



# *Joint Service Committee on Military Justice*

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# THE UCMJ, TODAY & TOMORROW

Col Mike Lewis  
USAF, JSC Chair

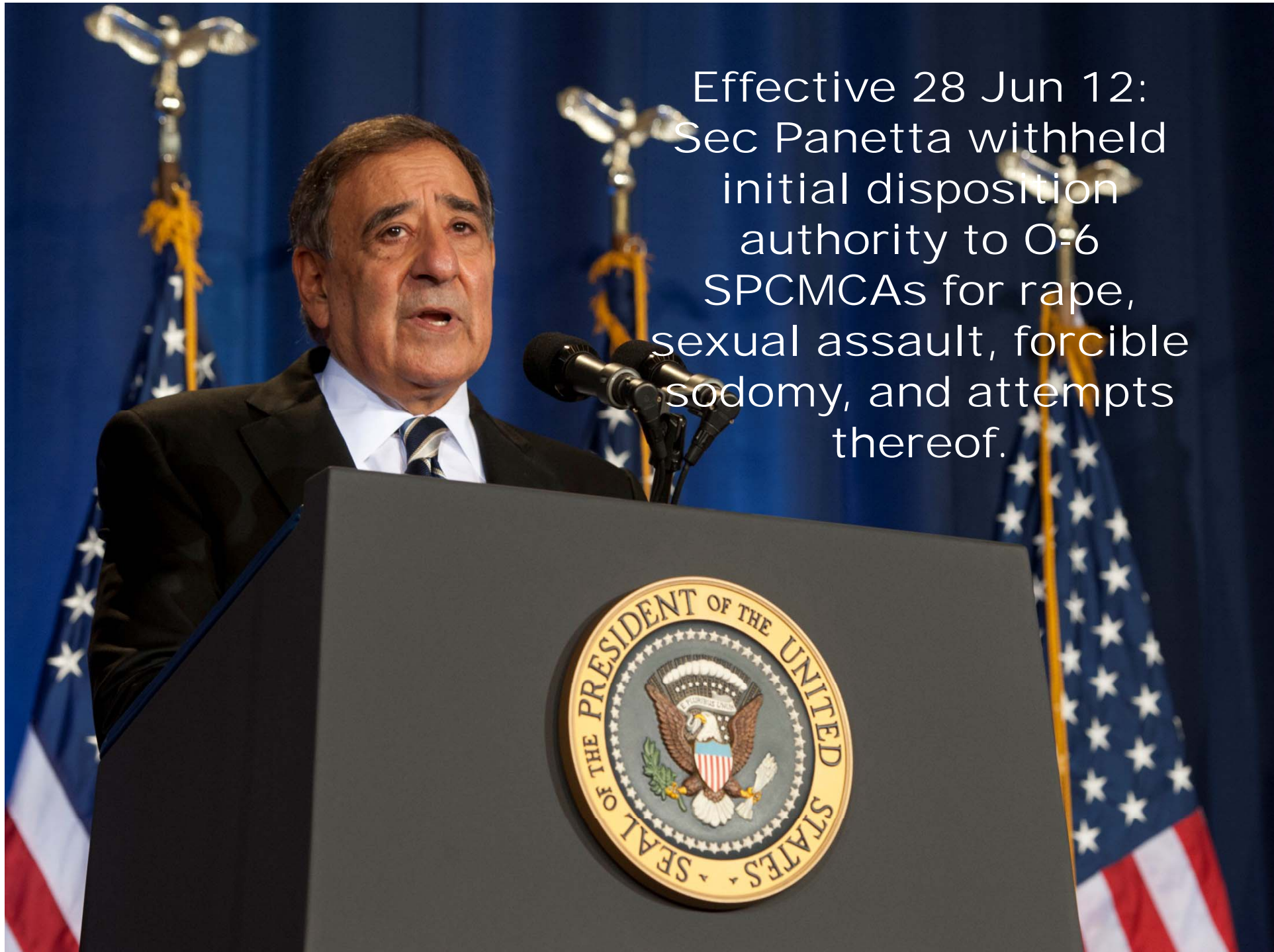




## *Overview*

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- Secretary of Defense Withhold Policy
- Special Victim Capability (FY13 NDAA)
- Special Victims Counsel/Victims Legal Counsel
- Draft EO Highlights
- FY14 NDAA provisions



Effective 28 Jun 12:  
Sec Panetta withheld  
initial disposition  
authority to O-6  
SPCMCA for rape,  
sexual assault, forcible  
sodomy, and attempts  
thereof.



*Special Victim Capability*

**SEC. 573. ESTABLISHMENT OF SPECIAL VICTIM CAPABILITIES WITHIN THE MILITARY DEPARTMENTS TO RESPOND TO ALLEGATIONS OF CERTAIN SPECIAL VICTIM OFFENSES.**

(a) **ESTABLISHMENT REQUIRED.**—Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish special victim capabilities for the purposes of—

(1) investigating and prosecuting allegations of child abuse, serious domestic violence, or sexual offenses; and

~~(2) providing support for the victims of such offenses.~~

(b) **PERSONNEL.**—The special victim capabilities developed under subsection (a) shall include specially trained and selected—

(1) investigators from the Army Criminal Investigative Command, Naval Criminal Investigative Service, or Air Force Office of Special Investigations;

(2) judge advocates;

(3) victim witness assistance personnel; and

(4) administrative paralegal support personnel.

- **Investigators**
- **JAGs**
- **VWAP**
- **Paralegals**



## *Special Victims' Counsel*

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- 28 Jan 13 – AF Pilot Program
    - Air Force – AD/ARC (if incident occurred while in status)
      - The status of the perpetrator does not matter (Air Force, other service, civilian, or unknown)
      - Both restricted and unrestricted reports
    - Adult Dependents of AF Members
      - Perpetrator must be an AF member
      - Both restricted and unrestricted reports
    - Other Services – AD/ARC (if incident occurred while in status)
      - Perpetrator must be an AF member
      - Unrestricted reports only
    - Adult Dependents of Other Services' Members
      - Perpetrator must be an AF member
      - Unrestricted reports only
    - For *sexual assaults* under UCMJ Articles 120, 125, and 80
    - Entry-level status Airmen in UPR involving physical contact of a sexual nature with BMT or TT faculty/staff
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## *Special Victims' Counsel/ Victims Legal Counsel*

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- 14 Aug 13 – SecDef Policy Directive
  - All Services must implement initial capability by 1 Nov 13, and fully established by 1 Jan 14
  - Left to the Services' discretion of what was “best suited for that Service”
  - Army/AF - Entry-level status Airmen BMT/TT unprofessional relationships eligible
  - Marine Corps –included eligible child victims



## *Draft EO Highlights*

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- MRE 412 Evidence at Art. 32 (proposed)
  - Consideration of MRE 412 Evidence at 32 Hearing
    - RCM 405(i) revised to expressly allow IO to make admissibility determinations under MRE 412, applying 412 victim protections
    - Discussion – Include 412 evidence in Art 32 report if considered by IO; Safeguard inadmissible evidence and closed hearing testimony







## *Draft EO Highlights*

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- Art 134
  - Animal Abuse (proposed)
    - Replace Abusing a public animal
    - Includes sexual acts
  - Indecent Conduct (proposed)
    - Old Indecent acts w/ another, but no requirement for “another”
    - Catch-all
  - Pandering and Prostitution – changed from “sexual intercourse” to “sexual act” for money (proposed)

FY14 NDAA  
Title XVII—Sexual Assault  
Prevention and Response  
and Related Reforms  
36 sections

16 military justice  
reforms

“The most  
extensive  
UCMJ revision  
since the  
Military  
Justice Act of  
1968.”

Maj Gen (Ret) Altenburg, USA



# Two major themes

- Enhanced victims' rights
- Constrained convening authority power and discretion

# 16 substantive revisions to military justice system

- Some applicable only to sexual offense cases, some applicable to all cases
- Some changes effective immediately, others phased in

# Reforms

1. Enacted mil crime victims' rights article within the UCMJ (Article 6b) (modeled on 18 U.S.C. § 3771) (Sec 1701 - rights effective immediately - enforcement mechanism willful & wanton violations eff Dec 26, 2014)

# Reforms

2. Requires military legal assistance programs to represent victims of certain offenses (Sec. 1716 effective June 24, 2014)



# Section 1716 of NDAA for FY 2014

Requires SVC representation for more offenses than previously required within DoD (includes not only sexual assaults of adults, but also victims of stalking, voyeurism, forcible pandering, indecent exposure, and child sexual offenses)

# 5 reforms to pretrial process

# Reforms (Pretrial process)

3. Article 32 investigations transformed into “preliminary hearings”

(Sec. 1702(a) applies to offenses committed on or after December 26, 2014)

# Article 32 reform

- Scope of the hearing limited
- Military victims given option not to testify
- Hearing must be recorded; upon request, victim will be given access to the recording
- Preliminary hearing officer usually must be judge advocate and equal to or senior in grade to detailed government and defense counsel

# Reforms (Pretrial Process)

4. Defense counsel required to seek interview of sexual assault victim through the trial counsel (**effective immediately - Section 1704**)
5. Character and military service of the accused required to be eliminated from Manual for Courts-Martial as factors commanders should consider in disposition decisions (**Sec 1708, implementation required by June 24, 2014**)

# Reforms

## (Pretrial Process)

6. Jurisdiction over charges of rape, sexual assault, forcible sodomy, or attempts to commit those offenses limited to GCMs (applies to offenses committed on or after June 24, 2014 – Section 1705(b))
7. GCM convening authorities' decisions not to refer charges for those offenses subjected to higher-level review (majority view implement immediately – Section 1744)

# Sentencing reform



# Reforms (Sentencing)

8. Punitive discharge required for convictions of rape, sexual assault, rape or sexual assault of a child, forcible sodomy, or attempts to commit those offenses (applies to offenses committed on or after June 24, 2014 – Section 1705(a))

4 reforms to post-trial  
process

# Reforms

## (Post-trial Process)

9. Victim given right to make post-trial submission to the convening authority (Sec. 1706(a) - majority view - 24 Jun 14)
10. Convening authority prohibited from considering information about the victim's character that was not admitted at trial (Sec. 1706(b) - majority view - 24 Jun 14)

# Reforms (Post-trial Process)

11. Convening authorities' power to set aside court-martial convictions limited to certain minor offenses (applies to offenses committed on or after June 24, 2014)

# Reforms (Post-trial Process)

12. Convening authorities' power to reduce sentences to confinement for more than six months or a punitive discharge limited other than to comply with a pretrial agreement; convening authorities generally prohibited from eliminating punitive discharge from sex offense sentences (applies to offenses committed on or after June 24, 2014)

4 criminal law reforms

13. Eliminate statute of limitations – sexual assault & sexual assault of a child – offenses on/after 26 Dec 13

14. Repeal consensual sodomy under Art 125 – offenses on/after 26 Dec 13

15. Establish regulations to prohibit retaliation/ostracism for reporting a criminal offense – publish by 26 Apr 14

16. Establish regulations to prohibit relationships between those in entry level processing/training and those who exercise control over them – publish by 24 Jun 14





## *Questions*

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# Discussion Time!

**Col Mike Lewis**

Phone: (240) 612-4820

Michael.A.Lewis11.mil@mail.mil

**Maj Dan Mamber**

Phone: (240) 612-4828

Daniel.C.Mamber.mil@mail.mil

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