

SAPR Training Supplement

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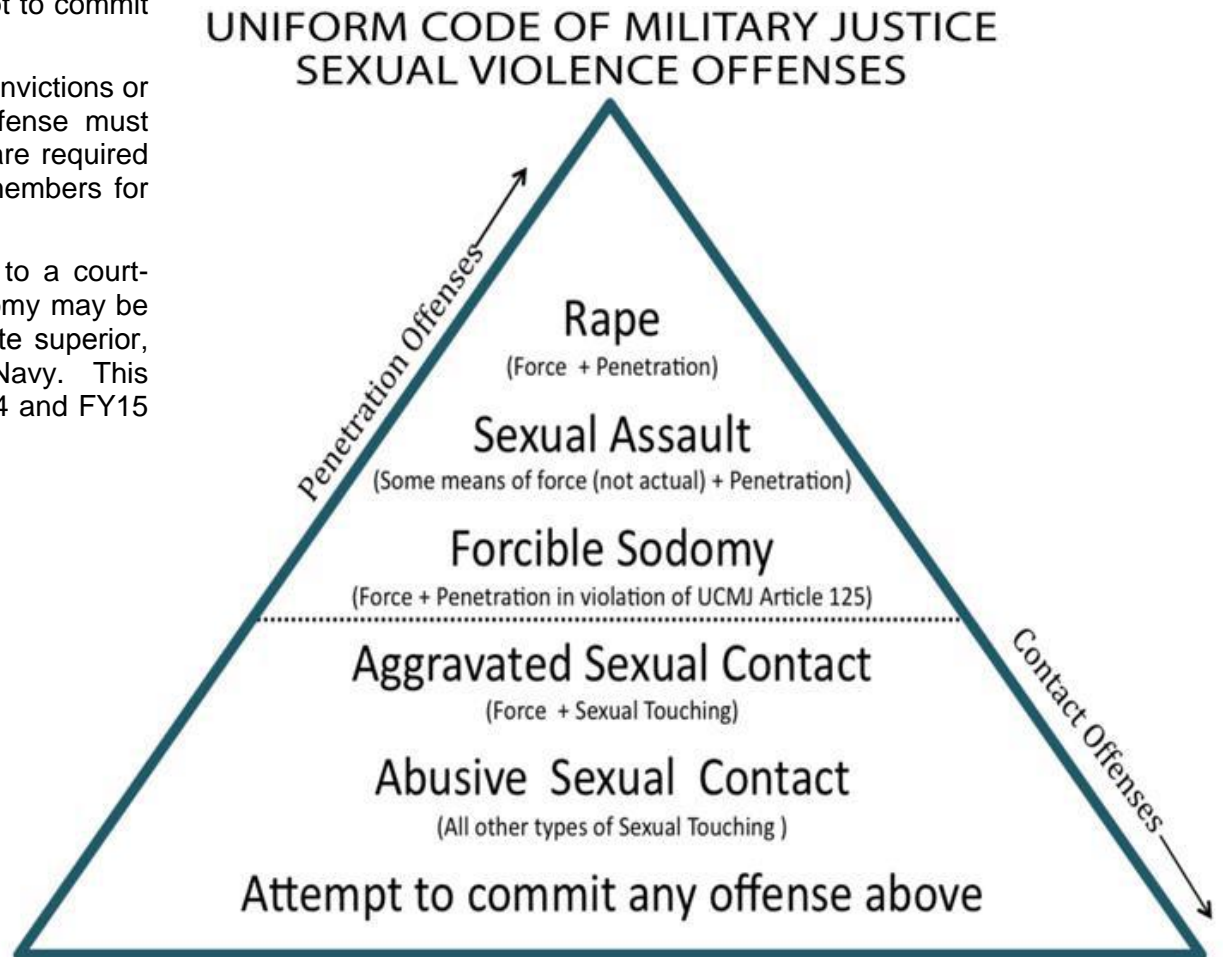
Military Justice — Uniform Code of Military Justice (UCMJ)

There is no longer a statute of limitations on trial by court-martial for sexual assault offenses under the UCMJ.

There is a minimum mandatory sentence of dismissal or dishonorable discharge for persons found guilty in a general court-martial of rape under Article 120(a), sexual assault under Article 120(b), forcible sodomy under Article 125, or an attempt to commit these offenses under Article 80.

A service member who is found guilty at court-martial convictions or receives non-judicial punishment for a sex-related offense must have their personnel records noted and commanders are required to review the personnel records of incoming service members for these notations.

Elevated review - A commander's decision not to go to a court-martial in cases of rape, sexual assault or forcible sodomy may be required to be reviewed by the commander's immediate superior, Navy's Chief Prosecutor, or Secretary of the Navy. This requirement was put in place by Sec. 1744 of the FY14 and FY15 National Defense Authorization Acts.



Article 120 — Rape and Sexual Assault Generally

To review Article 120:

http://www.sapr.mil/public/docs/ucmj/UCMJ_Article120_Rape_Sexual_Assault.pdf

(copied at the end of this document)

Recent changes in Articles 32 and 60 and their impact on victims:

Article 32 proceedings have been changed from investigations to preliminary hearings where the scope of the proceeding is limited to determinations of probable cause and the hearing is no longer a discovery tool for the defense. The Preliminary Hearing Officer (PHO), whenever practicable, is a Judge Advocate, equal or greater in rank to the other counsel involved in the case. Victims, both military and civilian have the right to decline to participate in the new Article 32 proceeding.

Article 60 has changed to prevent a convening authority (CA) from modifying the findings of a court-martial in many cases. The changes also limit the CA's ability to modify an adjudged sentence, except to effect certain pre-trial agreement provisions; and other limited circumstances.

To review Article 32:

[http://uscode.house.gov/view.xhtml?req=\(title:10%20section:832%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:10%20section:832%20edition:prelim))

(copied at the end of this document)

To review Article 60:

[http://uscode.house.gov/view.xhtml?req=\(title:10%20section:860%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:10%20section:860%20edition:prelim))

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Crime Victim's Rights

Once the counsel for the government notifies the defense that a victim will be testifying at either an Article 32 Preliminary Hearing, or at court-martial, the defense counsel must make any request to interview the victim through the Victims' Legal Counsel (VLC) or other counsel for the victim. The victim has the right to be accompanied to the interview by the Sexual Assault Response Coordinator (SARC), Victim Advocate (VA), VLC, or counsel for the government.

During clemency, the victim has the right to submit matters for consideration by the convening authority, and the convening authority is precluded from considering matters concerning the victim's character unless such matters were presented and not excluded at trial.

The victim of a sex-related offense that occurs in the United States must be consulted on their preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

Whenever a service member is required to complete SF 86, the member shall be instructed to answer "no" to question 21 with respect to consultation with a healthcare professional if the member is a victim of a sexual assault and the consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

The Crime Victim's Rights Act (CVRA) and Article 6b of the UCMJ:

1. The right to be reasonably protected from the accused.
2. The right to reasonable, accurate, and timely notice of any of the following:
 - a. A public hearing concerning the continuation of confinement prior to trial of the accused.
 - b. A preliminary hearing under Article 32.
 - c. A court-martial relating to the offense.
 - d. A public proceeding of the service clemency and parole board relating to the offense.
 - e. The release or escape of the accused, unless such notice may endanger the safety of any person.
3. The right not to be excluded from any public hearing or proceeding unless the military judge or investigating officer determines after receiving clear and convincing evidence that testimony by the victim would be materially altered.
4. The right to be reasonably heard at any of the following:
 - a. A public hearing concerning the continuation of confinement prior to trial of the accused.
 - b. A sentencing hearing relating to the offense.
 - c. A public proceeding of the service clemency and parole board relating to the offense.
5. The reasonable right to confer with the government in any of the proceedings under paragraph 2.
6. The right to receive restitution as provided in law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the dignity and privacy of the victim.

Reporting a Sexual Assault

Confidential resources who can maintain a victim's option of Restricted Reporting include: SARC; VA; Healthcare providers*, to include medical services and counseling services; Chaplains; and VLCs. When the alleged perpetrator is the victim's commander or in their chain of command, the victim may report the sexual assault to other commanding officers or an Inspector General.

Reporting Options		
Restricted		Unrestricted
Yes	Confidentiality	No Sensitive/need to know
Available	Victim Advocate Services	Available
Available	Victims' Legal Counsel Services	Available
No	Law Enforcement Investigation	Yes
No	Command Involvement	Yes
No	Eligible for Expedited Transfer	Yes
No	Eligible for Military Protective Order (MPO)	Yes
Available*	Sexual Assault Forensic Exam	Available
Available*	Medical Services	Available
Available	Counseling Services	Available

*In some states, including California, healthcare providers are required to report sexual assaults to law enforcement, and cannot offer a Restricted Report.

The DoD Safe Helpline can connect you with the resources that are in your area, to include those outside of your chain of command. You can call, text, or click for help!

Live 1-on-1 Help
 Confidential
 Worldwide 24/7

DoD
Safe Helpline

 Sexual Assault Support for the DoD Community

Help is just a *Click, Call or Text* away!



Click www.SafeHelpline.org
 Call 877-995-5247

Text* 55-247 (INSIDE THE U.S.) 202-470-5546 (OUTSIDE THE U.S.)

*Text your location for the nearest SARC

Retaliation, Reprisal, Ostracism, and Maltreatment

Victims of sexual assault are protected from retaliation, reprisal, ostracism, and maltreatment. Victims can seek assistance on how to report these allegations from a SARC, VA, or VLC. If the victim filed an Unrestricted Report, they can seek assistance from their immediate commander, a commander outside their chain of command, or their CMEO representative.

Per SECNAVINST 5370.7D, Military Whistleblower Protection:

Retaliation

Retaliation against a service member is one of the following actions when taken because that member reported, either formally or informally, a criminal offense: (1) Taking or threatening to take an unfavorable or adverse personnel action, or withholding or threatening to withhold a favorable personnel action; (2) Ostracism, which is the exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice; or (3) Maltreatment, which is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose; that is done with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice; and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering.

Reprisal

Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a service member for making or preparing to make a protected communication.

Ostracism

Exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.

Maltreatment

Treatment of peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose that is done with intent to discourage reporting.

Eligibility for SAPR Support Services

Eligibility for SAPR Support Services

Active Duty	Reservists	Military Dependents	Civilians eligible for treatment in the military healthcare system	All Other Civilians
<p>Eligible to file a Restricted Report or Unrestricted Report</p> <p>Full SAPR support services from a SARC, SAPR VA, and VLC</p>	<p>Eligible to file a Restricted Report or Unrestricted Report</p> <p>When sexually assaulted while performing active service and inactive duty training have full SAPR support services from a SARC, SAPR VA, and VLC</p> <p>When sexually assaulted prior to, or while not performing active service or inactive training, have limited SAPR support services from a SARC and SAPR VA, and full VLC services</p>	<p>Who are:</p> <ul style="list-style-type: none"> • 18+ years old • Eligible for treatment in the military healthcare system • Sexually assaulted by someone other than a spouse or intimate partner <p>Eligible to file a Restricted Report or Unrestricted Report</p> <p>Full SAPR support services from a SARC and a SAPR VA</p> <p>Eligible for VLC services when sexually assaulted by an active-duty member</p> <p><i>(The Family Advocacy Program covers adult military dependents who are assaulted by a spouse or intimate partner, and military dependent sexual assault victims who are 17 years old and younger.)</i></p>	<p>(E.g. dependents, retirees, civilians stationed or performing duties OCONUS)</p> <p>Eligible to file an Unrestricted Report</p> <p>Limited SAPR support services from a SARC and SAPR VA</p> <p>May be eligible to receive VLC services</p> <p>Civilian Employee Assistance Program (CEAP)</p>	<p>Follow civilian reporting options</p> <p>Limited SAPR support services from a SARC and SAPR VA</p> <p>Civilian Employee Assistance Program (CEAP)</p>

Sexual Assault Department of Defense Forms

DD Form 2910 — Victim Reporting Preference Statement

While a sexual assault victim may disclose information to whomever he or she chooses, an official report is made when a DD Form 2910 (Victim Reporting Preference Statement) is signed and filed with a Sexual Assault Response Coordinator (SARC) or Victim Advocate (VA), or when a Military Criminal Investigative Organization (MCIO), such as NCIS, initiates an investigation.

The DD Form 2910 is retained by the government for 50 years. With an Unrestricted Report the form is retained in the Defense Sexual Assault Incident Database (DSAID) as an electronic record. With a Restricted Report the form is retained by the SARC.

A copy of the form will be given to the victim, who is advised to keep the copy in their personal permanent records as this form may be used by the victim in other matters before other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

DD Form 2911 — Sexual Assault Forensic Examination (SAFE) Report

A victim may elect to complete a SAFE. With a Restricted Report, the SAFE Kit is retained for 5 years to allow victims the opportunity to change their minds and convert to an Unrestricted Report.

The DD Form 2911 is retained by the government for 50 years. A copy of the form will be given to the victim, who is advised to keep the copy in their personal permanent records as this form may be used by the victim in other matters before other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. If an Unrestricted Report is filed, personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents. If a Restricted Report is filled, in the event the report is converted to Unrestricted or an independent investigation is conducted, personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents.

Reference

UCMJ – Article 120 — Rape and Sexual Assault Generally

(a) Rape. Any person subject to this chapter who commits a sexual act upon another person by—

(1) using unlawful force against that other person; (2) using force causing or likely to cause death or grievous bodily harm to any person; (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping; (4) first rendering that other person unconscious; or (5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; is guilty of rape and shall be punished as a court-martial may direct.

(b) Sexual Assault. Any person subject to this chapter who— (1) commits a sexual act upon another person by— (A) threatening or placing that other person in fear; (B) causing bodily harm to that other person; (C) making a fraudulent representation that the sexual act serves a professional purpose; or (D) inducing a belief by any artifice, pretense, or concealment that the person is another person; (2) commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or (3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to— (A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or (B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person; is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) Aggravated Sexual Contact. Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact

been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(d) Abusive Sexual Contact. Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) Proof of Threat. In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) Defenses. An accused may raise any applicable defenses available under this chapter or the Rules for Courts-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) Definitions. In this section: (1) Sexual act. The term ‘sexual act’ means— (A) contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or (B) the penetration, however slight, of the vulva or anus or mouth of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. (2) Sexual contact. The term ‘sexual contact’ means— (A) touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person; or (B) any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body. (3) Bodily harm. The term ‘bodily harm’ means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact. (4) Grievous bodily harm. The term

'grievous bodily harm' means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(5) Force. The term 'force' means— (A) the use of a weapon; (B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or (C) inflicting physical harm sufficient to coerce or compel submission by the victim. (6) Unlawful Force. The term 'unlawful force' means an act of force done without legal justification or excuse. (7) Threatening or placing that other person in fear. The term 'threatening or placing that other person in fear' means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(8) Consent. (A) The term 'consent' means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent. (B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1). (C) Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person's actions.

http://www.sapr.mil/public/docs/ucmj/UCMJ_Article120_Rape_Sexual_Assault.pdf

§832. Article 32. Preliminary Hearing

(a) Preliminary Hearing Required.-

(1) No charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing, unless such hearing is waived by the accused.

(2) The purpose of the preliminary hearing shall be limited to the following:

(A) Determining whether there is probable cause to believe an offense has been committed and the accused committed the offense.

(B) Determining whether the convening authority has court-martial jurisdiction over the offense and the accused.

(C) Considering the form of charges.

(D) Recommending the disposition that should be made of the case.

(b) Hearing Officer.-

(1) A preliminary hearing under subsection (a) shall be conducted by an impartial judge advocate certified under section 827(b) of this title (article 27(b)) whenever practicable or, in exceptional circumstances in which the interests of justice warrant, by an impartial hearing officer who is not a judge advocate. If the hearing officer is not a judge advocate, a judge advocate certified under section 827(b) of this title (article 27(b)) shall be available to provide legal advice to the hearing officer.

(2) Whenever practicable, when the judge advocate or other hearing officer is detailed to conduct the preliminary hearing, the officer shall be equal to or senior in grade to military counsel detailed to represent the accused or the Government at the preliminary hearing.

(c) Report of Results.-

After conducting a preliminary hearing under subsection (a), the judge advocate or other officer conducting the preliminary hearing shall

prepare a report that addresses the matters specified in subsections (a)(2) and (f).

(d) Rights of Accused and Victim.-

(1) The accused shall be advised of the charges against the accused and of the accused's right to be represented by counsel at the preliminary hearing under subsection (a). The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence in defense and mitigation, relevant to the limited purposes of the hearing, as provided for in paragraph (4) and subsection (a)(2).

(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing.

(4) The presentation of evidence and examination (including cross-examination) of witnesses at a preliminary hearing shall be limited to the matters relevant to the limited purposes of the hearing, as provided in subsection (a)(2).

(e) Recording of Preliminary Hearing.-

A preliminary hearing under subsection (a) shall be recorded by a suitable recording device. The victim may request the recording and shall have access to the recording as prescribed by the Manual for Courts-Martial.

(f) Effect of Evidence of Uncharged Offense.-

If evidence adduced in a preliminary hearing under subsection (a) indicates that the accused committed an uncharged offense, the

§832. Article 32. Preliminary Hearing

hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused-

(1) is present at the preliminary hearing;

(2) is informed of the nature of each uncharged offense considered; and

(3) is afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (d).

(g) Effect of Violation.-

The requirements of this section are binding on all persons administering this chapter, but failure to follow the requirements does not constitute jurisdictional error.

(h) Victim Defined.-In this section, the term "victim" means a person who-

(1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and

(2) is named in one of the specifications.

[http://uscode.house.gov/view.xhtml?req=\(title:10%20section:832%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:10%20section:832%20edition:prelim))

§860. Article 60. Action by the Convening Authority

§860. Article 60. Action by the Convening Authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (e). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or another person authorized to act under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(5) The convening authority or other person taking action under this section shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

(c)(1) Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2)(A) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

(B) Except as provided in paragraph (4), the convening authority or another person authorized to act under this section may approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part.

(C) If the convening authority or another person authorized to act under this section acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense (other than a qualifying offense), the convening authority or other person shall provide, at that same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of the trial and action thereon.

(3)(A) Action on the findings of a court-martial by the convening authority or by another person authorized to act under this section is not required and may be taken only with respect to a qualifying offense.

(B) If the convening authority or another person authorized to act under this section acts on the findings of a court-martial, the convening authority or other person-

(i) may not dismiss any charge or specification by setting aside a finding of guilty thereto, but may take such action with respect to a qualifying offense; or

(ii) may not change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification, but may take such action with respect to a qualifying offense.

§860. Article 60. Action by the Convening Authority

(C) If the convening authority or another person authorized to act under this section acts on the findings to dismiss or change any charge or specification for an offense, the convening authority or other person shall provide, at that same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of the trial and action thereon.

(D)(i) In this subsection, the term "qualifying offense" means, except in the case of an offense excluded pursuant to clause (ii), an offense under this chapter for which-

(I) the maximum sentence of confinement that may be adjudged does not exceed two years; and

(II) the sentence adjudged does not include dismissal, a dishonorable or bad-conduct discharge, or confinement for more than six months.

(ii) Such term does not include any of the following:

(I) An offense under subsection (a) or (b) of section 920 of this title (article 120).

(II) An offense under section 920b or 925 of this title (articles 120b and 125).

(III) Such other offenses as the Secretary of Defense may specify by regulation.

(4)(A) Except as provided in subparagraph (B) or (C), the convening authority or another person authorized to act under this section may not disapprove, commute, or suspend in whole or in part an adjudged sentence of confinement for more than six months or a sentence of dismissal, dishonorable discharge, or bad conduct discharge.

(B) Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this section shall have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

(C) If a pre-trial agreement has been entered into by the convening authority and the accused, as authorized by Rule for Courts-Martial 705, the convening authority or another person authorized to act under this section shall have the authority to approve, disapprove, commute, or suspend a sentence in whole or in part pursuant to the terms of the pre-trial agreement, subject to the following limitations for convictions of offenses that involve a mandatory minimum sentence:

(i) If a mandatory minimum sentence of a dishonorable discharge applies to an offense for which the accused has been convicted, the convening authority or another person authorized to act under this section may commute the dishonorable discharge to a bad conduct discharge pursuant to the terms of the pre-trial agreement.

(ii) Except as provided in clause (i), if a mandatory minimum sentence applies pursuant to section 856(b) of this title (article 56(b)) to an offense for which the accused has been convicted, the convening authority or another person authorized to act under this section may not disapprove, otherwise commute, or suspend the mandatory minimum sentence in whole or in part, unless authorized to do so under subparagraph (B).

(d)(1) In any case in which findings and sentence have been adjudged for an offense that involved a victim, the victim shall be provided an opportunity to submit matters for consideration by the convening authority or by another person authorized to act under this section before the convening authority or such other person takes action under this section.

(2)(A) Except as provided in subparagraph (B), the submission of matters under paragraph (1) shall be made within 10 days after the later of- (i) the date on which the victim has been given an authenticated record of trial in accordance with section 854(e) of this title (article 54(e)), if applicable; and (ii) the date on which the victim has been given the recommendation of the staff judge advocate or legal officer under subsection (e).

(B) In the case of a summary court-martial, the submission of matters under paragraph (1) shall be made within seven days after the date on which the sentence is announced.

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(3) If a victim shows that additional time is required for submission of matters under paragraph (1), the convening authority or other person taking action under this section, for good cause, may extend the submission period under paragraph (2) for not more than an additional 20 days.

(4) A victim may waive the right under this subsection to make a submission to the convening authority or other person taking action under this section. Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which a victim may make a submission under this subsection shall be deemed to have expired upon the submission of such waiver to the convening authority or such other person.

(5) In this section, the term "victim" means a person who has suffered a direct physical, emotional, or pecuniary harm as a result of a commission of an offense under this chapter (the Uniform Code of Military Justice) and on which the convening authority or other person authorized to take action under this section is taking action under this section.

(e) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or another person authorized to act under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(f)(1) The convening authority or another person authorized to act under this section may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision-

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or another person authorized to act under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

[http://uscode.house.gov/view.xhtml?req=\(title:10%20section:860%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:10%20section:860%20edition:prelim))