
Coordination.

(1) A review of whether the information requested on the Questionnaire for National Security Positions (Standard Form 86) and by the Federal Investigative Standards prescribed by the Suitability and Credentialing Executive Agent and the Security Executive Agent appropriately supports the adjudicative guidelines under Security Executive Agent Directive 4 (known as the “National Security Adjudicative Guidelines”). Such review shall include identification of whether any such information currently collected is unnecessary to support the adjudicative guidelines.

(2) An assessment of whether such Questionnaire, Standards, and guidelines should be revised to account for the prospect of a holder of a security clearance becoming an insider threat.

Assessment.

(3) Recommendations to improve the background investigation process by—

Recommendations.

(A) simplifying the Questionnaire for National Security Positions (Standard Form 86) and increasing customer support to applicants completing such Questionnaire;

(B) using remote techniques and centralized locations to support or replace field investigation work;

(C) using secure and reliable digitization of information obtained during the clearance process;

(D) building the capacity of the background investigation workforce; and

(E) replacing periodic reinvestigations with continuous vetting techniques in all appropriate circumstances.

(b) **POLICY, STRATEGY, AND IMPLEMENTATION.**—Not later than 180 days after the date of the enactment of this Act, the Security Executive Agent shall, in coordination with the members of the Council, establish the following:

Deadline.  
Coordination.  
Plans.

(1) A policy and implementation plan for the issuance of interim security clearances.

(2) A policy and implementation plan to ensure contractors are treated consistently in the security clearance process across agencies and departments of the United States as compared to employees of such agencies and departments. Such policy shall address—

(A) prioritization of processing security clearances based on the mission the contractors will be performing;

(B) standardization in the forms that agencies issue to initiate the process for a security clearance;

(C) digitization of background investigation-related forms;

(D) use of the polygraph;

(E) the application of the adjudicative guidelines under Security Executive Agent Directive 4 (known as the “National Security Adjudicative Guidelines”);

(F) reciprocal recognition of clearances across agencies and departments of the United States, regardless of status of periodic reinvestigation;

(G) tracking of clearance files as individuals move from employment with an agency or department of the United States to employment in the private sector;

(H) collection of timelines for movement of contractors across agencies and departments;

(I) reporting on security incidents and job performance, consistent with section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”), that may affect the ability to hold a security clearance;

Recommendations.

(J) any recommended changes to the Federal Acquisition Regulations (FAR) necessary to ensure that information affecting contractor clearances or suitability is appropriately and expeditiously shared between and among agencies and contractors; and

(K) portability of contractor security clearances between or among contracts at the same agency and between or among contracts at different agencies that require the same level of clearance.

(3) A strategy and implementation plan that—

(A) provides for periodic reinvestigations as part of a security clearance determination only on an as-needed, risk-based basis;

Assessment.

(B) includes actions to assess the extent to which automated records checks and other continuous vetting methods may be used to expedite or focus reinvestigations; and

Determination.

(C) provides an exception to the requirement under subparagraph (A) for certain populations if the Security Executive Agent—

(i) determines such populations require reinvestigations at regular intervals; and

(ii) provides written justification to the appropriate congressional committees for any such determination.

(4) A policy and implementation plan for agencies and departments of the United States, as a part of the security clearance process, to accept automated records checks generated pursuant to a security clearance applicant’s employment with a prior employer.

(5) A policy for the use of certain background information on individuals collected by the private sector for background investigation purposes.

(6) Uniform standards for agency continuous vetting programs to ensure quality and reciprocity in accepting enrollment in a continuous vetting program as a substitute for a periodic investigation for continued access to classified information.

Standards.

**SEC. 6604. GOALS FOR PROMPTNESS OF DETERMINATIONS REGARDING SECURITY CLEARANCES.**

Deadlines.  
50 USC 3352c.

(a) **IN GENERAL.**—The Council shall reform the security clearance process with the objective that, by December 31, 2021, 90 percent of all determinations, other than determinations regarding populations identified under section 6603(b)(3)(C), regarding—

(1) security clearances—

(A) at the secret level are issued in 30 days or fewer; and

(B) at the top secret level are issued in 90 days or fewer; and

(2) reciprocity of security clearances at the same level are recognized in 2 weeks or fewer.

(b) **CERTAIN REINVESTIGATIONS.**—The Council shall reform the security clearance process with the goal that by December 31, 2021, reinvestigation on a set periodicity is not required for more than 10 percent of the population that holds a security clearance.

(c) **EQUIVALENT METRICS.**—

(1) **IN GENERAL.**—If the Council develops a set of performance metrics that it certifies to the appropriate congressional committees should achieve substantially equivalent outcomes as those outlined in subsections (b) and (c), the Council may use those metrics for purposes of compliance within this provision.

Certification.

(2) **NOTICE.**—If the Council uses the authority provided by paragraph (1) to use metrics as described in such paragraph, the Council shall, not later than 30 days after communicating such metrics to departments and agencies, notify the appropriate congressional committees that it is using such authority.

(d) **PLAN.**—Not later than 180 days after the date of the enactment of this Act, the Council shall submit to the appropriate congressional committees and make available to appropriate industry partners a plan to carry out this section. Such plan shall include recommended interim milestones for the goals set forth in subsections (b) and (c) for 2019, 2020, and 2021.

Recommendations.

**SEC. 6605. SECURITY EXECUTIVE AGENT.**

(a) **IN GENERAL.**—Title VIII of the National Security Act of 1947 (50 U.S.C. 3161 et seq.) is amended—

(1) by redesignating sections 803 and 804 as sections 804 and 805, respectively; and

50 USC 3163,  
3164.

(2) by inserting after section 802 the following:

**“SEC. 803. SECURITY EXECUTIVE AGENT.**

50 USC 3162a.

“(a) **IN GENERAL.**—The Director of National Intelligence, or such other officer of the United States as the President may designate, shall serve as the Security Executive Agent for all departments and agencies of the United States.

“(b) **DUTIES.**—The duties of the Security Executive Agent are as follows:

- “ (1) To direct the oversight of investigations, reinvestigations, adjudications, and, as applicable, polygraphs for eligibility for access to classified information or eligibility to hold a sensitive position made by any Federal agency.
- Review. “ (2) To review the national security background investigation and adjudication programs of Federal agencies to determine whether such programs are being implemented in accordance with this section.
- Procedures. “ (3) To develop and issue uniform and consistent policies and procedures to ensure the effective, efficient, timely, and secure completion of investigations, polygraphs, and adjudications relating to determinations of eligibility for access to classified information or eligibility to hold a sensitive position.
- “ (4) Unless otherwise designated by law, to serve as the final authority to designate a Federal agency or agencies to conduct investigations of persons who are proposed for access to classified information or for eligibility to hold a sensitive position to ascertain whether such persons satisfy the criteria for obtaining and retaining access to classified information or eligibility to hold a sensitive position, as applicable.
- “ (5) Unless otherwise designated by law, to serve as the final authority to designate a Federal agency or agencies to determine eligibility for access to classified information or eligibility to hold a sensitive position in accordance with Executive Order No. 12968 (50 U.S.C. 3161 note; relating to access to classified information).
- Review. “ (6) To review and approve the policies of the Federal agencies that ensure reciprocal recognition of eligibility for access to classified information or eligibility to hold a sensitive position among Federal agencies, and to act as the final authority to arbitrate and resolve disputes among such agencies involving the reciprocity of investigations and adjudications of eligibility.
- “ (7) To execute all other duties assigned to the Security Executive Agent by law.
- Guidelines. “ (c) AUTHORITIES.—The Security Executive Agent shall—
- “ (1) issue guidelines and instructions to the heads of Federal agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, timeliness, and security in processes relating to determinations by such agencies of eligibility for access to classified information or eligibility to hold a sensitive position, including such matters as investigations, polygraphs, adjudications, and reciprocity;
- “ (2) have the authority to grant exceptions to, or waivers of, national security investigative requirements, including issuing implementing or clarifying guidance, as necessary;
- “ (3) have the authority to assign, in whole or in part, to the head of any Federal agency (solely or jointly) any of the duties of the Security Executive Agent described in subsection (b) or the authorities described in paragraphs (1) and (2), provided that the exercise of such assigned duties or authorities is subject to the oversight of the Security Executive Agent, including such terms and conditions (including approval by the Security Executive Agent) as the Security Executive Agent determines appropriate; and

“(4) define and set standards for continuous vetting for continued access to classified information and for eligibility to hold a sensitive position.” Standards.

(b) **REPORT ON RECOMMENDATIONS FOR REVISING AUTHORITIES.**—Not later than 30 days after the date on which the Chairman of the Council submits to the appropriate congressional committees the report required by section 6602(b)(2)(A), the Chairman shall submit to the appropriate congressional committees such recommendations as the Chairman may have for revising the authorities of the Security Executive Agent.

(c) **CONFORMING AMENDMENT.**—Section 103H(j)(4)(A) of such Act (50 U.S.C. 3033(j)(4)(A)) is amended by striking “in section 804” and inserting “in section 805”.

(d) **CLERICAL AMENDMENT.**—The table of contents in the matter preceding section 2 of such Act (50 U.S.C. 3002) is amended by striking the items relating to sections 803 and 804 and inserting the following:

“Sec. 803. Security Executive Agent.

“Sec. 804. Exceptions.

“Sec. 805. Definitions.”.

**SEC. 6606. REPORT ON UNIFIED, SIMPLIFIED, GOVERNMENTWIDE STANDARDS FOR POSITIONS OF TRUST AND SECURITY CLEARANCES.**

Coordination.  
50 USC 3352d.

Not later than 90 days after the date of the enactment of this Act, the Security Executive Agent and the Suitability and Credentialing Executive Agent, in coordination with the other members of the Council, shall jointly submit to the appropriate congressional committees and make available to appropriate industry partners a report regarding the advisability and the risks, benefits, and costs to the Government and to industry of consolidating to not more than three tiers for positions of trust and security clearances.

**SEC. 6607. REPORT ON CLEARANCE IN PERSON CONCEPT.**

Classified  
information.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that to reflect the greater mobility of the modern workforce, alternative methodologies merit analysis to allow greater flexibility for individuals moving in and out of positions that require access to classified information, while still preserving security.

(b) **REPORT REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, the Security Executive Agent shall submit to the appropriate congressional committees and make available to appropriate industry partners a report that describes the requirements, feasibility, and advisability of implementing a clearance in person concept described in subsection (c).

(c) **CLEARANCE IN PERSON CONCEPT.**—The clearance in person concept—

(1) permits an individual who once held a security clearance to maintain his or her eligibility for access to classified information, networks, and facilities for up to 3 years after the individual’s eligibility for access to classified information would otherwise lapse; and

(2) recognizes, unless otherwise directed by the Security Executive Agent, an individual’s security clearance and background investigation as current, regardless of employment status, contingent on enrollment in a continuous vetting program.

Time period.

(d) CONTENTS.—The report required under subsection (b) shall address—

- (1) requirements for an individual to voluntarily remain in a continuous vetting program validated by the Security Executive Agent even if the individual is not in a position requiring access to classified information;
- (2) appropriate safeguards for privacy;
- (3) advantages to government and industry;
- (4) the costs and savings associated with implementation;
- (5) the risks of such implementation, including security and counterintelligence risks;
- (6) an appropriate funding model; and
- (7) fairness to small companies and independent contractors.

50 USC 3352d.

**SEC. 6608. REPORTS ON RECIPROCITY FOR SECURITY CLEARANCES INSIDE OF DEPARTMENTS AND AGENCIES.**

(a) REPORTS TO SECURITY EXECUTIVE AGENT.—The head of each Federal department or agency shall submit an annual report to the Security Executive Agent that, with respect to the period covered by the report—

Time period.

- (1) identifies the number of individuals whose security clearances took more than 2 weeks for reciprocity recognition after such individuals move to another part of such department or agency; and
- (2) breaks out the information described in paragraph (1) by type of clearance and the reasons for any delays.

(b) ANNUAL REPORT.—Not less frequently than once each year, the Security Executive Agent shall submit to the appropriate congressional committees and make available to industry partners a report that summarizes the information received pursuant to subsection (b) during the period covered by such report.

**SEC. 6609. INTELLIGENCE COMMUNITY REPORTS ON SECURITY CLEARANCES.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

- (1) despite sustained efforts by Congress and the executive branch, an unacceptable backlog in processing and adjudicating security clearances persists, both within elements of the intelligence community and in other departments of the Federal Government, with some processing times exceeding a year or even more;
- (2) the protracted clearance timetable threatens the ability of elements of the intelligence community to hire and retain highly qualified individuals, and thus to fulfill the missions of such elements;
- (3) the prospect of a lengthy clearance process deters some such individuals from seeking employment with the intelligence community in the first place, and, when faced with a long wait time, those with conditional offers of employment may opt to discontinue the security clearance process and pursue different opportunities;
- (4) now more than ever, therefore, the broken security clearance process badly needs fundamental reform; and
- (5) in the meantime, to ensure the ability of elements of the intelligence community to hire and retain highly qualified personnel, elements should consider, to the extent possible and consistent with national security, permitting new employees



to enter on duty immediately or nearly so, and to perform, on a temporary basis pending final adjudication of their security clearances, work that either does not require a security clearance or requires only a low-level interim clearance.

(b) REPORTS REQUIRED.—Section 506H of the National Security Act of 1947 (50 U.S.C. 3104) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)(ii), by adding “and” at the end;

(B) in subparagraph (B)(ii), by striking “; and” and inserting a period; and

(C) by striking subparagraph (C);

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following:

“(b) INTELLIGENCE COMMUNITY REPORTS.—(1)(A) Not later than March 1 of each year, the Director of National Intelligence shall submit a report to the congressional intelligence committees, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Oversight and Reform of the House of Representatives regarding the security clearances processed by each element of the intelligence community during the preceding fiscal year.

“(B) The Director shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives such portions of the report submitted under subparagraph (A) as the Director determines address elements of the intelligence community that are within the Department of Defense.

Determination.

“(C) Each report submitted under this paragraph shall separately identify security clearances processed for Federal employees and contractor employees sponsored by each such element.

“(2) Each report submitted under paragraph (1)(A) shall include, for each element of the intelligence community for the fiscal year covered by the report, the following:

“(A) The total number of initial security clearance background investigations sponsored for new applicants.

“(B) The total number of security clearance periodic reinvestigations sponsored for existing employees.

“(C) The total number of initial security clearance background investigations for new applicants that were adjudicated with notice of a determination provided to the prospective applicant, including—

“(i) the total number of such adjudications that were adjudicated favorably and granted access to classified information; and

“(ii) the total number of such adjudications that were adjudicated unfavorably and resulted in a denial or revocation of a security clearance.

“(D) The total number of security clearance periodic background investigations that were adjudicated with notice of a determination provided to the existing employee, including—

“(i) the total number of such adjudications that were adjudicated favorably; and

“(ii) the total number of such adjudications that were adjudicated unfavorably and resulted in a denial or revocation of a security clearance.

Time periods.

“(E) The total number of pending security clearance background investigations, including initial applicant investigations and periodic reinvestigations, that were not adjudicated as of the last day of such year and that remained pending, categorized as follows:

“(i) For 180 days or shorter.

“(ii) For longer than 180 days, but shorter than 12 months.

“(iii) For 12 months or longer, but shorter than 18 months.

“(iv) For 18 months or longer, but shorter than 24 months.

“(v) For 24 months or longer.

Determinations.  
Time period.

“(F) For any security clearance determinations completed or pending during the year preceding the year for which the report is submitted that have taken longer than 12 months to complete—

“(i) an explanation of the causes for the delays incurred during the period covered by the report; and

“(ii) the number of such delays involving a polygraph requirement.

“(G) The percentage of security clearance investigations, including initial and periodic reinvestigations, that resulted in a denial or revocation of a security clearance.

“(H) The percentage of security clearance investigations that resulted in incomplete information.

“(I) The percentage of security clearance investigations that did not result in enough information to make a decision on potentially adverse information.

“(3) The report required under this subsection shall be submitted in unclassified form, but may include a classified annex.”; and

(4) in subsection (c), as redesignated, by striking “subsection (a)(1)” and inserting “subsections (a)(1) and (b)”.

Review.  
50 USC 3352e.

**SEC. 6610. PERIODIC REPORT ON POSITIONS IN THE INTELLIGENCE COMMUNITY THAT CAN BE CONDUCTED WITHOUT ACCESS TO CLASSIFIED INFORMATION, NETWORKS, OR FACILITIES.**

Not later than 180 days after the date of the enactment of this Act and not less frequently than once every 5 years thereafter, the Director of National Intelligence shall submit to the congressional intelligence committees a report that reviews the intelligence community for which positions can be conducted without access to classified information, networks, or facilities, or may only require a security clearance at the secret level.

50 USC 3352f.

**SEC. 6611. INFORMATION-SHARING PROGRAM FOR POSITIONS OF TRUST AND SECURITY CLEARANCES.**

(a) PROGRAM REQUIRED.—

Deadline.

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Security Executive Agent and the Suitability and Credentialing Executive Agent shall establish and implement a program to share between and among agencies of the Federal Government and industry partners of the Federal Government relevant background information regarding individuals applying for and currently occupying

national security positions and positions of trust, in order to ensure the Federal Government maintains a trusted workforce.

(2) DESIGNATION.—The program established under paragraph (1) shall be known as the “Trusted Information Provider Program” (in this section referred to as the “Program”).

(b) PRIVACY SAFEGUARDS.—The Security Executive Agent and the Suitability and Credentialing Executive Agent shall ensure that the Program includes such safeguards for privacy as the Security Executive Agent and the Suitability and Credentialing Executive Agent consider appropriate.

(c) PROVISION OF INFORMATION TO THE FEDERAL GOVERNMENT.—The Program shall include requirements that enable investigative service providers and agencies of the Federal Government to leverage certain pre-employment information gathered through private-sector means during the employment or military recruiting process, and other relevant security or human resources information obtained during employment with or for the Federal Government, that satisfy Federal investigative standards, while safeguarding personnel privacy.

(d) INFORMATION AND RECORDS.—The information and records considered under the Program shall include the following:

- (1) Date and place of birth.
- (2) Citizenship or immigration and naturalization information.
- (3) Education records.
- (4) Employment records.
- (5) Employment or social references.
- (6) Military service records.
- (7) State and local law enforcement checks.
- (8) Criminal history checks.
- (9) Financial records or information.
- (10) Foreign travel, relatives, or associations.
- (11) Social media checks.
- (12) Such other information or records as may be relevant to obtaining or maintaining national security, suitability, fitness, or credentialing eligibility.

(e) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Security Executive Agent and the Suitability and Credentialing Executive Agent shall jointly submit to the appropriate congressional committees and make available to appropriate industry partners a plan for the implementation of the Program.

Deadline.

(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

(A) Mechanisms that address privacy, national security, suitability or fitness, credentialing, and human resources or military recruitment processes.

(B) Such recommendations for legislative or administrative action as the Security Executive Agent and the Suitability and Credentialing Executive Agent consider appropriate to carry out or improve the Program.

Recommendations.

(f) PLAN FOR PILOT PROGRAM ON TWO-WAY INFORMATION SHARING.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Security Executive Agent and the Suitability and Credentialing Executive Agent shall

Deadline.  
Assessment.

jointly submit to the appropriate congressional committees and make available to appropriate industry partners a plan for the implementation of a pilot program to assess the feasibility and advisability of expanding the Program to include the sharing of information held by the Federal Government related to contract personnel with the security office of the employers of those contractor personnel.

(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

(A) Mechanisms that address privacy, national security, suitability or fitness, credentialing, and human resources or military recruitment processes.

Recommendations.

(B) Such recommendations for legislative or administrative action as the Security Executive Agent and the Suitability and Credentialing Executive Agent consider appropriate to carry out or improve the pilot program.

Deadline.

(g) REVIEW.—Not later than 1 year after the date of the enactment of this Act, the Security Executive Agent and the Suitability and Credentialing Executive Agent shall jointly submit to the appropriate congressional committees and make available to appropriate industry partners a review of the plans submitted under subsections (e)(1) and (f)(1) and utility and effectiveness of the programs described in such plans.

Coordination.

**SEC. 6612. REPORT ON PROTECTIONS FOR CONFIDENTIALITY OF WHISTLEBLOWER-RELATED COMMUNICATIONS.**

Not later than 180 days after the date of the enactment of this Act, the Security Executive Agent shall, in coordination with the Inspector General of the Intelligence Community, submit to the appropriate congressional committees a report detailing the controls employed by the intelligence community to ensure that continuous vetting programs, including those involving user activity monitoring, protect the confidentiality of whistleblower-related communications.

**SEC. 6613. REPORTS ON COSTS OF SECURITY CLEARANCE BACKGROUND INVESTIGATIONS.**

Time period.  
Coordination.

(a) REPORTS.—Not later than March 1, 2020, and each year thereafter through 2022, the Security Executive Agent, in coordination with the Council, shall submit to the appropriate congressional committees a report on the resources expended by each agency of the Federal Government during the fiscal year prior to the date of the report for processing security clearance background investigations and continuous vetting programs, disaggregated by tier and whether the individual was a Government employee or contractor.

(b) CONTENTS.—Each report submitted under subsection (a) shall include, for the period covered by the report—

- (1) the costs of background investigations;
- (2) the costs of reinvestigations;
- (3) the costs associated with background investigations and reinvestigations for Government personnel;
- (4) the costs associated with background investigations and reinvestigations for contract personnel;
- (5) costs associated with continuous evaluation initiatives monitoring for personnel for whom a background investigation or reinvestigation was conducted, other than costs associated with adjudication;

(6) the average cost per person for each type of background investigation; and

(7) a summary of transfers and reprogrammings that were executed to support the processing of security clearances. Summary.

## TITLE LXVII—REPORTS AND OTHER MATTERS

### Subtitle A—Matters Relating to Russia and Other Foreign Powers

#### SEC. 6701. LIMITATION RELATING TO ESTABLISHMENT OR SUPPORT OF CYBERSECURITY UNIT WITH THE RUSSIAN FEDERATION. 6 USC 1501 note prec.

(a) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the congressional intelligence committees;

(2) the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(3) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(b) LIMITATION.—

(1) IN GENERAL.—No amount may be expended by the Federal Government, other than the Department of Defense, to enter into or implement any bilateral agreement between the United States and the Russian Federation regarding cybersecurity, including the establishment or support of any cybersecurity unit, unless, at least 30 days prior to the conclusion of any such agreement, the Director of National Intelligence submits to the appropriate congressional committees a report on such agreement that includes the elements required by subsection (c).

(2) DEPARTMENT OF DEFENSE AGREEMENTS.—Any agreement between the Department of Defense and the Russian Federation regarding cybersecurity shall be conducted in accordance with section 1232 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), as amended by section 1231 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91).

(c) ELEMENTS.—If the Director submits a report under subsection (b) with respect to an agreement, such report shall include a discussion of each of the following:

(1) The purpose of the agreement.

(2) The nature of any intelligence to be shared pursuant to the agreement.

(3) The expected value to national security resulting from the implementation of the agreement.

(4) Such counterintelligence concerns associated with the agreement as the Director may have and such measures as the Director expects to be taken to mitigate such concerns.

(d) RULE OF CONSTRUCTION.—This section shall not be construed to affect any existing authority of the Director of National

Intelligence, the Director of the Central Intelligence Agency, or another head of an element of the intelligence community, to share or receive foreign intelligence on a case-by-case basis.

**SEC. 6702. ASSESSMENT OF THREAT FINANCE RELATING TO RUSSIA.**

(a) **THREAT FINANCE DEFINED.**—In this section, the term “threat finance” means—

(1) the financing of cyber operations, global influence campaigns, intelligence service activities, proliferation, terrorism, or transnational crime and drug organizations;

(2) the methods and entities used to spend, store, move, raise, conceal, or launder money or value, on behalf of threat actors;

(3) sanctions evasion; and

(4) other forms of threat finance activity domestically or internationally, as defined by the President.

President.

Assessment.

(b) **REPORT REQUIRED.**—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Assistant Secretary of the Treasury for Intelligence and Analysis, shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report containing an assessment of Russian threat finance. The assessment shall be based on intelligence from all sources, including from the Office of Terrorism and Financial Intelligence of the Department of the Treasury.

(c) **ELEMENTS.**—The report required by subsection (b) shall include each of the following:

Summary.  
Time period.

(1) A summary of leading examples from the 3-year period preceding the date of the submittal of the report of threat finance activities conducted by, for the benefit of, or at the behest of—

(A) officials of the Government of Russia;

(B) persons subject to sanctions under any provision of law imposing sanctions with respect to Russia;

(C) Russian nationals subject to sanctions under any other provision of law; or

(D) Russian oligarchs or organized criminals.

(2) An assessment with respect to any trends or patterns in threat finance activities relating to Russia, including common methods of conducting such activities and global nodes of money laundering used by Russian threat actors described in paragraph (1) and associated entities.

(3) An assessment of any connections between Russian individuals involved in money laundering and the Government of Russia.

Summary.

(4) A summary of engagement and coordination with international partners on threat finance relating to Russia, especially in Europe, including examples of such engagement and coordination.

(5) An identification of any resource and collection gaps.

(6) An identification of—

(A) entry points of money laundering by Russian and associated entities into the United States;

(B) any vulnerabilities within the United States legal and financial system, including specific sectors, which have

been or could be exploited in connection with Russian threat finance activities; and

(C) the counterintelligence threat posed by Russian money laundering and other forms of threat finance, as well as the threat to the United States financial system and United States efforts to enforce sanctions and combat organized crime.

(7) Any other matters the Director determines appropriate.

(d) FORM OF REPORT.—The report required under subsection (b) may be submitted in classified form.

Classified information.

**SEC. 6703. NOTIFICATION OF AN ACTIVE MEASURES CAMPAIGN.**

50 USC 3396c.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the congressional intelligence committees;

(B) the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(C) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(2) CONGRESSIONAL LEADERSHIP.—The term “congressional leadership” includes the following:

(A) The majority leader of the Senate.

(B) The minority leader of the Senate.

(C) The Speaker of the House of Representatives.

(D) The minority leader of the House of Representatives.

(b) REQUIREMENT FOR NOTIFICATION.—The Director of National Intelligence, in cooperation with the Director of the Federal Bureau of Investigation and the head of any other relevant agency, shall notify the congressional leadership and the chairman and vice chairman or ranking member of each of the appropriate congressional committees, and of other relevant committees of jurisdiction, each time the Director of National Intelligence determines there is credible information that a foreign power has, is, or will attempt to employ a covert influence or active measures campaign with regard to the modernization, employment, doctrine, or force posture of the nuclear deterrent or missile defense.

Determination.

(c) CONTENT OF NOTIFICATION.—Each notification required by subsection (b) shall include information concerning actions taken by the United States to expose or halt an attempt referred to in subsection (b).

**SEC. 6704. NOTIFICATION OF TRAVEL BY ACCREDITED DIPLOMATIC AND CONSULAR PERSONNEL OF THE RUSSIAN FEDERATION IN THE UNITED STATES.**

Deadline.  
22 USC 254a  
note.

In carrying out the advance notification requirements set out in section 502 of the Intelligence Authorization Act for Fiscal Year 2017 (division N of Public Law 115–31; 131 Stat. 825; 22 U.S.C. 254a note), the Secretary of State shall—

(1) ensure that the Russian Federation provides notification to the Secretary of State at least 2 business days in advance of all travel that is subject to such requirements by accredited diplomatic and consular personnel of the Russian Federation in the United States, and take necessary action to secure full

compliance by Russian personnel and address any noncompliance; and

(2) provide notice of travel described in paragraph (1) to the Director of National Intelligence and the Director of the Federal Bureau of Investigation within 1 hour of receiving notice of such travel.

22 USC 9412.

**SEC. 6705. REPORT AND ANNUAL BRIEFING ON IRANIAN EXPENDITURES SUPPORTING FOREIGN MILITARY AND TERRORIST ACTIVITIES.**

(a) REPORT.—

(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report, and not less frequently than once each year thereafter provide a briefing to Congress, describing Iranian expenditures in the previous calendar year on military and terrorist activities outside the country, including each of the following:

(A) The amount spent in such calendar year on activities by the Islamic Revolutionary Guard Corps, including activities providing support for—

- (i) Hizballah;
- (ii) Houthi rebels in Yemen;
- (iii) Hamas;
- (iv) proxy forces in Iraq and Syria; or
- (v) any other entity or country the Director determines to be relevant.

Determination.

(B) The amount spent in such calendar year for ballistic missile research and testing or other activities that the Director determines are destabilizing to the Middle East region.

(2) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(b) ANNUAL BRIEFING.—Following the submission of the report under subsection (a), the Director shall annually provide a briefing to the congressional intelligence committees on the information described in such subsection.

**SEC. 6706. EXPANSION OF SCOPE OF COMMITTEE TO COUNTER ACTIVE MEASURES.**

50 USC 3369d.

(a) SCOPE OF COMMITTEE TO COUNTER ACTIVE MEASURES.—Section 501 of the Intelligence Authorization Act for Fiscal Year 2017 (Public Law 115–31; 50 U.S.C. 3001 note) is amended—

(1) in subsections (a) through (h)—

(A) by inserting “, the People’s Republic of China, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, or other nation state” after “Russian Federation” each place it appears; and

(B) by inserting “, China, Iran, North Korea, or other nation state” after “Russia” each place it appears; and

(2) in the section heading, by inserting “, **THE PEOPLE’S REPUBLIC OF CHINA, THE ISLAMIC REPUBLIC OF IRAN, THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA, OR OTHER NATION STATE**” after “**RUSSIAN FEDERATION**”.



(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by striking the item relating to section 501 and inserting the following new item:

“Sec. 501. Committee to counter active measures by the Russian Federation, the People’s Republic of China, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, and other nation states to exert covert influence over peoples and governments.”.

## Subtitle B—Reports

### SEC. 6711. TECHNICAL CORRECTION TO INSPECTOR GENERAL STUDY.

Section 11001(d) of title 5, United States Code, is amended—

(1) in the subsection heading, by striking “AUDIT” and inserting “REVIEW”;

(2) in paragraph (1), by striking “audit” and inserting “review”; and

(3) in paragraph (2), by striking “audit” and inserting “review”.

### SEC. 6712. REPORTS ON AUTHORITIES OF THE CHIEF INTELLIGENCE OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the congressional intelligence committees;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(C) the Committee on Homeland Security of the House of Representatives.

(2) HOMELAND SECURITY INTELLIGENCE ENTERPRISE.—The term “Homeland Security Intelligence Enterprise” has the meaning given such term in Department of Homeland Security Instruction Number 264–01–001, or successor authority.

(b) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Under Secretary of Homeland Security for Intelligence and Analysis, shall submit to the appropriate committees of Congress a report on the authorities of the Under Secretary.

(c) ELEMENTS.—The report required by subsection (b) shall include each of the following:

(1) An analysis of whether the Under Secretary has the legal and policy authority necessary to organize and lead the Homeland Security Intelligence Enterprise, with respect to intelligence, and, if not, a description of—

(A) the obstacles to exercising the authorities of the Chief Intelligence Officer of the Department and the Homeland Security Intelligence Council, of which the Chief Intelligence Officer is the chair; and

(B) the legal and policy changes necessary to effectively coordinate, organize, and lead intelligence activities of the Department of Homeland Security.

(2) A description of the actions that the Secretary has taken to address the inability of the Under Secretary to require components of the Department, other than the Office of Intelligence and Analysis of the Department to—

Analysis.

- Coordination. (A) coordinate intelligence programs; and  
 (B) integrate and standardize intelligence products produced by such other components.

**SEC. 6713. REVIEW OF INTELLIGENCE COMMUNITY WHISTLEBLOWER MATTERS.**

- Consultation. (a) **REVIEW OF WHISTLEBLOWER MATTERS.**—The Inspector General of the Intelligence Community, in consultation with the inspectors general for the Central Intelligence Agency, the National Security Agency, the National Geospatial-Intelligence Agency, the Defense Intelligence Agency, and the National Reconnaissance Office, shall conduct a review of the authorities, policies, investigatory standards, and other practices and procedures relating to intelligence community whistleblower matters, with respect to such inspectors general.

(b) **OBJECTIVE OF REVIEW.**—The objective of the review required under subsection (a) is to identify any discrepancies, inconsistencies, or other issues, which frustrate the timely and effective reporting of intelligence community whistleblower matters to appropriate inspectors general and to the congressional intelligence committees, and the fair and expeditious investigation and resolution of such matters.

(c) **CONDUCT OF REVIEW.**—The Inspector General of the Intelligence Community shall take such measures as the Inspector General determines necessary in order to ensure that the review required by subsection (a) is conducted in an independent and objective fashion.

- Recommendations. (d) **REPORT.**—Not later than 270 days after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a written report containing the results of the review required under subsection (a), along with recommendations to improve the timely and effective reporting of intelligence community whistleblower matters to inspectors general and to the congressional intelligence committees and the fair and expeditious investigation and resolution of such matters.

**SEC. 6714. REPORT ON ROLE OF DIRECTOR OF NATIONAL INTELLIGENCE WITH RESPECT TO CERTAIN FOREIGN INVESTMENTS.**

- Consultation. (a) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the heads of the elements of the intelligence community determined appropriate by the Director, shall submit to the congressional intelligence committees a report on the role of the Director in preparing analytic materials in connection with the evaluation by the Federal Government of national security risks associated with potential foreign investments into the United States.

(b) **ELEMENTS.**—The report under subsection (a) shall include—

(1) a description of the current process for the provision of the analytic materials described in subsection (a);

(2) an identification of the most significant benefits and drawbacks of such process with respect to the role of the Director, including the sufficiency of resources and personnel to prepare such materials; and

- Recommendations. (3) recommendations to improve such process.

**SEC. 6715. REPORT ON SURVEILLANCE BY FOREIGN GOVERNMENTS AGAINST UNITED STATES TELECOMMUNICATIONS NETWORKS.**

(a) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means the following:

- (1) The congressional intelligence committees.
- (2) The Committee on the Judiciary and the Committee on Homeland Security and Governmental Affairs of the Senate.
- (3) The Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall, in coordination with the Director of the Central Intelligence Agency, the Director of the National Security Agency, the Director of the Federal Bureau of Investigation, and the Secretary of Homeland Security, submit to the appropriate congressional committees a report describing—

Coordination.

- (1) any attempts known to the intelligence community by foreign governments to exploit cybersecurity vulnerabilities in United States telecommunications networks (including Signaling System No. 7) to target for surveillance United States persons, including employees of the Federal Government; and
- (2) any actions, as of the date of the enactment of this Act, taken by the intelligence community to protect agencies and personnel of the United States Government from surveillance conducted by foreign governments.

**SEC. 6716. BIENNIAL REPORT ON FOREIGN INVESTMENT RISKS.**

50 USC 3370a.

(a) **INTELLIGENCE COMMUNITY INTERAGENCY WORKING GROUP.**—

(1) **REQUIREMENT TO ESTABLISH.**—The Director of National Intelligence shall establish an intelligence community interagency working group to prepare the biennial reports required by subsection (b).

(2) **CHAIRPERSON.**—The Director of National Intelligence shall serve as the chairperson of such interagency working group.

(3) **MEMBERSHIP.**—Such interagency working group shall be composed of representatives of each element of the intelligence community that the Director of National Intelligence determines appropriate.

(b) **BIENNIAL REPORT ON FOREIGN INVESTMENT RISKS.**—

(1) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act and not less frequently than once every 2 years thereafter, the Director of National Intelligence shall submit to the appropriate congressional committees a report on foreign investment risks prepared by the interagency working group established under subsection (a).

(2) **ELEMENTS.**—Each report required by paragraph (1) shall include identification, analysis, and explanation of the following:

Analysis.

(A) Any current or projected major threats to the national security of the United States with respect to foreign investment.

(B) Any strategy used by a foreign country that such interagency working group has identified to be a country

of special concern to use foreign investment to target the acquisition of critical technologies, critical materials, or critical infrastructure.

(C) Any economic espionage efforts directed at the United States by a foreign country, particularly such a country of special concern.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

- (1) the congressional intelligence committees;
- (2) the Committee on Homeland Security and Governmental Affairs and the Committee on Foreign Relations of the Senate; and
- (3) the Committee on Homeland Security and the Committee on Foreign Affairs of the House of Representatives.

**SEC. 6717. MODIFICATION OF CERTAIN REPORTING REQUIREMENT ON TRAVEL OF FOREIGN DIPLOMATS.**

22 USC 254a  
note.

Section 502(d)(2) of the Intelligence Authorization Act for Fiscal Year 2017 (Public Law 115–31) is amended by striking “the number” and inserting “a best estimate”.

**SEC. 6718. SEMIANNUAL REPORTS ON INVESTIGATIONS OF UNAUTHORIZED DISCLOSURES OF CLASSIFIED INFORMATION.**

(a) **IN GENERAL.**—Title XI of the National Security Act of 1947 (50 U.S.C. 3231 et seq.) is amended by adding at the end the following new section:

50 USC 3235.

**“SEC. 1105. SEMIANNUAL REPORTS ON INVESTIGATIONS OF UNAUTHORIZED DISCLOSURES OF CLASSIFIED INFORMATION.**

“(a) **DEFINITIONS.**—In this section:

“(1) **COVERED OFFICIAL.**—The term ‘covered official’ means—

“(A) the heads of each element of the intelligence community; and

“(B) the inspectors general with oversight responsibility for an element of the intelligence community.

“(2) **INVESTIGATION.**—The term ‘investigation’ means any inquiry, whether formal or informal, into the existence of an unauthorized public disclosure of classified information.

“(3) **UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION.**—The term ‘unauthorized disclosure of classified information’ means any unauthorized disclosure of classified information to any recipient.

“(4) **UNAUTHORIZED PUBLIC DISCLOSURE OF CLASSIFIED INFORMATION.**—The term ‘unauthorized public disclosure of classified information’ means the unauthorized disclosure of classified information to a journalist or media organization.

“(b) **INTELLIGENCE COMMUNITY REPORTING.**—

“(1) **IN GENERAL.**—Not less frequently than once every 6 months, each covered official shall submit to the congressional intelligence committees a report on investigations of unauthorized public disclosures of classified information.

Time period.

“(2) **ELEMENTS.**—Each report submitted under paragraph (1) shall include, with respect to the preceding 6-month period, the following:

“(A) The number of investigations opened by the covered official regarding an unauthorized public disclosure of classified information.

“(B) The number of investigations completed by the covered official regarding an unauthorized public disclosure of classified information.

“(C) Of the number of such completed investigations identified under subparagraph (B), the number referred to the Attorney General for criminal investigation.

“(c) DEPARTMENT OF JUSTICE REPORTING.—

“(1) IN GENERAL.—Not less frequently than once every 6 months, the Assistant Attorney General for National Security of the Department of Justice, in consultation with the Director of the Federal Bureau of Investigation, shall submit to the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report on the status of each referral made to the Department of Justice from any element of the intelligence community regarding an unauthorized disclosure of classified information made during the most recent 365-day period or any referral that has not yet been closed, regardless of the date the referral was made.

Deadline.  
Consultation.  
Time period.

“(2) CONTENTS.—Each report submitted under paragraph (1) shall include, for each referral covered by the report, at a minimum, the following:

“(A) The date the referral was received.

“(B) A statement indicating whether the alleged unauthorized disclosure described in the referral was substantiated by the Department of Justice.

“(C) A statement indicating the highest level of classification of the information that was revealed in the unauthorized disclosure.

“(D) A statement indicating whether an open criminal investigation related to the referral is active.

“(E) A statement indicating whether any criminal charges have been filed related to the referral.

“(F) A statement indicating whether the Department of Justice has been able to attribute the unauthorized disclosure to a particular entity or individual.

“(d) FORM OF REPORTS.—Each report submitted under this section shall be submitted in unclassified form, but may have a classified annex.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the National Security Act of 1947 is amended by inserting after the item relating to section 1104 the following new item:

“Sec. 1105. Semiannual reports on investigations of unauthorized disclosures of classified information.”.

**SEC. 6719. CONGRESSIONAL NOTIFICATION OF DESIGNATION OF COVERED INTELLIGENCE OFFICER AS PERSONA NON GRATA.**

50 USC 3334f.

(a) COVERED INTELLIGENCE OFFICER DEFINED.—In this section, the term “covered intelligence officer” means—

(1) a United States intelligence officer serving in a post in a foreign country; or

(2) a known or suspected foreign intelligence officer serving in a United States post.

Consultation.

(b) **REQUIREMENT FOR REPORTS.**—Not later than 72 hours after a covered intelligence officer is designated as a persona non grata, the Director of National Intelligence, in consultation with the Secretary of State, shall submit to the congressional intelligence committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification of that designation. Each such notification shall include—

- (1) the date of the designation;
- (2) the basis for the designation; and
- (3) a justification for the expulsion.

50 USC 3316a.

**SEC. 6720. REPORTS ON INTELLIGENCE COMMUNITY PARTICIPATION IN VULNERABILITIES EQUITIES PROCESS OF FEDERAL GOVERNMENT.**

(a) **DEFINITIONS.**—In this section:

(1) **VULNERABILITIES EQUITIES POLICY AND PROCESS DOCUMENT.**—The term “Vulnerabilities Equities Policy and Process document” means the executive branch document entitled “Vulnerabilities Equities Policy and Process” dated November 15, 2017.

(2) **VULNERABILITIES EQUITIES PROCESS.**—The term “Vulnerabilities Equities Process” means the interagency review of vulnerabilities, pursuant to the Vulnerabilities Equities Policy and Process document or any successor document.

(3) **VULNERABILITY.**—The term “vulnerability” means a weakness in an information system or its components (for example, system security procedures, hardware design, and internal controls) that could be exploited or could affect confidentiality, integrity, or availability of information.

(b) **REPORTS ON PROCESS AND CRITERIA UNDER VULNERABILITIES EQUITIES POLICY AND PROCESS.**—

(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a written report describing—

(A) with respect to each element of the intelligence community—

Determination.

(i) the title of the official or officials responsible for determining whether, pursuant to criteria contained in the Vulnerabilities Equities Policy and Process document or any successor document, a vulnerability must be submitted for review under the Vulnerabilities Equities Process; and

(ii) the process used by such element to make such determination; and

(B) the roles or responsibilities of that element during a review of a vulnerability submitted to the Vulnerabilities Equities Process.

(2) **CHANGES TO PROCESS OR CRITERIA.**—Not later than 30 days after any significant change is made to the process and criteria used by any element of the intelligence community for determining whether to submit a vulnerability for review under the Vulnerabilities Equities Process, such element shall submit to the congressional intelligence committees a report describing such change.

(3) **FORM OF REPORTS.**—Each report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex.

(c) **ANNUAL REPORTS.**—

(1) **IN GENERAL.**—Not less frequently than once each calendar year, the Director of National Intelligence shall submit to the congressional intelligence committees a classified report containing, with respect to the previous year—

(A) the number of vulnerabilities submitted for review under the Vulnerabilities Equities Process;

(B) the number of vulnerabilities described in subparagraph (A) disclosed to each vendor responsible for correcting the vulnerability, or to the public, pursuant to the Vulnerabilities Equities Process; and

(C) the aggregate number, by category, of the vulnerabilities excluded from review under the Vulnerabilities Equities Process, as described in paragraph 5.4 of the Vulnerabilities Equities Policy and Process document.

(2) **UNCLASSIFIED INFORMATION.**—Each report submitted under paragraph (1) shall include an unclassified appendix that contains—

(A) the aggregate number of vulnerabilities disclosed to vendors or the public pursuant to the Vulnerabilities Equities Process; and

(B) the aggregate number of vulnerabilities disclosed to vendors or the public pursuant to the Vulnerabilities Equities Process known to have been patched.

(3) **NONDUPLICATION.**—The Director of National Intelligence may forgo submission of an annual report required under this subsection for a calendar year, if the Director notifies the intelligence committees in writing that, with respect to the same calendar year, an annual report required by paragraph 4.3 of the Vulnerabilities Equities Policy and Process document already has been submitted to Congress, and such annual report contains the information that would otherwise be required to be included in an annual report under this subsection.

Notification.

**SEC. 6721. INSPECTORS GENERAL REPORTS ON CLASSIFICATION.**

(a) **REPORTS REQUIRED.**—Not less than once per year in each of the three fiscal years immediately following the date of the enactment of this Act, each Inspector General listed in subsection (b) shall submit to the congressional intelligence committees a report that includes, with respect to the department or agency of the Inspector General, analyses of the following with respect to the prior fiscal year:

Analyses.

(1) The accuracy of the application of classification and handling markers on a representative sample of finished reports, including such reports that are compartmented.

(2) Compliance with declassification procedures.

(3) The effectiveness of processes for identifying topics of public or historical importance that merit prioritization for a declassification review.

(b) **INSPECTORS GENERAL LISTED.**—The Inspectors General listed in this subsection are as follows:

(1) The Inspector General of the Intelligence Community.

(2) The Inspector General of the Central Intelligence Agency.

(3) The Inspector General of the National Security Agency.

(4) The Inspector General of the Defense Intelligence Agency.

(5) The Inspector General of the National Reconnaissance Office.

(6) The Inspector General of the National Geospatial-Intelligence Agency.

50 USC 3024  
note.

**SEC. 6722. REPORTS AND BRIEFINGS ON NATIONAL SECURITY EFFECTS OF GLOBAL WATER INSECURITY AND EMERGING INFECTIOUS DISEASE AND PANDEMICS.**

(a) GLOBAL WATER INSECURITY.—

(1) REPORT.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on the implications of water insecurity on the national security interests of the United States, including consideration of social, economic, agricultural, and environmental factors.

(B) ASSESSMENT SCOPE AND FOCUS.—The report submitted under subparagraph (A) shall include an assessment of water insecurity described in such subsection with a global scope, but focus on areas of the world—

(i) of strategic, economic, or humanitarian interest to the United States—

(I) that are, as of the date of the report, at the greatest risk of instability, conflict, human insecurity, or mass displacement; or

(II) where challenges relating to water insecurity are likely to emerge and become significant during the 5-year or the 20-year period beginning on the date of the report; and

(ii) where challenges relating to water insecurity are likely to imperil the national security interests of the United States or allies of the United States.

(C) CONSULTATION.—In researching the report required by subparagraph (A), the Director shall consult with—

(i) such stakeholders within the intelligence community, the Department of Defense, and the Department of State as the Director considers appropriate; and

(ii) such additional Federal agencies and persons in the private sector as the Director considers appropriate.

(D) FORM.—The report submitted under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

Time periods.

Effective date.

(2) QUINQUENNIAL BRIEFINGS.—Beginning on the date that is 5 years after the date on which the Director submits the report under paragraph (1), and every 5 years thereafter, the



Director shall provide to the committees specified in such paragraph a briefing that updates the matters contained in the report.

(b) EMERGING INFECTIOUS DISEASE AND PANDEMICS.—

(1) REPORT.—

(A) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the appropriate congressional committees a report on the anticipated geopolitical effects of emerging infectious disease (including deliberate, accidental, and naturally occurring infectious disease threats) and pandemics, and their implications on the national security of the United States.

(B) CONTENTS.—The report under subparagraph (A) shall include an assessment of—

(i) the economic, social, political, and security risks, costs, and impacts of emerging infectious diseases on the United States and the international political and economic system;

(ii) the economic, social, political, and security risks, costs, and impacts of a major transnational pandemic on the United States and the international political and economic system; and

(iii) contributing trends and factors to the matters assessed under clauses (i) and (ii).

(C) EXAMINATION OF RESPONSE CAPACITY.—In examining the risks, costs, and impacts of emerging infectious disease and a possible transnational pandemic under subparagraph (B), the Director of National Intelligence shall also examine in the report under subparagraph (A) the response capacity within affected countries and the international system. In considering response capacity, the Director shall include—

(i) the ability of affected nations to effectively detect and manage emerging infectious diseases and a possible transnational pandemic;

(ii) the role and capacity of international organizations and nongovernmental organizations to respond to emerging infectious disease and a possible pandemic, and their ability to coordinate with affected and donor nations; and

(iii) the effectiveness of current international frameworks, agreements, and health systems to respond to emerging infectious diseases and a possible transnational pandemic.

(2) QUINQUENNIAL BRIEFINGS.—Beginning on the date that is 5 years after the date on which the Director submits the report under paragraph (1), and every 5 years thereafter, the Director shall provide to the congressional intelligence committees a briefing that updates the matters contained in the report.

(3) FORM.—The report under paragraph (1) and the briefings under paragraph (2) may be classified.

(4) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means—

(A) the congressional intelligence committees;

Assessment.

Effective date.

(B) the Committee on Foreign Affairs, the Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives; and

(C) the Committee on Foreign Relations, the Committee on Armed Services, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate.

**SEC. 6723. ANNUAL REPORT ON MEMORANDA OF UNDERSTANDING BETWEEN ELEMENTS OF INTELLIGENCE COMMUNITY AND OTHER ENTITIES OF THE UNITED STATES GOVERNMENT REGARDING SIGNIFICANT OPERATIONAL ACTIVITIES OR POLICY.**

Section 311 of the Intelligence Authorization Act for Fiscal Year 2017 (50 U.S.C. 3313) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by striking subsection (a) and inserting the following:

“(a) **IN GENERAL.**—Each year, concurrent with the annual budget request submitted by the President to Congress under section 1105 of title 31, United States Code, each head of an element of the intelligence community shall submit to the congressional intelligence committees a report that lists each memorandum of understanding or other agreement regarding significant operational activities or policy entered into during the most recently completed fiscal year between or among such element and any other entity of the United States Government.

“(b) **PROVISION OF DOCUMENTS.**—Each head of an element of an intelligence community who receives a request from the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives for a copy of a memorandum of understanding or other document listed in a report submitted by the head under subsection (a) shall submit to such committee the requested copy as soon as practicable after receiving such request.”.

Deadlines.

**SEC. 6724. STUDY ON THE FEASIBILITY OF ENCRYPTING UNCLASSIFIED WIRELINE AND WIRELESS TELEPHONE CALLS.**

(a) **STUDY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall complete and submit to the congressional intelligence committees a study on the feasibility of encrypting unclassified wireline and wireless telephone calls between personnel in the intelligence community.

(b) **BRIEFING.**—Not later than 90 days after the date on which the Director submits the study required by subsection (a), the Director shall provide to the congressional intelligence committees a briefing on the Director’s findings with respect to such study.

50 USC 3334g.

**SEC. 6725. REPORTS ON INTELLIGENCE COMMUNITY LOAN REPAYMENT AND RELATED PROGRAMS.**

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) there should be established, through the issuing of an Intelligence Community Directive or otherwise, an intelligence-community-wide program for student loan repayment, student loan forgiveness, financial counseling, and related matters, for employees of the intelligence community;

(2) creating such a program would enhance the ability of the elements of the intelligence community to recruit, hire, and retain highly qualified personnel, including with respect to mission-critical and hard-to-fill positions;

(3) such a program, including with respect to eligibility requirements, should be designed so as to maximize the ability of the elements of the intelligence community to recruit, hire, and retain highly qualified personnel, including with respect to mission-critical and hard-to-fill positions; and

(4) to the extent possible, such a program should be uniform throughout the intelligence community and publicly promoted by each element of the intelligence community to both current employees of the element as well as to prospective employees of the element.

(b) REPORT ON POTENTIAL INTELLIGENCE COMMUNITY-WIDE PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in cooperation with the heads of the elements of the intelligence community and the heads of any other appropriate department or agency of the Federal Government, shall submit to the congressional intelligence committees a report on potentially establishing and carrying out an intelligence-community-wide program for student loan repayment, student loan forgiveness, financial counseling, and related matters, as described in subsection (a).

(2) MATTERS INCLUDED.—The report under paragraph (1) shall include, at a minimum, the following:

(A) A description of the financial resources that the elements of the intelligence community would require to establish and initially carry out the program specified in paragraph (1).

(B) A description of the practical steps to establish and carry out such a program.

(C) The identification of any legislative action the Director determines necessary to establish and carry out such a program.

(c) ANNUAL REPORTS ON ESTABLISHED PROGRAMS.—

(1) COVERED PROGRAMS DEFINED.—In this subsection, the term “covered programs” means any loan repayment program, loan forgiveness program, financial counseling program, or similar program, established pursuant to title X of the National Security Act of 1947 (50 U.S.C. 3191 et seq.) or any other provision of law that may be administered or used by an element of the intelligence community.

(2) ANNUAL REPORTS REQUIRED.—Not less frequently than once each year, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the covered programs. Each such report shall include, with respect to the period covered by the report, the following:

(A) The number of personnel from each element of the intelligence community who used each covered program.

(B) The total amount of funds each element expended for each such program.

(C) A description of the efforts made by each element to promote each covered program pursuant to both the

personnel of the element of the intelligence community and to prospective personnel.

**SEC. 6726. REPEAL OF CERTAIN REPORTING REQUIREMENTS.**

(a) **CORRECTING LONG-STANDING MATERIAL WEAKNESSES.**—Section 368 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 110–259; 50 U.S.C. 3051 note) is hereby repealed.

(b) **INTERAGENCY THREAT ASSESSMENT AND COORDINATION GROUP.**—Section 210D of the Homeland Security Act of 2002 (6 U.S.C. 124k) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (i) as subsections (c) through (h), respectively; and

(3) in subsection (c), as so redesignated—

(A) in paragraph (8), by striking “; and” and inserting a period; and

(B) by striking paragraph (9).

(c) **INSPECTOR GENERAL REPORT.**—Section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking subsection (g); and

(2) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

**SEC. 6727. INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY REPORT ON SENIOR EXECUTIVES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.**

(a) **SENIOR EXECUTIVE SERVICE POSITION DEFINED.**—In this section, the term “Senior Executive Service position” has the meaning given that term in section 3132(a)(2) of title 5, United States Code, and includes any position above the GS–15, step 10, level of the General Schedule under section 5332 of such title.

(b) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a report on the number of Senior Executive Service positions in the Office of the Director of National Intelligence.

(c) **MATTERS INCLUDED.**—The report under subsection (b) shall include the following:

(1) The number of required Senior Executive Service positions for the Office of the Director of National Intelligence.

(2) Whether such requirements are reasonably based on the mission of the Office.

(3) A discussion of how the number of the Senior Executive Service positions in the Office compare to the number of senior positions at comparable organizations.

(d) **COOPERATION.**—The Director of National Intelligence shall provide to the Inspector General of the Intelligence Community any information requested by the Inspector General of the Intelligence Community that is necessary to carry out this section by not later than 14 calendar days after the date on which the Inspector General of the Intelligence Community makes such request.

**SEC. 6728. BRIEFING ON FEDERAL BUREAU OF INVESTIGATION OFFERING PERMANENT RESIDENCE TO SOURCES AND COOPERATORS.**

Deadline.

Not later than 30 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall

provide to the congressional intelligence committees a briefing on the ability of the Federal Bureau of Investigation to offer, as an inducement to assisting the Bureau, permanent residence within the United States to foreign individuals who are sources or cooperators in counterintelligence or other national-security-related investigations. The briefing shall address the following:

(1) The extent to which the Bureau may make such offers, whether independently or in conjunction with other agencies and departments of the United States Government, including a discussion of the authorities provided by section 101(a)(15)(S) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(S)), section 7 of the Central Intelligence Agency Act (50 U.S.C. 3508), and any other provision of law under which the Bureau may make such offers.

(2) An overview of the policies and operational practices of the Bureau with respect to making such offers.

(3) The sufficiency of such policies and practices with respect to inducing individuals to cooperate with, serve as sources for such investigations, or both.

(4) Whether the Director recommends any legislative actions to improve such policies and practices, particularly with respect to the counterintelligence efforts of the Bureau.

Overview.

Recommendations.

**SEC. 6729. INTELLIGENCE ASSESSMENT OF NORTH KOREA REVENUE SOURCES.**

(a) **ASSESSMENT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Assistant Secretary of State for Intelligence and Research and the Assistant Secretary of the Treasury for Intelligence and Analysis, shall produce an intelligence assessment of the revenue sources of the North Korean regime. Such assessment shall include revenue from the following sources:

Deadline.  
Coordination.

(1) Trade in coal, iron, and iron ore.

(2) The provision of fishing rights to North Korean territorial waters.

(3) Trade in gold, titanium ore, vanadium ore, copper, silver, nickel, zinc, or rare earth minerals, and other stores of value.

(4) Trade in textiles.

(5) Sales of conventional defense articles and services.

(6) Sales of controlled goods, ballistic missiles, and other associated items.

(7) Other types of manufacturing for export, as the Director of National Intelligence considers appropriate.

(8) The exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly, for use by the government of North Korea.

(9) The provision of nonhumanitarian goods (such as food, medicine, and medical devices) and services by other countries.

(10) The provision of services, including banking and other support, including by entities located in the Russian Federation, China, and Iran.

(11) Online commercial activities of the Government of North Korea, including online gambling.

(12) Criminal activities, including cyber-enabled crime and counterfeit goods.

(b) ELEMENTS.—The assessment required under subsection (a) shall include an identification of each of the following:

(1) The sources of North Korea’s funding.

(2) Financial and nonfinancial networks, including supply chain management, transportation, and facilitation, through which North Korea accesses the United States and international financial systems and repatriates and exports capital, goods, and services; and

(3) the global financial institutions, money services business, and payment systems that assist North Korea with financial transactions.

(c) SUBMITTAL TO CONGRESS.—Upon completion of the assessment required under subsection (a), the Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a copy of such assessment.

Stop Terrorist  
Use of Virtual  
Currencies Act.

**SEC. 6730. REPORT ON POSSIBLE EXPLOITATION OF VIRTUAL CURRENCIES BY TERRORIST ACTORS.**

(a) SHORT TITLE.—This section may be cited as the “Stop Terrorist Use of Virtual Currencies Act”.

Consultation.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Secretary of the Treasury and the Under Secretary of Homeland Security for Intelligence and Analysis, shall submit to Congress a report on the possible exploitation of virtual currencies by terrorist actors. Such report shall include the following elements:

Assessments.

(1) An assessment of the means and methods by which international terrorist organizations and State sponsors of terrorism use virtual currencies.

(2) An assessment of the use by terrorist organizations and state sponsors of terrorism of virtual currencies compared to the use by such organizations and states of other forms of financing to support operations, including an assessment of the collection posture of the intelligence community on the use of virtual currencies by such organizations and states.

(3) A description of any existing legal impediments that inhibit or prevent the intelligence community from collecting information on or helping prevent the use of virtual currencies by international terrorist organizations and state sponsors of terrorism and an identification of any gaps in existing law that could be exploited for illicit funding by such organizations and States.

(c) FORM OF REPORT.—The report required by subsection (b) shall be submitted in unclassified form, but may include a classified annex.

(d) DISSEMINATION TO STATE AND LOCAL PARTNERS.—Consistent with the protection of classified and confidential unclassified information, the Under Secretary shall share the report required by subsection (b) with State, local, and regional officials who operate within State, local, and regional fusion centers through the Department of Homeland Security State, Local, and Regional Fusion Center Initiative established in section 210A of the Homeland Security Act of 2002 (6 U.S.C. 124h).

## Subtitle C—Other Matters

### SEC. 6741. PUBLIC INTEREST DECLASSIFICATION BOARD.

(a) MEETINGS.—Section 703(e) of the Public Interest Declassification Act of 2000 (Public Law 106–567; 50 U.S.C. 3161 note) is amended by striking “funds.” and inserting “funds, but shall meet in person not less frequently than on a quarterly basis.”

50 USC 3301  
note, 3355  
and note,  
3355a–3355g.

(b) REMOVAL OF SUNSET.—Section 710 of the Public Interest Declassification Act of 2000 (Public Law 106–567; 50 U.S.C. 3161 note) is amended—

50 USC 3301  
note, 3355  
and note,  
3355a–3355g.

(1) by striking subsection (b);

(2) in the section heading, by striking “; SUNSET”; and

(3) by striking “(a) EFFECTIVE DATE.—”.

(c) STATUS OF BOARD.—Notwithstanding section 710(b) of the Public Interest Declassification Act of 2000 (Public Law 106–567; 50 U.S.C. 3161 note) as in effect on the day before the date of the enactment of this Act—

50 USC 3355  
note.

(1) the Public Interest Declassification Board shall be deemed to not have terminated for purposes of the appointment of members to the Board;

(2) section 703(h) of such Act shall not apply with respect to the period beginning on December 31, 2018, and ending on the day before the date of the enactment of this Act; and

(3) the length of the terms of the members serving on the Board as of December 30, 2018, shall be calculated by not counting the period specified in paragraph (2).

Time period.

### SEC. 6742. TECHNICAL AND CLERICAL AMENDMENTS TO THE NATIONAL SECURITY ACT OF 1947.

(a) TABLE OF CONTENTS.—The table of contents at the beginning of the National Security Act of 1947 (50 U.S.C. 3001 et seq.) is amended—

(1) by inserting after the item relating to section 2 the following new item:

“Sec. 3. Definitions.”;

(2) by striking the item relating to section 107;

(3) by striking the item relating to section 113B and inserting the following new item:

“Sec. 113B. Special pay authority for science, technology, engineering, or mathematics positions.”;

(4) by striking the items relating to sections 202, 203, 204, 208, 209, 210, 211, 212, 213, and 214; and

(5) by inserting after the item relating to section 311 the following new item:

“Sec. 312. Repealing and saving provisions.”.

(b) OTHER TECHNICAL CORRECTIONS.—Such Act is further amended—

(1) in section 102A—

50 USC 3024.

(A) in subparagraph (G) of paragraph (1) of subsection (g), by moving the margins of such subparagraph 2 ems to the left; and

(B) in paragraph (3) of subsection (v), by moving the margins of such paragraph 2 ems to the left;

(2) in section 106—

50 USC 3041.

- (A) by inserting “Sec. 106.” before “(a)” and conforming the typeface and typestyle accordingly; and
- (B) in subparagraph (I) of paragraph (2) of subsection (b), by moving the margins of such subparagraph 2 ems to the left;
- 50 USC 3042. (3) by striking section 107;
- 50 USC 3043. (4) in section 108(c), by striking “in both a classified and an unclassified form” and inserting “to Congress in classified form, but may include an unclassified summary”;
- 50 USC 3047. (5) in section 112(c)(1), by striking “section 103(c)(7)” and inserting “section 102A(i)”;
- (6) by amending section 201 to read as follows:
- Applicability. **“SEC. 201. DEPARTMENT OF DEFENSE.**  
50 USC 3005. “Except to the extent inconsistent with the provisions of this Act or other provisions of law, the provisions of title 5, United States Code, shall be applicable to the Department of Defense.”;
- 50 USC 3004. (7) in section 205, by redesignating subsections (b) and (c) as subsections (a) and (b), respectively;
- 50 USC 3004. (8) in section 206, by striking “(a)”;
- 50 USC 3004. (9) in section 207, by striking “(c)”;
- 50 USC 3075. (10) in section 308(a), by striking “this Act” and inserting “sections 2, 101, 102, 103, and 303 of this Act”;
- 50 USC 3006, 3078. (11) by redesignating section 411 as section 312;
- 50 USC 3093. (12) in section 503—  
(A) in paragraph (5) of subsection (c)—  
(i) by moving the margins of such paragraph 4 ems to the left; and  
(ii) by moving the margins of subparagraph (B) of such paragraph 2 ems to the left; and  
(B) in paragraph (2) of subsection (d), by moving the margins of such paragraph 2 ems to the left; and
- 50 USC 3094. (13) in subparagraph (B) of paragraph (3) of subsection (a) of section 504, by moving the margins of such subparagraph 2 ems to the right.

**SEC. 6743. BUG BOUNTY PROGRAMS.****(a) DEFINITIONS.—**In this section:

(1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of Congress” means—

(A) the congressional intelligence committees;

(B) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(C) the Committee on Armed Services and the Committee on Homeland Security of the House of Representatives.

(2) **BUG BOUNTY PROGRAM.**—The term “bug bounty program” means a program under which an approved computer security specialist or security researcher is temporarily authorized to identify and report vulnerabilities within the information system of an agency or department of the United States in exchange for compensation.

(3) **INFORMATION SYSTEM.**—The term “information system” has the meaning given that term in section 3502 of title 44, United States Code.

**(b) BUG BOUNTY PROGRAM PLAN.**—



(1) **REQUIREMENT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit to appropriate committees of Congress a strategic plan for appropriate agencies and departments of the United States to implement bug bounty programs.

Deadline.  
Consultation.

(2) **CONTENTS.**—The plan required by paragraph (1) shall include—

(A) an assessment of—

Assessment.

(i) the “Hack the Pentagon” pilot program carried out by the Department of Defense in 2016 and subsequent bug bounty programs in identifying and reporting vulnerabilities within the information systems of the Department of Defense; and

(ii) private sector bug bounty programs, including such programs implemented by leading technology companies in the United States; and

(B) recommendations on the feasibility of initiating bug bounty programs at appropriate agencies and departments of the United States.

Recommendations.

**SEC. 6744. TECHNICAL AMENDMENTS RELATED TO THE DEPARTMENT OF ENERGY.**

(a) **NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT.**—Section 3233(b) of the National Nuclear Security Administration Act (50 U.S.C. 2423(b)) is amended—

(1) by striking “Administration” and inserting “Department”; and

(2) by inserting “Intelligence and” after “the Office of”.

(b) **ATOMIC ENERGY DEFENSE ACT.**—Section 4524(b)(2) of the Atomic Energy Defense Act (50 U.S.C. 2674(b)(2)) is amended by inserting “Intelligence and” after “The Director of”.

(c) **NATIONAL SECURITY ACT OF 1947.**—Paragraph (2) of section 106(b) of the National Security Act of 1947 (50 U.S.C. 3041(b)(2)) is amended—

(1) in subparagraph (E), by inserting “and Counterintelligence” after “Office of Intelligence”; and

(2) by striking subparagraph (F); and

(3) by redesignating subparagraphs (G), (H), and (I) as subparagraphs (F), (G), and (H), respectively.

**SEC. 6745. SENSE OF CONGRESS ON NOTIFICATION OF CERTAIN DISCLOSURES OF CLASSIFIED INFORMATION.**

(a) **DEFINITIONS.**—In this section:

(1) **ADVERSARY FOREIGN GOVERNMENT.**—The term “adversary foreign government” means the government of any of the following foreign countries:

(A) North Korea.

(B) Iran.

(C) China.

(D) Russia.

(E) Cuba.

(2) **COVERED CLASSIFIED INFORMATION.**—The term “covered classified information” means classified information that was—

(A) collected by an element of the intelligence community; or

(B) provided by the intelligence service or military of a foreign country to an element of the intelligence community.

(3) ESTABLISHED INTELLIGENCE CHANNELS.—The term “established intelligence channels” means methods to exchange intelligence to coordinate foreign intelligence relationships, as established pursuant to law by the Director of National Intelligence, the Director of the Central Intelligence Agency, the Director of the National Security Agency, or other head of an element of the intelligence community.

(4) INDIVIDUAL IN THE EXECUTIVE BRANCH.—The term “individual in the executive branch” means any officer or employee of the executive branch, including individuals—

(A) occupying a position specified in article II of the Constitution;

(B) appointed to a position by an individual described in subparagraph (A); or

(C) serving in the civil service or the Senior Executive Service (or similar service for senior executives of particular departments or agencies).

(b) FINDINGS.—Congress finds that section 502 of the National Security Act of 1947 (50 U.S.C. 3092) requires elements of the intelligence community to keep the congressional intelligence committees “fully and currently informed” about all “intelligence activities” of the United States, and to “furnish to the congressional intelligence committees any information or material concerning intelligence activities \* \* \* which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.”.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) section 502 of the National Security Act of 1947 (50 U.S.C. 3092), together with other intelligence community authorities, obligates an element of the intelligence community to submit to the congressional intelligence committees written notification, by not later than 7 days after becoming aware, that an individual in the executive branch has disclosed covered classified information to an official of an adversary foreign government using methods other than established intelligence channels; and

(2) each such notification should include—

(A) the date and place of the disclosure of classified information covered by the notification;

(B) a description of such classified information;

(C) identification of the individual who made such disclosure and the individual to whom such disclosure was made; and

(D) a summary of the circumstances of such disclosure.

**SEC. 6746. SENSE OF CONGRESS ON CONSIDERATION OF ESPIONAGE ACTIVITIES WHEN CONSIDERING WHETHER OR NOT TO PROVIDE VISAS TO FOREIGN INDIVIDUALS TO BE ACCREDITED TO A UNITED NATIONS MISSION IN THE UNITED STATES.**

It is the sense of the Congress that the Secretary of State, in considering whether or not to provide a visa to a foreign individual to be accredited to a United Nations mission in the United States, should consider—

(1) known and suspected intelligence activities, espionage activities, including activities constituting precursors to espionage, carried out by the individual against the United States, foreign allies of the United States, or foreign partners of the United States; and

(2) the status of an individual as a known or suspected intelligence officer for a foreign adversary.

**SEC. 6747. SENSE OF CONGRESS ON WIKILEAKS.**

It is the sense of Congress that WikiLeaks and the senior leadership of WikiLeaks resemble a nonstate hostile intelligence service often abetted by state actors and should be treated as such a service by the United States.

## **DIVISION F—OTHER MATTERS**

### **TITLE LXXI—SANCTIONS WITH RESPECT TO NORTH KOREA**

Otto Warmbier  
North Korea  
Nuclear  
Sanctions and  
Enforcement Act  
of 2019.

Sec. 7101. Short title.

Subtitle A—Sanctions With Respect to North Korea

Sec. 7111. Sense of Congress.

Sec. 7112. Definitions.

PART I—EXPANSION OF SANCTIONS AND RELATED MATTERS

Sec. 7121. Sanctions with respect to foreign financial institutions that provide financial services to certain sanctioned persons.

Sec. 7122. Mandatory designations under North Korea Sanctions and Policy Enhancement Act of 2016.

Sec. 7123. Extension of applicability period of proliferation prevention sanctions.

Sec. 7124. Opposition to assistance by the international financial institutions.

Sec. 7125. Support for capacity of the International Monetary Fund to prevent money laundering and financing of terrorism.

Sec. 7126. Report and briefings on compliance, penalties, and technical assistance.

Sec. 7127. Sense of Congress on identification and blocking of property of North Korean officials.

Sec. 7128. Modification of report on implementation of United Nations Security Council resolutions by other governments.

Sec. 7129. Report on use by the Government of North Korea of beneficial ownership rules to access the international financial system.

PART II—CONGRESSIONAL REVIEW AND OVERSIGHT

Sec. 7131. Notification of termination or suspension of sanctions.

Sec. 7132. Reports on certain licensing actions.

Sec. 7133. Report and briefings on financial networks and financial methods of the Government of North Korea.

Sec. 7134. Report on countries of concern with respect to transshipment, reexportation, or diversion of certain items to North Korea.

PART III—GENERAL MATTERS

Sec. 7141. Rulemaking.

Sec. 7142. Authority to consolidate reports.

Sec. 7143. Waivers, exemptions, and termination.

Sec. 7144. Procedures for review of classified and certain other information.

Sec. 7145. Briefing on resourcing of sanctions programs.

Sec. 7146. Briefing on proliferation financing.

Sec. 7147. Exception relating to importation of goods.

Subtitle B—Financial Industry Guidance to Halt Trafficking

Sec. 7151. Short title.

Sec. 7152. Sense of Congress.

Sec. 7153. Coordination of human trafficking issues by the Office of Terrorism and Financial Intelligence.

Sec. 7154. Strengthening the role of anti-money laundering and other financial tools in combating human trafficking.

Sec. 7155. Sense of Congress on resources to combat human trafficking.

22 USC 9201  
note.

**SEC. 7101. SHORT TITLE.**

This title may be cited as the “Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019”.

## **Subtitle A—Sanctions With Respect to North Korea**

**SEC. 7111. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the United States is committed to working with its allies and partners to halt the nuclear and ballistic missile programs of North Korea through a policy of maximum pressure and diplomatic engagement;

(2) the imposition of sanctions, including those under this title, should not be construed to limit the authority of the President to fully engage in diplomatic negotiations to further the policy objective described in paragraph (1);

(3) the successful use of sanctions to halt the nuclear and ballistic missile programs of North Korea is part of a broader diplomatic and economic strategy that relies on effective coordination among relevant Federal agencies and officials, as well as with international partners of the United States; and

(4) the coordination described in paragraph (3) should include proper vetting of external messaging and communications from all parts of the Executive branch to ensure that those communications are an intentional component of and aligned with the strategy of the United States with respect to North Korea.

22 USC 9261.

**SEC. 7112. DEFINITIONS.**

In this subtitle, the terms “applicable Executive order”, “applicable United Nations Security Council resolution”, “appropriate congressional committees”, “Government of North Korea”, “North Korea”, “North Korean financial institution”, and “North Korean person” have the meanings given those terms in section 3 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9202).

## **PART I—EXPANSION OF SANCTIONS AND RELATED MATTERS**

**SEC. 7121. SANCTIONS WITH RESPECT TO FOREIGN FINANCIAL INSTITUTIONS THAT PROVIDE FINANCIAL SERVICES TO CERTAIN SANCTIONED PERSONS.**

(a) **IN GENERAL.**—Title II of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9221 et seq.) is amended by inserting after section 201A the following:

**“SEC. 201B. SANCTIONS WITH RESPECT TO FOREIGN FINANCIAL INSTITUTIONS THAT PROVIDE FINANCIAL SERVICES TO CERTAIN SANCTIONED PERSONS.** 22 USC 9221b.

“(a) **IN GENERAL.**—The Secretary of the Treasury shall impose one or more of the sanctions described in subsection (b) with respect to a foreign financial institution that the Secretary determines, in consultation with the Secretary of State, knowingly, on or after the date that is 120 days after the date of the enactment of the Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, provides significant financial services to any person designated for the imposition of sanctions with respect to North Korea under—

Determination.  
Consultation.

“(1) subsection (a), (b), or (g) of section 104;

“(2) an applicable Executive order; or

“(3) an applicable United Nations Security Council resolution.

“(b) **SANCTIONS DESCRIBED.**—The sanctions that may be imposed with respect to a foreign financial institution subject to subsection (a) are the following:

“(1) **ASSET BLOCKING.**—The Secretary may block and prohibit, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), all transactions in all property and interests in property of the foreign financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

“(2) **RESTRICTIONS ON CORRESPONDENT AND PAYABLE-THROUGH ACCOUNTS.**—The Secretary may prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by the foreign financial institution.

“(c) **IMPLEMENTATION; PENALTIES.**—

“(1) **IMPLEMENTATION.**—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this section.

“(2) **PENALTIES.**—A person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulation, license, or order issued to carry out this section shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

“(d) **REGULATIONS.**—Not later than 120 days after the date of the enactment of the Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, the President shall, as appropriate, prescribe regulations to carry out this section.

Deadline.  
President.

“(e) **EXCEPTION RELATING TO IMPORTATION OF GOODS.**—

“(1) **IN GENERAL.**—Notwithstanding section 404(b) or any provision of this section, the authorities and requirements to impose sanctions under this section shall not include the authority or a requirement to impose sanctions on the importation of goods.

“(2) **GOOD DEFINED.**—In this subsection, the term ‘good’ means any article, natural or manmade substance, material,

supply or manufactured product, including inspection and test equipment, and excluding technical data.

“(f) DEFINITIONS.—In this section:

“(1) ACCOUNT; CORRESPONDENT ACCOUNT; PAYABLE-THROUGH ACCOUNT.—The terms ‘account’, ‘correspondent account’, and ‘payable-through account’ have the meanings given those terms in section 5318A of title 31, United States Code.

“(2) FOREIGN FINANCIAL INSTITUTION.—The term ‘foreign financial institution’ has the meaning given that term in section 510.309 of title 31, Code of Federal Regulations (or any corresponding similar regulation or ruling).

“(3) KNOWINGLY.—The term ‘knowingly’, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

22 USC 9221c.

**“SEC. 201C. PROHIBITION ON TRANSACTIONS WITH CERTAIN SANCTIONED PERSONS BY PERSONS OWNED OR CONTROLLED BY UNITED STATES FINANCIAL INSTITUTIONS.**

Deadline.  
Consultation.

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, the Secretary of the Treasury, in consultation with the Secretary of State, shall prohibit an entity owned or controlled by a United States financial institution and established or maintained outside the United States from knowingly engaging in any transaction described in subsection (b) directly or indirectly with the Government of North Korea or any person designated for the imposition of sanctions with respect to North Korea under—

“(1) subsection (a), (b), or (g) of section 104;

“(2) an applicable Executive order; or

“(3) an applicable United Nations Security Council resolution.

“(b) TRANSACTIONS DESCRIBED.—A transaction described in this subsection is a transaction that would be prohibited by an order or regulation issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) if the transaction were engaged in in the United States or by a United States person.

Applicability.

“(c) CIVIL PENALTIES.—The civil penalty provided for in section 206(b) of the International Emergency Economic Powers Act (50 U.S.C. 1705(b)) shall apply to a United States financial institution to the same extent that such penalty applies to a person that commits an unlawful act described in section 206(a) of that Act if an entity owned or controlled by the United States financial institution and established or maintained outside the United States violates, attempts to violate, conspires to violate, or causes a violation of any order or regulation issued to implement subsection (a).

“(d) UNITED STATES FINANCIAL INSTITUTION DEFINED.—In this section, the term ‘United States financial institution’ has the meaning given the term ‘U.S. financial institution’ in section 510.328 of title 31, Code of Federal Regulations (or any corresponding similar regulation or ruling).”

(b) CLERICAL AMENDMENT.—The table of contents for the North Korea Sanctions and Policy Enhancement Act of 2016 is amended by inserting after the item relating to section 201A the following:

“Sec. 201B. Sanctions with respect to foreign financial institutions that provide financial services to certain sanctioned persons.

“Sec. 201C. Prohibition on transactions with certain sanctioned persons by persons owned or controlled by United States financial institutions.”.

**SEC. 7122. MANDATORY DESIGNATIONS UNDER NORTH KOREA SANCTIONS AND POLICY ENHANCEMENT ACT OF 2016.**

(a) IN GENERAL.—Section 104 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9214) is amended—

(1) by adding at the end the following:

“(g) ADDITIONAL MANDATORY DESIGNATIONS.—

“(1) IN GENERAL.—Except as provided in section 208, the President shall designate under this subsection any person that the President determines—

President.  
Determination.

“(A) knowingly, directly or indirectly, engages in the importation from or exportation to North Korea of significant quantities of—

“(i)(I) coal, textiles, seafood, iron, or iron ore; or

“(II) refined petroleum products or crude oil above limits set by the United Nations Security Council and with which the United States concurs; or

“(ii) services or technology related to goods specified in clause (i);

“(B) knowingly facilitates a significant transfer of funds or property of the Government of North Korea that materially contributes to any violation of an applicable United Nations Security Council resolution;

“(C) knowingly, directly or indirectly, engages in, facilitates, or is responsible for the exportation of workers from North Korea, or the employment of such workers, in a manner that generates significant revenue, directly or indirectly, for use by the Government of North Korea or by the Workers’ Party of Korea;

“(D) knowingly, directly or indirectly, sells or transfers a significant number of vessels to North Korea, except as specifically approved by the United Nations Security Council;

“(E) knowingly engages in a significant activity to charter, insure, register, facilitate the registration of, or maintain insurance or a registration for, a vessel owned, controlled, commanded, or crewed by a North Korean person; or

“(F) knowingly contributes to and participates in—

“(i) a significant act of bribery of an official of the Government of North Korea or any person acting for or on behalf of that official;

“(ii) the misappropriation, theft, or embezzlement of a significant amount of public funds by, or for the benefit of, an official of the Government of North Korea or any person acting for or on behalf of that official; or

“(iii) the use of any proceeds of any activity described in subparagraph (A) or (B).”;

- (2) in subsection (c), by inserting “or (g)” after “subsection (a)”;
- (3) in subsection (d)—
- (A) by striking “or” the first place it appears and inserting a comma; and
  - (B) by inserting “, or (g)” after “(b)”; and
- (4) in subsection (e)—
- (A) by striking “or” the last place it appears and inserting a comma; and
  - (B) by inserting “, or (g)” after “(b)”.
- (b) **CONFORMING AMENDMENTS.**—The North Korea Sanctions and Policy Enhancement Act of 2016 is amended—
- (1) in section 3(4) (22 U.S.C. 9202(4))—
- (A) by striking “or” the first place it appears and inserting a comma; and
  - (B) by inserting “, or (g)” after “(b)”; and
- (2) in section 102 (22 U.S.C. 9212)—
- (A) in subsection (a), by inserting “or (g)” after “section 104(a)” each place it appears; and
  - (B) in subsection (b)(1)—
    - (i) by striking “and” the first place it appears and inserting a comma; and
    - (ii) by inserting “, and (g)” after “(b)”; and
- (3) in section 204 (22 U.S.C. 9224), by inserting “or (g)” after “section 104(a)” each place it appears; and
- (4) in section 302(b)(3) (22 U.S.C. 9241(b)(3)) is amended by striking “section 104(b)(1)(M)” and inserting “section 104(g)(1)(C)”.

**SEC. 7123. EXTENSION OF APPLICABILITY PERIOD OF PROLIFERATION PREVENTION SANCTIONS.**

Section 203(b)(2) of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9223(b)(2)) is amended by striking “2 years” and inserting “5 years”.

**SEC. 7124. OPPOSITION TO ASSISTANCE BY THE INTERNATIONAL FINANCIAL INSTITUTIONS.**

(a) **IN GENERAL.**—The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end the following:

**“SEC. 73. OPPOSITION TO ASSISTANCE FOR ANY GOVERNMENT THAT FAILS TO IMPLEMENT SANCTIONS ON NORTH KOREA.**

“(a) **IN GENERAL.**—The Secretary of the Treasury shall instruct the United States Executive Director at each international financial institution (as defined in section 1701(c) of the International Financial Institutions Act (22 U.S.C. 262r(c))) that it is the policy of the United States to oppose the provision by that institution of financial assistance to a foreign government, other than assistance to support basic human needs, if the President determines that, in the year preceding consideration of approval of such assistance, the government has knowingly failed to adequately enforce sanctions under an applicable United Nations Security Council resolution (as defined in section 3 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9202)).

“(b) **WAIVER.**—The President may waive subsection (a) for up to 180 days at a time with respect to a foreign government if the President—

“(1) determines that—

President.  
Determinations.  
22 USC 286yy.



“(A) the failure of the foreign government described in subsection (a) is due exclusively to a lack of capacity on the part of the foreign government;

“(B) the foreign government is taking effective steps to prevent recurrence of such failure; or

“(C) the waiver is in the national security interests of the United States; and

“(2) submits to Congress a report on the reasons for the determination under paragraph (1).”

Reports.

(b) **TERMINATION.**—Effective on the date that is 10 years after the date of the enactment of this Act, section 73 of the Bretton Woods Agreements Act, as added by subsection (a), is repealed.

Repeal.  
22 USC 286yy  
note.

**SEC. 7125. SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.**

(a) **IN GENERAL.**—Title XVI of the International Financial Institutions Act (22 U.S.C. 262p et seq.) is amended by adding at the end the following:

**“SEC. 1629. SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.**

22 USC 262p–13.

“The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to use the voice and vote of the United States to support the increased use of the administrative budget of the Fund for technical assistance that strengthens the capacity of members of the Fund to prevent money laundering and the financing of terrorism.”

(b) **TERMINATION.**—Effective on the date that is 5 years after the date of the enactment of this Act, section 1629 of the International Financial Institutions Act, as added by subsection (a), is repealed.

Repeal.  
22 USC 262p–13  
note.

(c) **NATIONAL ADVISORY COUNCIL REPORT TO CONGRESS.**—The Chairman of the National Advisory Council on International Monetary and Financial Policies shall include in each report required by section 1701 of the International Financial Institutions Act (22 U.S.C. 262r) after the date of the enactment of this Act and before December 31, 2023, a description of—

Time period.

(1) the activities of the International Monetary Fund in the fiscal year covered by the report to provide technical assistance that strengthens the capacity of members of the Fund to prevent money laundering and the financing of terrorism, and the effectiveness of the assistance; and

(2) the efficacy of efforts by the United States to support such technical assistance through the use of the Fund’s administrative budget, and the level of such support.

**SEC. 7126. REPORT AND BRIEFINGS ON COMPLIANCE, PENALTIES, AND TECHNICAL ASSISTANCE.**

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the committees specified in subsection (d) a report that includes—

(1) a list of financial institutions that, during the period beginning on the date that is one year before the date of the enactment of this Act and ending on the date of the report,

List.  
Time period.

knowingly facilitated a significant transaction or transactions or provided significant financial services for—

(A) any North Korean person designated under an applicable Executive order;

(B) any North Korean person that knowingly facilitates the transfer of bulk cash or covered goods (as defined under section 1027.100 of title 31, Code of Federal Regulations (or any corresponding similar regulation or ruling));

(C) any person that knowingly invests in, or participates in a joint venture with, an entity in which the Government of North Korea participates or an entity that is created or organized under the laws of North Korea;

(D) any person that knowingly provides financial services, including through a subsidiary or joint venture, in North Korea;

(E) any person that knowingly provides specialized teaching, training, or information or provides material or technological support to a North Korean person that—

(i) may contribute to North Korea’s development and proliferation of weapons of mass destruction, including systems designed in whole or in part for the delivery of such weapons; or

(ii) may contribute to significant activities undermining cybersecurity; and

(2) a description of efforts by the Department of the Treasury during the period described in paragraph (1), through outreach, consultations, technical assistance, or other appropriate activities, to strengthen the capacity of financial institutions and foreign governments to prevent the provision of financial services benefitting any person subject to sanctions under—

(A) this Act or an amendment made by this Act;

(B) an applicable Executive order; or

(C) an applicable United Nations Security Council resolution.

Time periods.

(b) ANNUAL BRIEFINGS.—Not later than one year after the submission of the report required by subsection (a), and annually thereafter until the date that is 5 years after the date of the enactment of this Act, the Secretary of the Treasury shall brief the committees specified in subsection (d) on the matters covered by the report for the one-year period preceding the briefing.

(c) TESTIMONY REQUIRED.—Upon request of either of the committees specified in subsection (d), the Under Secretary of the Treasury for Terrorism and Financial Crimes shall testify to explain the effects of this Act and the amendments made by this Act on North Korea’s access to illicit finance channels.

(d) COMMITTEES SPECIFIED.—The committees specified in this subsection are—

(1) the Committee on Financial Services of the House of Representatives; and

(2) the Committee on Banking, Housing, and Urban Affairs of the Senate.

**SEC. 7127. SENSE OF CONGRESS ON IDENTIFICATION AND BLOCKING OF PROPERTY OF NORTH KOREAN OFFICIALS.**

It is the sense of Congress that the President should—

- (1) encourage international collaboration to counter the money laundering, terrorist financing, and proliferation financing threats emanating from North Korea; and
- (2) prioritize multilateral efforts to identify and block—
  - (A) any property owned or controlled by a North Korean official; and
  - (B) any significant proceeds of kleptocracy by the Government of North Korea or a North Korean official.

**SEC. 7128. MODIFICATION OF REPORT ON IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS BY OTHER GOVERNMENTS.**

Section 317 of the Korean Interdiction and Modernization of Sanctions Act (title III of Public Law 115–44; 131 Stat. 950) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “Not later than 180 days after the date of the enactment of this Act, and annually thereafter for 5 years,” and inserting “Not later than 180 days after the date of the enactment of the Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019, and annually thereafter for 5 years,”;

(B) in paragraph (3), by striking “; or” and inserting a semicolon;

(C) by redesignating paragraph (4) as paragraph (8); and

(D) by inserting after paragraph (3) the following:

“(4) prohibit, in the territories of such countries or by persons subject to the jurisdiction of such governments, the opening of new joint ventures or cooperative entities with North Korean persons or the expansion of existing joint ventures through additional investments, whether or not for or on behalf of the Government of North Korea, unless such joint ventures or cooperative entities have been approved by the committee of the United Nations Security Council established by United Nations Security Council Resolution 1718 (2006);

“(5) prohibit the unauthorized clearing of funds by North Korean financial institutions through financial institutions subject to the jurisdiction of such governments;

“(6) prohibit the unauthorized conduct of commercial trade with North Korea that is prohibited under applicable United Nations Security Council resolutions;

“(7) prevent the provision of significant financial services to North Korean persons or the transfer of such services to North Korean persons to, through, or from the territories of such countries or by persons subject to the jurisdiction of such governments; or”; and

(2) by amending subsection (c) to read as follows:

“(c) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term ‘appropriate congressional committees and leadership’ means—

“(A) the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the majority and minority leaders of the Senate; and

“(B) the Committee on Foreign Affairs, the Committee on Financial Services, the Committee on Ways and Means, and the Speaker, the majority leader, and the minority leader of the House of Representatives.

“(2) APPLICABLE UNITED NATIONS SECURITY COUNCIL RESOLUTION; NORTH KOREAN FINANCIAL INSTITUTION; NORTH KOREAN PERSON.—The terms ‘applicable United Nations Security Council resolution’, ‘North Korean financial institution’, and ‘North Korean person’ have the meanings given those terms in section 3 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9202).”.

**SEC. 7129. REPORT ON USE BY THE GOVERNMENT OF NORTH KOREA OF BENEFICIAL OWNERSHIP RULES TO ACCESS THE INTERNATIONAL FINANCIAL SYSTEM.**

Consultation. (a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of State, shall submit to the appropriate congressional committees a report setting forth the findings of the Secretary regarding how the Government of North Korea is exploiting the laws of countries other than the United States with respect to the beneficial owner of an entity in order to access the international financial system.

Proposals. (b) ELEMENTS.—The Secretary shall include in the report required under subsection (a) proposals for such legislative and administrative action as the Secretary considers appropriate to combat the abuse by the Government of North Korea of shell companies and other similar entities subject to the jurisdiction of governments other than the United States Government to avoid or evade sanctions.

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form but may include a classified annex.

**PART II—CONGRESSIONAL REVIEW AND OVERSIGHT**

President.  
22 USC 9265. **SEC. 7131. NOTIFICATION OF TERMINATION OR SUSPENSION OF SANCTIONS.**

Before taking any action to terminate or suspend the application of sanctions under this subtitle or an amendment made by this subtitle, the President shall notify the appropriate congressional committees of the President’s intent to take the action and the reasons for the action.

22 USC 9265a. **SEC. 7132. REPORTS ON CERTAIN LICENSING ACTIONS.**

(a) REPORT REQUIRED.—

President.  
Time period. (1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the committees specified in paragraph (2) a report on the operation of the system for issuing licenses for transactions under covered regulatory provisions during the preceding 180-day period that includes—

(A) the number and types of such licenses applied for during that period; and

(B) the number of such licenses issued during that period and information identifying the person receiving each such license.

(2) COMMITTEES SPECIFIED.—The committees specified in this paragraph are the following:

(A) The Committee on Financial Services and the Committee on Foreign Affairs of the House of Representatives.

(B) The Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate.

(b) SUBMISSION OF COPIES OF LICENSES ON REQUEST.—The Secretary of the Treasury shall expeditiously provide a copy of any license identified in a report required by subsection (a)(1) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate if an appropriate Member of Congress requests a copy of that license not later than 30 days after submission of the report. Deadline.

(c) FORM.—Each report required by subsection (a), and each copy of a license submitted under subsection (b), shall be submitted in unclassified form but may include a classified annex.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE MEMBER OF CONGRESS.—The term “appropriate Member of Congress” means—

(A) the chairman or ranking member of the Committee on Financial Services of the House of Representatives; or

(B) the chairman or ranking member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) COVERED REGULATORY PROVISION.—The term “covered regulatory provision” means any of the following provisions, as in effect on the day before the date of the enactment of this Act and as such provisions relate to North Korea:

(A) Part 743, 744, or 746 of title 15, Code of Federal Regulations.

(B) Part 510 of title 31, Code of Federal Regulations.

(C) Any other provision of title 31, Code of Federal Regulations.

**SEC. 7133. REPORT AND BRIEFINGS ON FINANCIAL NETWORKS AND FINANCIAL METHODS OF THE GOVERNMENT OF NORTH KOREA.** President.

(a) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report on sources of external support for the Government of North Korea that includes— Assessments.

(A) a description of the methods used by the Government of North Korea to deal in, transact in, or conceal the ownership, control, or origin of, goods and services exported by North Korea;

(B) an assessment of the relationship between the proliferation of weapons of mass destruction by the Government of North Korea and the financial industry or financial institutions;

(C) an assessment of the relationship between the acquisition by the Government of North Korea of military expertise, equipment, and technology and the financial industry or financial institutions;

(D) a description of the export by any person to the United States of goods, services, or technology that are made with significant amounts of North Korean labor, material, or goods, including minerals, manufacturing, seafood, overseas labor, or other exports from North Korea;

(E) an assessment of the involvement of any person in human trafficking involving citizens or nationals of North Korea;

(F) a description of how the President plans to address the flow of funds generated by activities described in subparagraphs (A) through (E), including through the use of sanctions or other means;

(G) an assessment of the extent to which the Government of North Korea engages in criminal activities, including money laundering, to support that Government;

(H) information relating to the identification, blocking, and release of property described in section 201B(b)(1) of the North Korea Sanctions and Policy Enhancement Act of 2016, as added by section 7121;

(I) a description of the metrics used to measure the effectiveness of law enforcement and diplomatic initiatives of Federal, State, and foreign governments to comply with the provisions of applicable United Nations Security Council resolutions; and

(J) an assessment of the effectiveness of programs within the financial industry to ensure compliance with United States sanctions, applicable United Nations Security Council resolutions, and applicable Executive orders.

(2) FORM.—The report required by paragraph (1) shall be submitted in unclassified form but may include a classified annex.

Deadline.  
Time periods.

(b) BRIEFINGS.—Not later than one year after the submission of the report required by subsection (a), and annually thereafter until the date that is 5 years after the date of the enactment of this Act, the President shall brief the appropriate congressional committees on the matters covered by the report for the one-year period preceding the briefing.

(c) INTERAGENCY COORDINATION.—The President shall ensure that any information collected pursuant to subsection (a) is shared among the Federal departments and agencies involved in investigations described in section 102(b) of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9212(b)).

**SEC. 7134. REPORT ON COUNTRIES OF CONCERN WITH RESPECT TO TRANSSHIPMENT, REEXPORTATION, OR DIVERSION OF CERTAIN ITEMS TO NORTH KOREA.**

President.  
Determination.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter through 2023, the Director of National Intelligence shall submit to the President, the Secretary of Defense, the Secretary of Commerce, the Secretary of State, the Secretary of the Treasury, and the appropriate congressional committees a report that identifies all countries that the Director determines are of concern with respect to transshipment, reexportation, or diversion of items subject to the provisions of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, to an entity owned or controlled by the Government of North Korea.

(b) FORM.—Each report required by subsection (a) shall be submitted in unclassified form but may include a classified annex.

### PART III—GENERAL MATTERS

#### SEC. 7141. RULEMAKING.

The President shall prescribe such rules and regulations as may be necessary to carry out this subtitle and amendments made by this subtitle.

President.  
22 USC 9269.

#### SEC. 7142. AUTHORITY TO CONSOLIDATE REPORTS.

(a) IN GENERAL.—Any and all reports required to be submitted to the appropriate congressional committees under this subtitle or an amendment made by this subtitle that are subject to a deadline for submission consisting of the same unit of time may be consolidated into a single report that is submitted pursuant to that deadline.

22 USC 9269a.

(b) CONTENTS.—Any reports consolidated under subsection (a) shall contain all information required under this subtitle or an amendment made by this subtitle and any other elements that may be required by existing law.

#### SEC. 7143. WAIVERS, EXEMPTIONS, AND TERMINATION.

22 USC 9269b.

(a) APPLICATION AND MODIFICATION OF EXEMPTIONS FROM AND WAIVERS OF NORTH KOREA SANCTIONS AND POLICY ENHANCEMENT ACT OF 2016.—Section 208 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9228) is amended by inserting “201B, 201C,” after “201A,” each place it appears.

##### (b) SUSPENSION.—

(1) IN GENERAL.—Subject to section 7131, the President may suspend the application of any provision of or amendment made by this subtitle (other than section 7147 of this title or section 201B(e) of the North Korea Sanctions and Policy Enhancement Act of 2016, as added by section 7121 of this title) with respect to an entity, individual, or transaction, for renewable periods of not more than 180 days each if, before such a suspension or renewal of such a suspension takes effect, the President submits to the appropriate congressional committees—

President.  
Time period.

##### (A) a certification that—

##### (i) the Government of North Korea has—

(I) committed to the verifiable suspension of North Korea’s proliferation and testing of weapons of mass destruction, including systems designed in whole or in part for the delivery of such weapons; and

(II) has agreed to multilateral talks including the Government of the United States, with the goal of permanently and verifiably limiting North Korea’s weapons of mass destruction and ballistic missile programs; or

##### (ii) the suspension is vital to the national security interests of the United States; and

(B) if the President submits a certification under subparagraph (A)(ii), an explanation of the reasons the suspension is vital to the national security interests of the United States.

Certification.

(2) CONFORMING AMENDMENT.—Section 401(a) of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9251(a)) is amended by inserting “(other than section 104(g), 201B, or 201C)” after “such titles”.

(c) TERMINATION.—Subject to section 7131, any requirement to impose sanctions under this subtitle or the amendments made by this subtitle, and any sanctions imposed pursuant to this subtitle or any such amendment, shall terminate on the date on which the President makes the certification described in section 402 of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9252).

22 USC 9269c.

**SEC. 7144. PROCEDURES FOR REVIEW OF CLASSIFIED AND CERTAIN OTHER INFORMATION.**

(a) IN GENERAL.—If a finding under this subtitle or an amendment made by this subtitle, a prohibition, condition, or penalty imposed as a result of any such finding, or a penalty imposed under this subtitle or an amendment made by this subtitle, is based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)), law enforcement information, or any other information protected from disclosure by statute, and a court reviews the finding or the imposition of the prohibition, condition, or penalty, the Secretary of the Treasury may submit such information to the court *ex parte* and *in camera*.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to confer or imply any right to judicial review of any finding under this subtitle or an amendment made by this subtitle, any prohibition, condition, or penalty imposed as a result of any such finding, or any penalty imposed under this subtitle or an amendment made by this subtitle.

**SEC. 7145. BRIEFING ON RESOURCING OF SANCTIONS PROGRAMS.**

Deadline.

Not later than 30 days after the date of the enactment of this Act, the Secretary of the Treasury shall provide to the appropriate congressional committees a briefing on—

Recommendations.

(1) the resources allocated by the Department of the Treasury to support each sanctions program administered by the Department; and

(2) recommendations for additional authorities or resources necessary to expand the capacity or capability of the Department related to implementation and enforcement of such programs.

**SEC. 7146. BRIEFING ON PROLIFERATION FINANCING.**

Deadline.  
Consultation.

(a) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of State, shall provide to the appropriate congressional committees a briefing on addressing proliferation finance.

(b) ELEMENTS.—The briefing required by subsection (a) shall include the following:

Assessment.

(1) The Department of the Treasury’s description of the principles underlying appropriate methods for combating the financing of the proliferation of weapons of mass destruction.

(2) An assessment of—

(A) Federal financial regulatory agency oversight, including by the Financial Crimes Enforcement Network,



of United States financial institutions and the adoption by their foreign subsidiaries, branches, and correspondent institutions of the principles described under paragraph (1); and

(B) whether financial institutions in foreign jurisdictions known by the United States intelligence and law enforcement communities to be jurisdictions through which North Korea moves substantial sums of licit and illicit finance are applying a risk-based approach to proliferation financing, and if that approach is comparable to the approach required by United States financial institution supervisors.

(3) A survey of the technical assistance the Office of Technical Assistance of the Department of the Treasury and other appropriate Executive branch offices currently provide foreign governments on implementing counter-proliferation financing best practices.

Survey.

(4) An assessment of the ability of foreign subsidiaries, branches, and correspondent institutions of United States financial institutions to implement a risk-based approach to proliferation financing.

Assessment.

**SEC. 7147. EXCEPTION RELATING TO IMPORTATION OF GOODS.**

22 USC 9269d.

(a) **IN GENERAL.**—The authorities and requirements to impose sanctions authorized under this subtitle or any amendment made by this subtitle shall not include the authority or requirement to impose sanctions on the importation of goods.

(b) **GOOD DEFINED.**—In this section, the term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data.

**Subtitle B—Financial Industry Guidance to Halt Trafficking**

Financial Industry Guidance to Halt Trafficking Act.

**SEC. 7151. SHORT TITLE.**

22 USC 7101 note.

This subtitle may be cited as the “Financial Industry Guidance to Halt Trafficking Act” or the “FIGHT Act”.

**SEC. 7152. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the President should aggressively apply, as appropriate, existing sanctions for human trafficking authorized under section 111 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7108);

(2) the Financial Crimes Enforcement Network of the Department of the Treasury should continue—

(A) to monitor reporting required under subchapter II of chapter 53 of title 31, United States Code (commonly known as the “Bank Secrecy Act”) and to update advisories, as warranted;

(B) to periodically review its advisories to provide covered financial institutions, as appropriate, with a list of new “red flags” for identifying activities of concern, particularly human trafficking;

(C) to encourage entities covered by the advisories described in subparagraph (B) to incorporate relevant elements provided in the advisories into their current transaction and account monitoring systems or in policies, procedures, and training on human trafficking to enable financial institutions to maintain ongoing efforts to examine transactions and accounts;

(D) to use geographic targeting orders, as appropriate, to impose additional reporting and recordkeeping requirements under section 5326(a) of title 31, United States Code, to carry out the purposes of, and prevent evasions of, the Bank Secrecy Act; and

(E) to utilize the Bank Secrecy Act Advisory Group and other relevant entities to identify opportunities for nongovernmental organizations to share relevant actionable information on human traffickers' use of the financial sector for nefarious purposes;

(3) Federal banking regulators, the Department of the Treasury, relevant law enforcement agencies, and the Human Smuggling and Trafficking Center, in partnership with representatives from the United States financial community, should adopt regular forms of sharing information to disrupt human trafficking, including developing protocols and procedures to share actionable information between and among covered institutions, law enforcement, and the United States intelligence community;

(4) training frontline bank and money service business employees, school teachers, law enforcement officers, foreign service officers, counselors, and the general public is an important factor in identifying trafficking victims;

(5) the Department of Homeland Security's Blue Campaign, training by the BEST Employers Alliance, and similar efforts by industry, human rights, and nongovernmental organizations focused on human trafficking provide good examples of current efforts to educate employees of critical sectors with respect to how to save victims and disrupt trafficking networks;

(6) the President should intensify diplomatic efforts, bilaterally and in appropriate international fora such as the United Nations, to develop and implement a coordinated, consistent, multilateral strategy for addressing the international financial networks supporting human trafficking; and

(7) in deliberations between the United States Government and any foreign country, including through participation in the Egmont Group of Financial Intelligence Units, regarding money laundering, corruption, and transnational crimes, the United States Government should—

(A) encourage cooperation by foreign governments and relevant international fora in identifying the extent to which the proceeds from human trafficking are being used to facilitate terrorist financing, corruption, or other illicit financial crimes;

(B) encourage cooperation by foreign governments and relevant international fora in identifying the nexus between human trafficking and money laundering;

(C) advance policies that promote the cooperation of foreign governments, through information sharing,

training, or other measures, in the enforcement of this subtitle;

(D) encourage other countries to assess their human trafficking and money laundering risks in light of updated guidance provided by the Financial Action Task Force in 2018; and

(E) encourage the Egmont Group of Financial Intelligence Units to study the extent to which human trafficking operations are being used for money laundering, terrorist financing, or other illicit financial purposes.

**SEC. 7153. COORDINATION OF HUMAN TRAFFICKING ISSUES BY THE OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE.**

(a) **FUNCTIONS.**—Section 312(a)(4) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (F), (G), and (H), respectively; and

(2) by inserting after subparagraph (D) the following:

“(E) combating illicit financing relating to human trafficking;”.

(b) **INTERAGENCY COORDINATION.**—Section 312(a) of such title is amended by adding at the end the following:

“(8) **INTERAGENCY COORDINATION.**—The Secretary of the Treasury, after consultation with the Undersecretary for Terrorism and Financial Crimes, shall designate an office within the OTFI that shall coordinate efforts to combat the illicit financing of human trafficking with—

“(A) other offices of the Department of the Treasury;

“(B) other Federal agencies, including—

“(i) the Office to Monitor and Combat Trafficking in Persons of the Department of State; and

“(ii) the Interagency Task Force to Monitor and Combat Trafficking;

“(C) State and local law enforcement agencies; and

“(D) foreign governments.”.

Consultation.  
Designation.

**SEC. 7154. STRENGTHENING THE ROLE OF ANTI-MONEY LAUNDERING AND OTHER FINANCIAL TOOLS IN COMBATING HUMAN TRAFFICKING.**

(a) **INTERAGENCY TASK FORCE RECOMMENDATIONS TARGETING MONEY LAUNDERING RELATED TO HUMAN TRAFFICKING.**—

(1) **IN GENERAL.**—Not later than 270 days after the date of the enactment of this Act, the Interagency Task Force to Monitor and Combat Trafficking, with the concurrence of the Secretary of State and the Secretary of the Treasury, shall submit to the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate, the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives, and each appropriate Federal banking agency—

(A) an analysis of anti-money laundering efforts of the United States Government, United States financial institutions, and international financial institutions (as defined in section 1701(c) of the International Financial Institutions Act (22 U.S.C. 262r(c))) related to human trafficking; and

Deadline.

Analysis.

(B) appropriate legislative, administrative, and other recommendations to strengthen efforts against money laundering related to human trafficking.

(2) REQUIRED RECOMMENDATIONS.—The recommendations under paragraph (1) shall include—

(A) best practices based on successful anti-human trafficking programs currently in place at domestic and international financial institutions that are suitable for broader adoption;

(B) feedback from stakeholders, including victims of severe forms of trafficking in persons, advocates of persons at risk of becoming victims of severe forms of trafficking in persons, the United States Advisory Council on Human Trafficking, civil society organizations, and financial institutions on policy proposals derived from the analysis conducted by the task force referred to in paragraph (1) that would enhance the efforts and programs of financial institutions to detect and deter money laundering related to human trafficking, including any recommended changes to internal policies, procedures, and controls related to human trafficking;

(C) any recommended changes to training programs at financial institutions to better equip employees to deter and detect money laundering related to human trafficking; and

(D) any recommended changes to expand human trafficking-related information sharing among financial institutions and between such financial institutions, appropriate law enforcement agencies, and appropriate Federal agencies.

(b) ADDITIONAL REPORTING REQUIREMENT.—Section 105(d)(7) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103(d)(7)) is amended—

(1) in the matter preceding subparagraph (A)—

(A) by inserting “the Committee on Financial Services,” after “the Committee on Foreign Affairs”; and

(B) by inserting “the Committee on Banking, Housing, and Urban Affairs,” after “the Committee on Foreign Relations”;

(2) in subparagraph (Q)(vii), by striking “; and” and inserting a semicolon;

(3) in subparagraph (R), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following:

“(S) the efforts of the United States to eliminate money laundering related to human trafficking and the number of investigations, arrests, indictments, and convictions in money laundering cases with a nexus to human trafficking.”.

(c) REQUIRED REVIEW OF PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Federal Financial Institutions Examination Council, in consultation with the Secretary of the Treasury, victims of severe forms of trafficking in persons, advocates of persons at risk of becoming victims of severe forms of trafficking in persons, the United States Advisory Council on Trafficking, civil society organizations, the private sector, and appropriate law enforcement agencies, shall—

Deadline.  
Consultation.  
12 USC 3305  
note.

(1) review and enhance training and examination procedures to improve the surveillance capabilities of anti-money laundering programs and programs countering the financing of terrorism to detect human trafficking-related financial transactions;

(2) review and enhance procedures for referring potential human trafficking cases to the appropriate law enforcement agency; and

(3) determine, as appropriate, whether requirements for financial institutions and covered financial institutions are sufficient to detect and deter money laundering related to human trafficking.

Determination.

(d) LIMITATIONS.—Nothing in this section shall be construed to—

12 USC 3305 note.

(1) grant rulemaking authority to the Interagency Task Force to Monitor and Combat Trafficking; or

(2) authorize financial institutions to deny services to or violate the privacy of victims of trafficking, victims of severe forms of trafficking, or individuals not responsible for promoting severe forms of trafficking in persons.

**SEC. 7155. SENSE OF CONGRESS ON RESOURCES TO COMBAT HUMAN TRAFFICKING.**

It is the sense of Congress that—

(1) adequate funding should be provided for critical Federal efforts to combat human trafficking;

(2) the Department of the Treasury should have the appropriate resources to vigorously investigate human trafficking networks under section 111 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7108) and other relevant statutes and Executive orders;

(3) the Department of the Treasury and the Department of Justice should each have the capacity and appropriate resources to support technical assistance to develop foreign partners' ability to combat human trafficking through strong national anti-money laundering programs and programs countering the financing of terrorism;

(4) each United States Attorney's Office should be provided appropriate funding to increase the number of personnel for community education and outreach and investigative support and forensic analysis related to human trafficking; and

(5) the Department of State should be provided additional resources, as necessary, to carry out the Survivors of Human Trafficking Empowerment Act (section 115 of Public Law 114–22; 129 Stat. 243).

**TITLE LXXII—SANCTIONS WITH RESPECT TO FOREIGN TRAFFICKERS OF ILLICIT SYNTHETIC OPIOIDS**

Fentanyl Sanctions Act.

Sec. 7201. Short title.  
 Sec. 7202. Sense of Congress.  
 Sec. 7203. Definitions.

**Subtitle A—Sanctions With Respect to Foreign Opioid Traffickers**

Sec. 7211. Identification of foreign opioid traffickers.  
 Sec. 7212. Imposition of sanctions.

- Sec. 7213. Description of sanctions.
- Sec. 7214. Waivers.
- Sec. 7215. Procedures for judicial review of classified information.
- Sec. 7216. Briefings on implementation.
- Sec. 7217. Inclusion of additional material in International Narcotics Control Strategy Report.

Subtitle B—Commission on Combating Synthetic Opioid Trafficking

- Sec. 7221. Commission on combating synthetic opioid trafficking.

Subtitle C—Other Matters

- Sec. 7231. Director of National Intelligence program on use of intelligence resources in efforts to sanction foreign opioid traffickers.
- Sec. 7232. Authorization of appropriations.
- Sec. 7233. Regulatory authority.
- Sec. 7234. Termination.
- Sec. 7235. Exception relating to importation of goods.

21 USC 2301  
note.

**SEC. 7201. SHORT TITLE.**

This title may be cited as the “Fentanyl Sanctions Act”.

21 USC 2301.

**SEC. 7202. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the United States should apply economic and other financial sanctions to foreign traffickers of illicit opioids to protect the national security, foreign policy, and economy of the United States and the health of the people of the United States;

(2) it is imperative that the People’s Republic of China follow through on full implementation of the new regulations, adopted May 1, 2019, to treat all fentanyl analogues as controlled substances under the laws of the People’s Republic of China, including by devoting sufficient resources for implementation and strict enforcement of the new regulations; and

(3) the effective enforcement of the new regulations should result in diminished trafficking of illicit fentanyl originating from the People’s Republic of China into the United States.

21 USC 2302.

**SEC. 7203. DEFINITIONS.**

In this title:

(1) **ALIEN; NATIONAL; NATIONAL OF THE UNITED STATES.**—The terms “alien”, “national”, and “national of the United States” have the meanings given those terms in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.**—The term “appropriate congressional committees and leadership” means—

(A) the Committee on Appropriations, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Select Committee on Intelligence, and the majority leader and the minority leader of the Senate; and

(B) the Committee on Appropriations, the Committee on Armed Services, the Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Oversight and Reform, the Permanent Select Committee on Intelligence, and the Speaker and the minority leader of the House of Representatives.

(3) CONTROLLED SUBSTANCE; LISTED CHEMICAL.—The terms “controlled substance”, “listed chemical”, “narcotic drug”, and “opioid” have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(4) ENTITY.—The term “entity” means a partnership, joint venture, association, corporation, organization, network, group, or subgroup, or any form of business collaboration.

(5) FOREIGN OPIOID TRAFFICKER.—The term “foreign opioid trafficker” means any foreign person that the President determines plays a significant role in opioid trafficking.

(6) FOREIGN PERSON.—The term “foreign person”—

(A) means—

(i) any citizen or national of a foreign country;

or

(ii) any entity not organized under the laws of the United States or a jurisdiction within the United States; and

(B) does not include the government of a foreign country.

(7) KNOWINGLY.—The term “knowingly”, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

(8) OPIOID TRAFFICKING.—The term “opioid trafficking” means any illicit activity—

(A) to produce, manufacture, distribute, sell, or knowingly finance or transport—

(i) synthetic opioids, including controlled substances that are synthetic opioids and listed chemicals that are synthetic opioids; or

(ii) active pharmaceutical ingredients or chemicals that are used in the production of controlled substances that are synthetic opioids;

(B) to attempt to carry out an activity described in subparagraph (A); or

(C) to assist, abet, conspire, or collude with other persons to carry out such an activity.

(9) PERSON.—The term “person” means an individual or entity.

(10) UNITED STATES PERSON.—The term “United States person” means—

(A) any citizen or national of the United States;

(B) any alien lawfully admitted for permanent residence in the United States;

(C) any entity organized under the laws of the United States or any jurisdiction within the United States (including a foreign branch of such an entity); or

(D) any person located in the United States.

## Subtitle A—Sanctions With Respect to Foreign Opioid Traffickers

### SEC. 7211. IDENTIFICATION OF FOREIGN OPIOID TRAFFICKERS.

(a) PUBLIC REPORT.—

President.  
21 USC 2311.  
Determination.

(1) IN GENERAL.—The President shall submit to the appropriate congressional committees and leadership, in accordance with subsection (c), a report—

(A) identifying the foreign persons that the President determines are foreign opioid traffickers;

(B) detailing progress the President has made in implementing this subtitle; and

(C) providing an update on cooperative efforts with the governments of Mexico, the People’s Republic of China, and other countries of concern with respect to combating foreign opioid traffickers.

(2) IDENTIFICATION OF ADDITIONAL PERSONS.—If, at any time after submitting a report required by paragraph (1) and before the submission of the next such report, the President determines that a foreign person not identified in the report is a foreign opioid trafficker, the President shall submit to the appropriate congressional committees and leadership an additional report containing the information required by paragraph (1) with respect to the foreign person.

(3) EXCLUSION.—The President shall not be required to include in a report under paragraph (1) or (2) any persons with respect to which the United States has imposed sanctions before the date of the report under this subtitle or any other provision of law with respect to opioid trafficking.

(4) FORM OF REPORT.—

(A) IN GENERAL.—Each report required by paragraph (1) or (2) shall be submitted in unclassified form but may include a classified annex.

(B) AVAILABILITY TO PUBLIC.—The unclassified portion of a report required by paragraph (1) or (2) shall be made available to the public.

(b) CLASSIFIED REPORT.—

(1) IN GENERAL.—The President shall submit to the appropriate congressional committees and leadership, in accordance with subsection (c), a report, in classified form—

(A) describing in detail the status of sanctions imposed under this subtitle, including the personnel and resources directed toward the imposition of such sanctions during the preceding fiscal year;

(B) providing background information with respect to persons newly identified as foreign opioid traffickers and their illicit activities;

(C) describing actions the President intends to undertake or has undertaken to implement this subtitle; and

(D) providing a strategy for identifying additional foreign opioid traffickers.

(2) EFFECT ON OTHER REPORTING REQUIREMENTS.—The report required by paragraph (1) is in addition to, and in no way delimits or restricts, the obligations of the President to keep Congress fully and currently informed pursuant to the provisions of the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(c) SUBMISSION OF REPORTS.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter until the date that is 5 years after such date of enactment, the President shall submit the reports required by subsections (a) and (b) to the appropriate congressional committees and leadership.



**(d) EXCLUSION OF CERTAIN INFORMATION.—**

Determinations.

(1) **INTELLIGENCE.**—Notwithstanding any other provision of this section, a report required by subsection (a) or (b) shall not disclose the identity of any person if the Director of National Intelligence determines that such disclosure could compromise an intelligence operation, activity, source, or method of the United States.

(2) **LAW ENFORCEMENT.**—Notwithstanding any other provision of this section, a report required by subsection (a) or (b) shall not disclose the identity of any person if the Attorney General, in coordination, as appropriate, with the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of the Treasury, the Secretary of State, and the head of any other appropriate Federal law enforcement agency, determines that such disclosure could reasonably be expected—

(A) to compromise the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(B) to jeopardize the integrity or success of an ongoing criminal investigation or prosecution;

(C) to endanger the life or physical safety of any person;

or

(D) to cause substantial harm to physical property.

(3) **NOTIFICATION REQUIRED.**—If the Director of National Intelligence makes a determination under paragraph (1) or the Attorney General makes a determination under paragraph (2), the Director or the Attorney General, as the case may be, shall notify the appropriate congressional committees and leadership of the determination and the reasons for the determination.

(4) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to authorize or compel the disclosure of information determined by the President to be law enforcement information, classified information, national security information, or other information the disclosure of which is prohibited by any other provision of law.

(e) **PROVISION OF INFORMATION REQUIRED FOR REPORTS.**—The Secretary of the Treasury, the Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence shall consult among themselves and provide to the President and the Director of the Office of National Drug Control Policy the appropriate and necessary information to enable the President to submit the reports required by subsection (a).

Consultation.

**SEC. 7212. IMPOSITION OF SANCTIONS.**President.  
21 USC 2312.

The President shall impose five or more of the sanctions described in section 7213 with respect to each foreign person that is an entity, and four or more of such sanctions with respect to each foreign person that is an individual, that—

(1) is identified as a foreign opioid trafficker in a report submitted under section 7211(a); or

(2) the President determines is owned, controlled, directed by, knowingly supplying or sourcing precursors for, or knowingly acting for or on behalf of, such a foreign opioid trafficker.

Determination.

President.  
21 USC 2313.

**SEC. 7213. DESCRIPTION OF SANCTIONS.**

(a) **IN GENERAL.**—The sanctions that may be imposed with respect to a foreign person under section 7212 are the following:

(1) **LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS.**—The United States Government may prohibit any United States financial institution from making loans or providing credits to the foreign person.

(2) **PROHIBITIONS ON FINANCIAL INSTITUTIONS.**—The following prohibitions may be imposed with respect to a foreign person that is a financial institution:

(A) **PROHIBITION ON DESIGNATION AS PRIMARY DEALER.**—Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, the financial institution as a primary dealer in United States Government debt instruments.

(B) **PROHIBITION ON SERVICE AS A REPOSITORY OF GOVERNMENT FUNDS.**—The financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds.

The imposition of either sanction under subparagraph (A) or (B) shall be treated as one sanction for purposes of section 7212, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of that section.

(3) **PROCUREMENT BAN.**—The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from the foreign person.

(4) **FOREIGN EXCHANGE.**—The President may, pursuant to such regulations as the President may prescribe, prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the foreign person has any interest.

(5) **BANKING TRANSACTIONS.**—The President may, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the foreign person.

(6) **PROPERTY TRANSACTIONS.**—The President may, pursuant to such regulations as the President may prescribe, prohibit any person from—

(A) acquiring, holding, withholding, using, transferring, withdrawing, or transporting any property that is subject to the jurisdiction of the United States and with respect to which the foreign person has any interest;

(B) dealing in or exercising any right, power, or privilege with respect to such property; or

(C) conducting any transaction involving such property.

(7) **BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON.**—The President may, pursuant to such regulations or guidelines as the President may prescribe, prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the foreign person.

(8) **EXCLUSION OF CORPORATE OFFICERS.**—The President may direct the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the United

Determination.

States, any alien that the President determines is a corporate officer or principal of, or a shareholder with a controlling interest in, the foreign person.

(9) SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS.—The President may impose on the principal executive officer or officers of the foreign person, or on individuals performing similar functions and with similar authorities as such officer or officers, any of the sanctions described in paragraphs (1) through (8) that are applicable.

(b) PENALTIES.—A person that violates, attempts to violate, conspires to violate, or causes a violation of any regulation, license, or order issued to carry out subsection (a) shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(c) EXCEPTIONS.—

(1) INTELLIGENCE AND LAW ENFORCEMENT ACTIVITIES.—Sanctions under this section shall not apply with respect to—

(A) any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.); or

(B) any authorized intelligence or law enforcement activities of the United States.

(2) EXCEPTION TO COMPLY WITH UNITED NATIONS HEADQUARTERS AGREEMENT.—Sanctions under subsection (a)(8) shall not apply to an alien if admitting the alien into the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force March 19, 1967, or other applicable international obligations.

(d) IMPLEMENTATION.—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this section.

#### SEC. 7214. WAIVERS.

(a) WAIVER FOR STATE-OWNED ENTITIES IN COUNTRIES THAT COOPERATE IN MULTILATERAL ANTI-TRAFFICKING EFFORTS.—

(1) IN GENERAL.—The President may waive for a period of not more than 12 months the application of sanctions under this subtitle with respect to an entity that is owned or controlled, directly or indirectly, by a foreign government or any political subdivision, agency, or instrumentality of a foreign government, if, not less than 15 days before the waiver is to take effect, the President certifies to the appropriate congressional committees and leadership that the foreign government is closely cooperating with the United States in efforts to prevent opioid trafficking.

(2) CERTIFICATION.—The President may certify under paragraph (1) that a foreign government is closely cooperating with the United States in efforts to prevent opioid trafficking if that government is—

President.  
21 USC 2314.

Time period.  
Deadline.  
Certification.

	<p>(A) implementing domestic laws to schedule all fentanyl analogues as controlled substances; and</p> <p>(B) doing two or more of the following:</p> <p>(i) Implementing substantial improvements in regulations involving the chemical and pharmaceutical production and export of illicit opioids.</p> <p>(ii) Implementing substantial improvements in judicial regulations to combat transnational criminal organizations that traffic opioids.</p> <p>(iii) Increasing efforts to prosecute foreign opioid traffickers.</p> <p>(iv) Increasing intelligence sharing and law enforcement cooperation with the United States with respect to opioid trafficking.</p>
Time period. Deadline.	<p>(3) <b>SUBSEQUENT RENEWAL OF WAIVER.</b>—The President may renew a waiver under paragraph (1) for subsequent periods of not more than 12 months each if, not less than 15 days before the renewal is to take effect, the Secretary of State certifies to the appropriate congressional committees and leadership that the government of the country to which the waiver applies has effectively implemented and is effectively enforcing the measures that formed the basis for the certification under paragraph (2).</p>
Determination.	<p>(b) <b>WAIVERS FOR NATIONAL SECURITY AND ACCESS TO PRESCRIPTION MEDICATIONS.</b>—</p> <p>(1) <b>IN GENERAL.</b>—The President may waive the application of sanctions under this subtitle if the President determines that the application of such sanctions would harm—</p> <p>(A) the national security interests of the United States;</p> <p>or</p> <p>(B) subject to paragraph (2), the access of United States persons to prescription medications.</p>
Verification.	<p>(2) <b>MONITORING.</b>—The President shall establish a monitoring program to verify that a person that receives a waiver under paragraph (1)(B) is not trafficking illicit opioids.</p>
Deadline.	<p>(3) <b>NOTIFICATION.</b>—Not later than 15 days after making a determination under paragraph (1), the President shall notify the appropriate congressional committees and leadership of the determination and the reasons for the determination.</p>
Time period. Certification.	<p>(c) <b>HUMANITARIAN WAIVER.</b>—The President may waive, for renewable periods of 180 days, the application of the sanctions under this subtitle if the President certifies to the appropriate congressional committees and leadership that the waiver is necessary for the provision of humanitarian assistance.</p>
21 USC 2315.	<p><b>SEC. 7215. PROCEDURES FOR JUDICIAL REVIEW OF CLASSIFIED INFORMATION.</b></p>
President.	<p>(a) <b>IN GENERAL.</b>—If a finding under this subtitle, or a prohibition, condition, or penalty imposed as a result of any such finding, is based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)) and a court reviews the finding or the imposition of the prohibition, condition, or penalty, the President may submit such information to the court <i>ex parte</i> and <i>in camera</i>.</p> <p>(b) <b>RULE OF CONSTRUCTION.</b>—Nothing in this section shall be construed—</p>

(1) to confer or imply any right to judicial review of any finding under this subtitle, or any prohibition, condition, or penalty imposed as a result of any such finding; or

(2) to limit or restrict any other practice, procedure, right, remedy, or safeguard that—

(A) relates to the protection of classified information; and

(B) is available to the United States in connection with any type of administrative hearing, litigation, or other proceeding.

**SEC. 7216. BRIEFINGS ON IMPLEMENTATION.**

Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter until the date that is 5 years after such date of enactment, the President, acting through the Secretary of State and the Director of National Intelligence, in coordination with the Secretary of the Treasury, shall provide to the appropriate congressional committees and leadership a comprehensive briefing on efforts to implement this subtitle.

Deadlines.  
President.  
Coordination.  
21 USC 2316.

**SEC. 7217. INCLUSION OF ADDITIONAL MATERIAL IN INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that, in order to apply economic and other financial sanctions to foreign traffickers of illicit opioids to protect the national security, foreign policy, and economy of the United States—

(1) the President should instruct the Secretary of State to intensify diplomatic efforts, both in appropriate international fora such as the United Nations, the Group of Seven, the Group of Twenty, and trilaterally and bilaterally with partners of the United States, to combat foreign opioid trafficking, including by working to establish a multilateral sanctions regime with respect to foreign opioid trafficking; and

(2) the Secretary of State, in consultation with the Secretary of the Treasury, should intensify efforts to maintain and strengthen the coalition of countries formed to combat foreign opioid trafficking.

(b) AMENDMENT TO FOREIGN ASSISTANCE ACT OF 1961.—Section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(a)) is amended by adding at the end the following:

“(9)(A) An assessment conducted by the Secretary of State, in consultation with the Secretary of the Treasury and the Director of National Intelligence, of the extent to which any diplomatic efforts described in section 7217(a) of the Fentanyl Sanctions Act have been successful.

“(B) Each assessment required by subparagraph (A) shall include an identification of—

“(i) the countries the governments of which have agreed to undertake measures to apply economic or other financial sanctions to foreign traffickers of illicit opioids and a description of those measures; and

“(ii) the countries the governments of which have not agreed to measures described in clause (i), and, with respect to those countries, other measures the Secretary of State recommends that the United States take to apply economic and other financial sanctions to foreign traffickers of illicit opioids.”.

Assessments.  
Consultation.

## Subtitle B—Commission on Combating Synthetic Opioid Trafficking

### SEC. 7221. COMMISSION ON COMBATING SYNTHETIC OPIOID TRAFFICKING.

#### (a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a commission to develop a consensus on a strategic approach to combating the flow of synthetic opioids into the United States.

(2) DESIGNATION.—The commission established under paragraph (1) shall be known as the “Commission on Combating Synthetic Opioid Trafficking” (in this section referred to as the “Commission”).

#### (b) MEMBERSHIP.—

##### (1) COMPOSITION.—

(A) IN GENERAL.—Subject to subparagraph (B), the Commission shall be composed of the following members:

(i) The Director of the Office of National Drug Control Policy.

(ii) The Administrator of the Drug Enforcement Administration.

(iii) The Secretary of Homeland Security.

(iv) The Secretary of Defense.

(v) The Secretary of the Treasury.

(vi) The Secretary of State.

(vii) The Director of National Intelligence.

(viii) Two members appointed by the majority leader of the Senate, one of whom shall be a Member of the Senate and one of whom shall not be.

(ix) Two members appointed by the minority leader of the Senate, one of whom shall be a Member of the Senate and one of whom shall not be.

(x) Two members appointed by the Speaker of the House of Representatives, one of whom shall be a Member of the House of Representatives and one of whom shall not be.

(xi) Two members appointed by the minority leader of the House of Representatives, one of whom shall be a Member of the House of Representatives and one of whom shall not be.

(B)(i) The members of the Commission who are not Members of Congress and who are appointed under clauses (viii) through (xi) of subparagraph (A) shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

(I) transnational criminal organizations conducting synthetic opioid trafficking;

(II) the production, manufacturing, distribution, sale, or transportation of synthetic opioids; or

(III) relations between—

(aa) the United States; and

(bb) the People’s Republic of China, Mexico, or any other country of concern with respect to trafficking in synthetic opioids.

(ii) An official who appoints members of the Commission may not appoint an individual as a member of the

Commission if the individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(iii)(I) All members of the Commission described in clause (i) shall possess an appropriate security clearance in accordance with applicable provisions of law concerning the handling of classified information.

(II) For the purpose of facilitating the activities of the Commission, the Director of National Intelligence shall expedite to the fullest degree possible the processing of security clearances that are necessary for members of the Commission.

(2) CO-CHAIRS.—

(A) IN GENERAL.—The Commission shall have 2 co-chairs, selected from among the members of the Commission, one of whom shall be a member of the majority party and one of whom shall be a member of the minority party.

(B) SELECTION.—The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives.

President.

(c) DUTIES.—The duties of the Commission are as follows:

(1) To define the core objectives and priorities of the strategic approach described in subsection (a)(1).

(2) To weigh the costs and benefits of various strategic options to combat the flow of synthetic opioids from the People's Republic of China, Mexico, and other countries of concern with respect to trafficking in synthetic opioids.

(3) To evaluate whether the options described in paragraph (2) are exclusive or complementary, the best means for executing such options, and how the United States should incorporate and implement such options within the strategic approach described in subsection (a)(1).

Evaluation.

(4) To review and make determinations on the difficult choices present within such options, among them what norms-based regimes the United States should seek to establish to encourage the effective regulation of dangerous synthetic opioids.

Review.  
Determination.

(5) To report on efforts by actors in the People's Republic of China to subvert United States laws and to supply illicit synthetic opioids to persons in the United States, including up-to-date estimates of the scale of illicit synthetic opioids flows from the People's Republic of China.

Reports.

(6) To report on the deficiencies in the regulation of pharmaceutical and chemical production of controlled substances and export controls with respect to such substances in the People's Republic of China and other countries that allow opioid traffickers to subvert such regulations and controls to traffic illicit opioids into the United States.

Reports.

(7) To report on the scale of contaminated or counterfeit drugs originating from Mexico, the People's Republic of China, India, and other countries of concern with respect to the exportation of contaminated or counterfeit drugs.

Reports.

Reports.

(8) To report on how the United States could work more effectively with subnational and local officials in the People’s Republic of China and other countries to combat the illicit production of synthetic opioids.

(9) In weighing the options for defending the United States against the dangers of trafficking in synthetic opioids, to consider possible structures and authorities that need to be established, revised, or augmented within the Federal Government.

Applicability.

(d) FUNCTIONING OF COMMISSION.—The provisions of subsections (c), (d), (e), (g), (h), (i), and (m) of section 1652 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) shall apply to the Commission to the same extent and in the same manner as such provisions apply to the commission established under that section, except that—

(1) subsection (c)(1) of that section shall be applied and administered by substituting “30 days” for “45 days”;

(2) subsection (g)(4)(A) of that section shall be applied and administered by inserting “and the Attorney General” after “Secretary of Defense”; and

(3) subsections (h)(2)(A) and (i)(1)(A) of that section shall be applied and administered by substituting “level V of the Executive Schedule under section 5316” for “level IV of the Executive Schedule under section 5315”.

(e) TREATMENT OF INFORMATION PROVIDED TO COMMISSION.—

(1) INFORMATION RELATING TO NATIONAL SECURITY.—

(A) RESPONSIBILITY OF DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this section.

(B) ACCESS AFTER TERMINATION OF COMMISSION.—Notwithstanding any other provision of law, after the termination of the Commission under subsection (h), only the members and designated staff of the appropriate congressional committees and leadership, the Director of National Intelligence (and the designees of the Director), and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

(2) INFORMATION PROVIDED BY CONGRESS.—The Commission may obtain information from any Member, committee, or office of Congress, including information related to the national security of the United States, only with the consent of the Member, committee, or office involved and only in accordance with any applicable rules and procedures of the House of Representatives or Senate (as the case may be) governing the provision of such information by Members, committees, and offices of Congress to entities in the executive branch.

Recommendations.

(f) REPORTS.—The Commission shall submit to the appropriate congressional committees and leadership—

(1) not later than 270 days after the date of the enactment of this Act, an initial report on the activities and recommendations of the Commission under this section; and



(2) not later than 270 days after the submission of the initial report under paragraph (1), a final report on the activities and recommendations of the Commission under this section.

(g) **TERMINATION.**—

(1) **IN GENERAL.**—The Commission, and all the authorities of this section, shall terminate at the end of the 120-day period beginning on the date on which the final report required by subsection (f)(2) is submitted to the appropriate congressional committees and leadership.

(2) **WINDING UP OF AFFAIRS.**—The Commission may use the 120-day period described in paragraph (1) for the purposes of concluding its activities, including providing testimony to Congress concerning the final report required by subsection (f)(2) and disseminating the report.

Time period.

## Subtitle C—Other Matters

### **SEC. 7231. DIRECTOR OF NATIONAL INTELLIGENCE PROGRAM ON USE OF INTELLIGENCE RESOURCES IN EFFORTS TO SANCTION FOREIGN OPIOID TRAFFICKERS.**

Consultation.  
21 USC 2331.

(a) **PROGRAM REQUIRED.**—

(1) **IN GENERAL.**—The Director of National Intelligence shall, in consultation with the Director of the Office of National Drug Control Policy, carry out a program to allocate and enhance use of resources of the intelligence community, including intelligence collection and analysis, to assist the Secretary of the Treasury, the Secretary of State, and the Administrator of the Drug Enforcement Administration in efforts to identify and impose sanctions with respect to foreign opioid traffickers under subtitle A.

Analyses.

(2) **FOCUS ON ILLICIT FINANCE.**—To the extent practicable, efforts described in paragraph (1) shall—

(A) take into account specific illicit finance risks related to narcotics trafficking; and

(B) be developed in consultation with the Undersecretary of the Treasury for Terrorism and Financial Crimes, appropriate officials of the Office of Intelligence and Analysis of the Department of the Treasury, the Director of the Financial Crimes Enforcement Network, and appropriate Federal law enforcement agencies.

(b) **REVIEW OF COUNTERNARCOTICS EFFORTS OF THE INTELLIGENCE COMMUNITY.**—The Director of National Intelligence shall, in coordination with the Director of the Office of National Drug Control Policy, carry out a comprehensive review of the current intelligence collection priorities of the intelligence community for counternarcotics purposes in order to identify whether such priorities are appropriate and sufficient in light of the number of lives lost in the United States each year due to use of illegal drugs.

(c) **REPORTS.**—

(1) **QUARTERLY REPORTS ON PROGRAM.**—Not later than 90 days after the date of the enactment of this Act, and every 90 days thereafter, the Director of National Intelligence and the Director of the Office of National Drug Control Policy shall jointly submit to the appropriate congressional committees and leadership a report on the status and accomplishments of the program required by subsection (a) during the 90-day

period ending on the date of the report. The first report under this paragraph shall also include a description of the amount of funds devoted by the intelligence community to the efforts described in subsection (a) during each of fiscal years 2017 and 2018.

(2) REPORT ON REVIEW.—Not later than 120 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Director of the Office of National Drug Control Policy and other relevant agencies, shall submit to the appropriate congressional committees and leadership—

(A) a comprehensive description of the results of the review required by subsection (b); and

(B) an assessment of whether—

(i) the priorities described in that subsection are appropriate and sufficient in light of the number of lives lost in the United States each year due to use of illegal drugs; and

(ii) any changes to such priorities are necessary.

(d) INTELLIGENCE COMMUNITY DEFINED.—In this section, the term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

22 USC 2332.

**SEC. 7232. AUTHORIZATION OF APPROPRIATIONS.**

(a) DEPARTMENT OF THE TREASURY.—There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary for fiscal year 2020 to carry out operations and activities of the Department of the Treasury solely for purposes of carrying out this title.

(b) COMMISSION ON COMBATING SYNTHETIC OPIOID TRAFFICKING.—Of the amount authorized to be appropriated by section 1403 for fiscal year 2020 and available for Drug Interdiction and Counter-Drug Activities, Defense-wide, as specified in the funding table in section 4501, the Secretary of Defense may, notwithstanding section 2215 of title 10, United States Code, transfer \$5,000,000 to the Commission on Combating Synthetic Opioid Trafficking established under section 7221 in order to carry out the duties of the Commission.

(c) SUPPLEMENT NOT SUPPLANT.—Amounts authorized to be appropriated by subsection (a) shall supplement and not supplant other amounts available to carry out operations and activities described in such subsections.

Time period.  
President.

(d) NOTIFICATION REQUIREMENT.—Amounts authorized to be appropriated by subsection (a) may not be obligated until 15 days after the date on which the President notifies the appropriate committees of Congress of the President’s intention to obligate such funds.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on Financial Services, the Committee on Foreign Affairs, the

Permanent Select Committee on Intelligence, the Committee on Oversight and Reform, and the Committee on Appropriations of the House of Representatives.

**SEC. 7233. REGULATORY AUTHORITY.**

Not later than 90 days after the date of the enactment of this Act, the President shall issue such regulations as are necessary to carry out this title, including guidance with respect to what activities are included under the definition of “opioid trafficking” under section 7203(8).

President.  
Deadline.  
21 USC 2333.

**SEC. 7234. TERMINATION.**

The provisions of this title, and any sanctions imposed pursuant to this title, shall terminate on the date that is 7 years after the date of the enactment of this Act.

21 USC 2334.

**SEC. 7235. EXCEPTION RELATING TO IMPORTATION OF GOODS.**

21 USC 2335.

(a) IN GENERAL.—The authorities and requirements to impose sanctions under this title shall not include the authority or a requirement to impose sanctions on the importation of goods.

(b) GOOD DEFINED.—In this section, the term “good” means any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technical data.

## TITLE LXXIII—PFAS

PFAS Act of  
2019.

Sec. 7301. Short title.

Sec. 7302. Definition of Administrator.

### Subtitle A—Drinking Water

Sec. 7311. Monitoring and detection.

Sec. 7312. Drinking water state revolving funds.

### Subtitle B—PFAS Release Disclosure

Sec. 7321. Additions to toxics release inventory.

### Subtitle C—USGS Performance Standard

Sec. 7331. Definitions.

Sec. 7332. Performance standard for the detection of highly fluorinated compounds.

Sec. 7333. Nationwide sampling.

Sec. 7334. Data usage.

Sec. 7335. Collaboration.

### Subtitle D—Emerging Contaminants

Sec. 7341. Definitions.

Sec. 7342. Research and coordination plan for enhanced response on emerging contaminants.

### Subtitle E—Toxic Substances Control Act

Sec. 7351. PFAS data call.

Sec. 7352. Significant new use rule for long-chain PFAS.

### Subtitle F—Other Matters

Sec. 7361. PFAS destruction and disposal guidance.

Sec. 7362. PFAS research and development.

**SEC. 7301. SHORT TITLE.**

15 USC 8901  
note.

This title may be cited as the “PFAS Act of 2019”.

**SEC. 7302. DEFINITION OF ADMINISTRATOR.**

15 USC 8901.

In this title, the term “Administrator” means the Administrator of the Environmental Protection Agency.

## Subtitle A—Drinking Water

15 USC 8911.

### SEC. 7311. MONITORING AND DETECTION.

(a) MONITORING PROGRAM FOR UNREGULATED CONTAMINANTS.—

(1) IN GENERAL.—The Administrator shall include each substance described in paragraph (2) in the fifth publication of the list of unregulated contaminants to be monitored under section 1445(a)(2)(B)(i) of the Safe Drinking Water Act (42 U.S.C. 300j–4(a)(2)(B)(i)).

(2) SUBSTANCES DESCRIBED.—The substances referred to in paragraph (1) are perfluoroalkyl and polyfluoroalkyl substances and classes of perfluoroalkyl and polyfluoroalkyl substances—

(A) for which a method to measure the level in drinking water has been validated by the Administrator; and

(B) that are not subject to a national primary drinking water regulation.

(3) EXCEPTION.—The perfluoroalkyl and polyfluoroalkyl substances and classes of perfluoroalkyl and polyfluoroalkyl substances included in the list of unregulated contaminants to be monitored under section 1445(a)(2)(B)(i) of the Safe Drinking Water Act (42 U.S.C. 300j–4(a)(2)(B)(i)) under paragraph (1) shall not count towards the limit of 30 unregulated contaminants to be monitored by public water systems under that section.

(b) APPLICABILITY.—

(1) IN GENERAL.—The Administrator shall—

(A) require public water systems serving more than 10,000 persons to monitor for the substances described in subsection (a)(2);

(B) subject to paragraph (2) and the availability of appropriations, require public water systems serving not fewer than 3,300 and not more than 10,000 persons to monitor for the substances described in subsection (a)(2); and

(C) subject to paragraph (2) and the availability of appropriations, ensure that only a representative sample of public water systems serving fewer than 3,300 persons are required to monitor for the substances described in subsection (a)(2).

(2) REQUIREMENT.—If the Administrator determines that there is not sufficient laboratory capacity to carry out the monitoring required under subparagraphs (B) and (C) of paragraph (1), the Administrator may waive the monitoring requirements in those subparagraphs.

(3) FUNDS.—The Administrator shall pay the reasonable cost of such testing and laboratory analysis as is necessary to carry out the monitoring required under subparagraphs (B) and (C) of paragraph (1) using—

(A) funds made available pursuant to subsection (a)(2)(H) or subsection (j)(5) of section 1445 of the Safe Drinking Water Act (42 U.S.C. 300j–4); or

(B) any other funds made available for that purpose.

Determination.  
Waiver authority.

**SEC. 7312. DRINKING WATER STATE REVOLVING FUNDS.**

Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) is amended—

(1) in subsection (a)(2), by adding at the end the following:

“(G) EMERGING CONTAMINANTS.—

“(i) IN GENERAL.—Notwithstanding any other provision of law and subject to clause (ii), amounts deposited under subsection (t) in a State loan fund established under this section may only be used to provide grants for the purpose of addressing emerging contaminants, with a focus on perfluoroalkyl and polyfluoroalkyl substances.

“(ii) REQUIREMENTS.—

“(I) SMALL AND DISADVANTAGED COMMUNITIES.—Not less than 25 percent of the amounts described in clause (i) shall be used to provide grants to—

“(aa) disadvantaged communities (as defined in subsection (d)(3)); or

“(bb) public water systems serving fewer than 25,000 persons.

“(II) PRIORITIES.—In selecting the recipient of a grant using amounts described in clause (i), a State shall use the priorities described in subsection (b)(3)(A).

“(iii) NO INCREASED BONDING AUTHORITY.—The amounts deposited in the State loan fund of a State under subsection (t) may not be used as a source of payment of, or security for (directly or indirectly), in whole or in part, any obligation the interest on which is exempt from the tax imposed under chapter 1 of the Internal Revenue Code of 1986.”;

(2) in subsection (m)(1), in the matter preceding subparagraph (A), by striking “this section” and inserting “this section, except for subsections (a)(2)(G) and (t)”;

(3) by adding at the end the following:

“(t) EMERGING CONTAMINANTS.—

“(1) IN GENERAL.—Amounts made available under this subsection shall be allotted to a State as if allotted under subsection (a)(1)(D) as a capitalization grant, for deposit into the State loan fund of the State, for the purposes described in subsection (a)(2)(G).

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$100,000,000 for each of fiscal years 2020 through 2024, to remain available until expended.”.

## Subtitle B—PFAS Release Disclosure

**SEC. 7321. ADDITIONS TO TOXICS RELEASE INVENTORY.**

15 USC 8921.

(a) DEFINITION OF TOXICS RELEASE INVENTORY.—In this section, the term “toxics release inventory” means the list of toxic chemicals subject to the requirements of section 313(c) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(c)).

(b) IMMEDIATE INCLUSION.—

Effective date.

(1) IN GENERAL.—Subject to subsection (e), beginning January 1 of the calendar year following the date of enactment of this Act, the following chemicals shall be deemed to be included in the toxics release inventory:

(A) Perfluorooctanoic acid (commonly referred to as “PFOA”) (Chemical Abstracts Service No. 335-67-1).

(B) The salts associated with the chemical described in subparagraph (A) (Chemical Abstracts Service Nos. 3825-26-1, 335-95-5, and 68141-02-6).

(C) Perfluorooctane sulfonic acid (commonly referred to as “PFOS”) (Chemical Abstracts Service No. 1763-23-1).

(D) The salts associated with the chemical described in subparagraph (C) (Chemical Abstracts Service Nos. 2795-39-3, 29457-72-5, 56773-42-3, 29081-56-9, and 70225-14-8).

(E) A perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances that is—

(i) listed as an active chemical substance in the February 2019 update to the inventory under section 8(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2607(b)(1)); and

(ii) on the date of enactment of this Act, subject to the provisions of—

(I) section 721.9582 of title 40, Code of Federal Regulations; or

(II) section 721.10536 of title 40, Code of Federal Regulations.

(F) Hexafluoropropylene oxide dimer acid (commonly referred to as “GenX”) (Chemical Abstracts Service No. 13252-13-6).

(G) The compound associated with the chemical described in subparagraph (F) identified by Chemical Abstracts Service No. 62037-80-3.

(H) Perfluorononanoic acid (commonly referred to as “PFNA”) (Chemical Abstracts Service No. 375-95-1).

(I) Perfluorohexanesulfonic acid (commonly referred to as “PFHxS”) (Chemical Abstracts Service No. 355-46-4).

(2) THRESHOLD FOR REPORTING.—

(A) IN GENERAL.—Subject to subparagraph (B), the threshold for reporting the chemicals described in paragraph (1) under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023) is 100 pounds.

Deadline.

(B) REVISIONS.—Not later than 5 years after the date of enactment of this Act, the Administrator shall—

Determination.

(i) determine whether revision of the threshold under subparagraph (A) is warranted for any chemical described in paragraph (1); and

(ii) if the Administrator determines a revision to be warranted under clause (i), initiate a revision under section 313(f)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(f)(2)).

(c) INCLUSION FOLLOWING ASSESSMENT.—

(1) IN GENERAL.—

(A) DATE OF INCLUSION.—Subject to subsection (e), notwithstanding section 313 of the Emergency Planning and Community Right-To-Know Act of 1986, a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances not described in subsection (b)(1) shall be deemed to be included in the toxics release inventory beginning January 1 of the calendar year after any of the following dates:

Effective date.

(i) FINAL TOXICITY VALUE.—The date on which the Administrator finalizes a toxicity value for the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances.

(ii) SIGNIFICANT NEW USE RULE.—The date on which the Administrator makes a covered determination for the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances.

(iii) ADDITION TO EXISTING SIGNIFICANT NEW USE RULE.—The date on which the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances is added to a list of substances covered by a covered determination.

(iv) ADDITION AS ACTIVE CHEMICAL SUBSTANCE.—The date on which the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances to which a covered determination applies is—

- (I) added to the list published under paragraph (1) of section 8(b) of the Toxic Substances Control Act and designated as an active chemical substance under paragraph (5)(A) of such section; or
- (II) designated as an active chemical substance on such list under paragraph (5)(B) of such section.

(B) COVERED DETERMINATION.—For purposes of this paragraph, a covered determination is a determination made, by rule, under section 5(a)(2) of the Toxic Substances Control Act that a use of a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances is a significant new use (except such a determination made in connection with a determination described in section 5(a)(3)(B) or section 5(a)(3)(C) of such Act).

(2) THRESHOLD FOR REPORTING.—

(A) IN GENERAL.—Subject to subparagraph (B), notwithstanding subsection (f)(1) of section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023), the threshold for reporting under such section 313 the substances and classes of substances included in the toxics release inventory under paragraph (1) is 100 pounds.

Deadline.

(B) REVISIONS.—Not later than 5 years after the date on which a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances is included in the toxics release inventory under paragraph (1), the Administrator shall—

- (i) determine whether revision of the threshold under subparagraph (A) is warranted for the substance or class of substances; and

Determination.

(ii) if the Administrator determines a revision to be warranted under clause (i), initiate a revision under section 313(f)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(f)(2)).

(d) INCLUSION FOLLOWING DETERMINATION.—

Deadline.

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall determine whether the substances and classes of substances described in paragraph (2) meet any one of the criteria described in section 313(d)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(d)(2)) for inclusion in the toxics release inventory.

(2) SUBSTANCES DESCRIBED.—The substances and classes of substances referred to in paragraph (1) are perfluoroalkyl and polyfluoroalkyl substances and classes of perfluoroalkyl and polyfluoroalkyl substances not described in subsection (b)(1), including—

(A) perfluoro[(2-pentafluoroethoxy-ethoxy)acetic acid] ammonium salt (Chemical Abstracts Service No. 908020-52-0);

(B) 2,3,3,3-tetrafluoro 2-(1,1,2,3,3,3-hexafluoro)-2-(trifluoromethoxy) propanoyl fluoride (Chemical Abstracts Service No. 2479-75-6);

(C) 2,3,3,3-tetrafluoro 2-(1,1,2,3,3,3-hexafluoro)-2-(trifluoromethoxy) propionic acid (Chemical Abstracts Service No. 2479-73-4);

(D) 3H-perfluoro-3-[(3-methoxy-propoxy) propanoic acid] (Chemical Abstracts Service No. 919005-14-4);

(E) the salts associated with the chemical described in subparagraph (D) (Chemical Abstracts Service Nos. 958445-44-8, 1087271-46-2, and NOCAS 892452);

(F) 1-octanesulfonic acid 3,3,4,4,5,5,6,6,7,7,8,8-tridecafluoro-potassium salt (Chemical Abstracts Service No. 59587-38-1);

(G) perfluorobutanesulfonic acid (Chemical Abstracts Service No. 375-73-5);

(H) 1-Butanesulfonic acid, 1,1,2,2,3,3,4,4,4-nonafuoro-potassium salt (Chemical Abstracts Service No. 29420-49-3);

(I) the component associated with the chemical described in subparagraph (H) (Chemical Abstracts Service No. 45187-15-3);

(J) heptafluorobutyric acid (Chemical Abstracts Service No. 375-22-4);

(K) perfluorohexanoic acid (Chemical Abstracts Service No. 307-24-4);

(L) the compound associated with the chemical described in subsection (b)(1)(F) identified by Chemical Abstracts Service No. 2062-98-8;

(M) perfluoroheptanoic acid (commonly referred to as “PFHpA”) (Chemical Abstracts Service No. 375-85-9);

(N) each perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances for which a method to measure levels in drinking water has been validated by the Administrator; and



(O) a perfluoroalkyl and polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances other than the chemicals described in subparagraphs (A) through (N) that is used to manufacture fluorinated polymers, as determined by the Administrator.

(3) ADDITION TO TOXICS RELEASE INVENTORY.—Subject to subsection (e), if the Administrator determines under paragraph (1) that a substance or a class of substances described in paragraph (2) meets any one of the criteria described in section 313(d)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(d)(2)), the Administrator shall revise the toxics release inventory in accordance with such section 313(d) to include that substance or class of substances not later than 2 years after the date on which the Administrator makes the determination. Deadline.

(e) CONFIDENTIAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Prior to including on the toxics release inventory pursuant to subsection (b)(1), (c)(1), or (d)(3) any perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances the chemical identity of which is subject to a claim of a person of protection from disclosure under subsection (a) of section 552 of title 5, United States Code, pursuant to subsection (b)(4) of that section, the Administrator shall—

(A) review any such claim of protection from disclosure; Review.  
and

(B) require that person to reassert and substantiate or resubstantiate that claim in accordance with section 14(f) of the Toxic Substances Control Act (15 U.S.C. 2613(f)).

(2) NONDISCLOSURE OF PROTECTION INFORMATION.—If the Administrator determines that the chemical identity of a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances qualifies for protection from disclosure pursuant to paragraph (1), the Administrator shall include the substance or class of substances, as applicable, on the toxics release inventory in a manner that does not disclose the protected information. Determination.

(f) EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986.—Section 313(c) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(c)) is amended—

(1) by striking the period at the end and inserting “; and”;

(2) by striking “are those chemicals” and inserting the following: “are—

“(1) the chemicals”; and

(3) by adding at the end the following:

“(2) the chemicals included on such list under subsections (b)(1), (c)(1), and (d)(3) of section 7321 of the PFAS Act of 2019.”.

## Subtitle C—USGS Performance Standard

### SEC. 7331. DEFINITIONS.

15 USC 8931.

In this subtitle:

(1) DIRECTOR.—The term “Director” means the Director of the United States Geological Survey.

(2) HIGHLY FLUORINATED COMPOUND.—

(A) IN GENERAL.—The term “highly fluorinated compound” means a perfluoroalkyl substance or a polyfluoroalkyl substance with at least one fully fluorinated carbon atom.

(B) DEFINITIONS.—In this paragraph:

(i) FULLY FLUORINATED CARBON ATOM.—The term “fully fluorinated carbon atom” means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.

(ii) PERFLUOROALKYL SUBSTANCE.—The term “perfluoroalkyl substance” means a chemical of which all of the carbon atoms are fully fluorinated carbon atoms.

(iii) POLYFLUOROALKYL SUBSTANCE.—The term “polyfluoroalkyl substance” means a chemical containing at least one fully fluorinated carbon atom and at least one carbon atom that is not a fully fluorinated carbon atom.

15 USC 8932.

**SEC. 7332. PERFORMANCE STANDARD FOR THE DETECTION OF HIGHLY FLUORINATED COMPOUNDS.**

Consultation.

(a) IN GENERAL.—The Director, in consultation with the Administrator, shall establish a performance standard for the detection of highly fluorinated compounds.

(b) EMPHASIS.—

(1) IN GENERAL.—In developing the performance standard under subsection (a), the Director shall emphasize the ability to detect as many highly fluorinated compounds present in the environment as possible using validated analytical methods that—

(A) achieve limits of quantitation (as defined in the document of the United States Geological Survey entitled “Analytical Methods for Chemical Analysis of Geologic and Other Materials, U.S. Geological Survey” and dated 2002); and

(B) are as sensitive as is feasible and practicable.

(2) REQUIREMENT.—In developing the performance standard under subsection (a), the Director may—

(A) develop quality assurance and quality control measures to ensure accurate sampling and testing;

(B) develop a training program with respect to the appropriate method of sample collection and analysis of highly fluorinated compounds; and

Coordination.

(C) coordinate as necessary with the Administrator, including, if appropriate, to develop methods to detect individual and different highly fluorinated compounds simultaneously.

15 USC 8933.

**SEC. 7333. NATIONWIDE SAMPLING.**

(a) IN GENERAL.—The Director shall carry out a nationwide sampling to determine the concentration of highly fluorinated compounds in estuaries, lakes, streams, springs, wells, wetlands, rivers, aquifers, and soil using the performance standard developed under section 7332(a).

(b) **REQUIREMENTS.**—In carrying out the sampling under subsection (a), the Director shall—

(1) first carry out the sampling at sources of drinking water near locations with known or suspected releases of highly fluorinated compounds;

(2) when carrying out sampling of sources of drinking water under paragraph (1), carry out the sampling prior to and, at the request of the Administrator, after any treatment of the water;

(3) survey for ecological exposure to highly fluorinated compounds, with a priority in determining direct human exposure through drinking water; and

(4) consult with—

(A) States to determine areas that are a priority for sampling; and

(B) the Administrator—

(i) to enhance coverage of the sampling; and

(ii) to avoid unnecessary duplication.

(c) **REPORT.**—Not later than 120 days after the completion of the sampling under subsection (a), the Director shall prepare a report describing the results of the sampling and submit the report to—

(1) the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate;

(2) the Committee on Energy and Commerce and the Committee on Natural Resources of the House of Representatives;

(3) the Senators of each State in which the Director carried out the sampling; and

(4) each Member of the House of Representatives who represents a district in which the Director carried out the sampling.

Consultation.  
Determination.

**SEC. 7334. DATA USAGE.**

15 USC 8934.

(a) **IN GENERAL.**—The Director shall provide the sampling data collected under section 7333 to—

(1) the Administrator; and

(2) other Federal and State regulatory agencies on request.

(b) **USAGE.**—The sampling data provided under subsection (a) shall be used to inform and enhance assessments of exposure, likely health and environmental impacts, and remediation priorities.

**SEC. 7335. COLLABORATION.**

15 USC 8935.

In carrying out this subtitle, the Director shall collaborate with—

(1) appropriate Federal and State regulators;

(2) institutions of higher education;

(3) research institutions; and

(4) other expert stakeholders.

## Subtitle D—Emerging Contaminants

**SEC. 7341. DEFINITIONS.**

15 USC 8951.

In this subtitle:

(1) **CONTAMINANT.**—The term “contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

(2) **CONTAMINANT OF EMERGING CONCERN; EMERGING CONTAMINANT.**—The terms “contaminant of emerging concern” and “emerging contaminant” mean a contaminant—

(A) for which the Administrator has not promulgated a national primary drinking water regulation; and

(B) that may have an adverse effect on the health of individuals.

(3) **FEDERAL RESEARCH STRATEGY.**—The term “Federal research strategy” means the coordinated cross-agency plan for addressing critical research gaps related to detecting, assessing exposure to, and identifying the adverse health effects of emerging contaminants in drinking water developed by the Office of Science and Technology Policy in response to the report of the Committee on Appropriations of the Senate accompanying S. 1662 of the 115th Congress (S. Rept. 115–139).

(4) **TECHNICAL ASSISTANCE AND SUPPORT.**—The term “technical assistance and support” includes—

(A) assistance with—

(i) identifying appropriate analytical methods for the detection of contaminants;

(ii) understanding the strengths and limitations of the analytical methods described in clause (i);

(iii) troubleshooting the analytical methods described in clause (i);

(B) providing advice on laboratory certification program elements;

(C) interpreting sample analysis results;

(D) providing training with respect to proper analytical techniques;

(E) identifying appropriate technology for the treatment of contaminants; and

(F) analyzing samples, if—

(i) the analysis cannot be otherwise obtained in a practicable manner otherwise; and

(ii) the capability and capacity to perform the analysis is available at a Federal facility.

(5) **WORKING GROUP.**—The term “Working Group” means the Working Group established under section 7342(b)(1).

15 USC 8952.

**SEC. 7342. RESEARCH AND COORDINATION PLAN FOR ENHANCED RESPONSE ON EMERGING CONTAMINANTS.**

(a) **IN GENERAL.**—The Administrator shall—

Review.

(1) review Federal efforts—

(A) to identify, monitor, and assist in the development of treatment methods for emerging contaminants; and

(B) to assist States in responding to the human health risks posed by contaminants of emerging concern; and

(2) in collaboration with owners and operators of public water systems, States, and other interested stakeholders, establish a strategic plan for improving the Federal efforts referred to in paragraph (1).

(b) **INTERAGENCY WORKING GROUP ON EMERGING CONTAMINANTS.**—

Deadline.  
Establishment.  
Analysis.

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Administrator and the Secretary of Health and Human Services shall jointly establish a Working Group to coordinate the activities of the Federal Government

to identify and analyze the public health effects of drinking water contaminants of emerging concern.

(2) MEMBERSHIP.—The Working Group shall include representatives of the following:

(A) The Environmental Protection Agency, appointed by the Administrator.

(B) The following agencies, appointed by the Secretary of Health and Human Services:

(i) The National Institutes of Health.

(ii) The Centers for Disease Control and Prevention.

(iii) The Agency for Toxic Substances and Disease Registry.

(C) The United States Geological Survey, appointed by the Secretary of the Interior.

(D) Any other Federal agency the assistance of which the Administrator determines to be necessary to carry out this subsection, appointed by the head of the respective agency.

Determination.

(3) EXISTING WORKING GROUP.—The Administrator may expand or modify the duties of an existing working group to perform the duties of the Working Group under this subsection.

(c) NATIONAL EMERGING CONTAMINANT RESEARCH INITIATIVE.—

(1) FEDERAL RESEARCH STRATEGY.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy (referred to in this subsection as the “Director”) shall coordinate with the heads of the agencies described in subparagraph (C) to establish a research initiative, to be known as the “National Emerging Contaminant Research Initiative”, that shall—

Deadline.  
Coordination.

(i) use the Federal research strategy to improve the identification, analysis, monitoring, and treatment methods of contaminants of emerging concern; and

(ii) develop any necessary program, policy, or budget to support the implementation of the Federal research strategy, including mechanisms for joint agency review of research proposals, for interagency cofunding of research activities, and for information sharing across agencies.

(B) RESEARCH ON EMERGING CONTAMINANTS.—In carrying out subparagraph (A), the Director shall—

(i) take into consideration consensus conclusions from peer-reviewed, pertinent research on emerging contaminants; and

(ii) in consultation with the Administrator, identify priority emerging contaminants for research emphasis.

Consultation.

(C) FEDERAL PARTICIPATION.—The agencies referred to in subparagraph (A) include—

(i) the National Science Foundation;

(ii) the National Institutes of Health;

(iii) the Environmental Protection Agency;

(iv) the National Institute of Standards and Technology;

(v) the United States Geological Survey; and

- (vi) any other Federal agency that contributes to research in water quality, environmental exposures, and public health, as determined by the Director.
- Consultation. (D) PARTICIPATION FROM ADDITIONAL ENTITIES.—In carrying out subparagraph (A), the Director shall consult with nongovernmental organizations, State and local governments, and science and research institutions determined by the Director to have scientific or material interest in the National Emerging Contaminant Research Initiative.
- Deadline. (2) IMPLEMENTATION OF RESEARCH RECOMMENDATIONS.—
- (A) IN GENERAL.—Not later than 1 year after the date on which the Director and heads of the agencies described in paragraph (1)(C) establish the National Emerging Contaminant Research Initiative under paragraph (1)(A), the head of each agency described in paragraph (1)(C) shall—
- (i) issue a solicitation for research proposals consistent with the Federal research strategy and that agency’s mission; and
- Grants. (ii) make grants to applicants that submit research proposals consistent with the Federal research strategy and in accordance with subparagraph (B).
- (B) SELECTION OF RESEARCH PROPOSALS.—The head of each agency described in paragraph (1)(C) shall select research proposals to receive grants under this paragraph on the basis of merit, using criteria identified by the head of each such agency, including the likelihood that the proposed research will result in significant progress toward achieving the objectives identified in the Federal research strategy.
- (C) ELIGIBLE ENTITIES.—Any entity or group of 2 or more entities may submit to the head of each agency described in paragraph (1)(C) a research proposal in response to the solicitation for research proposals described in subparagraph (A)(i), including, consistent with that agency’s grant policies—
- (i) State and local agencies;
- (ii) public institutions, including public institutions of higher education;
- (iii) private corporations; and
- (iv) nonprofit organizations.
- (d) FEDERAL TECHNICAL ASSISTANCE AND SUPPORT FOR STATES.—
- (1) STUDY.—
- Deadline. (A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall conduct a study on actions the Administrator can take to increase technical assistance and support for States with respect to emerging contaminants in drinking water samples.
- (B) CONTENTS OF STUDY.—In carrying out the study described in subparagraph (A), the Administrator shall identify—
- (i) methods and effective treatment options to increase technical assistance and support with respect

to emerging contaminants to States, including identifying opportunities for States to improve communication with various audiences about the risks associated with emerging contaminants;

(ii) means to facilitate access to qualified contract testing laboratory facilities that conduct analyses for emerging contaminants; and

(iii) actions to be carried out at existing Federal laboratory facilities, including the research facilities of the Administrator, to provide technical assistance and support for States that require testing facilities for emerging contaminants.

(C) AVAILABILITY OF ANALYTICAL RESOURCES.—In carrying out the study described in subparagraph (A), the Administrator shall consider—

(i) the availability of—

(I) Federal and non-Federal laboratory capacity; and

(II) validated methods to detect and analyze contaminants; and

(ii) other factors determined to be appropriate by the Administrator.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Administrator shall submit to Congress a report describing the results of the study described in paragraph (1).

(3) PROGRAM TO PROVIDE FEDERAL ASSISTANCE TO STATES.—

Deadline.

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, based on the findings in the report described in paragraph (2), the Administrator shall develop a program to provide technical assistance and support to eligible States for the testing and analysis of emerging contaminants.

(B) APPLICATION.—

(i) IN GENERAL.—To be eligible for technical assistance and support under this paragraph, a State shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

(ii) CRITERIA.—The Administrator shall evaluate an application for technical assistance and support under this paragraph on the basis of merit using criteria identified by the Administrator, including—

Evaluation.

(I) the laboratory facilities available to the State;

(II) the availability and applicability of existing analytical methodologies;

(III) the potency and severity of the emerging contaminant, if known; and

(IV) the prevalence and magnitude of the emerging contaminant.

(iii) PRIORITIZATION.—In selecting States to receive technical assistance and support under this paragraph, the Administrator—

(I) shall give priority to States with affected areas primarily in financially distressed communities;

Waiver authority.

(II) may—

(aa) waive the application process in an emergency situation; and

(bb) require an abbreviated application process for the continuation of work specified in a previously approved application that continues to meet the criteria described in clause (ii); and

(III) shall consider the relative expertise and availability of—

(aa) Federal and non-Federal laboratory capacity available to the State;

(bb) analytical resources available to the State; and

(cc) other types of technical assistance available to the State.

(C) DATABASE OF AVAILABLE RESOURCES.—The Administrator shall establish and maintain a database of resources available through the program developed under subparagraph (A) to assist States with testing for emerging contaminants that—

(i) is—

(I) available to States and stakeholder groups determined by the Administrator to have scientific or material interest in emerging contaminants, including—

(aa) drinking water and wastewater utilities;

(bb) laboratories;

(cc) Federal and State emergency responders;

(dd) State primacy agencies;

(ee) public health agencies; and

(ff) water associations;

(II) searchable; and

(III) accessible through the website of the Administrator; and

(ii) includes a description of—

(I) qualified contract testing laboratory facilities that conduct analyses for emerging contaminants; and

(II) the resources available in Federal laboratory facilities to test for emerging contaminants.

(D) WATER CONTAMINANT INFORMATION TOOL.—The Administrator shall integrate the database established under subparagraph (C) into the Water Contaminant Information Tool of the Environmental Protection Agency.

(4) FUNDING.—Of the amounts available to the Administrator, the Administrator may use not more than \$15,000,000 in a fiscal year to carry out this subsection.

(e) REPORT.—Not less frequently than once every 2 years until 2029, the Administrator shall submit to Congress a report that describes the progress made in carrying out this subtitle.

(f) EFFECT.—Nothing in this section modifies any obligation of a State, local government, or Indian Tribe with respect to treatment methods for, or testing or monitoring of, drinking water.



## Subtitle E—Toxic Substances Control Act

### SEC. 7351. PFAS DATA CALL.

Section 8(a) of the Toxic Substances Control Act (15 U.S.C. 2607(a)) is amended by adding at the end the following:

“(7) PFAS DATA.—Not later than January 1, 2023, the Administrator shall promulgate a rule in accordance with this subsection requiring each person who has manufactured a chemical substance that is a perfluoroalkyl or polyfluoroalkyl substance in any year since January 1, 2011, to submit to the Administrator a report that includes, for each year since January 1, 2011, the information described in subparagraphs (A) through (G) of paragraph (2).”.

Regulations.  
Reports.

### SEC. 7352. SIGNIFICANT NEW USE RULE FOR LONG-CHAIN PFAS.

Not later than June 22, 2020, the Administrator shall take final action on the proposed rule entitled “Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule” (80 Fed. Reg. 2885 (January 21, 2015)).

Deadline.

## Subtitle F—Other Matters

### SEC. 7361. PFAS DESTRUCTION AND DISPOSAL GUIDANCE.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall publish interim guidance on the destruction and disposal of perfluoroalkyl and polyfluoroalkyl substances and materials containing perfluoroalkyl and polyfluoroalkyl substances, including—

- (1) aqueous film-forming foam;
- (2) soil and biosolids;
- (3) textiles, other than consumer goods, treated with perfluoroalkyl and polyfluoroalkyl substances;
- (4) spent filters, membranes, resins, granular carbon, and other waste from water treatment;
- (5) landfill leachate containing perfluoroalkyl and polyfluoroalkyl substances; and
- (6) solid, liquid, or gas waste streams containing perfluoroalkyl and polyfluoroalkyl substances from facilities manufacturing or using perfluoroalkyl and polyfluoroalkyl substances.

(b) CONSIDERATIONS; INCLUSIONS.—The interim guidance under subsection (a) shall—

- (1) take into consideration—
  - (A) the potential for releases of perfluoroalkyl and polyfluoroalkyl substances during destruction or disposal, including through volatilization, air dispersion, or leachate; and
  - (B) potentially vulnerable populations living near likely destruction or disposal sites; and
- (2) provide guidance on testing and monitoring air, effluent, and soil near potential destruction or disposal sites for releases described in paragraph (1)(A).

(c) REVISIONS.—The Administrator shall publish revisions to the interim guidance under subsection (a) as the Administrator

Publications.  
15 USC 8961.  
Deadline.

Time period.

determines to be appropriate, but not less frequently than once every 3 years.

15 USC 8962.

**SEC. 7362. PFAS RESEARCH AND DEVELOPMENT.**

(a) **IN GENERAL.**—The Administrator, acting through the Assistant Administrator for the Office of Research and Development, shall—

Examination.

(1)(A) further examine the effects of perfluoroalkyl and polyfluoroalkyl substances on human health and the environment; and

Public information.

(B) make publicly available information relating to the findings under subparagraph (A);

(2) develop a process for prioritizing which perfluoroalkyl and polyfluoroalkyl substances, or classes of perfluoroalkyl and polyfluoroalkyl substances, should be subject to additional research efforts that is based on—

(A) the potential for human exposure to the substances or classes of substances;

(B) the potential toxicity of the substances or classes of substances; and

(C) information available about the substances or classes of substances;

(3) develop new tools to characterize and identify perfluoroalkyl and polyfluoroalkyl substances in the environment, including in drinking water, wastewater, surface water, groundwater, solids, and the air;

Evaluation.

(4) evaluate approaches for the remediation of contamination by perfluoroalkyl and polyfluoroalkyl substances in the environment; and

(5) develop and implement new tools and materials to communicate with the public about perfluoroalkyl and polyfluoroalkyl substances.

(b) **FUNDING.**—There is authorized to be appropriated to the Administrator to carry out this section \$15,000,000 for each of fiscal years 2020 through 2024.

Caesar Syria  
Civilian  
Protection Act  
of 2019.  
22 USC 8791  
note.

## **TITLE LXXIV—CAESAR SYRIA CIVILIAN PROTECTION ACT OF 2019**

Sec. 7401. Short title.

Sec. 7402. Statement of policy.

### **Subtitle A—Additional Actions in Connection With the National Emergency With Respect to Syria**

Sec. 7411. Measures with respect to Central Bank of Syria.

Sec. 7412. Sanctions with respect to foreign persons that engage in certain transactions.

Sec. 7413. Strategy relating to areas of Syria in which civilians are subject to forced displacement.

### **Subtitle B—Assistance for the People of Syria**

Sec. 7421. Sense of Congress.

Sec. 7422. Briefing on monitoring and evaluating of ongoing assistance programs in Syria and to the Syrian people.

Sec. 7423. Assessment of potential methods to enhance the protection of civilians.

Sec. 7424. Assistance to support entities taking actions relating to gathering evidence for investigations into war crimes or crimes against humanity in Syria since March 2011.

Sec. 7425. Codification of certain services in support of nongovernmental organizations' activities authorized.

Sec. 7426. Briefing on strategy to facilitate humanitarian assistance.

Subtitle C—General Provisions

Sec. 7431. Suspension of sanctions.

Sec. 7432. Waivers and exemptions.

Sec. 7433. Implementation and regulatory authorities.

Sec. 7434. Exception relating to importation of goods.

Sec. 7435. Cost limitation.

Sec. 7436. Rule of construction.

Sec. 7437. Prohibition on construction of provisions of this title as an authorization for use of military force.

Sec. 7438. Sunset.

**SEC. 7401. SHORT TITLE.**

This title may be cited as the “Caesar Syria Civilian Protection Act of 2019”.

**SEC. 7402. STATEMENT OF POLICY.**

It is the policy of the United States that diplomatic and coercive economic means should be utilized to compel the government of Bashar al-Assad to halt its murderous attacks on the Syrian people and to support a transition to a government in Syria that respects the rule of law, human rights, and peaceful co-existence with its neighbors.

## Subtitle A—Additional Actions in Connection With the National Emergency With Respect to Syria

**SEC. 7411. MEASURES WITH RESPECT TO CENTRAL BANK OF SYRIA.**

Determinations.

(a) DETERMINATION REGARDING CENTRAL BANK OF SYRIA.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall determine, under section 5318A of title 31, United States Code, whether reasonable grounds exist for concluding that the Central Bank of Syria is a financial institution of primary money laundering concern.

Deadline.

(b) ENHANCED DUE DILIGENCE AND REPORTING REQUIREMENTS.—If the Secretary of the Treasury determines under subsection (a) that reasonable grounds exist for concluding that the Central Bank of Syria is a financial institution of primary money laundering concern, the Secretary, in consultation with the Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), shall impose one or more of the special measures described in section 5318A(b) of title 31, United States Code, with respect to the Central Bank of Syria.

Consultation.

(c) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 90 days after making a determination under subsection (a) with respect to whether the Central Bank of Syria is a financial institution of primary money laundering concern, the Secretary of the Treasury shall submit to the appropriate congressional committees a report that includes the reasons for the determination.

(2) FORM.—A report required by paragraph (1) shall be submitted in unclassified form but may include a classified annex.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**SEC. 7412. SANCTIONS WITH RESPECT TO FOREIGN PERSONS THAT ENGAGE IN CERTAIN TRANSACTIONS.**

(a) IMPOSITION OF SANCTIONS.—

Effective date.  
President.  
Determination.

(1) IN GENERAL.—On and after the date that is 180 days after the date of the enactment of this Act, the President shall impose the sanctions described in subsection (b) with respect to a foreign person if the President determines that the foreign person, on or after such date of enactment, knowingly engages in an activity described in paragraph (2).

(2) ACTIVITIES DESCRIBED.—A foreign person engages in an activity described in this paragraph if the foreign person—

(A) knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with—

(i) the Government of Syria (including any entity owned or controlled by the Government of Syria) or a senior political figure of the Government of Syria;

(ii) a foreign person that is a military contractor, mercenary, or a paramilitary force knowingly operating in a military capacity inside Syria for or on behalf of the Government of Syria, the Government of the Russian Federation, or the Government of Iran; or

(iii) a foreign person subject to sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) with respect to Syria or any other provision of law that imposes sanctions with respect to Syria;

(B) knowingly sells or provides significant goods, services, technology, information, or other support that significantly facilitates the maintenance or expansion of the Government of Syria's domestic production of natural gas, petroleum, or petroleum products;

(C) knowingly sells or provides aircraft or spare aircraft parts that are used for military purposes in Syria for or on behalf of the Government of Syria to any foreign person operating in an area directly or indirectly controlled by the Government of Syria or foreign forces associated with the Government of Syria;

(D) knowingly provides significant goods or services associated with the operation of aircraft that are used for military purposes in Syria for or on behalf of the Government of Syria to any foreign person operating in an area described in subparagraph (C); or

(E) knowingly, directly or indirectly, provides significant construction or engineering services to the Government of Syria.

(3) SENSE OF CONGRESS.—It is the sense of Congress that, in implementing this section, the President should consider financial support under paragraph (2)(A) to include the provision of loans, credits, or export credits.

## (b) SANCTIONS DESCRIBED.—

(1) IN GENERAL.—The sanctions to be imposed with respect to a foreign person described in subsection (a) are the following:

(A) BLOCKING OF PROPERTY.—The President shall exercise all of the powers granted to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of the foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

President.

(B) INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE.—

(i) VISAS, ADMISSION, OR PAROLE.—An alien described in subsection (a) is—

- (I) inadmissible to the United States;
- (II) ineligible to receive a visa or other documentation to enter the United States; and
- (III) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(ii) CURRENT VISAS REVOKED.—

(I) IN GENERAL.—An alien described in subsection (a) is subject to revocation of any visa or other entry documentation regardless of when the visa or other entry documentation is or was issued.

(II) IMMEDIATE EFFECT.—A revocation under subclause (I) shall—

- (aa) take effect immediately; and
- (bb) automatically cancel any other valid visa or entry documentation that is in the alien's possession.

(2) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of regulations promulgated under section 7433(b) to carry out paragraph (1)(A) to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.

Applicability.

(3) EXCEPTIONS.—Sanctions under paragraph (1)(B) shall not apply with respect to an alien if admitting or paroling the alien into the United States is necessary—

(A) to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations; or

(B) to carry out or assist law enforcement activity in the United States.

**SEC. 7413. STRATEGY RELATING TO AREAS OF SYRIA IN WHICH CIVILIANS ARE SUBJECT TO FORCED DISPLACEMENT.**

Deadline.  
President.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall—

- (1) identify the areas described in subsection (b); and
- (2) submit to the appropriate congressional committees the strategy described in subsection (c).

President.  
Determination.

(b) AREAS DESCRIBED.—The areas described in this subsection are areas in Syria that the President determines—

- (1) are under the control of—
  - (A) the Government of Syria;
  - (B) the Government of the Russian Federation;
  - (C) the Government of Iran; or
  - (D) a foreign person described in section 7412(a)(2)(A)(ii); and
- (2) are areas in which civilians have been subject to forced displacement by—

- (A) a government specified in subparagraph (A), (B), or (C) of paragraph (1); or
- (B) a foreign person described in section 7412(a)(2)(A)(ii).

(c) STRATEGY DESCRIBED.—The strategy described in this subsection is a strategy to deter foreign persons from entering into contracts related to reconstruction in the areas described in subsection (b) for or on behalf of—

- (1) a government specified in subparagraph (A), (B), or (C) of subsection (b)(1); or
- (2) a foreign person described in section 7412(a)(2)(A)(ii).

(d) FORM.—The strategy required by subsection (a)(2) shall be submitted in unclassified form but may include a classified annex.

(e) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

- (1) the Committee on Foreign Affairs of the House of Representatives; and
- (2) the Committee on Foreign Relations of the Senate.

## Subtitle B—Assistance for the People of Syria

**SEC. 7421. SENSE OF CONGRESS.**

It is the sense of Congress that it is in the interests of the United States to continue to provide assistance to the people of Syria in order to promote peace, stability, and development, including through multilateral organizations.

**SEC. 7422. BRIEFING ON MONITORING AND EVALUATING OF ONGOING ASSISTANCE PROGRAMS IN SYRIA AND TO THE SYRIAN PEOPLE.**

Deadline.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State and the Administrator of the United States Agency for International Development shall brief the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the monitoring and evaluation of ongoing assistance programs

in Syria and for the Syrian people, including assistance provided through multilateral organizations.

(b) **MATTERS TO BE INCLUDED.**—The briefing required by subsection (a) shall include a description of—

(1) the specific project monitoring and evaluation efforts, including measurable goals and performance metrics for assistance in Syria;

(2) the memoranda of understanding entered into by the Department of State, the United States Agency for International Development, and their respective Inspectors General, and the multilateral organizations through which United States assistance will be delivered that formalize requirements for the sharing of information between such entities for the conduct of audits, investigations, and evaluations; and

(3) the major challenges to monitoring and evaluating programs described in subsection (a).

**SEC. 7423. ASSESSMENT OF POTENTIAL METHODS TO ENHANCE THE PROTECTION OF CIVILIANS.**

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the President shall brief the appropriate congressional committees on the potential effectiveness, risks, and operational requirements of military and non-military means to enhance the protection of civilians inside Syria, especially civilians who are in besieged areas, trapped at borders, or internally displaced.

Deadline.  
President.  
Briefing.

(b) **CONSULTATION.**—The briefing required by subsection (a) shall be informed by consultations with the Department of State, the United States Agency for International Development, the Department of Defense, and international and local humanitarian aid organizations operating in Syria.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Affairs and the Committee on Armed Services of the House of Representatives; and

(2) the Committee on Foreign Relations and the Committee on Armed Services of the Senate.

**SEC. 7424. ASSISTANCE TO SUPPORT ENTITIES TAKING ACTIONS RELATING TO GATHERING EVIDENCE FOR INVESTIGATIONS INTO WAR CRIMES OR CRIMES AGAINST HUMANITY IN SYRIA SINCE MARCH 2011.**

(a) **IN GENERAL.**—Except as provided in subsection (b), the Secretary of State, after consultation with the Attorney General and the heads of other appropriate Federal agencies, is authorized, consistent with the national interest, to provide assistance to support entities that are conducting criminal investigations, supporting prosecutions, or collecting evidence and preserving the chain of custody for such evidence for eventual prosecution, against those who have committed war crimes or crimes against humanity in Syria, including the aiding and abetting of such crimes by foreign governments and organizations supporting the Government of Syria, since March 2011.

Consultation.

(b) **LIMITATION.**—No assistance may be provided under subsection (a) while President Bashar al-Assad remains in power—

(1) to build the investigative or judicial capacities of the Government of Syria; or

Deadline. (2) to support prosecutions in the domestic courts in Syria.  
 (c) BRIEFING.—Not later than one year after the date of the enactment of this Act, the Secretary of State shall brief the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on assistance provided under subsection (a).

**SEC. 7425. CODIFICATION OF CERTAIN SERVICES IN SUPPORT OF NON-GOVERNMENTAL ORGANIZATIONS' ACTIVITIES AUTHORIZED.**

(a) IN GENERAL.—Except as provided in subsection (b), section 542.516 of title 31, Code of Federal Regulations (relating to certain services in support of nongovernmental organizations' activities authorized), as in effect on the day before the date of the enactment of this Act, shall—

(1) remain in effect on and after such date of enactment; and

(2) in the case of a nongovernmental organization that is authorized to export or reexport services to Syria under such section on the day before such date of enactment, apply to such organization on and after such date of enactment to the same extent and in the same manner as such section applied to such organization on the day before such date of enactment.

(b) EXCEPTION.—

(1) IN GENERAL.—Section 542.516 of title 31, Code of Federal Regulations, as codified under subsection (a), shall not apply with respect to a foreign person that has been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), or otherwise designated as a terrorist organization, by the Secretary of State, in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security.

Applicability.  
Federal Register,  
publication.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to a foreign person on and after the date on which the designation of that person as a terrorist organization is published in the Federal Register.

President. **SEC. 7426. BRIEFING ON STRATEGY TO FACILITATE HUMANITARIAN ASSISTANCE.**

Deadline. (a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall brief the appropriate congressional committees on the strategy of the President to help facilitate the ability of humanitarian organizations to access financial services to help facilitate the safe and timely delivery of assistance to communities in need in Syria.

(b) CONSIDERATION OF DATA FROM OTHER COUNTRIES AND NON-GOVERNMENTAL ORGANIZATIONS.—In preparing the strategy required by subsection (a), the President shall consider credible data already obtained by other countries and nongovernmental organizations, including organizations operating in Syria.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(2) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.



## Subtitle C—General Provisions

### SEC. 7431. SUSPENSION OF SANCTIONS.

(a) IN GENERAL.—The President may suspend in whole or in part the imposition of sanctions otherwise required under this Act or the imposition of sanctions required by any amendment made by this title for renewable periods not to exceed 180 days if the President determines that the following criteria have been met in Syria:

President.

Time period.  
Determination.

(1) The air space over Syria is no longer being utilized by the Government of Syria or the Government of the Russian Federation to target civilian populations through the use of incendiary devices, including barrel bombs, chemical weapons, and conventional arms (including air-delivered missiles and explosives).

(2) Areas besieged by the Government of Syria, the Government of the Russian Federation, the Government of Iran, or a foreign person described in section 7412(a)(2)(A)(ii) are no longer cut off from international aid and have regular access to humanitarian assistance, freedom of travel, and medical care.

(3) The Government of Syria is releasing all political prisoners forcibly held within the prison system of the regime of Bashar al-Assad and the Government of Syria is allowing full access to prison system facilities for investigations by appropriate international human rights organizations.

(4) The forces of the Government of Syria, the Government of the Russian Federation, the Government of Iran, and any foreign person described in section 7412(a)(2)(A)(ii) are no longer engaged in deliberate targeting of medical facilities, schools, residential areas, and community gathering places, including markets, in violation of international norms.

(5) The Government of Syria is—

(A) taking steps to verifiably fulfill its commitments under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Geneva September 3, 1992, and entered into force April 29, 1997 (commonly known as the “Chemical Weapons Convention”), and the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (21 UST 483); and

(B) making tangible progress toward becoming a signatory to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London, and Moscow April 10, 1972, and entered into force March 26, 1975 (26 UST 583).

(6) The Government of Syria is permitting the safe, voluntary, and dignified return of Syrians displaced by the conflict.

(7) The Government of Syria is taking verifiable steps to establish meaningful accountability for perpetrators of war crimes in Syria and justice for victims of war crimes committed by the Assad regime, including through participation in a credible and independent truth and reconciliation process.

- Deadline. (b) **BRIEFING REQUIRED.**—Not later than 30 days after the President makes a determination described in subsection (a), the President shall provide a briefing to the appropriate congressional committees on the determination and the suspension of sanctions pursuant to the determination.
- Determination. (c) **REIMPOSITION OF SANCTIONS.**—Any sanctions suspended under subsection (a) shall be reimposed if the President determines that the criteria described in that subsection are no longer being met.
- (d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to limit the authority of the President to terminate the application of sanctions under section 7412 with respect to a person that no longer engages in activities described in subsection (a)(2) of that section.
- (e) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—
- (1) the Committee on Foreign Affairs, the Committee on Financial Services, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives; and
  - (2) the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on the Judiciary of the Senate.
- President. **SEC. 7432. WAIVERS AND EXEMPTIONS.**
- (a) **EXEMPTIONS.**—The following activities and transactions shall be exempt from sanctions authorized under this title or any amendment made by this title:
- (1) Any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.), or to any authorized intelligence activities of the United States.
  - (2) Any transaction necessary to comply with United States obligations under—
    - (A) the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States;
    - (B) the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force March 19, 1967; or
    - (C) any other international agreement to which the United States is a party.
- (b) **WAIVER.**—
- Time period. (1) **IN GENERAL.**—The President may, for renewable periods not to exceed 180 days, waive the application of any provision of this title (other than section 7434) with respect to a foreign person if the President certifies to the appropriate congressional committees that such a waiver is in the national security interests of the United States.
- Certification. (2) **BRIEFING.**—Not later than 90 days after the issuance of a waiver under paragraph (1), and every 180 days thereafter while the waiver remains in effect, the President shall brief the appropriate congressional committees on the reasons for the waiver.
- Deadline. (c) **HUMANITARIAN WAIVER.**—

(1) **IN GENERAL.**—The President may waive, for renewable periods not to exceed 2 years, the application of any provision of this title (other than section 7434) with respect to a non-governmental organization providing humanitarian assistance not covered by the authorization described in section 7425 if the President certifies to the appropriate congressional committees that such a waiver is important to address a humanitarian need and is consistent with the national security interests of the United States.

Time period.  
Certification.

(2) **BRIEFING.**—Not later than 90 days after the issuance of a waiver under paragraph (1), and every 180 days thereafter while the waiver remains in effect, the President shall brief the appropriate congressional committees on the reasons for the waiver.

Deadline.

(d) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Affairs, the Committee on Financial Services, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives; and

(2) the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on the Judiciary of the Senate.

**SEC. 7433. IMPLEMENTATION AND REGULATORY AUTHORITIES.**

President.

(a) **IMPLEMENTATION AUTHORITY.**—The President may exercise all authorities provided to the President under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) for purposes of carrying out this title and the amendments made by this title.

(b) **REGULATORY AUTHORITY.**—The President shall, not later than 180 days after the date of the enactment of this Act, promulgate regulations as necessary for the implementation of this title and the amendments made by this title.

Deadline.

**SEC. 7434. EXCEPTION RELATING TO IMPORTATION OF GOODS.**

(a) **IN GENERAL.**—The authorities and requirements to impose sanctions authorized under this title or the amendments made by this title shall not include the authority or a requirement to impose sanctions on the importation of goods.

(b) **GOOD DEFINED.**—In this section, the term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data.

**SEC. 7435. COST LIMITATION.**

No additional funds are authorized to be appropriated to carry out the requirements of this title and the amendments made by this title. Such requirements shall be carried out using amounts otherwise authorized to be appropriated.

**SEC. 7436. RULE OF CONSTRUCTION.**

Except for section 7434 with respect to the importation of goods, nothing in this title shall be construed to limit the authority of the President pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or any other provision of law.

**SEC. 7437. PROHIBITION ON CONSTRUCTION OF PROVISIONS OF THIS TITLE AS AN AUTHORIZATION FOR USE OF MILITARY FORCE.**

Nothing in this title may be construed as an authorization for use of military force.

**SEC. 7438. SUNSET.**

This title shall cease to be effective on the date that is 5 years after the date of the enactment of this Act.

Protecting  
Europe's Energy  
Security Act  
of 2019.  
22 USC 9526  
note.

**TITLE LXXV—PROTECTING EUROPE'S ENERGY SECURITY**

Sec. 7501. Short title.

Sec. 7502. Sense of Congress.

Sec. 7503. Imposition of sanctions with respect to provision of certain vessels for the construction of certain Russian energy export pipelines.

**SEC. 7501. SHORT TITLE.**

This title may be cited as the “Protecting Europe’s Energy Security Act of 2019”.

**SEC. 7502. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the United States and Europe share a common history, a common identity, and common values built upon the principles of democracy, rule of law, and individual freedoms;

(2) the United States has encouraged and admired the European project, which has resulted in a common market and common policies, has achieved unprecedented prosperity and stability on the continent, and serves as a model for other countries to reform their institutions and prioritize anticorruption measures;

(3) the relationships between the United States and Europe and the United States and Germany are critical to the national security interests of the United States as well as to global prosperity and peace, and Germany in particular is a crucial partner for the United States in multilateral efforts aimed at promoting global prosperity and peace;

(4) the United States should stand against any effort designed to weaken those relationships; and

(5) Germany has demonstrated leadership within the European Union and in international fora to ensure that sanctions imposed with respect to the Russian Federation for its malign activities are maintained.

President.

**SEC. 7503. IMPOSITION OF SANCTIONS WITH RESPECT TO PROVISION OF CERTAIN VESSELS FOR THE CONSTRUCTION OF CERTAIN RUSSIAN ENERGY EXPORT PIPELINES.**

(a) REPORT REQUIRED.—

Consultation.

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, and every 90 days thereafter, the Secretary of State, in consultation with the Secretary of the Treasury, shall submit to the appropriate congressional committees a report that identifies, for the period specified in paragraph (2)—

(A) vessels that engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of

the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project; and

(B) foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly—

Consultation.  
Determination.

(i) sold, leased, or provided those vessels for the construction of such a project; or

(ii) facilitated deceptive or structured transactions to provide those vessels for the construction of such a project.

(2) PERIOD SPECIFIED.—The period specified in this paragraph is—

(A) in the case of the first report required to be submitted by paragraph (1), the period beginning on the date of the enactment of this Act and ending on the date on which the report is submitted; and

(B) in the case of any subsequent such report, the 90-day period preceding submission of the report.

(b) INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE OF IDENTIFIED PERSONS AND CORPORATE OFFICERS.—

(1) IN GENERAL.—

(A) VISAS, ADMISSION, OR PAROLE.—An alien described in paragraph (2) is—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) CURRENT VISAS REVOKED.—

(i) IN GENERAL.—The visa or other entry documentation of an alien described in paragraph (2) shall be revoked, regardless of when such visa or other entry documentation is or was issued.

(ii) IMMEDIATE EFFECT.—A revocation under clause (i) shall—

(I) take effect immediately; and

(II) automatically cancel any other valid visa or entry documentation that is in the alien's possession.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien is—

(A) a foreign person identified under subsection (a)(1)(B);

(B) a corporate officer of a person described in subparagraph (A); or

(C) a principal shareholder with a controlling interest in a person described in subparagraph (A).

(c) BLOCKING OF PROPERTY OF IDENTIFIED PERSONS.—The President shall exercise all powers granted to the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in all property and interests in property of any person identified under subsection (a)(1)(B) if such property and interests in property

are in the United States, come within the United States, or are or come within the possession or control of a United States person.

Certification.  
Deadline.

(d) WIND-DOWN PERIOD.—The President may not impose sanctions under this section with respect to a person identified in the first report submitted under subsection (a) if the President certifies in that report that the person has, not later than 30 days after the date of the enactment of this Act, engaged in good faith efforts to wind down operations that would otherwise subject the person to the imposition of sanctions under this section.

(e) EXCEPTIONS.—

(1) EXCEPTION FOR INTELLIGENCE, LAW ENFORCEMENT, AND NATIONAL SECURITY ACTIVITIES.—Sanctions under this section shall not apply to any authorized intelligence, law enforcement, or national security activities of the United States.

(2) EXCEPTION TO COMPLY WITH UNITED NATIONS HEADQUARTERS AGREEMENT.—Sanctions under this section shall not apply with respect to the admission of an alien to the United States if the admission of the alien is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force March 19, 1967, or other applicable international obligations.

(3) EXCEPTION FOR SAFETY OF VESSELS AND CREW.—Sanctions under this section shall not apply with respect to a person providing provisions to a vessel identified under subsection (a)(1)(A) if such provisions are intended for the safety and care of the crew aboard the vessel, the protection of human life aboard the vessel, or the maintenance of the vessel to avoid any environmental or other significant damage.

(4) EXCEPTION FOR REPAIR OR MAINTENANCE OF PIPELINES.—Sanctions under this section shall not apply with respect to a person for engaging in activities necessary for or related to the repair or maintenance of, or environmental remediation with respect to, a pipeline project described in subsection (a)(1)(A).

(5) EXCEPTION RELATING TO IMPORTATION OF GOODS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the authorities and requirements to impose sanctions authorized under this section shall not include the authority or a requirement to impose sanctions on the importation of goods.

(B) GOOD DEFINED.—In this paragraph, the term “good” means any article, natural or man-made substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data.

(f) WAIVERS.—

(1) NATIONAL INTEREST WAIVER FOR VISA BAN.—The President may waive the application of sanctions under subsection (b) with respect to an alien if the President—

Determination.

(A) determines that the waiver is in the national interests of the United States; and

Reports.

(B) submits to the appropriate congressional committees a report on the waiver and the reasons for the waiver.

(2) NATIONAL SECURITY WAIVER FOR ECONOMIC AND OTHER SANCTIONS.—The President may waive the application of sanctions under subsection (c) with respect to a person if the President—

(A) determines that the waiver is in the national security interests of the United States; and

Determination.

(B) submits to the appropriate congressional committees a report on the waiver and the reasons for the waiver.

Reports.

(g) IMPLEMENTATION; PENALTIES.—

(1) IMPLEMENTATION.—The President may exercise all authorities provided to the President under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this section.

(2) PENALTIES.—A person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulation, license, or order issued to carry out this section shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(h) TERMINATION AND SUNSET.—The authority to impose sanctions under this section with respect to a person involved in the construction of a pipeline project described in subsection (a)(1)(A), and any sanctions imposed under this section with respect to that project, shall terminate on the date that is the earlier of—

(1) the date on which the President certifies to the appropriate congressional committees that appropriate safeguards have been put in place—

Certification.

(A) to minimize the ability of the Government of the Russian Federation to use that project as a tool of coercion and political leverage, including by achieving the unbundling of energy production and transmission so that entities owned or controlled by that Government do not control the transmission network for the pipeline; and

(B) to ensure, barring unforeseen circumstances, that the project would not result in a decrease of more than 25 percent in the volume of Russian energy exports transiting through existing pipelines in other countries, particularly Ukraine, relative to the average monthly volume of Russian energy exports transiting through such pipelines in 2018; or

(2) the date that is 5 years after the date of the enactment of this Act.

(i) DEFINITIONS.—In this section:

(1) ADMISSION; ADMITTED; ALIEN.—The terms “admission”, “admitted”, and “alien” have the meanings given those terms in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives.

(3) FOREIGN PERSON.—The term “foreign person” means an individual or entity that is not a United States person.

(4) KNOWINGLY.—The term “knowingly”, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

(5) UNITED STATES PERSON.—The term “United States person” means—

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States;

(B) an entity organized under the laws of the United States or any jurisdiction within the United States, including a foreign branch of such an entity; or

(C) any person within the United States.

## TITLE LXXVI—OTHER MATTERS

### Subtitle A—Federal Employee Paid Leave Act

Sec. 7601. Short title.

Sec. 7602. Paid parental leave under title 5.

Sec. 7603. Paid parental leave for congressional employees.

Sec. 7604. Conforming amendment to Family and Medical Leave Act for GAO and Library of Congress employees.

Sec. 7605. Clarification for members of the National Guard and Reserves.

Sec. 7606. Conforming amendment for certain TSA employees.

### Subtitle B—Other Matters

Sec. 7611. Liberian refugee immigration fairness.

Sec. 7612. Pensacola Dam and Reservoir, Grand River, Oklahoma.

Sec. 7613. Limitation on certain rolling stock procurements; cybersecurity certification for rail rolling stock and operations.

Federal  
Employee Paid  
Leave Act.

## Subtitle A—Federal Employee Paid Leave Act

5 USC 101 note.

### SEC. 7601. SHORT TITLE.

This subtitle may be cited as the “Federal Employee Paid Leave Act”.

### SEC. 7602. PAID PARENTAL LEAVE UNDER TITLE 5.

(a) IN GENERAL.—Subsection (d) of section 6382 of title 5, United States Code, is amended—

(1) by striking “An employee” and inserting “(1) An employee”;

(2) by striking “subparagraph (A), (B), (C),” and inserting “subparagraph (C),”; and

(3) by adding at the end the following:

“(2)(A) An employee may elect to substitute for any leave without pay under subparagraph (A) or (B) of subsection (a)(1) any paid leave which is available to such employee for that purpose.

“(B) The paid leave that is available to an employee for purposes of subparagraph (A) is—

“(i) 12 administrative workweeks of paid parental leave under this subparagraph in connection with the birth or placement involved; and

“(ii) during the 12-month period referred to in subsection (a)(1), and in addition to the 12 administrative

Time periods.



workweeks under clause (i), any annual or sick leave accrued or accumulated by such employee under subchapter I.

“(C) Nothing in this subsection shall be considered to require that an employee first use all or any portion of the leave described in subparagraph (B)(ii) before being allowed to use the paid parental leave described in subparagraph (B)(i).

“(D) Paid parental leave under subparagraph (B)(i)—

“(i) shall be payable from any appropriation or fund available for salaries or expenses for positions within the employing agency;

“(ii) shall not be considered to be annual or vacation leave for purposes of section 5551 or 5552 or for any other purpose; and

“(iii) if not used by the employee before the end of the 12-month period (as referred to in subsection (a)(1)) to which it relates, shall not accumulate for any subsequent use.

Time period.

“(E) Nothing in this paragraph shall be construed to modify the requirement to complete at least 12 months of service as an employee (within the meaning of section 6381(1)(A)) before the date of the applicable birth or placement involved to be eligible for paid parental leave under subparagraph (B)(i) of this paragraph.

Time period.

“(F)(i) An employee may not take leave under this paragraph unless the employee agrees (in writing), before the commencement of such leave, to work for the applicable employing agency for not less than a period of 12 weeks beginning on the date such leave concludes.

Time period.

“(ii) The head of the agency shall waive the requirement in clause (i) in any instance where the employee is unable to return to work because of the continuation, recurrence, or onset of a serious health condition (including mental health), related to the applicable birth or placement of a child, of the employee or the child.

Waiver authority.

“(iii) The head of the employing agency may require that an employee who claims to be unable to return to work because of a health condition described under clause (ii) provide certification supporting such claim by the health care provider of the employee or the child (as the case may be). The employee shall provide such certification to the head in a timely manner.

Certification.

“(G)(i) If an employee fails to return from paid leave provided under this paragraph after the date such leave concludes, the employing agency may recover, from such employee, an amount equal to the total amount of Government contributions paid by the agency under section 8906 on behalf of the employee for maintaining such employee’s health coverage under chapter 89 during the period of such leave.

“(ii) Clause (i) shall not apply to any employee who fails to return from such leave due to—

“(I) the continuation, recurrence, or onset of a serious health condition as described under, and consistent with the requirements of, subparagraph (F); or

“(II) any other circumstance beyond the control of the employee.”.

(b) CONFORMING AMENDMENTS.—Section 6382(a) is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A) by inserting “and subsection (d)(2) of this section” after “section 6383”; and

(2) in paragraph (4), by striking “During” and inserting “Subject to subsection (d)(2), during”.

5 USC 6382 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall not be effective with respect to any birth or placement occurring before October 1, 2020.

**SEC. 7603. PAID PARENTAL LEAVE FOR CONGRESSIONAL EMPLOYEES.**

(a) AMENDMENTS TO CONGRESSIONAL ACCOUNTABILITY ACT.—Section 202 of the Congressional Accountability Act of 1995 (2 U.S.C. 1312) is amended—

(1) in subsection (a)(1), by adding at the end the following: “In applying section 102 of such Act with respect to leave for an event described in subsection (a)(1)(A) or (B) of such section to covered employees, subsection (d) of this section shall apply. Paragraphs (1) and (4) of section 102(a) of such Act shall be subject to subsection (d) of this section.”;

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (c) the following:

“(d) SPECIAL RULE FOR PAID PARENTAL LEAVE.—

“(1) SUBSTITUTION OF PAID LEAVE.—A covered employee may elect to substitute for any leave without pay under subparagraph (A) or (B) of section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) any paid leave which is available to such employee for that purpose.

“(2) AMOUNT OF PAID LEAVE.—The paid leave that is available to a covered employee for purposes of paragraph (1) is—

“(A) the number of weeks of paid parental leave in connection with the birth or placement involved that corresponds to the number of administrative workweeks of paid parental leave available to employees under section 6382(d)(2)(B)(i) of title 5, United States Code; and

“(B) during the 12-month period referred to in section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) and in addition to the administrative workweeks described in subparagraph (A), any additional paid vacation, personal, family, medical, or sick leave provided by the employing office to such employee.

“(3) LIMITATION.—Nothing in this section or section 102(d)(2)(A) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(d)(2)(A)) shall be considered to require or permit an employing office to require that an employee first use all or any portion of the leave described in paragraph (2)(B) before being allowed to use the paid parental leave described in paragraph (2)(A).

“(4) ADDITIONAL RULES.—Paid parental leave under paragraph (2)(A)—

“(A) shall be payable from any appropriation or fund available for salaries or expenses for positions within the employing office;

“(B) if not used by the covered employee before the end of the 12-month period (as referred to in section 102(a)(1) of the Family and Medical Leave Act of 1993

Time period.

Time period.

(29 U.S.C. 2612(a)(1))) to which it relates, shall not accumulate for any subsequent use; and

“(C) shall apply without regard to the limitations in sub-paragraph (E), (F), or (G) of section 6382(d)(2) of title 5, United States Code, or section 104(c)(2) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2614(c)(2)).”

Applicability.

(b) CONFORMING AMENDMENT.—Section 202(a)(2) of the Congressional Accountability Act of 1995 (2 U.S.C. 1312(a)(2)) is amended by adding at the end the following: “The requirements of subparagraph (B) shall not apply with respect to leave under subparagraph (A) or (B) of section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)).”

(c) EFFECTIVE DATE.—The amendments made by this section shall not be effective with respect to any birth or placement occurring before October 1, 2020.

2 USC 1312 note.

**SEC. 7604. CONFORMING AMENDMENT TO FAMILY AND MEDICAL LEAVE ACT FOR GAO AND LIBRARY OF CONGRESS EMPLOYEES.**

(a) AMENDMENT TO FAMILY AND MEDICAL LEAVE ACT OF 1993.—Section 102 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting “and subsection (d)(3)” after “section 103”; and

(B) in paragraph (4), by striking “During” and inserting “Subject to subsection (d)(3), during”; and

(2) in subsection (d), by adding at the end the following:

“(3) SPECIAL RULE FOR GAO EMPLOYEES.—

“(A) SUBSTITUTION OF PAID LEAVE.—An employee of the Government Accountability Office may elect to substitute for any leave without pay under subparagraph (A) or (B) of subsection (a)(1) any paid leave which is available to such employee for that purpose.

“(B) AMOUNT OF PAID LEAVE.—The paid leave that is available to an employee of the Government Accountability Office for purposes of subparagraph (A) is—

“(i) the number of weeks of paid parental leave in connection with the birth or placement involved that corresponds to the number of administrative workweeks of paid parental leave available to employees under section 6382(d)(2)(B)(i) of title 5, United States Code; and

“(ii) during the 12-month period referred to in section 102(a)(1) and in addition to the administrative workweeks described in clause (i), any additional paid vacation, personal, family, medical, or sick leave provided by such employer.

Time period.

“(C) LIMITATION.—Nothing in this section shall be considered to require or permit an employer to require that an employee first use all or any portion of the leave described in subparagraph (B)(ii) before being allowed to use the paid parental leave described in clause (i) of subparagraph (B).

“(D) ADDITIONAL RULES.—Paid parental leave under subparagraph (B)(i)—

	“(i) shall be payable from any appropriation or fund available for salaries or expenses for positions with the Government Accountability Office;
Time period.	“(ii) if not used by the employee of such employer before the end of the 12-month period (as referred to in subsection (a)(1)) to which it relates, shall not accumulate for any subsequent use; and
Applicability.	“(iii) shall apply without regard to the limitations in subparagraph (E), (F), or (G) of section 6382(d)(2) of title 5, United States Code or section 104(c)(2) of this Act.
Applicability.	“(4) SPECIAL RULE FOR LIBRARY OF CONGRESS EMPLOYEES.—Consistent with section 101(a)(3)(J) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(a)(3)(J)), the rights and protections established by sections 101 through 105, including section 102(d)(3), shall apply to employees of the Library of Congress under section 202 of that Act (2 U.S.C. 1312).”
	(b) CONFORMING AMENDMENT.—Section 101(2) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(2)) is amended by adding at the end the following:
	“(E) GAO EMPLOYEES.—In the case of an employee of the Government Accountability Office, the requirements of subparagraph (A) shall not apply with respect to leave under section 102(a)(1)(A) or (B).”
29 USC 2611 note.	(c) EFFECTIVE DATE.—The amendments made by this section shall not be effective with respect to any birth or placement occurring before October 1, 2020.
Determinations.	<b>SEC. 7605. CLARIFICATION FOR MEMBERS OF THE NATIONAL GUARD AND RESERVES.</b>
5 USC 6382 note.	(a) EXECUTIVE BRANCH EMPLOYEES.—For purposes of determining the eligibility of an employee who is a member of the National Guard or Reserves to take leave under section 6382(a) of title 5, United States Code, or to substitute such leave pursuant to subsection (d)(2)(A) of section 6382 of such title (as added by section 1102), any service by such employee on active duty (as defined in section 6381(7) of such title) shall be counted as service as an employee for purposes of section 6381(1)(B) of such title.
2 USC 1312 note.	(b) CONGRESSIONAL EMPLOYEES.—For purposes of determining the eligibility of a covered employee (as such term is defined in section 101(3) of the Congressional Accountability Act) who is a member of the National Guard or Reserves to take leave under section 102(a) of the Family and Medical Leave Act of 1993 (pursuant to section 202(a)(1) of the Congressional Accountability Act), any service by such employee on active duty (as defined in section 101(14) of the Family and Medical Leave Act of 1993) shall be counted as time during which such employee has been employed in an employing office for purposes of section 202(a)(2)(B) of the Congressional Accountability Act.
29 USC 2612 note.	(c) GAO AND LIBRARY OF CONGRESS EMPLOYEES.—For purposes of determining the eligibility of an employee of the Government Accountability Office or Library of Congress who is a member of the National Guard or Reserves to take leave under section 102(a) of the Family and Medical Leave Act of 1993, any service by such employee on active duty (as defined in section 101(14)

of such Act) shall be counted as time during which such employee has been employed for purposes of section 101(2)(A) of such Act.

**SEC. 7606. CONFORMING AMENDMENT FOR CERTAIN TSA EMPLOYEES.**

Section 111(d)(2) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) is amended to read as follows:

“(2) EXCEPTIONS.—

“(A) REEMPLOYMENT.—In carrying out the functions authorized under paragraph (1), the Under Secretary shall be subject to the provisions set forth in chapter 43 of title 38, United States Code.

“(B) LEAVE.—The provisions of subchapter V of chapter 63 of title 5, United States Code, shall apply to any individual appointed under paragraph (1) as if such individual were an employee (within the meaning of subparagraph (A) of section 6381(1) of such title).”

## Subtitle B—Other Matters

**SEC. 7611. LIBERIAN REFUGEE IMMIGRATION FAIRNESS.**

8 USC 1255 note.

(a) DEFINITIONS.—In this section:

(1) IN GENERAL.—Except as otherwise specifically provided, any term used in this Act that is used in the immigration laws shall have the meaning given the term in the immigration laws.

(2) IMMIGRATION LAWS.—The term “immigration laws” has the meaning given the term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).

(3) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(b) ADJUSTMENT OF STATUS.—

Determinations.

(1) IN GENERAL.—Except as provided in paragraph (3), the Secretary shall adjust the status of an alien described in subsection (c) to that of an alien lawfully admitted for permanent residence if the alien—

(A) applies for adjustment not later than 1 year after the date of the enactment of this Act;

(B) is otherwise eligible to receive an immigrant visa; and

(C) subject to paragraph (2), is admissible to the United States for permanent residence.

(2) APPLICABILITY OF GROUNDS OF INADMISSIBILITY.—In determining the admissibility of an alien under paragraph (1)(C), the grounds of inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(3) EXCEPTIONS.—An alien shall not be eligible for adjustment of status under this subsection if the Secretary determines that the alien—

(A) has been convicted of any aggravated felony;

(B) has been convicted of two or more crimes involving moral turpitude (other than a purely political offense); or

(C) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

## (4) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been subject to an order of exclusion, deportation, removal, or voluntary departure under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may, notwithstanding such order, submit an application for adjustment of status under this subsection if the alien is otherwise eligible for adjustment of status under paragraph (1).

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) shall not be required, as a condition of submitting or granting an application under this subsection, to file a separate motion to reopen, reconsider, or vacate an order described in subparagraph (A).

## (C) EFFECT OF DECISION BY SECRETARY.—

(i) GRANT.—If the Secretary adjusts the status of an alien pursuant to an application under this subsection, the Secretary shall cancel any order described in subparagraph (A) to which the alien has been subject.

(ii) DENIAL.—If the Secretary makes a final decision to deny such application, any such order shall be effective and enforceable to the same extent that such order would be effective and enforceable if the application had not been made.

## (c) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

Applicability.

(1) IN GENERAL.—The benefits provided under subsection (b) shall apply to any alien who—

Time period.

(A)(i) is a national of Liberia; and

(ii) has been continuously present in the United States during the period beginning on November 20, 2014, and ending on the date on which the alien submits an application under subsection (b); or

(B) is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

## (2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—

For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous physical presence based on one or more absences from the United States for one or more periods amounting, in the aggregate, of not more than 180 days.

Regulations.  
Procedures.

## (d) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall promulgate regulations establishing procedures by which an alien who is subject to a final order of deportation, removal, or exclusion, may seek a stay of such order based on the filing of an application under subsection (b).

## (2) DURING CERTAIN PROCEEDINGS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary may not order an alien to be removed from the United States if the alien—

(i) is in exclusion, deportation, or removal proceedings under any provision of such Act; and

(ii) has submitted an application for adjustment of status under subsection (b).

(B) EXCEPTION.—The Secretary may order an alien described in subparagraph (A) to be removed from the United States if the Secretary has made a final determination to deny the application for adjustment of status under subsection (b) of the alien.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may—

(i) authorize an alien who has applied for adjustment of status under subsection (b) to engage in employment in the United States during the period in which a determination on such application is pending; and

(ii) provide such alien with an “employment authorized” endorsement or other appropriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application for adjustment of status under subsection (b) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize employment for the applicable alien.

Time period.

(e) RECORD OF PERMANENT RESIDENCE.—On the approval of an application for adjustment of status under subsection (b) of an alien, the Secretary shall establish a record of admission for permanent residence for the alien as of the date of the arrival of the alien in the United States.

(f) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide applicants for adjustment of status under subsection (b) with the same right to, and procedures for, administrative review as are provided to—

Procedures.

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); and

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(g) LIMITATION ON JUDICIAL REVIEW.—

(1) IN GENERAL.—A determination by the Secretary with respect to the adjustment of status of any alien under this section is final and shall not be subject to review by any court.

Determination.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to preclude the review of a constitutional claim or a question of law under section 704 of title 5, United States Code, with respect to a denial of adjustment of status under this section.

(h) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—The Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) to offset the adjustment of status of an alien who has been lawfully admitted for permanent residence pursuant to this section.

(i) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) SAVINGS PROVISION.—Nothing in this Act may be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the

administration and enforcement of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) or any other law relating to immigration, nationality, or naturalization.

(2) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—The eligibility of an alien to be lawfully admitted for permanent residence under this section shall not preclude the alien from seeking any status under any other provision of law for which the alien may otherwise be eligible.

**SEC. 7612. PENSACOLA DAM AND RESERVOIR, GRAND RIVER, OKLAHOMA.**

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term “Commission” means the Federal Energy Regulatory Commission.

(2) CONSERVATION POOL.—The term “conservation pool” means all land and water of Grand Lake O’ the Cherokees, Oklahoma, below the flood pool.

(3) FLOOD POOL.—The term “flood pool” means all land and water of Grand Lake O’ the Cherokees, Oklahoma, allocated for flood control or navigation by the Secretary pursuant to section 7 of the Flood Control Act of 1944 (33 U.S.C. 709).

(4) PROJECT.—The term “project” means the Pensacola Hydroelectric Project (FERC No. 1494).

(5) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) CONSERVATION POOL MANAGEMENT.—

(1) FEDERAL LAND.—Notwithstanding section 3(2) of the Federal Power Act (16 U.S.C. 796(2)), any Federal land within the project boundary, including any right, title, or interest in or to land held by the United States for any purpose, shall not—

(A) be subject to the first proviso in section 4(e) of the Federal Power Act (16 U.S.C. 797(e)); or

(B) be considered to be—

(i) land or other property of the United States for purposes of recompensing the United States for the use, occupancy, or enjoyment of the land under section 10(e)(1) of that Act (16 U.S.C. 803(e)(1)); or

(ii) land of the United States for purposes of section 24 of that Act (16 U.S.C. 818).

(2) LICENSE CONDITIONS.—

(A) IN GENERAL.—Except as may be required by the Secretary to carry out responsibilities under section 7 of the Flood Control Act of 1944 (33 U.S.C. 709), the Commission or any other Federal or State agency shall not include in any license for the project any condition or other requirement relating to—

(i) surface elevations of the conservation pool; or

(ii) the flood pool (except to the extent it references flood control requirements prescribed by the Secretary).

(B) EXCEPTION.—Notwithstanding subparagraph (A), the project shall remain subject to the Commission’s rules and regulations for project safety and protection of human health.

(3) PROJECT SCOPE.—



(A) LICENSING JURISDICTION.—The licensing jurisdiction of the Commission for the project shall not extend to any land or water outside the project boundary.

(B) OUTSIDE INFRASTRUCTURE.—Any land, water, or physical infrastructure or other improvement outside the project boundary shall not be considered to be part of the project.

(C) BOUNDARY JURISDICTION AMENDMENTS.—The Commission may, consistent with the requirements of the Federal Power Act, amend the project boundary, only with the expressed written agreement of the project licensee. If the licensee does not agree to a project boundary change proposed by the Commission, the purposes and requirements of part I of the Federal Power Act (16 U.S.C. 791a et seq.) shall be deemed to be satisfied without the Commission’s proposed boundary or jurisdiction change.

(c) EXCLUSIVE JURISDICTION OF FLOOD POOL MANAGEMENT.—The Secretary shall have exclusive jurisdiction and responsibility for management of the flood pool for flood control operations at Grand Lake O’ the Cherokees.

(d) STUDY OF UPSTREAM INFRASTRUCTURE.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall initiate a study of infrastructure and lands upstream from the project to evaluate resiliency to flooding. Not later than one year after initiating the study, the Secretary shall issue a report advising local communities and State departments of transportation of any identified deficiencies and potential mitigation options.

Deadline.  
Evaluation.  
  
Reports.

(e) SAVINGS PROVISION.—Nothing in this section affects, with respect to the project—

(1) any authority or obligation of the Secretary or the Chief of Engineers pursuant to section 2 of the Act of June 28, 1938 (commonly known as the “Flood Control Act of 1938”) (33 U.S.C. 701c–1);

(2) any authority of the Secretary or the Chief of Engineers pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (33 U.S.C. 709);

(3) any obligation of the United States to obtain flowage or other property rights pursuant to the Act of July 31, 1946 (60 Stat. 743, chapter 710);

(4) any obligation of the United States to acquire flowage or other property rights for additional reservoir storage pursuant to Executive Order 9839 (12 Fed. Reg. 2447; relating to the Grand River Dam Project);

(5) any authority of the Secretary to acquire real property interest pursuant to section 560 of the Water Resources Development Act of 1996 (Public Law 104–303; 110 Stat. 3783);

(6) any obligation of the Secretary to conduct and pay the cost of a feasibility study pursuant to section 449 of the Water Resources Development Act of 2000 (Public Law 106–541; 114 Stat. 2641);

(7) the National Flood Insurance Program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), including any policy issued under that Act; or

(8) any disaster assistance made available under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42

U.S.C. 5121 et seq.) or other Federal disaster assistance program.

**SEC. 7613. LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS; CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.**

Section 5323 of title 49, United States Code, is amended by adding at the end the following:

“(u) **LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (5), financial assistance made available under this chapter shall not be used in awarding a contract or subcontract to an entity on or after the date of enactment of this subsection for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock—

“(A) is incorporated in or has manufacturing facilities in the United States; and

“(B) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that—

“(i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;

“(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and

“(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

“(2) **EXCEPTION.**—For purposes of paragraph (1), the term ‘otherwise related legally or financially’ does not include a minority relationship or investment.

“(3) **INTERNATIONAL AGREEMENTS.**—This subsection shall be applied in a manner consistent with the obligations of the United States under international agreements.

“(4) **CERTIFICATION FOR RAIL ROLLING STOCK.**—

“(A) **IN GENERAL.**—Except as provided in paragraph (5), as a condition of financial assistance made available in a fiscal year under section 5337, a recipient that operates rail fixed guideway service shall certify in that fiscal year that the recipient will not award any contract or subcontract for the procurement of rail rolling stock for use in public transportation with a rail rolling stock manufacturer described in paragraph (1).

“(B) **SEPARATE CERTIFICATION.**—The certification required under this paragraph shall be in addition to any certification the Secretary establishes to ensure compliance with the requirements of paragraph (1).

“(5) **SPECIAL RULES.**—

“(A) **PARTIES TO EXECUTED CONTRACTS.**—This subsection, including the certification requirement under paragraph (4), shall not apply to the award of any contract or subcontract made by a public transportation agency

Applicability.

with a rail rolling stock manufacturer described in paragraph (1) if the manufacturer and the public transportation agency have executed a contract for rail rolling stock before the date of enactment of this subsection.

“(B) ROLLING STOCK.—Except as provided in subparagraph (C) and for a contract or subcontract that is not described in subparagraph (A), this subsection, including the certification requirement under paragraph (4), shall not apply to the award of a contract or subcontract made by a public transportation agency with any rolling stock manufacturer for the 2-year period beginning on or after the date of enactment of this subsection.

Time period.

“(C) EXCEPTION.—Subparagraph (B) shall not apply to the award of a contract or subcontract made by the Washington Metropolitan Area Transit Authority.

“(v) CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.—

“(1) CERTIFICATION.—As a condition of financial assistance made available under this chapter, a recipient that operates a rail fixed guideway public transportation system shall certify that the recipient has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks.

“(2) COMPLIANCE.—For the process required under paragraph (1), a recipient of assistance under this chapter shall—

“(A) utilize the approach described by the voluntary standards and best practices developed under section 2(c)(15) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)(15)), as applicable;

“(B) identify hardware and software that the recipient determines should undergo third-party testing and analysis to mitigate cybersecurity risks, such as hardware or software for rail rolling stock under proposed procurements; and

Determination.

“(C) utilize the approach described in any voluntary standards and best practices for rail fixed guideway public transportation systems developed under the authority of the Secretary of Homeland Security, as applicable.

“(3) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority of—

“(A) the Secretary of Homeland Security to publish or ensure compliance with requirements or standards concerning cybersecurity for rail fixed guideway public transportation systems; or

“(B) the Secretary of Transportation under section 5329 to address cybersecurity issues as those issues relate to

the safety of rail fixed guideway public transportation systems.”.

Approved December 20, 2019.

---

LEGISLATIVE HISTORY—S. 1790 (H.R. 2500):

HOUSE REPORTS: Nos. 116–120 and Pt. 2 (both from Comm. on Armed Services) accompanying H.R. 2500 and 116–333 (Comm. of Conference).

SENATE REPORTS: No. 116–48 (Comm. on Armed Services).

CONGRESSIONAL RECORD, Vol. 165 (2019):

June 24–27, Sept. 12, considered and passed Senate.

Sept. 17, considered and passed House, amended.

Dec. 11, House agreed to conference report.

Dec. 12, 16, 17, Senate considered and agreed to conference report.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2019):

Dec. 20, Presidential remarks and statement.



<b>REPORTING</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
To be informed of the right to consult with an SVC by the victim's SARC, VA, VWL, CID Investigator, Government Counsel, or other local responsible official, prior to an investigator interviewing or requesting a statement regarding the sexual assault	10 USC 1044e(f), Interim AR 27-10, 17-10d(4)(a), DoDI 5505.18
To file a Restricted or Unrestricted report of sexual assault	DoDI 6495.02, Enclosure 4, paragraph 1a
Protection from retaliation, reprisal, ostracism, maltreatment, or threats thereof, for filing a report. Punitive provisions prohibiting reprisal, ostracism and cruelty/ maltreatment.	DoDI 6495.02, paragraph 4w; Army Directive 2014-20; Article 132, UCMJ
Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services	10 USC 1044e(b)(1)
Legal consultation regarding the Victim Witness Assistance Program (VWAP), including: <ul style="list-style-type: none"> <li>- The rights and benefits afforded the victim;</li> <li>- The role of the VAP liaison and what privileges do or do not exist between the victims and the liaison; and</li> <li>- The nature of communication made to the liaison in comparison to communication made to an SVC or legal assistance attorney</li> </ul>	10 USC 1044e(b)(2)
Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator (SARC), a unit or installation Sexual Assault Victim Advocate (VA), or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim	10 USC 1044e(b)(3)
Legal consultation regarding the potential for civil litigation against other parties (other than the United States)	10 USC 1044e(b)(4)
Legal consultation regarding the military justice system, including (but not limited to): <ul style="list-style-type: none"> <li>- The roles and responsibilities of the trial counsel, the defense counsel, and investigators;</li> <li>- Any proceedings of the military justice process in which the victim may observe;</li> <li>- The government's authority to compel cooperation and testimony; and</li> <li>- The victim's responsibility to testify and other duties to the court</li> </ul>	10 USC 1044e(b)(5)
Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services	10 USC 1044e(b)(7)
Assistance with IG and EEO complaints, FOIA requests, and congressional requests	AR 27-3
To be treated with fairness and with respect for dignity and privacy	Article 6b(a)(8)
<b>INVESTIGATION</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
To be notified of right to SVC before interview or request for a statement	Interim AR 27-10, 17-10d(4)(a)

Notification by the government of status of the investigation and apprehension of the suspected offender.	Interim AR 27-10, 17-14a
Notification of an MPO and copy of the DD Form 2873	Interim AR 27-10, 17-19a; DD Form
To be accompanied by SVC to all law enforcement interviews	10 USC 1044e(b)(6)
To have personal property items gathered as evidence which are digital or electronic in nature returned if a forensic copy or electronic evidence stored on or accessed through an electronic device has been made	DoDI 5505.18
Reasonably protected from the accused	Article 6b(a)(1); RCM 305(i)(2)(A)(iv)
Reasonable, accurate, timely notice of PTC hearing	Article 6b(a)(2)(A); RCM 305(i)(2)(A)(iv)
To be reasonably heard at the PTC hearing, including through counsel	Article 6b(a)(4)(A); RCM 305(i)(2)(A)(iv); Interim AR 27-10, 17-10a(4)(a)
The right to have rights and concerns addressed to the military magistrate during any review of pretrial confinement	Interim AR 27-10, 8-5b(1)
Reasonable right to confer with government counsel at PTC hearing	Article 6b(a)(5); RCM 305(i)(2)(A)(iv)
Right to reasonable, accurate, and timely notice of the release of the accused from pretrial confinement, unless notice will endanger safety of any person.	Article 6b(a)(2)(E); RCM 305(i)(2)(c)
Right to be notified of retaliation investigation resolution and outcome.	FY 2017 NDAA §547; See Army Directive 2015-16
Opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense	RCM 306(e); Interim AR 27-10, 17-10d(4)(c)
To have property safeguarded and returned as expeditiously as possible and to be notified of the procedures for requesting return	Interim AR 27-10, 17-16
<b>PREFERRAL</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Consultation and notification of the decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender	Interim AR 27-10, 17-14a(3) and 17-15a(1)
Production of, without request by the victim: <ul style="list-style-type: none"> <li>- A copy of all statements and documentary evidence produced or provided by the victim;</li> <li>- An excerpt of the charge sheet setting forth the preferred specifications pertaining to that victim;</li> <li>- The date, time, and location of any PTC review and Article 32 hearing</li> </ul>	TJAG Policy Memo – 17-08, paragraph 4a
Notice of Investigatory Subpoena submitted after preferral of charges for personal or confidential information about a victim and right to request relief	RCM 703 (g)(3)(C)(ii); RCM 703(g)(3)(G)
<b>ARTICLE 32</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Not to be required to testify and to be designated unavailable – Military victims	Article 32(d)(3); RCM 405(h)(2)(A)(iii); DA PAM 27-17, 2-3c; See RCM 405(h)(2)(B)(iii) for civilian victim witnesses
Proceedings free from unreasonable delay	Article 6b(a)(7)

Reasonable, accurate, timely notice of the Article 32 hearing	Article 6b(a)(2)(B); RCM 405(g)(2); DA PAM 27-17, 2-2f
To be reasonably protected from the accused at an Article 32 hearing	Article 6b(a)(1)
Not to be excluded from the Article 32 unless the hearing officer, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing. SVC presence can be exercised on behalf of the client.	Article 6b(a)(3); 10 USC 1044e(b)(6); RCM 405(g)(3); DA PAM 27-17, 3-3d(2); Interim AR 27-10, 17-10a(3)
Reasonable right to confer with government counsel at Article 32 hearing	Article 6b(a)(5); RCM 405(g)(2); Interim AR 27-10, 17-10a(5)
Suppression of evidence offered to prove the victim engaged in other sexual behavior or evidence offered to prove the victim's sexual predisposition	RCM 405(i)(2)(B) and (C); MRE 412
Privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and the psychotherapist or an assistant to the psychotherapist, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition	MRE 513
To be heard on 513 and heard through counsel	10 USC 1044e(b)(6)
Privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate or between the alleged victim and DOD Safe Helpline staff, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim	MRE 514
To be heard on 514 and heard through counsel	10 USC 1044e(b)(6)
To petition ACCA for a writ of mandamus: <ul style="list-style-type: none"> <li>- If the victim believes and Article 32 ruling violates victim's Article 6b or Article 32 rights;</li> <li>- MREs 412, 513, 514, or 615;</li> <li>- If the victim is subject to order for depo-petition to quash</li> </ul>	Article 6b(e); RCM 405(i)(2)(C)
Named victim may request access to, or a copy of the recording of the proceedings. Request access to, or a copy of, the recording of the proceedings and upon request, production of the requested access to, or a copy of, the recording not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of re-referral, or court-martial adjournment	Article 32(e); RCM 405(j)(5); DA PAM 27-17, 3-3a(2)(a)
Named victim may submit to the PHO, Government counsel, and defense counsel additional information relevant to the convening authority's disposition of the charges and specifications	RCM 405(k)
Upon receipt or filing by the government, without request by the victim, a summarized transcript of the victim's testimony at the preliminary hearing	TJAG Policy Memo 17-08, paragraph 4b(1)
<b>REFERRAL</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Upon receipt or filing by the government, without request by the victim, an excerpt of the charge sheet setting forth the referred specifications pertaining to that victim	TJAG Policy Memo 17-08, paragraph 4b(2)
To have views considered by SCMCA with Initial Disposition Authority (IDA)	RCM 306(a) discussion; MCM Appx 2.1

<b>ARRAIGNMENT/ PRETRIAL</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Not to be excluded from the arraignment hearing unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing. SVC presence can be exercised on behalf of the client.	Article 6b(a)(3); 10 USC 1044e(b)(6); MRE 615(e), Interim AR 27-10, 17-10a(3)
Reasonable, accurate, timely notice of arraignment	Article 6b(a)(2)(C); AR 27-10, 17-10a(2)(c)
For victims under 18 years of age/not a member of the armed forces, or incompetent, incapacitated, or deceased – military judge may designate in writing a family member, a representative of the estate of the victim, or another suitable individual to assume the victim’s rights under the UCMJ	Article 6b(c); RCM 801(a)(6); Interim AR 27-10, 17-10b
Upon receipt or filing by the government, without request by the victim: <ul style="list-style-type: none"> <li>- Any docket requests, as well as docketing or scheduling orders, including deadlines for filing motion and the date, time, and location for any session of trial;</li> <li>- A copy of any motion or responsive pleadings that may limit a victim’s ability to participate in the court-martial, affect the victim’s possessory rights in any property, concern the victim’s privileged communications or private medical information, or involve the victim’s right to be heard; and</li> <li>- Any request to interview the victim received from defense counsel</li> </ul>	TJAG Policy Memo 17-08, paragraph 4b(3) and (4)
To have defense counsel request interview through SVC	Article 6b(f); RCM701(e)(1)(A)
To have defense-requested interviews conducted in the presence of trial counsel, a VA, or the SVC	Article 46(b)(2); RCM 701(e)(1)(B); Interim AR 27-10, 17- 10d(4)(b)
To be accompanied by SVC to all interviews	10 USC 1044e(b)(6)
Suppression of evidence offered to prove the victim engaged in other sexual behavior or evidence offered to prove the victim’s sexual predisposition	MRE 412
To be heard on 412 and heard through counsel	10 USC 1044e(b)(6); MRE 412
Not to be excluded from a closed MRE 412 hearing unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing and to have counsel permitted to attend the closed hearing	Article 6b(a)(3); 10 USC 1044e(b)(6); MRE 615(e); Interim AR 27-10, 17-10a(3)
Privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient’s mental or emotional condition	MRE 513
A closed hearing to discuss admissibility of potential MRE 513 evidence	MRE 513(e)(2)
To attend a 513 hearing and to be heard through counsel	10 USC 1044e(b)(6); MRE 513(e)(2)



Privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate or between the alleged victim and DOD Safe Helpline staff, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim	MRE 514
A closed hearing to discuss admissibility of potential MRE 514 evidence	MRE 514(e)(2)
Reasonable opportunity to attend the 514 hearing and be heard through counsel	10 USC 1044e(b)(6); MRE 514(e)(2)
Notification of negotiations of plea agreements and their potential terms and right to consult with government counsel	RCM 705 (e)(3)(B); Interim AR 27-10, 17-15a(4)
Opportunity to express views concerning the plea agreement terms and conditions, whenever practicable, prior to the convening authority accepting a plea agreement	RCM 705 (e)(3)(B)
Notification of the acceptance of a plea of guilty or the rendering of a verdict after trial	Interim AR 27-10, 17-14a(7)
To be informed of any means to receive restitution and to be informed of the fact that court-martial convening authorities will consider the appropriateness of requiring restitution in plea agreements	Interim AR 27-10, Chapters 5-27a, 17-16(b) and (c)

<b>TRIAL</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Reasonable, accurate, timely notice of court-martial relating to the offense	Article 6b(a)(2)(C); RCM 806(b) discussion; Interim AR 27-10, 17-10a(3)(c)
To be reasonably protected from the accused during courts-martial	RCM 806(b) discussion
A separate waiting area from the accused or defense witnesses	Interim AR 27-10, 17-19c
Not to be excluded from trial unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing	Article 6b(a)(3); RCM 806(b)(3); MRE 615(e); AR 27- 10, 17-10a(3)
Suppression of evidence offered to prove the victim engaged in other sexual behavior or evidence offered to prove the victim’s sexual predisposition	MRE 412
To be heard on 412 and heard through counsel	10 USC 1044e(b)(6); MRE 412(c)(2)
Privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient’s mental or emotional condition	MRE 513
To be heard on 513 and heard through counsel	10 USC 1044e(b)(6), MRE 513(e)(2)
Privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate or between the alleged victim and DOD Safe Helpline staff, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim	MRE 514
To be heard on 514 and heard through counsel	10 USC 1044e(b)(6); MRE 514(e)(2)
Closure of Article 39a and sealing of records	MREs 412, 513 and 514; RCM 1113; RCM 806(b)(4)
Reasonable right to confer with government counsel at trial	Article 6b(a)(5); RCM 806(b) discussion
The opportunity to consult with trial counsel about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim	Interim AR 27-10, 17-14a(8)
To be reasonably heard at sentencing related to the offense of which the accused was found guilty; <ul style="list-style-type: none"> <li>- The “right to be reasonably heard” means the right to make a sworn or unsworn statement; oral, written, or both</li> <li>- After the announcement of findings, a victim who would like to present an unsworn statement shall provide a copy to the trial counsel, defense counsel, unless waived by military judge for good cause shown</li> <li>- Upon good cause shown, the military judge may permit the victim’s counsel to deliver all or part of the victim’s unsworn statement</li> </ul>	Article 6b(a)(4)(B); RCM 1001(c); Interim AR 27-10, 17-10a(4)(b)
To give a sworn or unsworn statement (oral, written, or both) during presentencing and to make that statement through Article 6b representative under RCM 801(a)(6) if applicable	RCM 1001(c)

<b>POST-TRIAL</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Notice of victim's right to submit matters to the convening authority after the sentence is adjudged (named victim of an offense for which the accused was found guilty)	RCM 1106A(b)
Opportunity to submit matters for consideration by the convening authority (named victim of an offense for which the accused was found guilty)	RCM 1106A; Interim AR 27-10, 17-10a(10)
To receive restitution as provided by law	Article 6b(a)(6)
Notification of: -Result of trial or other disposition -Earliest date the offender will be eligible for parole -General info about the corrections process, to include offender's eligibility for early release -Right to be notified of the offender's confinement or parole status change -How to submit a victim impact statement to the Clemency/Parole Board -Formal notification to victim/SVC of post-trial procedures, to include submission of matters under RCM 1106A -Provision of DD Form 2703 -Formal information regarding post-trial procedures and the DD Form 2704 from either the TC or the representative for the government using a DD Form 2703 (Do not attach to portion of record to which the accused has access) - The right to request, through the VWL, trial counsel, or designee of the commander of the corrections facility to which the offender is assigned, notice of post-trial procedures and to make an election on DD Form 2704	Interim AR 27-10, 17-14a(9)-(13) and 17-14b
Notification of the opportunity to receive a copy of the certified record of trial if victim testified or if requested	RCM 1112(e)
Named victim who testified during the proceeding automatically receives a copy of the certified Record of Trial (ROT), regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT	RCM 1112(e); Interim AR 27-10, 5-57b
Any victim, regardless of whether that victim's allegation resulted in a conviction, receives the Statement of Trial Results and the Entry of Judgment	Article 60(a)(2); RCM 1101(d), 1111(f)
TC will provide court-martial record, consisting of a copy of the audio recording/ substantially verbatim transcript of all open sessions of court, copies of/access to unsealed evidence admitted, copies of/ access to unsealed appellate exhibits, to counsel for any victim after valid request under RCM 1106A	RCM 1106A; Interim AR 27-10, 5-41 and 5-57b
Notice to victim of convening authority action	Interim AR 27-10, 5-45(g)
<b>PAROLE</b>	
<b>RIGHT</b>	<b>AUTHORITY</b>
Direction by the VWL, TC, or other government representative on how to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations	Interim AR 27-10, 17-14a(13); AR 15-130, 4-1a(3)
Reasonable, accurate, timely notice of clemency and parole board relating to the offense, or escape of the accused	Article 6b(a)(2)(D) and (E); Interim AR 27-10, 17-

To be reasonably heard at a clemency or parole board relating to the offense and the right to consult with counsel	Article 6b(a)(4)(C); Interim AR 27-10, 17-10a(4)(c)
Reasonable right to confer with government counsel a clemency or parole board relating to the offense	Article 6b(a)(5); Interim AR 27-10, 17-10a(5)
Notification of the detention or release from detention of an offender or suspected offender	Interim AR 27-10, 17-14a(6)