

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,
Appellee,

v.

DEVIN W. JOHNSON,
Specialist 3 (E-3),
United States Space Force,
Appellant.

USCA Dkt. No. 24-0004/SF

Crim. App. Dkt. No. 40257

BRIEF ON BEHALF OF APPELLANT

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Issues Presented

I.

Whether the United States Court of Appeals for the Armed Forces has jurisdiction and authority to direct the modification of the 18 U.S.C. § 922 prohibition noted on the Staff Judge Advocate's indorsement to the entry of judgment.

II.

Whether review by the United States Court of Appeals for the Armed Forces of the 18 U.S.C. § 922 prohibition noted on the Staff Judge Advocate's indorsement to the entry of judgment would satisfy the Court's prudential case of controversy doctrines. *See B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024) (detailing this Court's prudential case and controversy doctrines).

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (2018).¹ This Honorable Court has jurisdiction to review this case under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2018).

Relevant Authorities

Article III, Section 2 of the United States Constitution provides:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; —to all cases affecting ambassadors, other public ministers and consuls; —to all cases of admiralty and maritime jurisdiction; —to controversies to which the

¹ All references to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the versions in the *Manual for Courts-Martial, United States* (2019 ed.) [2019 MCM].

United States shall be a party; —to controversies between two or more states; —between a state and citizens of another state; —between citizens of different states; —between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

The Second Amendment of the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

In relevant part, 10 U.S.C. § 860c(a) (2018) provides:

Entry of judgment of general or special court-martial.

(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60) [10 USCS § 860].

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

(i) any post-trial action by the convening authority;
or

(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

In relevant part, 18 U.S.C. § 923(c) (2024) provides:

Upon the filing of a proper application and payment of the prescribed fee, the Attorney General shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter [18 USCS §§ 921 et seq.] and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license.

In relevant part, 18 U.S.C. § 924(a)(1) (2024) provides:

Except as otherwise provided in this chapter, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter [18 USCS §§ 921 et seq.] to be kept in the records of a person licensed under this chapter [18 USCS §§ 921 et seq.] or in applying for any license or exemption or relief from disability under the provisions of this chapter [18 USCS §§ 921 et seq.];

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922 [18 USCS § 922];

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) [18 USCS § 922(1)]; or

(D) willfully violates any other provision of this chapter [18 USCS §§ 921 et seq.],

shall be fined under this title, imprisoned not more than five years, or both.

In relevant part, R.C.M. 1111 provides:

(a) *In general.*

(1) *Scope.* Under regulations prescribed by the Secretary concerned, the military judge of a general or special court-martial shall enter into the record of trial the judgment of the court. If the Chief Trial Judge determines that the military judge is not reasonably available, the Chief Trial Judge may detail another military judge to enter the judgment.

(2) *Purpose.* The judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders. The entry of judgment terminates the trial proceedings and initiates the appellate process.

...

(b) *Contents.* The judgment of the court shall be signed and dated by the military judge and shall consist of—

...

(3) *Additional information.*

...

(F) *Other information.* Any additional information that the Secretary concerned may require by regulation.

(4) *Statement of Trial Results.* The Statement of Trial Results shall be included in the judgment in accordance with regulations prescribed by the Secretary concerned.

(c) Modification of judgment. The judgment may be modified as follows—

...

(2) The Judge Advocate General, the Court of Criminal Appeals, and the Court of Appeals for the Armed Forces may modify a judgment in the performance of their duties and responsibilities.

Pertinent provisions of the following statutes and codes are reproduced in the appendix: 10 U.S.C. § 866 (2018); 10 U.S.C. § 867 (2018); 18 U.S.C. § 922 (2024); 28 C.F.R. 25.6 (effective Jan. 20, 2015). Additionally, pertinent provisions of Department of the Air Force Manual (DAFMAN) 71-102, *Air Force Criminal Indexing* (July 21, 2020), Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* (Jan. 18, 2019),² and DAFI 51-201, *Administration of Military Justice* (Jan. 24, 2024) (incorporating Guidance Memorandum (Oct. 3, 2024)) are reproduced in the appendix.

Statement of the Case

On October 30, 2021, a panel of officer members convicted Specialist 3 (Spc3) Devin W. Johnson, contrary to his pleas, of one specification of abusive sexual

² The relevant paragraphs of the 2019 version of DAFI 51-201 are provided in context with the Chapter they are found in because this version is not readily available online. DAFMAN 71-102 and the 2024 version of DAFI 51-201 are both available online at <https://www.e-publishing.af.mil/Product-Index/>.

contact. JA at 2. The members acquitted Spc3 Johnson of one specification of abusive sexual contact and one specification of sexual assault. JA at 2. The members³ sentenced Spc3 Johnson to a reprimand, six months of confinement, reduction to E-1, and a bad-conduct discharge. JA at 25-26. The convening authority took no action on the findings or the sentence. JA at 32. On August 9, 2023, AFCCA affirmed the findings and sentence. JA at 2.

This Court originally granted Spc3 Johnson's case on March 29, 2024. The order granted review on two firearm-related issues. Order Granting Review (Mar. 29, 2024). No briefing was ordered. *Id.* At the time, *United States v. Williams*, __ M.J. __, 2024 CAAF LEXIS 501 (C.A.A.F. 2024), was pending before this Court. After deciding *Williams*, this Court specified briefing for two issues in this case. Order Granting Review (Oct. 24, 2024).

As of this filing, a motion to supplement the record is pending before this Court. Appellant's Motion to Supplement the Record (Oct. 17, 2024). Within that motion, Spc3 Johnson provided a declaration related to the second specified issue. *Id.* at App.

³ The AFCCA opinion erroneously states that the military judge sentenced Spc3 Johnson. JA at 2; *see* JA at 97 (showing election to be sentenced by members).

Statement of Facts

The members found that Spc3 Johnson touched GH's buttocks without her consent. JA at 25, 34. The Statement of Trial Results (STR) and Entry of Judgment (EOJ) memorialized this finding. JA at 25, 29.

The military judge signed the STR on October 30, 2021, the same day Spc3 Johnson was convicted. JA at 29-30. Right below where the military judge signed the STR, the Staff Judge Advocate (SJA) indicated, "following the completion of the Statement of Trial Results," a firearm prohibition would be applied to Spc3 Johnson. JA at 30. The three-page STR was then distributed to "AFOSI/XIW." JA at 31.

On January 20, 2022, the military judge signed the EOJ. JA at 26. The listed attachments to the EOJ included the three-page STR, but did not list the indorsement. JA at 26. Rather, the indorsement was the third page of the EOJ. JA at 27. On January 21, 2022, the SJA signed the indorsement and indicated Spc3 Johnson qualified for a firearm prohibition under 18 U.S.C. § 922. JA at 27. The SJA did not indicate which part of 18 U.S.C. § 922 applied to Spc3 Johnson following his conviction. JA at 27. The four-page EOJ was distributed to "AFOSI/XIW." JA at 27.

Prior to his conviction, Spc3 Johnson did not own firearms. Appellant's Motion to Supplement the Record, App. at 1. Now, due to financial and safety concerns, Spc3 Johnson intends to purchase firearms for hunting and self defense. *Id.* at 1-2.

Summary of the Argument

To resolve either specified issue fully, this case must be remanded.⁴ This Court has jurisdiction under Article 67(c)(1)(B), UCMJ, to review judgments by a military judge affirmed or set aside (“acted” upon) by the AFCCA. The SJA’s indorsement is a required part of the EOJ signed by the military judge. This makes the indorsement part of the judgment, which this Court can review since the AFCCA had jurisdiction to review it under Article 66(d)(2), UCMJ. However, here, the AFCCA did not act upon (“affirm” or “set aside”) the erroneous firearm bar because Spc3 Johnson did not raise the post-trial processing error to the AFCCA. *See* Supplement to the Petition for Grant of Review at 27-28; *see also* Appellant’s Motion to Supplement the Record

⁴ Additionally, in remanding this case, this Court should also order a new legal and factual sufficiency review. *United States v. Mendoza*, __ M.J. __, 2024 CAAF LEXIS 590, at *22-23 (C.A.A.F. Oct. 7, 2024). The AFCCA opinion states, “We see no reason why the Government may not use evidence that GH was asleep—ordinarily the focal point of a prosecution under the theory of while asleep—as circumstantial evidence of the lack of actual consent in a prosecution under a theory of without consent.” JA at 18. The Government cannot prove absence of consent by merely establishing GH was asleep, but that is what the evidence the AFCCA relied on shows. JA at 12, 63, 65-66, 68, 93 (relying on the evidence showing GH was asleep at the time of the touching). Additionally, the AFCCA’s opinion suggests that proving sleep is all that is necessary for a consent case because GH being asleep is part of the “surrounding circumstances.” JA at 18. Under the facts of this case, both at trial and on appeal, sleep was equated with lack of consent. This is inconsistent with *Mendoza* and this case should be remanded for another legal and factual sufficiency review because it is not clear whether the AFCCA determined GH could consent under all the facts. *See Mendoza*, 2024 CAAF LEXIS 590, at *22-23 (remanding for new legal and factual sufficiency review when it was not clear whether the lower court found the victim was capable of consenting).

at 3 (comparing the timing of Spc3 Johnson's brief to the AFCCA and federal circuit court decisions about 18 U.S.C. § 922). Because the AFCCA did not act upon this issue at all, this Court cannot exercise jurisdiction at this time. Due to the unique procedural posture of this case and the presumption against waiver of constitutional issues, this case should be remanded for the AFCCA's consideration of the error.

Spc3 Johnson has standing to raise this error, but because this Court cannot review this issue yet, this case is not ripe for review. Should this Court disagree on ripeness, adjudication of the firearm bar otherwise satisfies this Court's case and controversy doctrines. The firearm notification to the National Instant Criminal Background Check System (NICS) prohibits Spc3 Johnson from possessing and owning firearms for personal use. This unconstitutional infringement is predicated on the distribution of the EOJ. By correcting the firearm bar on the EOJ, Spc3 Johnson could lawfully purchase, possess, and own firearms. Alternatively, sentencing relief could be provided as redress for the unconstitutional deprivation of rights.

Based on the procedural posture of this case, and many like it, this Court should clarify the meaning of Article 66(d)(2), UCMJ, when evaluating this Court's own authority to act under Article 67, UCMJ. In doing so, this Court should find both this Court and the AFCCA have jurisdiction and remand this case to the AFCCA for review. There, the AFCCA can review the indorsement on the EOJ and provide appropriate relief because Spc3 Johnson has standing.

Argument

I.

This Court may direct the modification of the firearm prohibition noted on the EOJ only after the lower court acts upon the error. Spc3 Johnson did not raise this error to the AFCCA, but due to changes in the law, remand is appropriate.

Standard of Review

This Court reviews questions of jurisdiction de novo. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *7. Questions of statutory construction are also reviewed de novo. *See id.* (reviewing whether the lower court acted outside its Article 66, UCMJ, authority de novo); *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017).

Law and Analysis

Whether this Court has jurisdiction is a question with “two separate but related parts.” *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *7-8. First, whether this Court has jurisdiction to “review” Spc3 Johnson’s case, *id.* at *8, which it does. 10 U.S.C. § 867(a) (2018). Second, whether this Court has authority to “act” upon the SJA’s indorsement to the EOJ, *see Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *8, which it would if the AFCCA had reviewed this error. 10 U.S.C. § 867(c)(1)(B) (2018); 10 U.S.C. § 866(d)(2) (2018). Because of the unique procedural posture of this case, Spc3 Johnson’s granted issue should be remanded to the AFCCA for further proceedings consistent with *Williams*.

1. This Court has jurisdiction to review this case under Article 67(a)(3), UCMJ.

Much like in *Williams*, whether this Court has jurisdiction to review is “straightforward.” *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *8. “This Court’s primary source of jurisdiction is Article 67(a), UCMJ, which grants [this Court] jurisdiction to review three categories of cases.” *Id.* (citing *M.W. v. United States*, 83 M.J. 361, 364 (C.A.A.F. 2023)). Relevant here, Article 67(a)(3), UCMJ, gives this Court jurisdiction over “all cases reviewed by a Court of Criminal Appeals [CCA] in which, upon petition of the accused and on good cause shown, [this Court] has granted a review.” Article 67(a)(3), UCMJ. However, this Court only has jurisdiction to review if the CCA also has jurisdiction to review. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *9 (citing *United States v. Arness*, 74 M.J. 441, 443 (C.A.A.F. 2015)).

Here, whether the AFCCA had jurisdiction to review is also “straightforward.” *Id.* at *8. The AFCCA had jurisdiction to review Spc3 Johnson’s case under Article 66(b)(3), UCMJ, because Spc3 Johnson was sentenced to a bad-conduct discharge. Article 66(b)(3), UCMJ; JA at 26. The AFCCA did review his case, and this Court found good cause to grant Spc3 Johnson’s petition for review. Accordingly, this Court has jurisdiction to review Spc3 Johnson’s case.

2. The uniqueness of the Department of the Air Force’s post-trial processing gives this Court authority to direct modification of the SJA’s indorsement under Article 67(c)(1)(B), UCMJ.

This Court’s decision in *Williams* demonstrates that the Department of the Air Force (DAF) handles post-trial processing different from other services. *See Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *6 (showing that the only firearm prohibition notification for the Army is in the STR). Unlike other services, in the DAF, the indorsement *is* the entry of judgment. This means this Court has authority to act under Article 67(c)(1)(B), UCMJ, if the AFCCA also acts on the firearm prohibition under Article 66(d)(2), UCMJ. “Acting” may vary case by case, but where the AFCCA effectively affirms or sets aside the firearm prohibition during its review, it has exercised its authority to “act.” *See, e.g., United States v. Dominguez-Garcia*, No. ACM S32694 (f rev), 2024 CCA LEXIS 218, at *2 (A.F. Ct. Crim. App. May 31, 2024), *rev. granted*, USCA Dkt. No. 24-0183, 2024 CAAF LEXIS 586 (C.A.A.F. Oct. 3, 2024) (acting by denying relief on the firearm prohibition without discussion).⁵

A. The indorsement is part of the EOJ, making it a judgment by the military judge.

Article 60c, UCMJ, provides, “In accordance with the rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the

⁵ While this Court has granted the firearm issue in several cases, should additional briefing be required following Spc3 Johnson’s case, the facts and procedural posture of *Dominguez-Garcia* lend itself to this Court’s review. *Dominguez-Garcia*, No.

record of trial the judgment of the court.” The judgment must contain the STR and any modifications to the STR made by the convening authority and the military judge. Article 60c, UCMJ. Through R.C.M. 1111(b), the President expanded what is to be included in the entry of judgment. In addition to the STR and specific information about the findings and sentence, the President also requires the entry of judgment to include “other information” that the Secretary orders “by regulation.” R.C.M. 1111(b)(3)(F).

Under the latitude afforded by R.C.M. 1111(b)(3)(F), the Secretary of the DAF created a different way of managing the DAF’s obligation of reporting qualifying convictions under 18 U.S.C. § 922:⁶ through indorsements to the STR *and* the EOJ. DAFI 51-201, at ¶¶ 15.31, 15.32 (Jan. 18, 2019).⁷ The SJA’s indorsement does not just “accompany” the EOJ; the indorsement is a required part of the judgment under Article 60c, UCMJ, and R.C.M. 1111(b)(3)(F). The DAF’s post-trial processing regulations make clear that the indorsement is part of the entry of judgment, just like it is for the STR. DAFI 51-201, at ¶ 13.38.3 (Jan. 18, 2019). *Compare* JA at 26 (calling

ACM S32694 (f rev), 2024 CCA LEXIS 218, at *2, *rev. granted*, USCA Dkt. No. 24-0183, 2024 CAAF LEXIS 586.

⁶ As described by the DAF, 18 U.S.C. § 922 “requires the reporting of the [18 U.S.C. § 922(g) and (n) categories] to the [Federal Bureau of Investigations] for purposes of prohibiting firearm purchases and possession.” DAFMAN 71-102, *Air Force Criminal Indexing*, at ¶ 4.1 (July 21, 2020).

⁷ This process has remained the same to date. DAFI 51-201, at ¶¶ 20.6, 20.7, 20.41, 20.42, 29.32, 29.33 (Jan. 24, 2024).

the STR an “attachment”), *with* JA at 27 (calling the firearm prohibition an “indorsement”).

The SJA’s indorsement is no different than the STR this Court considered in *Williams. Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *6. The STR is required by statute and the Army put the firearm notification in the STR. *Id.* As this Court held there: “[T]he STR is part of the trial court’s ‘judgment.’” *Id.* at *10 (citing Article 60c(a)(1)(A), UCMJ). Similarly, here, the indorsement is also required by statute: “In accordance with rules prescribed by the President,” the military judge enters the “judgment” of the court that “shall consist of” “other information” required by the Secretary of the Air Force, to include a “first indorsement” with the firearm bar. Article 60c, UCMJ; R.C.M. 1111(b)(3)(F); DAFI 51-201, at ¶ 13.38.3 (Jan. 18, 2019). While the chain of legal authorities is longer than in *Williams*, the effect is the same. The indorsement is part of the trial court’s judgment. *See Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *10 (finding the STR part of the judgment).

B. The distribution of the erroneous firearm prohibition is an error in the processing of the court-martial after entry of judgment that the AFCCA can act on.

The plain language of Article 67(c)(1)(B), UCMJ, allows this Court to act with respect to a “judgment” by a military judge acted upon by a CCA. Article 67(c)(1)(B), UCMJ. The CCAs have two different authorities to act under: (1) Article 66(d)(1),

UCMJ; and (2) Article 66(d)(2), UCMJ. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *13-15.

The Air Force Court could have acted under Article 66(d)(2), UCMJ. *See id.* at *13 (holding while the firearm prohibition “must be included in the entry of judgment, it is separate from the ‘findings’ and ‘sentence’ that the service courts may act upon under Article 66(d)(1), UCMJ”). Under Article 66(d)(2), UCMJ, “a [CCA] may provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).” There are three prongs to trigger jurisdiction under Article 66(d)(2), UCMJ: (1) there was error, (2) the error occurred after entry of judgment, and (3) the appellant raised the error to the CCA. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *14.

Here, only the first two prongs are satisfied. First, there was error. The Government deprived Spc3 Johnson of his Second Amendment rights in violation of the Constitution.⁸ Second, the error occurred after entry of judgment. Specifically, it

⁸ This Court did not ask for briefing on the merits of the firearm ban. But it is relevant to the error prong of AFCCA’s jurisdiction. In summary, Spc3 Johnson was convicted of abusive sexual contact. JA at 25. While Spc3 Johnson maintains that it is not clear *which* abusive sexual contact he was convicted of, any of the evidence regarding Spc3 Johnson making nonconsensual contact with GH’s buttocks with his hand was nonviolent. JA at 9-19. In *United States v. Rahimi*, the Supreme Court made clear that precedent suggesting a person had to be “responsible” to own

came when the EOJ was distributed to law enforcement and Spc3 Johnson was coded into NICS. *See* 18 U.S.C. § 922(t)(1) (establishing NICS). “*Reporting* of persons qualifying for NICS prohibition is an immediate denial of the individual’s right to exercise his or her constitutional right to possess a firearm.” DAFMAN 71-102, at ¶ 4.4. (emphasis added). As Spc3 Johnson was not convicted of a violent offense, *see supra* footnote 8, distributing a prohibition to NICS indicating he is barred from owning a firearm is an error in the processing of the court-martial occurring after entry of judgment. Therefore, Article 66(d)(2), UCMJ, would have allowed the AFCCA to “affirm” or “set aside as incorrect in law” the deprivation of rights by providing “appropriate relief” through correcting the EOJ or providing other appropriate relief. *See* R.C.M. 1111(c)(2) (permitting the AFCCA to modify the EOJ in performance of their “duties”). Consequently, this Court would have authority to act upon the AFCCA’s decision to affirm the firearm prohibition on the EOJ because the AFCCA had the authority to review and act upon it.

firearms was not a workable standard. 144 S. Ct. 1889, 1903 (2024). Rather, the Supreme Court reiterated, “The right to keep and bear arms is among the ‘fundamental rights necessary to our system of ordered liberty.’” *Id.* at 1897 (quoting *McDonald v. Chicago*, 561 U. S. 742, 778 (2010)). To constitutionally limit Spc3 Johnson’s right to own a firearm, there must be a “relevantly similar” analog in history. *Id.* at 1898; *see Range v. AG United States*. 69 F.4th 96, 104-05 (3d Cir. 2023), *vacated Garland v. Range*, 2024 U.S. LEXIS 2917 (U.S., July 2, 2024) (distinguishing violent and nonviolent offenses). The Government has not demonstrated one here. Consequently, barring Spc3 Johnson from possessing or owning a firearm is an error.

However, as acknowledged before this Court in the supplement to the petition for grant of review, the unconstitutional deprivation of the right to bear arms was not raised before the AFCCA. Supplement to the Petition for Grant of Review at 28. This Court specified this issue to assess its jurisdiction following *Williams*. Order Granting Review (Oct. 24, 2024). Spc3 Johnson’s case is one of many cases asking this Court to review this issue. *E.g.*, *United States v. Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024), *rev. granted*, USCA Dkt. No. 24-0182, 2024 CAAF LEXIS 640 (C.A.A.F. Oct. 17, 2024); *Dominguez-Garcia*, No. ACM S32694 (f rev), 2024 CCA LEXIS 218, *rev. granted*, USCA Dkt. No. 24-0183, 2024 CAAF LEXIS 586; *United States v. Gubicza*, No. ACM 40464, 2024 CCA LEXIS 266 (A.F. Ct. Crim. App. July 2, 2024), *rev. granted*, USCA Dkt. No. 24-0219, 2024 CAAF LEXIS 585 (C.A.A.F. Oct. 3, 2024); *United States v. George*, No. ACM 40397, 2024 CCA LEXIS 224 (A.F. Ct. Crim. App. June 7, 2024), *rev. granted*, 2024 CCA LEXIS 511 (C.A.A.F. Sep. 3, 2024); *United States v. Jackson*, No. ACM 40310, 2024 CCA LEXIS 9 (A.F. Ct. Crim. App. Jan. 11, 2024), *rev. granted*, 2024 CAAF LEXIS 390 (C.A.A.F. July 8, 2024); *United States v. Casillas*, No. ACM 40302, 2023 CCA LEXIS 527 (A.F. Ct. Crim. App. Dec. 15, 2023), *rev. granted*, 2024 CAAF LEXIS 329 (C.A.A.F. June 14, 2024); *United States v. Saul*, No. ACM 40341, 2023 CCA LEXIS 546 (A.F. Ct. Crim. App. Dec. 29, 2023), *rev. granted*, 2024 CAAF LEXIS 308 (C.A.A.F. June 6, 2024); *United States*

v. Maymi, No. ACM 40332, 2023 CCA LEXIS 491 (A.F. Ct. Crim. App. Oct. 5, 2023), *rev. granted*, 2024 CAAF LEXIS 91 (C.A.A.F. Feb. 16, 2024).

Some of the granted cases before this Court raised the issue to the AFCCA. *E.g.*, *Vanzant*, 84 M.J. at 673; *Gubicza*, No. ACM 40464, 2024 CCA LEXIS 266, at *2; *Jackson*, No. ACM 40310, 2024 CCA LEXIS 9, at *2; *George*, No. ACM 40397, 2024 CCA LEXIS 224, at *3; *Dominguez-Garcia*, No. ACM S32694 (f rev), 2024 CCA LEXIS 218, at *2. But the AFCCA has never reviewed this issue because it believes it lacks jurisdiction to do so. *E.g.*, *Vanzant*, 84 M.J. at 673; *Gubicza*, No. ACM 40464, 2024 CCA LEXIS 266, at *2; *Jackson*, No. ACM 40310, 2024 CCA LEXIS 9, at *2; *George*, No. ACM 40397, 2024 CCA LEXIS 224, at *3; *Dominguez-Garcia*, No. ACM S32694 (f rev), 2024 CCA LEXIS 218, at *2. This includes even after this Court issued its opinion in *Williams*. *E.g.*, *United States v. Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (A.F. Ct. Crim. App. Oct. 17, 2024) (citing *Vanzant*, 84 M.J. at 680-81) (reasoning that *Vanzant* held “the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate’s indorsement to the entry of judgment is beyond a [CCAs’] statutory authority to review”).

Spec3 Johnson’s case must be remanded to the AFCCA for him to raise the issue in the first place. While not originally raised, this is an issue of a “fundamental constitutional right” where this Court should “indulge every reasonable presumption against waiver.” *United States v. Avery*, 52 M.J. 496, 498 (C.A.A.F. 2000) (quoting

Johnson v. Zerbst, 304 U.S. 458, 464 (1938)). Spc3 Johnson, and any similarly situated appellants, get “the benefit of changes to the law between the time of trial and the time of his appeal.” *United States v. Tovarchavez*, 78 M.J. 458, 462 (C.A.A.F. 2019). The clarification of Article 66(d)(2), UCMJ, from *Williams* is a change to the law that AFCCA should apply to this case.

Therefore, this Court has the authority to act on the indorsement because, by virtue of the unique post-trial processing required by the Secretary of the DAF, the indorsement is part of the entry of judgment made by the military judge that can be affirmed or set aside by the AFCCA. However, because Spc3 Johnson was in a position on appeal where he could not raise this issue to the AFCCA, his case should be remanded for consideration of the issue by the AFCCA. *See* Issue II.1 (discussing ripeness).

3. If the indorsement is not part of the EOJ, this Court should remand the case to the AFCCA for it to act under Article 66(d)(2), UCMJ.

Should this Court disagree that the indorsement is part of entry of judgment, then based on the language of Article 67, UCMJ, this Court would not have the authority to act on this issue as framed. However, if that is the case, the AFCCA still has authority to review and act on the error.

The firearm prohibition notification in the DAF is different from that in *Williams*; here, if the indorsement is not part of the entry of judgment itself, then the operative firearm disposition notice still occurs “after the judgment was entered into

the record.” DAFI 51-201, at ¶ 13.38.3 (Jan. 18, 2019). In accordance with the plain language of Article 66(d)(2), UCMJ, the prohibition and distribution is still an error occurring after entry of judgment. Appropriate relief could be correction of the firearm prohibition, R.C.M. 1111(c), or other tailored relief. *See, e.g., United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002) (holding the CCAs have authority to tailor appropriate remedies to the circumstances of the case).

However, the AFCCA has declined to consider this issue. *E.g., Vanzant*, 84 M.J. at 680-81. The AFCCA conflates its authority to act under Article 66(d)(2), UCMJ, with its authority under Article 66(d)(1), UCMJ, by holding “the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate’s indorsement to the entry of judgment is beyond a [CCAs’] statutory authority to review.” *Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (citing *Vanzant*, 84 M.J. at 680-81). This is incorrect following *Williams*, where Article 66(d)(1), UCMJ, and Article 66(d)(2), UCMJ, are different sources of authority. Prior to remanding, this Court should clarify this misunderstanding of the law.

Based on the unique post-trial processing of the DAF, the AFCCA has authority to review this post-trial processing error under Article 66(d)(2), UCMJ, if the error is demonstrated by the accused. Because Spc3 Johnson was unable to raise this issue to the AFCCA, this Court should send his case back for the AFCCA to review.

II.

Where the issue is raised at the lower court, review of the firearm prohibition noted on EOJ satisfies this Court’s prudential case or controversy doctrines. Spc3 Johnson did not raise this error to the AFCCA, so while he has standing, review of the post-trial processing error is not ripe.

Standard of Review

This Court reviews questions of jurisdiction de novo. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *7. “[E]very federal appellate court has a special obligation to ‘satisfy itself not only of its own jurisdiction, but also that of the lower courts’” *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)). The Constitution grants Article III courts the power to decide “Cases” or “Controversies.” U.S. Const. Art. III, §2. This Court, established under Article I of the Constitution, applies the principles from the “cases” and “controversies” limitation as a “prudential matter.” *United States v. Wuterich*, 67 M.J. 63, 69 (C.A.A.F. 2008).

The doctrines of ripeness and standing originate in Article III’s “case” or “controversy” language. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). “If [an] appeal is not ripe, it deprives the court of subject matter jurisdiction and must be dismissed.” *United States v. Wall*, 79 M.J. 456, 459-60 (C.A.A.F. 2020) (citing 1 Lissa Griffin, *Federal Criminal Appeals* § 3:46 (2019 ed.)). Similarly, courts will not issue advisory opinions where there is no standing. *B.M. v. United States*, 84 M.J.

314, 317 (C.A.A.F. 2024). The party invoking federal jurisdiction bears the burden of establishing standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

Law and Analysis

This Court recently reemphasized that even if there is jurisdiction, this Court does not issue advisory opinions. *B.M.*, 84 M.J. at 317. An issue must be ripe and there must be standing.

This case presents the question of whether Spc3 Johnson has standing to raise an error in his post-trial paperwork that affects his Second Amendment rights. Article 66(d)(2), UCMJ; Article 67(c)(1)(B), UCMJ. As already discussed, this issue was not raised at the AFCCA. Because this Court’s jurisdiction is predicated on the AFCCA’s review, correcting the firearm bar is not ripe for this Court, but the case can be remanded.

Aside from the issue of ripeness, Spc3 Johnson meets each of the standing requirements. “To establish . . . standing, an [appellant] must show (1) an ‘injury in fact,’ (2) a sufficient ‘causal connection between the injury and the conduct complained of,’ and (3) a ‘likel[ihood]’ that the injury ‘will be redressed by a favorable decision.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014) (quoting *Lujan*, 504 U. S. at 560-61 (internal quotation marks omitted in original). Here, the Government’s distribution of the SJA’s erroneous 18 U.S.C. § 922 notation in Spc3 Johnson’s post-trial paperwork deprived him of his right to bear arms.

Ultimately, Spc3 Johnson has standing, but based on the procedural posture, this Court should remand his case because the granted issue (Issue III) is not yet ripe.

1. Spc3 Johnson’s case is not ripe for this Court’s adjudication until Spc3 Johnson has an opportunity to raise the error to the AFCCA and the AFCCA affirms or sets aside the error.

“Ripeness” is “the state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made.” *Ripeness*, BLACK’S LAW DICTIONARY 1589 (11th ed. 2019). For a case to be “ripe,” it cannot be dependent on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Trump v. New York*, 592 U.S. 125, 131 (2020) (quoting *Texas v. United States*, 523 U. S. 296, 300 (1998) (internal quotation marks omitted in original)). As this Court noted, “Article I courts . . . ‘generally adhere’ to this doctrine and ordinarily decline to consider an issue that is ‘premature.’” *Wall*, 79 M.J. at 459 (quoting *United States v. Chisholm*, 59 M.J. 151, 152 (C.A.A.F. 2003)).

Here, review of Spc3 Johnson’s firearm prohibition on the EOJ would be premature because he has yet to frame and raise the issue to the AFCCA for appropriate relief. For example, the requested relief or post-trial processing error could change or be presented differently. Additionally, what the AFCCA “affirms” or “sets aside” is fluid. If the relief or error is not focused on the EOJ, this Court’s jurisdiction could also change. Additionally, now that *Williams* clarifies Article

66(d)(2), UCMJ, the AFCCA could provide actual relief. Appropriate relief would affect whether this Court even grants review of this case. These are all contingent future events dependent on whether Spc3 Johnson will raise this issue to the AFCCA and how he will do so. At this stage of review, this case is “riddled with contingencies and speculation that impede judicial review.” *Trump*, 592 U.S. at 131. But remanding this case fixes the ripeness issue if this Court grants review on Issue III again.

Spc3 Johnson deserves a chance for proper review through the jurisdictional scheme outlined in Issue I. *Tovarchavez*, 78 M.J. at 462. Therefore, his case should be remanded for proper consideration because there is standing to raise this issue as outlined below. *Infra* Sections II.2-4.

2. Spc3 Johnson experienced an injury in fact: immediate and actual deprivation of his right to bear arms.

The injury-in-fact requirement helps to ensure that the appellant has a “personal stake in the outcome of the controversy.” *Warth v. Seldin*, 422 U. S. 490, 498 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). The “injury” must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U. S. at 560.

For an injury to be “concrete” it does not have to be tangible. “Although tangible injuries are perhaps easier to recognize, [the Supreme Court has] confirmed in many . . . previous cases that intangible injuries can nevertheless be concrete.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340-342 (2016) (citing *Pleasant Grove*

City v. Summum, 555 U. S. 460 (2009) (discussing a free speech injury); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520 (1993) (discussing a free exercise of religion injury)). For an injury to be particularized, it must affect the individual in a “personal and individual way.” *Lujan*, 504 U.S. at 560 n.1. For an injury to be actual or imminent, the injury must be “‘certainly impending.’” *Id.* at 564 n.2 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). Speculative theories of injury are insufficient. The fact that a harm may happen “‘some day’ . . . -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of ‘actual or imminent’ injury.” *Id.* at 564.

Here, Spc3 Johnson has been deprived his right to bear arms, an intangible injury similar to a deprivation of speech or religion rights. This is a concrete, particularized, and actual injury. Through the indorsement on the EOJ, the Government has deprived Spc3 Johnson of the ability to purchase or own firearms. By distributing the notification to NICS that Spc3 Johnson has a “qualifying offense,” Spc3 Johnson is denied his ability to bear arms.

For standing purposes, the court accepts as valid the merits of the legal claim. *E.g.*, *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 298 (2022) (“[W]e must assume that the loan-repayment limitation . . . unconstitutionally burdens speech.”); *see Warth*, 422 U.S. at 500 (“standing in no way depends on the merits of the plaintiff’s contention that particular conduct is illegal”). Here, this Court assumes 18 U.S.C.

§ 922(g)(1) is unconstitutional as applied to Spc3 Johnson. Therefore, this personal deprivation of Spc3 Johnson's Second Amendment rights is occurring right now.

Spc3 Johnson asserted through a declaration that “but for” this qualifying conviction under 18 U.S.C. § 922(g)(1), he would “immediately” purchase a rifle for deer hunting and a handgun for self defense. Appellant's Motion to Supplement the Record, App. at 1. This is no different than the injury asserted by the plaintiff in *Range v. AG United States*. 69 F.4th at 99 (3d Cir. 2023). “But for” the statute, the appellant in *Range* would “for sure” purchase a gun. *Id.* Like the appellant in *Range*, Spc3 Johnson is experiencing an actual and concrete deprivation of his Second Amendment rights.

Whether this Court finds there is jurisdiction under Article 67(c)(1)(B), UCMJ, or only under Article 66(d)(2), UCMJ, both provide the statutory basis to challenge the injury. Spc3 Johnson's constitutional right to bear arms has been infringed because of an error occurring after entry of judgment through a notation on the EOJ. Spc3 Johnson does not need to expose himself to criminal liability before challenging this error. *See Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 (1979) (noting that a plaintiff “should not be required to await and undergo a criminal prosecution as the sole means of seeking relief”) (quoting *Doe v. Bolton*, 410 U.S. 179, 188 (1973)). Congress has provided a statutory basis for raising this injury as is. 10 U.S.C. § 866(d)(2) (2018); 10 U.S.C. § 867(c)(1)(B) (2018).

Altogether, Spc3 Johnson has asserted an injury in fact caused by the unconstitutional determination 18 U.S.C. § 922(g)(1) applies to him.

3. There is a sufficient causal connection between Spc3 Johnson's injury and the distribution of the 18 U.S.C. § 922 prohibition on the SJA's indorsement.

Spc3 Johnson's injury is that he cannot possess or own firearms due to the SJA forwarding an erroneous notice of a qualifying firearm prohibition to NICS. JA at 27. It is the reporting that creates the deprivation of rights: "Reporting of persons qualifying for NICS prohibition is an immediate denial of the individual's right to exercise his or her constitutional right to possess a firearm." DAFMAN 71-102, at ¶ 4.4. Relief can from correcting the indorsement, but the Government's mandatory distribution of the EOJ is why Spc3 Johnson cannot obtain a firearm. This is because the DAF must report qualifying convictions to NICS.

The Department of the Air Force Criminal Justice Information Cell (DAF-CJIC) is responsible for DAF criminal indexing. AFMAN 71-102, at ¶ 1.4. DAF-CJIC oversees all Air Force NICS entries and removals. AFMAN 71-102, at ¶ 1.4.2. The DAF is required to report to DAF-CJIC members convicted at a general court-martial of a crime punishable by a term of imprisonment exceeding one year. DAFMAN 71-102, at ¶¶ 4.3.1.2, 4.4.3. To effectuate this reporting, the SJA is responsible for "disposition documentation" distribution. DAFMAN 71-102, at Table 1.1, ¶¶ 1.5.3, 4.3.1.4. The "required disposition documentation" following a court-martial is the EOJ and the "first indorsement." *Id.* The "first indorsement" contains

the required firearm prohibition. DAFI 51-201, at ¶¶ 13.38.3, 15.32 (Jan. 18, 2019). The EOJ and indorsement are distributed to “the local AFOSI detachment, Security Forces, and AFOSI/XI to ensure reporting pursuant to 18 U.S.C. § 921-22 is appropriately handled.” DAFI 51-201, at ¶ 15.32 (Jan. 18, 2019). “AFOSI/XI” is the old moniker for DAF-CJIC. *See* DAFMAN 71-102, at ¶ 4.6.7 (noting where to send expungement requests to: DAF-CJIC at “HQ AFOSI/XIC.”).

If an individual wants to lawfully purchase a firearm, a seller must run an NICS background check. 18 U.S.C. §§ 922(s), (t)(1)(A). NICS determines whether the seller may proceed with the transaction. 28 C.F.R. § 25.6(c). As relevant here, a “proceed” response will occur if no disqualifying information is found in the NICS. 28 C.F.R. § 25.6. Because sellers must run an NICS background check before lawfully transferring a firearm, erroneous reporting during the DAF post-trial processing will deprive an individual of their right to bear arms.

But for the indorsement stating “Yes” next to “Firearm Prohibition Triggered Under 18 U.S.C. § 922,” Spc3 Johnson could purchase a firearm from a federally licensed firearm seller. The Federal Gun Control Act, codified at 18 U.S.C. §§ 922(a)(1)(A) and 923(c), requires that any person engaged in the business of dealing in firearms to be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). To lawfully purchase a firearm, Spc3 Johnson would be engaging with a federally licensed firearm seller who would be required to use NICS. *See*

ABOUT NICS, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics> (last visited Oct. 30, 2024) (showing all states use NICS in one way or another).

As it stands, NICS would show Spc3 Johnson is prohibited from owning or possessing a firearm due to the SJA reporting as such to DAF-CJIC. Consequently, there is a sufficient causal connection between Spc3 Johnson's denial of his Second Amendment rights and the indorsement on the EOJ.

4. The injury is likely to be redressed by a favorable decision from this Court or the AFCCA.

As raised to this Court, Spc3 Johnson is seeking a correction to the firearm bar on the EOJ by challenging 18 U.S.C. § 922 as applied to him. He is not challenging the regulatory scheme of reporting or 18 U.S.C. § 922 facially. However, raising an error occurring after entry of judgment has the impact of adjudicating whether 18 U.S.C. § 922 constitutionally applies to him. The practical effect of this is two-fold: (1) he can lawfully purchase a firearm, and (2) the Government could not meet the intent element in a later prosecution.

First, correction of Spc3 Johnson's record will remove him from NICS because the DAF informs NICS whether a prohibiting category exists. *See* NICS INDICES, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/nics-indices> (last visited Oct. 30, 2024) (noting it is the contributing agency's responsibility to remove an individual from NICS Indices if their prohibitor is no

longer valid). The DAF will also transmit “[a]ny actions taken as the results of appellate review . . . to DAF-CJIC.” DAFMAN 71-102, at ¶ 4.4.3.1. Without an NICS prohibitor, Spc3 Johnson would be able to purchase a firearm, as he intends to do. Motion to Supplement the Record, App. at 1.

Second, because correction of the EOJ requires adjudication of whether Spc3 Johnson has a qualifying status under 18 U.S.C. § 922, he could lawfully purchase a firearm knowing his status does not qualify. This secondary effect about knowledge of status is the other key to redressability. Correcting the EOJ requires adjudication of the underlying constitutional issue—whether 18 U.S.C. § 922 applies. If Spc3 Johnson prevails, the NICS prohibitor is dropped and Spc3 Johnson would know his status is not qualifying. This matters because to convict an individual under 18 U.S.C. § 922(g) and 18 U.S.C. § 924, “the Government . . . must show that the defendant knew he possessed a firearm and also that he *knew he had the relevant status when he possessed it.*” *Rehaif v. United States*, 588 U.S. 225, 227 (2019) (emphasis added). It is “the defendant’s *status*, and not his conduct alone, that makes the difference. Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful.” *Rehaif*, 588 U.S. at 232.

Spc3 Johnson’s status is the crucial element—and correction of the EOJ clarifies whether that status is constitutional or not. In his case, a conviction in “any court of, a crime punishable by imprisonment for a term exceeding one year” is not a

qualifying status if the status prohibitor is unconstitutional. This is the underlying question that drives whether the EOJ should be corrected in the first place. Combined, correcting the EOJ based on adjudication of the underlying prohibiting category will fix the unconstitutional deprivation of rights.

Both this Court and the AFCCA can modify the EOJ through R.C.M. 1111(c) as part of each court's respective duties. Even though the STR contains an indorsement as well, the operative indorsement is the one on the EOJ. DAFI 51-201, at ¶¶ 15.13.1, 15.13.3 (Jan. 18, 2019). The EOJ and indorsement are the "final disposition." *Id.* Changing the firearm prohibition on the EOJ therefore corrects the unlawful denial through NICS and the unconstitutional status bar. Therefore, whether this Court or the AFCCA has jurisdiction, correcting the EOJ's indorsement issue is possible and addresses the constitutional issue.

Alternatively, since the AFCCA's jurisdiction is predicated on Article 66(d)(2), UCMJ, a different form of redress could be sentencing relief. The injury is still the erroneous deprivation of constitutional rights by the Government, but this injury could be redressed through another means. *See, e.g., Tardif*, 57 M.J. 219 (C.A.A.F. 2002) (creating a means to grant appropriate relief for unreasonable and unexplained post-trial delays). While the specified issues contemplate action on the EOJ, that is only one possible form of appropriate relief.

This relates back to the ripeness issue. Because this issue has never been adjudicated at the AFCCA, it is premature to discuss standing when there are multiple ways this issue could be raised or awarded appropriate relief. 10 U.S.C. § 866(d)(2) (2028). With “error” now being present in Article 66(d)(2), UCMJ, injuries are not limited to “excessive post-trial delay.” *See Mendoza*, __ M.J. __, 2024 CAAF LEXIS 590, at *15 (discussing plain language and the canon against surplusage); *United States v. Sager*, 76 M.J. 158, 161 (2017) (“In ordinary use the word ‘or’ ... marks an alternative which generally corresponds to the word ‘either.’”) (quoting Earl T. Crawford, *The Construction of Statutes* § 188 (1940)). Consequently, even if modifying the EOJ does not provide redress, that does not mean standing is eliminated. Furthermore, this Court risks issuing an advisory opinion on the standing issue when, based on the jurisdictional question, the issue is not ripe. Nevertheless, Spc3 Johnson has standing to raise the issue.

Conclusion

This Court has an opportunity to confirm that both this Court and the AFCCA can review and act upon an erroneous firearm prohibition in the EOJ. Without this Court’s guidance on jurisdiction, the AFCCA will continue to avoid this issue. Because Spc3 Johnson has standing, this Court should remand Spc3 Johnson’s case to the AFCCA to allow him to raise the erroneous 18 U.S.C. § 922 prohibition for the AFCCA to act upon. And, ultimately, the answer for many cases pending before this

Court may be the same as the answer here: remand to the AFCCA for consideration of the issue and a determination of appropriate relief.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'S. Castanien', with a long horizontal flourish extending to the right.

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CERTIFICATE OF FILING AND SERVICE

I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Appellate Government Division on November 4, 2024.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE
WITH RULES 24(b) and 37

1. This brief complies with the type-volume limitation of Rule 24(b) because it contains 8,054 words.
2. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in a proportional typeface, Times New Roman, in 14-point type.

Respectfully Submitted,

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Appendix

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(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph (A), (B) or (C) of section 866(b)(1) of this title (article 66(b)(1)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing conclusions on the matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B).

(c) REMEDY.—

(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

(2) REHEARING.—In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(3) REMEDY WITHOUT REHEARING.—

(A) DISMISSAL WHEN NO REHEARING ORDERED.—If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(B) DISMISSAL WHEN REHEARING IMPRACTICAL.—If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

§866. Art. 66. Courts of Criminal Appeals

(a) COURTS OF CRIMINAL APPEALS.—Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (h). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel. In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(b) REVIEW.—

(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction of a timely appeal from the judgment of a court-martial, entered into the record under section 860c of this title (article 60c), as follows:

(A) On appeal by the accused in a case in which the sentence extends to confinement for more than six months and the case is not subject to automatic review under paragraph (3)

(B) On appeal by the accused in a case in which the Government previously filed an appeal under section 862 of this title (article 62).

(C) On appeal by the accused in a case that the Judge Advocate General has sent to the Court of Criminal Appeals for review of the sentence under section 856(d) of this title (article 56(d))

(D) In a case in which the accused filed an application for review with the Court under section 869(d)(1)(B) of this title (article 69(d)(1)(B)) and the application has been granted by the Court.

(2) REVIEW OF CERTAIN SENTENCES.—A Court of Criminal Appeals shall have jurisdiction over all cases that the Judge Advocate General orders sent to the Court for review under section 856(d) of this title (article 56(d)).

(3) AUTOMATIC REVIEW.—A Court of Criminal Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under section 860(c) of this title (article 60c) includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more.

(c) TIMELINESS.—An appeal under subsection (b) is timely if it is filed as follows:

(1) In the case of an appeal by the accused under subsection (b)(1)(A) or (b)(1)(B), if filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); or

(B) the date set by the Court of Criminal Appeals by rule or order.

(2) In the case of an appeal by the accused under subsection (b)(1)(C), if filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is notified that the application for review has been granted by letter placed in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record; or

(B) the date set by the Court of Criminal Appeals by rule or order.

(d) DUTIES.—

(1) CASES APPEALED BY ACCUSED.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witness, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(2) ERROR OR EXCESSIVE DELAY.—In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).

(e) CONSIDERATION OF AN APPEAL OF SENTENCE BY THE UNITED STATES.—

(1) IN GENERAL.—In considering a sentence on appeal or review as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

(A) whether the sentence violates the law; and

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(B) whether the sentence is plainly unreasonable.

(2) RECORD ON APPEAL OR REVIEW.—In an appeal or review under this subsection or section 856(d) of this title (article 56(d)), the record on appeal or review shall consist of—

(A) any portion of the record in the case that is designated as pertinent by either of the parties;

(B) the information submitted during the sentencing proceeding; and

(C) any information required by regulation prescribed by the President or by rule or order of the Court of Criminal Appeals.

(f) LIMITS OF AUTHORITY.—

(1) SET ASIDE OF FINDINGS —

(A) IN GENERAL.—If the Court of Criminal Appeals sets aside the findings, the Court—

(i) may affirm any lesser included offense; and

(ii) may, except when prohibited by section 844 of this title (article 44), order a rehearing.

(B) DISMISSAL WHEN NO REHEARING ORDERED.—If the Court of Criminal Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.

(C) DISMISSAL WHEN REHEARING IMPRACTICABLE.—If the Court of Criminal Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

(2) SET ASIDE OF SENTENCE.—If the Court of Criminal Appeals sets aside the sentence, the Court may—

(A) modify the sentence to a lesser sentence; or

(B) order a rehearing

(3) ADDITIONAL PROCEEDINGS.—If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the president may prescribe. If the Court of Appeals for the Armed Forces determines that additional proceedings are warranted, the Court of Criminal Appeals shall order a hearing or other proceeding in accordance with the direction of the court of Appeals for the Armed Forces.

(g) ACTION IN ACCORDANCE WITH DECISIONS OF COURTS.—The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the appropriate authority to take action in accordance with the decision of the Court of Criminal Appeals.

(h) RULES OF PROCEDURE.—The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(i) PROHIBITION ON EVALUATION OF OTHER MEMBERS OF COURTS.—No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(j) INELIGIBILITY OF MEMBERS OF COURTS TO REVIEW RECORDS OF CASES INVOLVING CERTAIN PRIOR MEMBER SERVICE.—No member of a Court of Criminal Appeals shall be eligible to review the record

of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

§867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General, after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps, orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c)(1) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to—

(A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or

(B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals.

(2) In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him.

(3) In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review.

(4) The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further

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action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

§867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

§868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

§869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused and subject to subsections (b), (c), and (d), the Judge Advocate General may modify or set aside, in whole or in part, the findings and sentence in a court-martial that is not reviewed under section 866 of this title (article 66).

(b) TIMING.—To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than one year after the date of completion of review under section 864 or 865 of this title (article 64 or 65), as the case may be. The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.

(c) SCOPE.—

(1)(A) In a case reviewed under section 864 or section 865(d) of this title (article 64 or 65(d)), the Judge Advocate General may set aside the findings or sentence, in whole or in part, on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (Article 44).

(C) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(D) If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(2) In a case reviewed under section 865(d) of this title (article 65(d)), review under this section is limited to the issue of whether the waiver, withdrawal, or failure to file an appeal was invalid under the law. If the Judge Advocate General determines that the waiver, withdrawal, or failure to file an appeal was invalid, the Judge Advocate General shall order appropriate corrective action under rules prescribed by the President.

(d) COURT OF CRIMINAL APPEALS.—

(1) A Court of Criminal Appeals may review the action taken by the Judge Advocate General under subsection (c)—

(A) in a case sent to the Court of Criminal Appeals by order of the Judge Advocate General; or

(B) in a case submitted to the Court of Criminal Appeals by the accused in an application for review.

(2) The Court of Criminal Appeals may grant an application under paragraph (1)(B) only if—

(A) the application demonstrates a substantial basis for concluding that the action on review under subsection (c) constituted prejudicial error; and

(B) the application is filed not later than the earlier of—

(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or

(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

(3) The submission of an application for review under this subsection does not constitute a proceeding before the Court of Criminal Appeals for purposes of section 870(c)(1) of this title (article 70(c)(1)).

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under subsection (d), the Court may take action only with respect to matters of law.

§870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

18 USCS § 922, Part 1 of 4

Current through Public Law 118-106, approved October 4, 2024.

United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) > Part I. Crimes (Chs. 1 — 123) > CHAPTER 44. Firearms (§§ 921 — 934)

§ 922. Unlawful acts [Caution: See prospective amendment note below.]

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter [18 USCS §§ 921 et seq.] to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title [18 USCS § 1715], is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter [effective Dec. 16, 1968];

or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter [18 USCS §§ 921 et seq.]. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)

(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter [18 USCS §§ 921 et seq.].

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

(3)

(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

- (i)** on private property not part of school grounds;
- (ii)** as part of a program approved by a school in the school zone, by an individual who is participating in the program;
- (iii)** by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
- (iv)** by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter [18 USCS § 925(d)(3)] as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

- (1)** the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or
- (2)** the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)

(1) Beginning on the date that is 90 days after the date of enactment of this subsection [enacted Nov. 30, 1993] and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923 [18 USCS § 923], unless—

(A) after the most recent proposal of such transfer by the transferee—

- (i)** the transferor has—
 - (I)** received from the transferee a statement of the transferee containing the information described in paragraph (3);
 - (II)** verified the identity of the transferee by examining the identification document presented;
 - (III)** within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and
 - (IV)** within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)

(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law

enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)

(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923 [18 USCS § 923], an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986 [26 USCS § 5812]; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1) [18 USCS § 1028(d)(1)]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

- (i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;
 - (ii) is not a fugitive from justice;
 - (iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]);
 - (iv) has not been adjudicated as a mental defective or been committed to a mental institution;
 - (v) is not an alien who—
 - (I) is illegally or unlawfully in the United States; or
 - (II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
 - (vi) has not been discharged from the Armed Forces under dishonorable conditions; and
 - (vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;
- (C) the date the statement is made; and
- (D) notice that the transferee intends to obtain a handgun from the transferor.
- (4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—
- (A) the chief law enforcement officer of the place of business of the transferor; and
 - (B) the chief law enforcement officer of the place of residence of the transferee.
- (5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.
- (6)
- (A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.
 - (B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—
 - (i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);
 - (ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and
 - (iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)

(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act [note to this section] that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter [18 USCS §§ 921 et seq.], unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act [note to this section];

(B)

(i) the system provides the licensee with a unique identification number; or

(ii) subject to subparagraph (C), 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section, or State, local, or Tribal law;

(C) in the case of a person less than 21 years of age, in addition to all other requirements of this chapter [18 USCS §§ 921 et seq.]—

(i) the system provides the licensee with a unique identification number;

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that cause exists to further investigate a possibly disqualifying juvenile record under subsection (d); or

(iii) in the case of such a person with respect to whom the system notifies the licensee in accordance with clause (ii) that cause exists to further investigate a possibly disqualifying juvenile record under subsection (d), 10 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that—

(I) transferring the firearm to the other person would violate subsection (d) of this section; or

(II) receipt of a firearm by the other person would violate subsection (g) or (n) of this section, or State, local, or Tribal law; and

(D) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title [18 USCS § 1028(d)]) of the transferee containing a photograph of the transferee.

(2) If transfer or receipt of a firearm would not violate section 922(d), (g), or (n) [18 USCS § 922(d), (g), or (n)] (as applicable) or State, local or Tribal law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)

(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986 [26 USCS § 5812]; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the transfer of a firearm to or receipt of a firearm by such other person would violate subsection (d), (g), or (n) (as applicable) or State[,] local or Tribal law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that transfer of a firearm to or receipt of a firearm by such other person would violate subsection (d), (g), or (n) (as applicable) of this section or State[,] local or Tribal law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923 [18 USCS § 923], and may impose on the licensee a civil fine of not more than \$5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

- (A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or
- (B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

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This document is current through the Oct. 28, 2024 issue of the Federal Register.

**LEXISNEXIS' CODE OF FEDERAL REGULATIONS > Title 28 Judicial Administration > Chapter I
— Department of Justice > Part 25 — Department of Justice Information Systems > Subpart A
— The National Instant Criminal Background Check System**

§ 25.6 Accessing records in the system.

(a) FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act. FFLs are strictly prohibited from initiating a NICS background check for any other purpose. The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL's contacting the FBI NICS Operations Center (by telephone or electronic dial-up access) or a POC. FFLs in each state will be advised by the ATF whether they are required to initiate NICS background checks with the NICS Operations Center or a POC and how they are to do so.

(b) Access to the NICS through the FBI NICS Operations Center. FFLs may contact the NICS Operations Center by use of a toll-free telephone number, only during its regular business hours. In addition to telephone access, toll-free electronic dial-up access to the NICS will be provided to FFLs after the beginning of the NICS operation. FFLs with electronic dial-up access will be able to contact the NICS 24 hours each day, excluding scheduled and unscheduled downtime.

(c)

(1) The FBI NICS Operations Center, upon receiving an FFL telephone or electronic dial-up request for a background check, will:

(i) Verify the FFL Number and code word;

(ii) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;

(iii) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records; and

(iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(A) "Proceed" response, if no disqualifying information was found in the NICS Index, NCIC, or III.

(B) "Delayed" response, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from possessing a firearm by Federal or state law. A "Delayed" response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 a.m. on Friday and shortly thereafter receives a "Delayed" response from the NICS. If state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a "Proceed" or "Denied" response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)

(C) "Denied" response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides information demonstrating that receipt of a firearm by the prospective transferee would violate 18 U.S.C. 922 or state law. The "Denied" response will be provided to the requesting FFL by the NICS Operations Center during its regular business hours.

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(2) None of the responses provided to the FFL under paragraph (c)(1) of this section will contain any of the underlying information in the records checked by the system.

(d) Access to the NICS through POCs. In states where a POC is designated to process background checks for the NICS, FFLs will contact the POC to initiate a NICS background check. Both ATF and the POC will notify FFLs in the POC's state of the means by which FFLs can contact the POC. The NICS will provide POCs with electronic access to the system virtually 24 hours each day through the NCIC communication network. Upon receiving a request for a background check from an FFL, a POC will:

(1) Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system;

(2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; and **(3)** Transmit the request for a background check via the NCIC interface to the NICS.

(e) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in state and local law enforcement and other relevant record systems, and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check.

(f) When the NICS receives an inquiry from a POC, it will search the relevant databases (i.e., NICS Index, NCIC, III) for any matching record(s) and will provide an electronic response to the POC. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:

(1) No record response, if the NICS determines, through a complete search, that no matching record exists.

(2) Partial response, if the NICS has not completed the search of all of its records. This response will indicate the databases that have been searched (i.e., III, NCIC, and/or NICS Index) and the databases that have not been searched. It will also provide any potentially disqualifying information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.

(3) Single matching record response, if all records in the relevant databases have been searched and one matching record was found.

(4) Multiple matching record response, if all records in the relevant databases have been searched and more than one matching record was found.

(g) Generally, based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will:

(1) Confirm any matching records; and

(2) Notify the FFL that the transfer may proceed, is delayed pending further record analysis, or is denied. "Proceed" notifications made within three business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a "Denied" response.

(h) POC Determination Messages. POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions: open transactions that are not resolved before the end of the operational day on which the check is requested; denied transactions; transactions reported to the NICS as open and later changed to proceed; and denied transactions that have been overturned. The FBI shall provide POCs with an electronic capability to transmit this information. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL. For transactions where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks, newly created POC NICS transactions that are not followed by a determination message (deny or open) before the end of the operational day on which they were initiated will be assumed to have resulted in a proceed notification to the

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FFL. The information provided in the POC determination messages will be maintained in the NICS Audit Log described in § 25.9(b). The NICS will destroy its records regarding POC determinations in accordance with the procedures detailed in § 25.9(b).

(i) Response recording. FFLs are required to record the system response, whether provided by the FBI NICS Operations Center or a POC, on the appropriate ATF form for audit and inspection purposes, under 27 CFR part 178 recordkeeping requirements. The FBI NICS Operations Center response will always include an NTN and associated “Proceed,” “Delayed,” or “Denied” determination. POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs will record the POC response, including any transaction number and/or determination.

(j) Access to the NICS Index for purposes unrelated to NICS background checks required by the Brady Act. Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) shall be limited to uses for the purposes of:

- (1) Providing information to Federal, state, tribal, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives;
- (2) Responding to an inquiry from the Bureau of Alcohol, Tobacco, Firearms, and Explosives in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53); or,
- (3) Disposing of firearms in the possession of a Federal, state, tribal, or local criminal justice agency.

Statutory Authority

Authority Note Applicable to 28 CFR Ch. I, Pt. 25

History

[63 FR 58303, 58308, Oct. 30, 1998; 69 FR 43892, 43900, July 23, 2004; 79 FR 69047, 69051, Nov. 20, 2014]

Annotations

Notes

[EFFECTIVE DATE NOTE:

79 FR 69047, 69051, Nov. 20, 2014, revised paragraph (j), effective Jan. 20, 2015.]

Research References & Practice Aids

Hierarchy Notes:

28 CFR Ch. I



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

DAFMAN71-102_DAFGM2024-01

10 September 2024

MEMORANDUM FOR DISTRIBUTION C

MAJCOMS/FLDCOMS/FOAs/DRUs

FROM: SAF/IGX

SUBJECT: Department of the Air Force (DAF) Guidance Memorandum to Air Force Manual (AFMAN) 71-102, *Air Force Criminal Indexing*.

By Order of the Secretary of the Air Force, this DAF Guidance Memorandum immediately changes AFMAN 71-102, *Air Force Criminal Indexing* to a DAFMAN. Compliance with this memorandum is mandatory. To the extent its directions are inconsistent with other DAF publications, the information herein prevails, in accordance with (IAW) DAF Instruction (DAFI) 90-160, *Publications and Forms Management* and DAFMAN 90-161, *Publishing Process and Procedures*.

This memorandum provides guidance authorizing the exclusion of offenses listed in **Attachment 5** from collection and submission of Deoxyribonucleic Acid (DNA) pursuant to changes issued in Department of Defense Instruction (DoDI) 5505.14, *DNA Collection and Submission Requirements for Law Enforcement*, and implements four new DAF forms. This guidance is applicable to the entire DAF, including all uniformed members of the Regular Air Force, the United States Space Force, the Air Force Reserve, the Air National Guard, the Civil Air Patrol, when conducting missions as the official Air Force Auxiliary, all DAF civilian employees, and those with a contractual obligation to abide by the terms of DAF issuances.

Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction 33-322, Records Management and Information Governance Program, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System.

This memorandum becomes void after one year has elapsed from the date of this memorandum, or upon publication of an interim change or rewrite of the affected publication, whichever is earlier.

STEPHEN L. DAVIS
Lieutenant General, DAF
The Inspector General

Attachment: Interim Guidance for DAFMAN 71-102

ATTACHMENT

Interim Guidance for AFMAN 71-102, *Air Force Criminal Indexing*

(ADDED) 1.5.3. The servicing legal office will distribute all disposition documentation to DAF-CJIC within three duty days of disposition completed. The DA Form 239, *Department of the Air Force Offense Disposition Report*, is required for all offenses resulting in a positive probable cause disposition. The servicing legal office will provide the DA Form 239 to DAF-CJIC within three duty days of completion, and it also will return a completed copy of the DA Form 239 to the office (local AFOSI detachment or local AFSF) that initiated the DAF Form 239. Reference Table 1.1 for disposition documentation for which the servicing legal office is the Office of Primary Responsibility (OPR) for distribution.

(ADDED) 1.5.4. The installation servicing legal office will report all subjects of a commander directed investigation (CDI) or informal inquiry who have charges preferred against them to AFSF so a case can be opened, and criminal indexing can be accomplished.

(UPDATED) Table 1.1. Disposition Documentation Requirements.

Proceeding	Required Disposition Documentation	OPR
Summary Court-Martial (SCM)	DD Form 2329, <i>Record of Trial by Summary Court Martial</i> , and the first indorsement	SJA
General Court-Martial (GCM)	Notice of scheduling/delay/abatement exceeding one year after referral of charges	SJA
GCM and Special Court-Martial (SPCM)	Report of Results of Trial (pre-1 January 2019) or Statement of Trial Results (STR) and the first indorsement	SJA
GCM and SPCM	Court-Martial Order (pre-1 January 2019) or Entry of Judgement (EoJ) and the first indorsement	SJA
All courts-martial	DD Form 458 <i>Charge Sheet</i> , upon preferral and referral (copy of referral charge sheet must be provided to DAF-CJIC within 24 hours of service on accused)	SJA
All courts-martial	Notice of approval of request for resignation, retirement, or discharge in lieu of trial.	SJA
All courts-martial	Supplementary Orders (if any)	SJA
All courts-martial	First Supplemental Order (pre-1 January 2019) or Certification of Final Review (post review/appeals)	SJA
Nonjudicial Punishment	Completed AF Forms 3070, <i>Record of Nonjudicial Punishment Proceedings</i> ; AF Form 366, <i>Record of Proceedings of Vacation of Suspended Nonjudicial Punishment</i> ; AF Form 3212, <i>Record of Supplementary Action Under Article 15, UCMJ</i> (through servicing SJA review)	SJA
Notice of no criminal proceedings	DAF Form 239	SJA

(ADDED) 4.3.7.5.4. Firearm prohibitions resulting from MCDVs involving dating relationships become permanent when:

(ADDED) 4.3.7.5.4.1. The subject/offender is convicted for multiple offenses with an element of violence against a victim who qualifies as a “dating relationship” in the same court.

(ADDED) 4.3.7.5.4.2. The subject/offender is convicted in multiple courts for offenses with an element of violence against a victim who qualifies for any Domestic Violence relationship, including “dating relationship.”

(UPDATED) Table 4.1. Matrix for Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives, and Service of DAF Form 177.

Paragraph	Prohibitor	Timing	Notifying Authority
4.3.1.	Conviction in any court a of crime punishable by imprisonment for a term exceeding one year	Conviction in a court-martial	SJA
4.3.1.	Conviction in any court of crime punishable by imprisonment for term exceeding one year	Conviction in a civilian court	Commander or Investigating Law Enforcement agency Note: If requirement is unclear, contact DAF-CJIC or servicing legal office.
4.3.3.	Persons who are unlawful users of, or addicted to, any controlled substance	Admission as part of a Law Enforcement investigation	Investigating Law Enforcement agency
4.3.3.	Persons who are unlawful users of, or addicted to, any controlled substance	Conviction at SCM/SPCM/GCM (regardless of whether earlier notified)	SJA
4.3.3.	Persons who are unlawful users of, or addicted to, any controlled substance	Completion of NJP (after servicing SJA legal review)	SJA
4.3.3.	Persons who are in possession of unlawful substance (as listed on CSA), when not otherwise justified by MRO	Admission as part of a Law Enforcement investigation	Investigating Law Enforcement agency
4.3.3.	Persons who are in possession of an unlawful substance (as	Completion of NJP (after servicing SJA legal review)	SJA

	listed on CSA), when not otherwise justified by MRO		
4.3.3.	Persons who are in possession of an unlawful substance (as listed on CSA), when not otherwise justified by MRO	Conviction at SCM/SPCM/GCM (regardless of whether earlier notified)	SJA
4.3.4	Persons who have been adjudicated as mental defectives or who have been committed to a mental institution	If resulting from a court-martial (e.g., not guilty by reason of insanity or incompetent to stand trial)	SJA
4.3.4.	Persons who have been adjudicated as mental defectives or who have been committed to a mental institution	Any other condition/trigger (not court-martial related)	Commander
4.3.7.	Persons convicted in any court of a MCDV. Note: Only applies to GCM/SPCM for military convictions.	Upon a court-martial conviction	SJA
4.3.7.	Persons convicted in any court of a MCDV.	Upon notification of a conviction in a civilian court of MCDV	Commander
4.3.8.	Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year. Note: Only applies to GCM referrals for military prosecutions.	Upon referral of charges	SJA
4.3.8.	Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year.	Upon notification of an indictment in a civilian court	Investigating Law Enforcement agency (or Commander if DAF Law Enforcement does not open an investigation)

(UPDATED) 4.6.3. Notification by the SJA. Where the SJA is required to notify the member that they have been identified as meeting a NICS prohibitor (refer to **Table 4.1** and **paragraph 4.3**), the legal office will provide a copy of the completed DAF Form 177 and all supporting documentation for the prohibition to DAF-CJIC, within 24 hours of completion, via email to daf.cjic@us.af.mil. **(T-1)** The servicing legal office will also provide a digital copy to the member's commander, member's defense counsel if applicable, and forward the original signed DAF Form 177 to the investigating DAF Law Enforcement Agency (AFOSI or AFSF) to be retained within the investigative case file. **(T-1)**

(UPDATED) 4.6.4. Notification by the Investigating Agency. Where the investigating agency (e.g., AFOSI or AFSF) is required to notify the member that they have been identified as meeting a NICS prohibitor (refer to **Table 4.1** and **paragraph 4.3**), the investigating agency will complete the DAF Form 177. **(T-1)** In cases where the prohibition becomes clear during a subject interview (e.g., the member admits to unlawful use of a substance as defined by the CSA), this notification will occur upon completion of the subject interview. **(T-1)** The investigating agency will retain the original signed DAF Form 177 in the investigative case file and will, within 24 hours of completion, provide a digital copy to the member's commander, servicing legal office, and DAF-CJIC (via email to daf.cjic@us.af.mil) with all supporting documentation for the prohibition. **(T-1)** The servicing legal office will provide a copy to the member's defense counsel, if applicable. **(T-1)**

(UPDATED) 4.6.5. Notification by the Commander. The member's unit commander is required to notify the member that they have been identified as meeting a NICS prohibitor (refer to **Table 4.1** and **paragraph 4.3**). **(T-1)** The commander will provide a copy of the completed DAF Form 177 and all supporting documentation for the prohibition to DAF-CJIC within 24 hours of completion via email to daf.cjic@us.af.mil and to the servicing legal office. **(T-1)** The servicing legal office will provide a copy to the member's defense counsel, if applicable. **(T-1)** The commander will forward the original signed DAF Form 177 and all supporting documentation for the prohibition to the investigating DAF Law Enforcement Agency (AFOSI or AFSF) to be retained within the investigative case file. **(T-1)**

(DELETED) 4.6.7.

(UPDATED) 5.1. Collection of DNA. The collection of a member's DNA sample is authorized by and conducted pursuant to 10 USC §1565, *DNA Identification Information: Collection from Certain Offenders; Use*; 34 USC § 40702, *Collection and Use of DNA Identification Information from Certain Federal Offenders*; and 28 CFR § 28.12, *Collection of DNA Samples*.

(UPDATED) 5.2. DNA Samples. AFOSI and AFSF will collect and submit DNA samples from service members when probable cause exists for indexable offenses. **(T-0)** **Note:** Only collect and submit DNA samples from civilians when the arrest has been made by an AFOSI civilian agent IAW **paragraph 2.1.2**. **(T-0)** Upon coordination with the servicing SJA, as documented on the DAF Form 178, submit the DNA sample to USACIL according to DoDI 5505.14 and maintain the DAF Form 178 in the investigative case file. **(T-1)** DNA collection and submission requirements do not apply to the offenses enumerated in **Attachment 5**, which are not considered to be serious or significant. The offenses found in **Attachment 5** do not require collection or submission of DNA, unless such offenses are accompanied by a serious or significant offense IAW 28 CFR § 20.32.

(UPDATED) 5.2.5. Upon preferral of charges for subjects of a CDI or informal inquiry (not investigated by law enforcement), the servicing SJA must ensure collection of DNA occurs for qualifying offenses. **(T-0)** Following notification from SJA of preferral of charges, AFSF will collect DNA for qualifying offenses as required. DNA will not be collected for a CDI or informal inquiry that does not result in preferral of charges. **(T-1)**

(ADDED) 5.2.5.1. Neither AFOSI nor AFSF will collect DNA for any offense without an open investigative case file. The case file number is required for submission of the DNA collection kit to USACIL. **(T-0)** All investigative documentation will be maintained in the case file and will be retrievable by the case file number. DAF-CJIC will use the case file number to retrieve information that is necessary for the performance of its duties including, but not limited to, DNA submission challenges, expungement requests, and audits of the CODIS entries. **(T-1)**

(UPDATED) **9.2. Expungement Requests.** Individuals requesting expungement will complete and submit an appropriate expungement request form and an DAF Form 238, *Department of the Air Force Verification of Identity*, to DAF-CJIC at DAF-CJIC, 27130 Telegraph Rd, Quantico, VA 22134, or by email to daf.cjic.expungements@us.af.mil. **(T-1)** Refer to **paragraphs 9.2.1, 9.2.2, and 9.2.3** to determine the appropriate DAF expungement request form.

(UPDATED) 9.2.1. Current service members requesting expungement or modification of their records will request an expungement by completing and submitting a DAF Form 235, *Request for Expungement of Current Service Members*, IAW **paragraph 9.2**. Members will submit these requests through the servicing SJA and the first commanding officer in the grade of O-4 or higher. The servicing SJA and commander will indorse the request for expungement from CODIS. DAF-CJIC will limit the review of SJA and commander indorsements to CODIS entries IAW DoDI 5505.14. DAF-CJIC will not consider any indorsements relating to entries in III, DCII or NICS. The requestor will then submit the completed DAF Form 235 IAW **paragraph 9.2**.

(UPDATED) 9.2.1.1.1. A completed DAF Form 235 written request for an expungement and/or correction of a DAF record. **(T-1)**

(UPDATED) 9.2.1.1.2. A completed DAF Form 238 with a wet signature or a digital signature using CAC certificates. **(T-1)**

(DELETED) 9.2.1.1.3.

(UPDATED) 9.2.1.2. To avoid delays in processing, include the following if available:

(UPDATED) 9.2.1.2.2. Former name (if applicable).

(UPDATED) 9.2.1.2.3. Supporting documents (e.g., proof that charges were dismissed, proof that the allegation was later found to have been based on a falsified report; proof of mistaken identity or a statement explaining that there was no probable cause to believe the individual committed the offense reported). **(T-1)**

(DELETED) 9.2.1.2.4.

**BY ORDER OF THE SECRETARY
OF THE AIR FORCE**

AIR FORCE MANUAL 71-102

21 JULY 2020



Special Investigations

AIR FORCE CRIMINAL INDEXING

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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(Colonel Christopher S. Church)

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This manual implements Air Force Policy Directive 71-1 *Criminal Investigations and Counterintelligence*; Department of Defense Instruction (DoDI) 5505.07, *Titling and Indexing in Criminal Investigations*; DoDI 5505.11, *Fingerprint Reporting Requirements*; DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*; Public Law 103-159, 107 Stat. 1536, *Brady Handgun Violence Prevention Act*. Unless otherwise noted herein, this instruction applies to all civilian employees and uniformed members of the Department of the Air Force (Regular Air Force and Space Force), Air Force Reserve (AFR) and Air National Guard (ANG) while in Title 10 status. For purposes of this instruction, ANG members not in Title 10 status are treated as civilians. COMPLIANCE WITH THIS PUBLICATION IS MANDATORY. Requests for waivers to any part of this publication will not be granted. This manual requires the collection and or maintenance of information protected by the Privacy Act of 1974 and AFI 33-322 *Air Force Privacy and Civil Liberties Program*, authorized by Title 10 United States Code Section 9013, DoDI 5505.16, *Investigations by DoD Components*, and DoDI 5505.07. The applicable System of Records Notices, F071 AFOSI D, *Investigative Information Management System*, and F031 AF SF B, *Security Forces Management Information System*, are available at: <https://dpcl.d.defense.gov/privacy/SORNS.aspx>. The authority to collect and or maintain the records prescribed in this publication is Title 5 United States Code Section 552a. Forms affected by the Privacy Act have an appropriate Privacy Act statement. Ensure all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual AFI 33-322, *Records Management and Information Governance Program*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. The reporting requirements in this publication are

Chapter 1

ROLES AND RESPONSIBILITIES

1.1. Air Force Inspector General (IG). The IG develops indexing policy for the Department of the Air Force (DAF) and provides oversight of the AF in execution of indexing policies.

1.2. The Air Force Office of Special Investigations (AFOSI) will:

1.2.1. Serve as the DAF focal point for indexing Criminal History Record Information (CHRI) and validation of AFOSI and Air Force Security Forces (AFSF) field unit CHRI. **(T-0)**

1.2.2. Manage the DAF Criminal Justice Information Cell (DAF-CJIC). HQ AFOSI will establish and maintain a direct means to enter CHRI into the Interstate Identification Index (III) system and the National Crime Information Center (NCIC) databases, as well as serve as the venue to process expungements for these systems. **(T-1)**

1.2.3. Maintain the National Instant Criminal Background Check System (NICS) point of contact for the AF within Headquarters (HQ) AFOSI. **(T-1)** AFOSI executes responsibilities with the NICS enterprise via the DAF-CJIC. AFOSI will submit names and identifying information of qualifying persons to DAF-CJIC for inclusion in the NICS. **(T-1)** AFOSI will refer any expungement requests to the DAF-CJIC. **(T-1)** AFOSI units are responsible for collecting DNA samples from subjects investigated for qualifying offenses and submitting them to the United States Army Criminal Investigation Laboratory (USACIL) for indexing in the Combined Deoxyribonucleic Acid Index System (CODIS) database. **(T-0)**

1.2.4. Submit names and identifying information on AFOSI investigations for inclusion in the Defense Central Index of Investigations (DCII) database. **(T-0)** AFOSI will submit unclassified closed case information to the Law Enforcement Defense Data Exchange (D-DEX) upon case closure and ensure data is complete and accurate. **(T-0)** AFOSI is responsible for submitting Defense Incident-Based Reporting System (DIBRS) data to the Defense Manpower Data Center (DMDC), in accordance with Department of Defense Manual (DoDM) 7730.47 Volume 1, *Defense Incident-Based Reporting System (DIBRS): Data Segments And Elements*, DoDM 7730.47 Volume 2, *Defense Incident-Based Reporting System (DIBRS): Supporting Codes*, and this manual. **(T-0)** AFOSI at the installation level maintains relationships as necessary with installation offices responsible for aspects of the AF indexing process outlined in this manual. **(T-1)**

1.3. Air Force Security Forces (AFSF) will:

1.3.1. Maintain a direct means to enter CHRI into the III system. **(T-1)** AFSF units are responsible for collecting DNA samples from subjects/offenders investigated for qualifying offenses and submitting them to the USACIL for indexing in the CODIS database. **(T-0)**

1.3.1.1. AFSF will submit names and identifying information of qualifying persons to DAF-CJIC for inclusion in the NICS. **(T-0)**

1.3.1.2. AFSF will enter all names and identifying information on SF investigations for inclusion in the DCII database. **(T-0)** AFSF will refer any expungement requests to the DAF-CJIC. **(T-0)**

1.3.1.3. AFSF is responsible for submission of DIBRS information to DMDC. (T-0) AFSF will submit unclassified closed case information to D-DEx. (T-0) AFSF at the installation level maintains relationships as necessary with installation offices responsible for the actions to complete the indexing process. (T-1)

1.3.2. Air Force Security Forces Center (AFSFC). AFSFC provides oversight to the Air Force Corrections System. AFSFC tracks AF confinees in sister-services confinement facilities, as well as AF confinement facilities. AF confinement facilities complete notifications in accordance with AFMAN 31-115 Volume 1, *Air Force Corrections System*, regarding the release of a person required to register as a sex offender. The AF Corrections System maintains administrative oversight of members it gains and who are adjudged a punitive discharge (Bad Conduct Discharge, Dishonorable Discharge [DD], or Dismissal) from post-trial action through completion of appellate review leave. Once appellate review leave concludes and the punitive discharge is executed, The AF Corrections System produces and distributes the Air Force Form 100, *Request and Authorization for Separation* and the Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty*, with all applicable separation codes listed.

1.4. Department of the Air Force Criminal Justice Information Cell (DAF-CJIC). The DAF-CJIC is an AF-level entity located at HQ AFOSI, reporting to the AFOSI commander, and is responsible for AF criminal indexing. The DAF-CJIC is composed of representatives from AFOSI, Air Force Judge Advocate General Corps, and AFSF. The DAF CJIC will:

1.4.1. Enter and oversee manual entries and removals for fingerprint indexing in the III system as necessary, as well as manual entries and removals from DCII as necessary. (T-1)

1.4.2. Oversee all AF expungement requests related to criminal indexing, oversee correction of CHRI, and oversee all AF NICS entries and removals. (T-1)

1.4.3. Conduct audits on NCIC terminal accesses and query records for the AF in compliance with the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division mandates. (T-1)

1.4.4. Task and coordinate with AF law enforcement field units and judge advocates for criminal indexing related information, as necessary. (T-1)

1.4.5. Review fingerprint submission reports for additional indexing requirements.

1.4.6. Monitor Drug Demand Reduction (DDR) program submissions and engages with Air Force Medical Readiness Agency (AFMRA) to close reporting gaps. (T-1)

1.5. Air Force Judge Advocate General Corps (AFJAGC). Provides legal advice and guidance for the areas covered by this manual.

1.5.1. The installation Staff Judge Advocate (SJA) will provide legal advice to AF personnel on indexing requirements and legalities. (T-1) Other guidance about command action documentation is outlined in AFI 51-201, *Administration of Military Justice* (see Table 1.1).

1.5.2. The Air Force Military Justice Division (JAJM), formerly known as the Air Force Legal Operations Agency (AFLOA), will provide weekly data extractions from the Automated Military Justice Analysis and Management System to the DAF-CJIC. (T-1)

Table 1.1. Disposition Documentation Requirements.

Proceeding	Before 1 Jan 2019	After 1 Jan 2019	OPR
General court-martial (GCM)	DD Form 458, <i>Charge Sheet</i> , upon referral to GCM	DD Form 458, <i>Charge Sheet</i> , upon referral to GCM	SJA
Summary Court-martial (SCM)	Convening Authority Action/DD Form 2329, <i>Record of trial by Summary Court Martial</i>	DD Form 2329 + first indorsement	SJA
General court-martial	Notice of scheduling/delay/abatement exceeding one year after referral of charges	Notice of scheduling/delay/abatement exceeding one year after referral of charges	SJA
General and special court-martial (SPCM)	<i>Report of Results of Trial</i> (RRoT)	Statement of Trial Results + first indorsement	SJA
General and special court-martial	Court-Martial Order (CMO)	Entry of Judgement + first indorsement	SJA
All court-martial	Notice of approval of request for resignation, retirement or discharge in lieu of trial.	Notice of approval of request for resignation, retirement or discharge in lieu of trial.	SJA
All courts-martial	Supplementary Orders (if any)	Supplementary Orders (if any)	SJA
All courts-martial	Certification of Final Review (post review/appeals)	Certification of Final Review (post review/appeals)	SJA
Nonjudicial Punishment	Completed AF Form 3070, <i>Record of Nonjudicial Punishment Proceedings</i> , AF Form 366, <i>Record of Proceedings of Vacation of Suspended Nonjudicial Punishment</i> , AF Form 3212, <i>Record of Supplementary Action Under Article 15, Uniform Code of Military Justice (UCMJ)</i> (through servicing SJA review)	Completed AF Forms 3070, 366, 3212 (through servicing SJA review)	SJA

Administrative action	Command action memo or copy of administrative action	Command action memo or copy of administrative action	Commander
Notification of disposition other than court-martial in penetrative sexual assault cases	Initial Disposition Authority memorandum (General Court-Martial Convening Authority (GCMCA)) in penetrative sexual assault cases with disposition other than court-martial	Initial Disposition Authority memorandum (GCMCA) in penetrative sexual assault cases with disposition other than court-martial	SJA
Notice of no action in all other cases (not involving penetrative sexual assault)	Command action memo or other documentation	Command action memo or other documentation	Commander
Administrative discharge for qualifying offense	Convening authority action memorandum	Convening authority action memorandum	SJA

1.6. Air Force Medical Readiness Agency (AFMRA). Provides guidance to field medical staff in accordance with this manual.

1.6.1. Medical (or healthcare) providers (or personnel) will notify a member's commander when they become aware of the member's admission to, or discharge from, any on-base or off-base inpatient mental health or substance abuse treatment facility. (DODI 6490.08, *Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members*, and AFI 44-172, *Mental Health*). **(T-1)**

1.6.2. Drug Demand Reduction (DDR). For AF military members, government service employees, and non-appropriated fund employees, AF DDR will report to the DAF-CJIC all positive urinalysis test results for controlled substances (as defined in Title 21 United States Code Section 802, *Drug Abuse and Prevention*) that are not medically authorized/explained by the medical review officer (MRO). **(T-1)**

1.6.3. Family Advocacy Program (FAP). The FAP will report to the respective commander and the DAF-CJIC, within one duty day of notification, AF personnel for which a military protection order (MPO) or civilian protection order (CPO) has been issued, as well as instances where they were notified of AF personnel convicted by civilian (federal, state, and local) court of offenses that may qualify as domestic violence (**reference para. 2.2.4.10**). **(T-1)**

1.7. Unit Commanders. Unit commanders will report to the installation's primary law enforcement control center (typically the law enforcement desk or base defense operations center) issuances, changes and terminations of MPOs. **(T-1)**

1.7.1. Unit commanders will report all subjects who meet the NICS qualifications to DAF-CJIC within one duty day of commencing a commander directed investigation (CDI) or informal inquiry (see [paragraph 4.3](#)). (T-1) Commanders will refer to OSI or AFSF any matter which is referred to court-martial, so a case may be opened and criminal indexing accomplished in accordance with DoDI 5505.11. Refer to AFI 71-101, Criminal Investigations, Investigations Matrix, to determine if the matter will be referred to OSI or to AFSF. (T-1)

1.7.2. In addition, unit commanders will notify members of NICS prohibition qualifications via AF Form 177 (formerly AFOSI Form 175), *Notice/Acknowledgment of Qualification for Prohibitions of Firearms, Ammunition, and Explosives*. (T-1) Unit commanders will distribute the AF Form 177, in accordance with section 4.6. (T-1) After consultation with servicing legal office, the unit commanders will coordinate with base AFOSI or AFSF for the collection of fingerprints and DNA for all CDIs or informal inquiries. (T-1)

1.7.3. Commanders will also report issuances of administrative action; approved administrative discharges (with either an “under other than honorable conditions or general discharge characterization); or a decision to take no action on a qualifying offense; and those indexable mental health hospitalizations that meet commitment reporting criteria in accordance with [paragraph 4.4](#) (T-1).

Chapter 4

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

4.1. NICS. NICS is a database system for the indexing of persons with a qualifying prohibition for the shipment, transportation, receipt and possession of firearms and ammunition in or affecting interstate or foreign commerce. The FBI maintains the NICS system on behalf of the DOJ. The Brady Handgun Violence Prevention Act of 1993 requires the reporting of the categories below to the FBI for purposes of prohibiting firearm purchases and possession. Refer to [Paragraph 4.4](#) for reporting procedures.

4.2. Title 18 United States Code, Section 925(a)(1), *Exceptions: Relief from Disabilities.* Establishes an exemption to the prohibitions listed in Title 18 United States Code Section 922, *Unlawful Acts*, for United States Government personnel to possess government owned weapons for official government business.

4.2.1. 18 USC § 925(a)(1) does not allow exceptions or waivers in the case of Misdemeanor Crimes of Domestic Violence (MCDV).

4.2.2. In accordance with DoDI 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, a conviction for an offense meeting the definition of a felony crime of domestic violence also prohibits government personnel from the possession of government owned weapons.

4.3. Prohibited Categories. 18 USC § 922 details ten categories that prohibit an individual from the shipment, transportation, purchase, transfer, receipt and possession of firearms and ammunition. The categories and qualifications for those prohibitions are as follows:

4.3.1. Category 1: Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (or a misdemeanor crime punishable by imprisonment over two years).

4.3.1.1. Qualification prohibits the purchase of new and/or the possession of currently owned firearms and ammunition. This prohibition is permanent.

4.3.1.2. Requires a crime be punishable by imprisonment for a term exceeding one year. It does not require a person to actually receive a sentence of more than one year. A GCM is the only military court with the ability to impose a sentence in excess of one year.

4.3.1.3. AFOSI, AFSF, and commanders, upon notification, will report IAW [paragraph 4.4](#) all subjects of criminal investigations and/or CDIs or informal inquiries who are adjudicated as guilty at GCM for an offense punishable by imprisonment for a term exceeding one year. **(T-0)**

4.3.1.4. Base SJAs, upon notification, will report in accordance with [paragraph 4.4](#) all subjects of criminal investigations and/or CDIs or informal inquiries who are adjudicated as guilty at GCM for an offense punishable by imprisonment for a term exceeding a year. **(T-1)**

4.3.2. Category 2: Persons who are fugitives from justice.

4.3.10.1. AFOSI, AFSF, and commanders, upon notification, will report in accordance with [paragraph 4.4](#) all subjects of criminal investigations and/or CDIs or informal inquiries for whom a CPO has been issued. (T-1)

4.3.10.2. FAP and SJAs, upon notification, will report in accordance with [paragraph 4.4](#) all subjects for whom a CPO has been issued. (T-1)

4.4. Reporting Qualifying Prohibitions. Reporting of persons qualifying for NICS prohibition is an immediate denial of the individual's ability to exercise his or her constitutional right to possess a firearm. Due to the restrictions imposed by a NICS entry, care must be taken to ensure an individual meets the strict qualifications and supporting documentation is available.

4.4.1. All requests and supporting documentation for entry of persons with a qualifying prohibition into NICS will be sent to the DAF-CJIC via email at daf.cjic@us.af.mil. (T-1)

4.4.2. The following information is required for reporting a prohibited person in NICS: full name (last, first, middle); Social Security Number; date of birth (YYYYMMDD format); Gender; Race; agency case number. (T-0) These data points are documented on the AF Form 177. Reference Section 4.6 of this manual. See [paragraphs 4.4.4](#) through [paragraph 4.4.12](#) for additional requirements for each prohibitive category.

4.4.3. Category 1: Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (or a misdemeanor crime punishable by imprisonment over two years) will be indexed in accordance with [paragraph 4.4.2](#) (T-0)

4.4.3.1. Requests for submission to NICS must be accompanied by documentation in accordance with [Table 1.1](#), or civilian equivalent. Any actions taken by the convening authority or as the result of appellate review will be transmitted to DAF-CJIC in accordance with [paragraph 4.4.2](#) (T-1)

4.4.4. Category 2: Persons who are fugitives from justice will be indexed in accordance with [paragraph 4.4.2](#) (T-0)

4.4.4.1. Requests for submission to NICS must be accompanied by a corresponding DD Form 553. (T-1)

4.4.4.2. Requests for removal from NICS must be accompanied by DD Form 616, *Report of Return of Absentee*. (T-1)

4.4.5. Category 3: Persons who are unlawful users of, or addicted to, any controlled substance will be indexed in accordance with [paragraph 4.4.2](#) Requests for submission to NICS under the substance abuser prohibition must include the following for subject: (T-0)

4.4.5.1. Date of qualifying action(s) (admission, urinalysis, and/or possession date). (T-0)

4.4.5.2. One of the following supporting documents:

4.4.5.2.1. A confirmation positive urinalysis result using mass spectrometry. (T-0)

4.4.5.2.2. Positive drug identification lab result. (T-0)

4.4.5.2.3. Agency case file documentation reflecting drug identification in accordance with [paragraph 4.3.1.3.3.2](#) (T-0)

4.6.5. Notification by the Commander. The member's unit commander is required to notify the member that he or she has been identified as meeting a NICS prohibitor (see [Table 4.1](#) and Section 4.3 of this manual). **(T-1)** The commander will provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: daf.cjic@us.af.mil. **(T-1)** The commander will also provide a digital copy to the servicing legal office, and investigating Air Force LE (AFOSI or AFSF). **(T-1)** The servicing legal office will provide a copy to the member's defense counsel, if applicable. **(T-1)** The commander will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained. **(T-1)**

4.6.6. Declination of the Member to Initial or Sign. If the member refuses to initial and/or sign the form, the commander will annotate the refusal to sign and provide a copy to the member. **(T-1)** Refusal to sign does not affect the prohibition on the member.

4.6.7. Forwarding the Original AF Form 177. **(T-1)** All original AF Forms 177 will be mailed to DAF-CJIC at: **HQ AFOSI/XIC, 27130 Telegraph Rd, Russell Knox Building, Quantico, VA 22134.**

4.7. Expungements and NICS. For expungements pertaining to AF records within NICS, see [Chapter 9](#) of this manual.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

DAFI 51-201_DAFGM2021-02

15 April 2021

MEMORANDUM FOR DISTRIBUTION C
MAJCOMs/FOAs/DRUs

FROM: HQ USAF/JA
1420 Air Force Pentagon
Washington, DC 20330-1420

SUBJECT: Department of the Air Force Guidance Memorandum to DAFI 51-201,
Administration of Military Justice

By Order of the Secretary of the Air Force, this Department of the Air Force Guidance Memorandum immediately implements changes to DAFI 51-201, *Administration of Military Justice*. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails, in accordance with DAFI 33-360, *Publications and Forms Management*.

This Memorandum clarifies that SVIP members must collaborate within 48 hours after determining that an allegation meets the criteria of a special victim covered offense. It also clarifies that the SVIP team must include VWAP personnel.

This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon incorporation by interim change to, or rewrite of DAFI 51-201, whichever is earlier.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment:
Attachment 1

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-201

18 JANUARY 2019



LAW

**ADMINISTRATION OF MILITARY
JUSTICE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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OPR: AFLOA/JAJM

Certified by: AF/JAA
(Mr. Conrad Von Wald)

Supersedes: AFI 51-201, 8 December 2017

Pages: 395

This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), and Air Force Policy Directive (AFPD) 51-2, *Administration of Military Justice*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the UCMJ, MCM, including the Rules for Courts-Martial (R.C.M.) and Military Rules of Evidence (M.R.E.) and applicable Department of Defense (DoD) Directives. It applies to individuals at all levels, including Regular Air Force and Air Force Reserve Component. It applies to members of the Air National Guard who committed violations of the UCMJ while in Title 10 status. Commands may supplement this instruction only with the prior, written approval of Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This publication requires the collection and or maintenance of information protected by 5 United States Code (U.S.C.) § 552a, *The Privacy Act of 1974*. The authorities to collect or maintain the records prescribed in the publication are Title 10 United States Code § 8013, *Secretary of the Air Force*; Title 10 United States Code § 8037, *Judge Advocate General*; Title 10 United States Code § 854, *Record of Trial*; Title 10 United States Code § 865, *Transmittal and Review of Records*; and Executive Order 9397 (SSN). The applicable SORN, F051 AFJA I, Military Justice and Magistrate Court Records, is available at: <http://dpcl.d.defense.gov/Privacy/SORNsSearchResults/tabid/7541/Category/277/Default.aspx>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the Air Force Form 847, *Recommendation for Change of Publication*; route Air Force Forms 847 from the field through major command (MAJCOM) functional managers.

Chapter 13

POST-SENTENCING PROCESS

13.1. Effective Dates.

13.1.1. For cases referred before 1 January 2019, refer to Attachments 11 and 12 for post-trial processing procedures, to include publication of the Court-Martial Order.

13.1.2. For cases referred on or after 1 January 2019, follow the post-sentencing process as outlined in this Chapter.

13.2. Definition of “Victim” During Post-Sentencing. Practitioners should be cognizant of the changing definition of victim throughout the post-sentencing process. In certain circumstances, victim refers to any victim named in a specification, regardless of whether the specification resulted in a conviction. In other circumstances, victim refers only to named victims whose specifications resulted in a conviction.

13.2.1. Any victim, regardless of whether that victim’s allegation resulted in a conviction, receives the Statement of Trial Results and the Entry of Judgment. R.C.M. 1101(d), 1111(f).

13.2.2. Any victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense for which the accused was found guilty receives an opportunity to submit matters to the convening authority under R.C.M. 1106A(b)(2).

13.2.3. A victim named in a specification who testified during the proceeding automatically receives a copy of the certified ROT, regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT. R.C.M. 1112(e).

Section 13A—Initial Post-Sentencing Process and Statement of Trial Results

13.3. Statement of Trial Results (R.C.M. 1101).

13.3.1. Following final adjournment, the military judge must ensure a Statement of Trial Results is prepared and signed by the military judge. (T-0) The Statement of Trial Results must contain the content required under R.C.M. 1101. (T-0) **Note:** In cases where an expurgated Statement of Trial Results is required, both an expurgated and unexpurgated Statement of Trial Results must be prepared and signed by the military judge. (T-1) See paragraph 13.5 for discussion of expurgated and unexpurgated Statements of Trial Results. Trial counsel will generally provide a draft to the military judge with all required information, to include Defense Incident-Based Reporting System (DIBRS) codes for the listed offenses. (T-1) Trial counsel and military judges must follow the templates provided at Figures A9.1 and A9.2. (T-1)

13.3.2. Military Judge Recommendation for Suspension of Sentence. See paragraph 12.44.

13.3.3. Prior to distribution, the SJA must sign and attach to the Statement of Trial Results a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under Title 18 United States Code 922(g)(9); criminal record history indexing is required in accordance with DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. (T-1)

See Chapter 15 for further information on these requirements. Templates are located at Figures A9.1 and A9.2. The first indorsement is distributed with the Statement of Trial Results. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in their signature block.

13.4. Distributing the Statement of Trial Results. The SJA distributes the Statement of Trial Results and first indorsement to those recipients identified in the Statement of Trial Results/Entry of Judgment distribution list on the Virtual Military Justice Deskbook. (T-1)

13.5. Unexpurgated and Expurgated Statements of Trial Results.

13.5.1. When the content of a Statement of Trial Results includes classified or other matters unfit for publication, prepare both an expurgated and an unexpurgated copy. The version with the content replaced is called the expurgated Statement of Trial Results. Only certain parties receive the unexpurgated version (see paragraph 13.5.2.). Make the following substitutions in the expurgated Statement of Trial Results:

13.5.1.1. Names of children under 16 years of age are replaced with initials, regardless of verdict (in both the expurgated and unexpurgated Statement of Trial Results); (T-1)

13.5.1.2. Names of minor victims under 18 years of age are replaced with initials when the charged offense is a child pornography offense, regardless of verdict (in both the expurgated and unexpurgated Statement of Trial Results); (T-1)

13.5.1.3. Names of adult sex offense victims are replaced with initials, regardless of verdict; (T-1)

13.5.1.4. Names of victims listed in paragraphs 13.5.1.1-13.5.1.3 when listed in other offenses on the charge sheet (e.g., if the same victim is listed as the victim of an Article 128, UCMJ, offense and an Article 120, UCMJ, offense, the victim’s name should be expurgated in both offenses such that the name cannot be ascertained from the Article 128, UCMJ, charge) should be replaced with initials, regardless of verdict; (T-1) and

13.5.1.5. Classified information is replaced with asterisks. (T-1)

13.5.2. Distribution.

13.5.2.1. Unexpurgated Statements of Trial Results—Classified Cases. If an unexpurgated Statement of Trial Results contains classified information, ensure the Statement of Trial Results is properly marked with classified markings in accordance with the classification guide; then do not distribute it to any party. (T-1) Provide the unexpurgated classified statement to AFLOA/JAJM as part of the original ROT, and maintain an unexpurgated classified statement in the legal office’s copy of the ROT in a container authorized to store classified information. For more information on the storage and transfer of classified information, see AFMAN 51-203.

13.5.2.2. Unexpurgated Statement of Trial Results—Unclassified Cases. For cases not involving classified information, only the following parties receive the unexpurgated Statement of Trial Results:

13.5.2.2.1. AFLOA/JAJM;

13.5.2.2.2. The commanding officer responsible for the confinement facility where the accused is held; and

13.5.2.2.3. The confinement officer or noncommissioned officer.

13.5.2.3. Expurgated Statements of Trial Results. All other individuals or organizations required to receive a Statement of Trial Results are provided expurgated copies.

13.5.2.4. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list mark, “*Recipients of unexpurgated Statement of Trial Results.”

13.5.2.5. Refer to the Statement of Trial Results Distribution Checklist on the Virtual Military Justice Deskbook for the most current guidance on distribution.

Section 13B—Accused’s Submission of Matters

13.6. Generally. The accused may submit written post-sentencing matters for the convening authority’s consideration in accordance with R.C.M. 1106. Submissions may not include matters that relate to the character of a victim unless such matters were admitted as evidence at trial. (T-0) See R.C.M. 1106.

13.6.1. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority.

13.6.2. If a victim submits post-sentencing matters under R.C.M. 1106A and Section 13B, trial counsel shall promptly serve those matters on defense counsel to allow the accused an opportunity to provide a written rebuttal. (T-1)

13.7. Time Periods for Submissions.

13.7.1. In a GCM or SPCM, the accused may submit matters within ten calendar days after the sentence is announced.

13.7.2. In a SCM, the accused may submit matters within seven calendar days after the sentence is announced.

13.7.3. If a victim submits post-sentencing matters under R.C.M. 1106A, the accused has five calendar days from receipt of those matters to submit matters in rebuttal. A sample notice to the accused of the opportunity to submit rebuttal matters is located at Figure A9.6. The day on which the accused is served victim’s matters does not count against the five-day time period.

13.7.4. The convening authority may extend the time periods for submission up to an additional 20 calendar days if the accused shows good cause for the extension. Extension requests must be submitted by the accused or defense counsel, in writing, to the trial counsel who will provide it to the convening authority. (T-1)

13.7.5. Notification. Immediately following sentence announcement, the SJA or trial counsel notifies the accused of the right to submit matters under R.C.M. 1106. (T-1) A template letter is provided at Figure A9.3. At a minimum, the notification letter should advise the accused:

13.7.5.1. The process for submitting matters to the convening authority;

13.7.5.2. That the convening authority will consider timely written matters submitted by the accused before deciding whether to grant the accused post-sentencing relief;

13.7.5.3. That the convening authority may not consider character evidence related to the victim unless such evidence was admitted at trial;

13.7.5.4. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;

13.7.5.5. That any matters submitted by the victim under R.C.M. 1106A and Section 13C will be provided to the accused for rebuttal;

13.7.5.6. That a failure to submit matters by the prescribed time constitutes a waiver;

13.7.5.7. That submission of any matters under R.C.M. 1106 shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limit is expressly reserved in writing;

13.7.5.8. That if the accused waives the opportunity to submit matters, the waiver may not be revoked; and

13.7.5.9. That the accused is entitled to request a copy of the recording and copy of, or access to, the exhibits to assist in the preparation of their matters.

13.8. Access to Court-Martial Recordings and Evidence. To facilitate preparation of matters, the defense counsel or accused may request a copy of the court-martial recording and copies of, or access to, the exhibits. When preparing these records for release, the government should be cognizant that delays in providing the requested information may serve as grounds for the defense to request a delay in the submission of matters.

13.8.1. The government shall not release the recording under R.C.M. 1106 unless the government receives a written request from the defense. (T-1) Upon receiving such a request, trial counsel is only authorized to release the recording of open court-martial sessions. Trial counsel must not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any person or party (including defense counsel or an SVC). (T-0) Trial counsel is not required to further redact the recordings (e.g., for personally identifying information), but shall not provide such recordings directly to the accused, only to defense counsel. (T-1) Defense counsel must maintain the recording to prevent the unauthorized release of third-party personal information to any other party, including to the accused. (T-1)

13.8.2. The government must provide access to exhibits upon written request from the defense, but should not normally provide copies of exhibits. (T-1) If the government chooses to provide copies of exhibits, third-party personal information (i.e. information not pertaining to the accused) must first be redacted. **Note:** See paragraph 13.8.1. for discussion on sealed exhibits.

13.8.3. In the event an accused is not represented by either military or civilian defense counsel, contact AFLOA/JAJM for guidance.

13.9. Application to Defer Sentence and Waive Required Forfeitures. Before the convening authority makes a decision as to whether to grant relief in a case, an accused may submit an application to the convening authority, through the servicing SJA, to defer any adjudged or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(b) and 58b(a)(1), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive

any mandatory forfeiture of pay and allowances under Article 58b(b) for the benefit of the accused's dependents. Applications for deferral or waiver may be submitted through the servicing SJA any time after the sentence is announced and before action. The accused may choose to submit an application for deferral or waiver at the same time the accused submits post-sentencing matters, or at any other time prior to action. The convening authority may waive automatic forfeitures of pay and allowances without a request from the accused. **Note:** Automatic and adjudged forfeitures go into effect automatically 14 days after the announcement of the sentence. See Section 13E for additional guidance on deferring and waiving forfeitures of pay and allowances.

13.10. Return to Duty. The return to duty system may offer selected enlisted personnel with exceptional potential the opportunity for relief concerning the characterization of their discharges and possible return to duty. The applicant, with assistance of defense counsel, submits a letter and attachments to the convening authority or TJAG requesting a recommendation for return to duty. The defense counsel is responsible for ensuring the application, with the requisite recommendation, is forwarded to the Air Force Clemency and Parole Board. AFI 31-105 and Attachment 18 of that instruction, provides additional guidance on applications and requirements for applications for return to duty.

Section 13C—Victim's Submission of Matters

13.11. Generally. In any case resulting in a guilty finding for an offense that involved a victim who has suffered direct physical, emotional or pecuniary harm, the SJA must ensure the victim is provided an opportunity to submit written matters for consideration by the convening authority, or by another person authorized to act under Article 60a or Article 60b, UCMJ, before the convening authority or such other person considers taking action. (T-0) See R.C.M. 1106A.

13.11.1. Submissions may not include matters that relate to the character of the accused unless such matters were admitted as evidence at trial. (T-0)

13.11.2. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority and the accused. The accused has an opportunity to rebut statements made by the victim in accordance with R.C.M. 1106(d)(3).

13.12. Time Periods for Submissions.

13.12.1. In a GCM or SPCM, the victim must submit any matters within ten calendar days after the sentence is announced. (T-0)

13.12.2. In a SCM, the victim must submit any matters within seven calendar days after the sentence is announced. (T-0)

13.12.3. The convening authority may extend the time period for submissions up to an additional 20 calendar days, if the victim shows good cause for the extension. Extension requests must be in writing and submitted by the victim or victim's counsel to the trial counsel, who will provide it to the convening authority. (T-1)

13.13. Notification. Immediately following trial, the SJA or trial counsel must provide a letter to eligible victims as defined in paragraph 13.11, if any, notifying them of their right to submit matters under R.C.M. 1106A. (T-1) A template letter notifying a victim of the right to submit a

Victim Impact Statement is provided at Figure A9.4. At a minimum, the notification letter should advise the victim:

- 13.13.1. That the convening authority will consider any timely written matters submitted by the victim before deciding whether to grant the accused post-sentencing relief; (T-1)
- 13.13.2. That the convening authority may not consider character evidence related to the accused unless such evidence was admitted at trial; (T-1)
- 13.13.3. That the convening authority may not consider character evidence related to the crime victim unless such evidence was admitted at trial; (T-1)
- 13.13.4. That the convening authority may not consider evidence of offenses of which the accused was not convicted at trial; (T-1)
- 13.13.5. The process for submitting matters to the convening authority; (T-1)
- 13.13.6. That any matters submitted by the victim will be provided to the accused's defense counsel for rebuttal by the accused; (T-1)
- 13.13.7. The date by which matters must be submitted, and the process for requesting additional time from the convening authority; (T-1)
- 13.13.8. That the victim is entitled to only one opportunity to submit matters, and that a failure to submit matters by the prescribed time constitutes a waiver; (T-1)
- 13.13.9. That if the victim waives the opportunity to submit matters the waiver may not be revoked; (T-1) and
- 13.13.10. That the victim is entitled to request a copy of the recording and copies of, or access to, the exhibits to assist in the preparation of their matters. (T-1)

13.14. Access to Court-Martial Recordings and Evidence. To facilitate preparation of matters, the victim's counsel or victim may request a copy of the court-martial recording and copies of, or access to, the exhibits.

13.14.1. The government may release the recording under R.C.M. 1106A only upon receiving a written request from the eligible victim or victim's counsel. (T-1) Upon receiving such a request, trial counsel is only authorized to release the recordings of open court-martial sessions. Trial counsel may not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any other person or party (including defense counsel or SVC). (T-1) Trial counsel is not normally required to further redact the recording (e.g., for personally identifying information) except as indicated below. However, to ensure compliance with the Privacy Act, the government should release the recording in the following manner:

13.14.1.1. If the victim is represented by an SVC, trial counsel should provide the recording to the victim's SVC as a For Official Use disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*. The SVC must maintain the recording in accordance with the Privacy Act. (T-0)

13.14.1.2. An unredacted recording (e.g., a recording of all open sessions that has not been redacted for PII) may be provided directly to the victim only if the victim is not represented by counsel. **Note:** Such recording may not include any closed, sealed or classified sessions

absent an order from the military judge. See paragraph 13.14.1. The recording may be provided to an unrepresented victim as a routine use under the Privacy Act system of records notice for Air Force courts-martial records. See SORN F051 AF JA 1. Child victim testimony must be removed before distributing a recording directly to an unrepresented victim unless the requester is the child victim or guardian whose testimony is at issue. (T-1) Trial counsel must verify that child-victim testimony is removed before distributing the recording to an unrepresented victim. (T-1) Refer to the charged offense to determine whether a testifying victim constitutes a child.

13.14.2. The government must provide access to exhibits upon written request from the SVC, if the victim is represented, or to the victim if the victim is unrepresented, but should not normally provide copies of exhibits. (T-1) If the government chooses to provide copies of exhibits, third-party personal information must first be redacted. (T-1) **Note:** Victims should not be given access to or copies of sealed exhibits.

Section 13D—Convening Authority Action and Decision on Action

13.15. Cases Referred before 1 January 2019. Refer to Attachment 11 for the form and format of convening authority action.

13.16. Applicable Version of Article 60, UCMJ. The convening authority may grant relief or take action on a case depending on what version of Article 60 applies. To determine the applicable version of Article 60, look at the date of the earliest offense resulting in a conviction. The version of Article 60 in effect on that date applies to the entire case.

13.16.1. If the earliest offense resulting in a conviction occurred prior to 24 June 2014, then use the version of Article 60 in effect prior to 24 June 2014. In such cases, the convening authority has full discretion to grant clemency on the court-martial findings and/or sentence. See paragraphs A11.15.2.1, A11.23.2, and A11.23.4.

13.16.2. If the earliest offense resulting in a conviction occurred between 24 June 2014 and 31 December 2018, then use the version of Article 60 in effect at that time (found in the 2016 MCM).

13.16.3. If the earliest offense resulting in a conviction occurred on or after 1 January 2019, then use the version of Article 60a and Article 60b effective under the Military Justice Act of 2016 (found in the 2019 MCM).

13.17. Convening Authority Discretion. The convening authority may grant post-sentencing relief on the findings and/or sentence of a court-martial in accordance with the applicable versions of Articles 60, 60a, and 60b, UCMJ, and their associated R.C.M.s, as discussed in the previous paragraph.

13.17.1. When deciding whether to grant relief under these rules, the convening authority has two options: take action on the findings and sentence or take no action on the findings and sentence. A decision to take action is tantamount to granting relief, whereas a decision to take no action is tantamount to granting no relief. Granting post-sentencing relief (i.e. “taking action”) is a matter of command prerogative entirely within the discretion of the convening authority, as limited by the applicable version of Article 60, UCMJ. See paragraph 13.18.

13.17.2. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. (T-1) However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may recommend administrative, rather than punitive, discharge to the Secretary of the Air Force under Article 74(b), UCMJ. If a convening authority is considering making such a recommendation, the convening authority's SJA should contact AFLOA/JAJR for assistance and coordination.

13.18. Military Judge Suspension Recommendation.

13.18.1. In all cases, regardless of the date of the offenses, the convening authority may suspend a sentence in accordance with a military judge's recommendation as annotated on the Statement of Trial Results. See Article 60a(c), UCMJ. However, the convening authority may not suspend a mandatory minimum sentence or exceed the suspension recommendation of the military judge. (T-0) Further, the duration of the suspension may not be less than that recommended by the military judge. (T-0)

13.19. Required Considerations. Before making a decision to take action or to take no action, the convening authority must:

13.19.1. Consult with a SJA or legal advisor; (T-0) and

13.19.2. Consider matters timely submitted by the accused under R.C.M. 1106 and/or the victim(s) under R.C.M. 1106A. (T-0)

13.19.3. The convening authority may consider other matters the convening authority deems appropriate before making a decision. However, the convening authority may not consider any matters adverse to the accused that were not admitted at the court-martial unless the accused is first notified and given an opportunity to rebut. (T-0)

13.20. Consultation with Staff Judge Advocate.

13.20.1. For cases referred before 1 January 2019, the SJA must prepare a written legal review in the form of a SJA Recommendation (SJAR) and Addendum. (T-0) Refer to Attachment 11 for the SJAR/Addendum requirements and templates.

13.20.2. For cases referred on or after 1 January 2019, there is no requirement that legal advice be in writing, and there is no longer a requirement for an SJAR or Addendum. However, if written legal advice is prepared then the SJA must serve it on the accused and accused's counsel. (T-1) Though the legal reviews are not required, any subsequent written legal reviews that raise new matters to which the accused has not had an opportunity to rebut must also be served on the accused and accused's counsel. (T-1)

13.21. Matters Adverse to the Accused. If the convening authority wishes to consider any matters adverse to the accused that were not admitted at trial, then the convening authority must first cause those matters to be served on the accused with an opportunity to rebut. (T-0)

13.21.1. The SJA shall serve any such matters on the accused and the accused's counsel, and shall notify the accused, in writing:

13.21.1.1. That the convening authority may potentially consider information adverse to the accused not previously admitted at trial;

13.21.1.2. That the accused has a right to rebut the information; and

13.21.1.3. The date on which the accused's rebuttal matters are due to the SJA, which should be no less than five calendar days from the date on which the accused is notified. (T-1)

13.21.1.4. This notification memo will be attached to the record of trial, behind the memo documenting the convening authority's decision to take action or to take no action. (T-1) See paragraph 13.23.

13.21.2. Upon receiving rebuttal matters, if any, from the accused, the SJA provides those to the convening authority. The SJA does not have to prepare a corresponding written legal review or memo (**Note:** For cases referred prior to 1 January 2019, the SJA will prepare a written Addendum and serve it on the accused and counsel in accordance with Attachment 11 (T-1)).

13.21.3. The convening authority indicates, in writing, whether such matters were considered and, if so, whether the accused submitted matters in rebuttal. This may be incorporated into the same memo the convening authority uses to document the decision to take action or to take no action. See paragraph 13.19; a template is provided at Figure A9.5.

13.22. Timing of Convening Authority Decision to Take Action/No Action. The convening authority must generally act before the entry of judgement. However, the convening authority may grant relief upon recommendation of trial counsel for substantial assistance by the accused after the entry of judgment. See R.C.M. 1109(e)(3)(B) and (e)(7); see also R.C.M. 1110(c)(2). If trial counsel's recommendation is made more than one year after the entry of judgment, the GCMCA over the command to which the accused is assigned may reduce the sentence only if the criteria in R.C.M. 1109(e)(5)(B) is met.

13.23. Documenting Convening Authority Action/No Action.

13.23.1. If the convening authority decides to take action, the convening authority's decision must be in writing and must include a written statement explaining the reasons for the action. (T-0)

13.23.2. If the convening authority decides to take no action, the convening authority's decision must be in writing. (T-1) No rationale is required.

13.23.3. The convening authority's written decision to take action or no action must be attached to the record of trial. (T-1) A template is provided at A9.5 and sample action language is provided at A9.8. At a minimum, the convening authority's written decision on action must:

13.23.3.1. Indicate the action taken, if any, on the findings or the sentence and the rationale (to include whether the action was taken as a result of a trial counsel substantial assistance recommendation); (T-1)

13.23.3.2. Express the convening authority's decision on a military judge suspension recommendation, if any; (T-1)

13.23.3.3. Annotate whether the convening authority intends to grant or previously granted any deferments or waivers of forfeitures, the effective/expiration dates for any such deferments or waivers, and the dependent who will receive waived forfeitures; (T-1)

13.23.3.4. Include any adjudged and approved reprimand; (T-1)

13.23.3.5. Direct the member to be placed on excess leave pending appellate review if required under Section 13K. (T-1)

13.24. Service of the Convening Authority's Decision. The SJA must promptly serve the convening authority's decision to take action or no action on the military judge, counsel for the accused, and counsel for the victim. (T-0) In the event the accused or victim is not represented by counsel, the convening authority's decision must be served on the accused or victim, as applicable. (T-1) If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. (T-0)

13.25. Disqualification of a Convening Authority. A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute a personal interest in the outcome of the case or a personal bias towards the accused. See *United States v. Gudmundson*, 57 M.J. 493 (C.A.A.F. 2002); *United States v. Voorhees*, 50 M.J. 494 (C.A.A.F. 1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 2 C.M.R. 161 (C.M.A. 1952).

Section 13E—Forfeitures of Pay, Deferment and Waiver (Articles 57(b) and 58b, UCMJ; R.C.M. 1103)

13.26. Adjudged Versus Automatic Forfeitures. The ability of a convening authority to defer or waive forfeitures of pay and allowances hinges on whether the forfeitures are adjudged or automatic (the latter of which is also known as “mandatory forfeitures”).

13.26.1. Adjudged forfeitures are those forfeitures imposed by the military judge or the members as part of a court-martial sentence. See Article 57(a) and R.C.M. 1103. Adjudged forfeitures of pay and/or pay and allowances take effect 14 calendar days after the sentence is announced, or, in an SCM, the date the sentence is approved by the convening authority.

13.26.2. Automatic forfeitures are forfeitures that take effect by operation of law. See Article 58b. An accused must forfeit pay and allowances if sentenced to confinement for more than six months or if sentenced to a punitive discharge and any length of confinement.

13.26.2.1. Automatic forfeitures take effect 14 calendar days after the sentence is announced or, in an SCM, the date the sentence is approved by the convening authority.

13.26.2.2. The amount of automatic forfeitures in a GCM is all pay and allowances otherwise due to the accused. The amount of automatic forfeitures in an SPCM is two-thirds pay otherwise due to the accused. Allowances otherwise due are not subject to mandatory forfeitures in an SPCM.

13.26.2.3. Automatic forfeitures only take effect if the following three conditions exist:

13.26.2.3.1. The adjudged sentence includes confinement for more than six months or death, or confinement for six months or less and a punitive discharge;

13.26.2.3.2. The accused is in confinement or on parole; and

13.26.2.3.3. The accused is otherwise entitled to pay and allowances that are subject to automatic forfeitures.

13.27. Deferment Versus Waiver. Deferment and waiver of forfeitures are distinct concepts that operate differently depending on whether the forfeitures are adjudged or automatic.

13.27.1. Deferment (Article 57(b)). Deferment is a postponement of the running of a sentence. Upon written application of the accused, the convening authority may defer adjudged and automatic forfeitures until the entry of judgment or, in the case of a SCM, until a convening authority acts on the sentence. Deferred forfeitures are paid directly to the accused. The accused may apply for deferment regardless of whether the accused has dependents. The convening authority may rescind a deferment at any time.

13.27.1.1. In rare circumstances, the convening authority may grant a deferment without an application from the accused. See R.C.M. 1103(c).

13.27.1.2. The factors an accused should establish in a deferment request, and the factors a convening authority should consider, are provided in R.C.M. 1103(d)(2).

13.27.1.3. The convening authority's action on the deferment request must be in writing, with a copy included in the record of trial and provided to the military judge and accused. (T-0)

13.27.1.4. If the convening authority grants deferment, the deferment continues until Entry of Judgment unless the convening authority mitigates, suspends or disapproves the adjudged forfeitures prior to Entry of Judgment, in which case the deferment or adjudged forfeitures ends at the time at which the convening authority acts, and are thereafter mitigated, suspended or disapproved.

13.27.2. Waiver (Article 58b). The convening authority may waive automatic forfeitures for no more than six months for the benefit of the accused's dependents. Waived forfeitures are paid directly to the accused's dependents. Dependent is defined by Title 37 United States Code § 401. See paragraph 13.29.

13.27.2.1. The convening authority may not waive adjudged forfeitures. (T-0) However, the convening authority may take action under Articles 60, 60a or 60b to defer, suspend, mitigate, or disapprove all or part of adjudged forfeitures, and then waive any resulting automatic forfeitures. See *United States v. Emminger*, 56 M.J. 441 (C.A.A.F. 2002). Figure A11.16 provides sample language the convening authority may use to defer, suspend, mitigate or disapprove all or part of adjudged forfeitures.

13.27.2.2. The factors a convening authority may consider before granting a waiver are provided in R.C.M. 1103(h)(2).

13.27.2.3. The convening authority may waive automatic forfeitures for the purpose of providing support to the accused's dependents even if the accused does not apply for a waiver.

13.27.2.4. The convening authority may waive automatic forfeitures at any point before the entry of judgment. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.

13.27.2.5. Waived forfeitures cannot be applied beyond a member's expiration of term of service because the pay entitlement ceases at that point.

13.27.2.6. If the convening authority grants waiver of any portion of automatic forfeitures, the convening authority should specify the date on which the waiver is effective. The waiver may begin no later than the Entry of Judgment.

13.27.3. A request for a combination of deferral and waiver can maximize the pay and allowances going to the accused and the accused's family members. For example, the accused may request that the convening authority defer mandatory and adjudged forfeitures until the entry of judgment and then waive mandatory forfeitures starting on the entry of judgment for a period not to exceed six months. However, a convening authority who waives automatic forfeitures starting at Entry of Judgment should also consider disapproving, commuting or suspending some or all of the adjudged forfeitures for the same period. *U.S. v. Emminizer*, 56 M.J. 44 (C.A.A.F. 2002).

13.28. Mechanics of Deferring and Waiving Forfeiture of Pay. Table 13.1 explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period.

13.28.1. Accused's Deferral Request. If an accused requests a deferral of a reduction in grade or a forfeiture of pay and allowances until entry of judgment, the convening authority may approve the request, in full or in part, or may disapprove the request.

13.28.1.1. The accused's deferral request should specify whether a request for deferred forfeitures is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferral of both.

13.28.1.2. The convening authority's decision on the request should be reflected in a signed and dated document. This includes the basis for any denial.

13.28.1.3. The terms of approved deferrals are reported in a 14-day memorandum in accordance with Figure A9.7 and are reported on the decision on action memorandum signed by the convening authority at Attachment A9.5.

13.28.1.4. A deferral of forfeitures may be for adjudged forfeitures, mandatory forfeitures or both, and for all pay and allowances to which the accused is entitled or a lesser sum. However, deferment does not extend beyond the time at which the Entry of Judgment is completed in a GCM or SPCM or beyond action in a SCM. R.C.M. 1103(f).

13.28.2. Waiver of Mandatory Forfeitures. In cases where mandatory forfeitures are waived, whether prior to or as part of the convening authority's action, the approved waiver should state the amount approved in dollar amounts per month, unless the waiver is for total pay and allowances in a general court-martial. If forfeiture of two-thirds pay is approved in a special court-martial, the forfeitures should be reflected in whole dollar amounts.

13.28.2.1. The convening authority must identify the dependents who will receive the waived forfeitures. If payments are made to an ex-spouse, or multiple ex-spouses, or other person on behalf of minor dependents, the SJA or designee obtains confirmation that the designated payee is the appointed guardian or custodian of a minor dependent as required. Legal offices should provide information described in AFMAN 65-116V1, *Defense Joint Military Pay System Active Component (DJMS-AC) FSO Procedures*, to the local finance office when processing waiver requests. This information includes a copy of the waiver request (if submitted), copy of the approved waiver request with amount approved, full name of payees, proof of dependency of payees or certification that the payees are dependents of the member, payment account information, and a statement signed by payee and member agreeing to notify legal and finance if the payee ceases being a dependent during the period payments are made.

13.28.2.2. If mandatory forfeitures are waived before the decision on action, the convening authority must reflect approval in a signed and dated document at the time forfeitures are waived. (T-1) Such a waiver of mandatory forfeitures is also reported in the 14-day memorandum and in the convening authority's decision on action memorandum.

13.28.2.3. The local accounting and finance office should be consulted to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. **Note:** These considerations could affect the enforceability of a plea agreement or pretrial agreement. A number of factors can impact the following entitlements:

13.28.2.3.1. Basic Allowance for Subsistence. The accused loses Basic Allowance for Subsistence upon entry into confinement, thus the convening authority cannot give the accused's family any portion of the accused's Basic Allowance for Subsistence.

13.28.2.3.2. Taxes. Federal and state taxes are withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

13.28.2.3.3. Grade Reduction. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration. To the extent that it is allowed by law under Article 58a, a grade reduction can be deferred but cannot be waived.

13.28.2.3.4. Active Duty Air Force Spouse. A spouse who is also a Regular Air Force member may receive only waived forfeiture of pay, not pay and allowances. (T-0)

13.28.2.3.5. Expiration of Term of Service. There are no forfeitures to waive on any date after the accused's expiration of term of service. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond his or her expiration of term of service may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. (T-0) See *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

13.28.2.3.6. Foreign Accounts. The Defense Finance and Accounting Services (DFAS) has experienced difficulties making deposits into certain foreign bank accounts. Plea agreement and pretrial agreement terms requiring deposits of pay into foreign account may be impractical to accomplish.

13.29. Dependency Determinations under Article 58b, UCMJ.

13.29.1. Dependent is defined by 37 U.S.C. § 401.

13.29.2. Evidence of Dependency. Sufficient evidence of dependency is required to support an Article 58b, UCMJ, waiver. The nature of this evidence will depend on the status of the dependent.

13.29.2.1. Dependency status for a spouse or child may be established by their enrollment in the Defense Enrollment Eligibility Reporting System or by other competent evidence, such as, a marriage certificate, a birth certificate, or a court order establishing paternity or child support obligations for a child.

13.29.2.2. Dependency determinations for a child over 21 years of age, parents or a ward are more complex because they only qualify as a dependent if the military sponsor provides more than one-half of their support. A precondition for waiving forfeitures for the benefit of one of these dependents should be an approval letter of dependency from the Defense Finance & Accounting Services. The accused, or other party requesting the waiver, should provide a copy of the Defense Finance & Accounting Services approval letter with any request to waive mandatory forfeitures. If an accused is unable to qualify one of these persons as a dependent with DFAS, then there will normally be insufficient evidence of dependency to support an Article 58b waiver of mandatory forfeitures.

13.30. Required Adjustment of Forfeitures. If the convening authority takes action on a sentence that then creates an illegal punishment (e.g., no confinement but a forfeiture exceeding 2/3 pay per month), legal offices should ensure that this is corrected before entry of judgment.

13.31. Deferral and Waiver in Cases With Offenses Committed Prior to 1 April 1996. See Attachment 11 for information on forfeitures related to offenses committed prior to 1 April 1996.

Table 13.1. Relationship between Adjudged and Automatic Forfeitures

FORFEITURE PERIOD	ADJUDGED FORFEITURES	MANDATORY/AUTOMATIC FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service.	Not in effect. Accused continues to be paid unless post expiration of term of service.
14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED UNTIL ENTRY OF JUDGMENT	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents (in the case of a waiver). (See Notes 3 & 4)

ENTRY OF JUDGMENT	In effect unless the convening authority approves, disapproves, commutes or suspends the adjudged forfeitures in whole or in part.	In effect, except any portion the convening authority has waived. Waiver period may not exceed six months. (See Notes 4 & 5)
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Automatic forfeitures only apply when the three conditions listed in paragraph 13.26.2.3 exist. 2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or automatic forfeitures 14 days after the date on which the sentence was adjudged until the entry of judgment. The accused should specify whether the deferment requested is for adjudged forfeitures, automatic forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused is paid a sum equal to entitled pay and allowances, minus any amounts not deferred. The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time. 3. The convening authority may waive available automatic forfeitures with or without a request from the accused. The convening authority may waive automatic forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above). 4. Automatic forfeitures may be waived until the earlier of: 1) a period not to exceed six months; 2) the accused's release from confinement; or 3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above). 5. If the convening authority acts on the sentence, the convening authority may waive all or a portion of the available automatic forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to increase the amount of automatic forfeitures available for the convening authority to waive. See <i>U.S. v. Emminizer</i>, 56 M.J. 441 (C.A.A.F. 2002). 		

13.32. Service of Legal Review on the Accused. There is no requirement to prepare written legal advice to a convening authority pertaining to a request for deferment or waiver. However, if written legal advice is prepared the legal office must understand the distinction between advice that must be served on the accused and advice where service is not required. (T-1) Legal advice pertaining to deferral requests need not be served on the accused. Legal advice pertaining to waiver requests must be served on the accused. (T-0) In either case, legal offices should process requests promptly.

13.32.1. Article 57(a), UCMJ, Deferral of Forfeiture Requests. In *United States v. Key*, 55 M.J. 537 (A.F.C.C.A. 2001), the Court held that a SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority. The Court compared such a request to a request for deferral of confinement, for which no SJA recommendation is required and, when prepared, historically, is not served on the accused. The SJA or designee ensures that any decision by the convening authority on the request is included in the ROT. (T-1)

13.32.2. **Article 58b, UCMJ, Waiver of Forfeiture Requests.** In *United States v. Spears*, 48 M.J. 768 (A.F.C.C.A. 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. This requires that the SJA or designee serves the legal review on the accused and defense counsel before submission to the convening authority and includes it as an attachment to the completed ROT.

Section 13F—Contingent Confinement

13.33. Contingent Confinement. Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See R.C.M. 1003(b)(3) and 1102. A fine-enforcement provision may be ordered executed in accordance with the procedures below.

13.33.1. **Authority to Execute Contingent Confinement.** A fine does not become effective, and the accused is not required to pay, until entry of judgment. See Article 57(a), UCMJ. The convening authority may not order an accused to serve contingent confinement until the entry of judgment is complete and the requirements of paragraph 13.34 are met. If the accused fails to demonstrate good faith efforts to pay the fine, the convening authority may order the sentence of confinement by following the procedures outlined in paragraph 13.34.

13.33.2. **Enforcement.** Once court-martial jurisdiction attaches, an accused remains subject to the UCMJ through the execution and enforcement of a sentence. Article 2(a)(1), UCMJ, confers jurisdiction over members of a regular component of the armed forces, including those awaiting discharge after the expiration of terms of enlistment. Jurisdiction continues for the purpose of enforcing an adjudged sentence for individuals discharged as the result of a court-martial conviction. *Carter v. McClaughry*, 183 U.S. 365 (1902); *Peebles v. Froehlke*, 46 C.M.R. 266 (C.M.A. 1973).

13.34. Procedures for Executing Contingent Confinement. Contingent confinement may be executed in accordance with the following procedures:

13.34.1. When the fine is ordered executed, the convening authority notifies the accused in writing the fine is due and payable. A specific due date should be included in the notification. If the accused is in confinement, the due date should normally be a reasonable period before the accused is scheduled for release from confinement to allow adequate time for a contingent confinement hearing and convening authority action.

13.34.2. After the fine is considered due, the SJA for the base where the accused was tried ascertains whether the accused has paid the fine. If it appears the fine has not been paid, the SJA notifies the convening authority. If the convening authority finds probable cause to believe a fine is unpaid, the convening authority may order a post-trial contingent confinement hearing. The convening authority for this hearing is the officer who convened the court-martial, a successor in command, or the officer exercising general court-martial convening authority over the command to which the accused is assigned. If the accused is no longer a member of the Air Force, AFDW/CC is the convening authority. The purpose of the hearing

is to determine whether the fine is delinquent, whether the delinquency, if any, resulted from the accused's indigence and whether the contingent confinement should be executed.

13.34.3. A military judge is detailed as hearing officer to conduct the contingent confinement hearing. This detailing is accomplished in the same manner as detailing a military judge to a court-martial.

13.34.4. The SJA or designee provides the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused's residence. See AFMAN 65-605, Volume 1, *Budget Guidance and Technical Procedures*, (hereinafter "AFMAN 65-605v1"), for appropriate funding authority. The notice informs the accused of the following:

13.34.4.1. The accused's alleged failure to pay the fine;

13.34.4.2. The purpose of the hearing to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

13.34.4.3. The accused's right to present witnesses and documentary evidence;

13.34.4.4. The accused's right to representation by military defense counsel; and

13.34.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

13.34.5. Unless the hearing is otherwise waived, the hearing officer makes findings on whether payment of a fine is delinquent and whether any delinquency resulted from the accused's indigence. Payment of a fine is delinquent if not made within the period specified in the approved sentence or, if no period is specified, within a reasonable time. An accused's failure to pay a fine is not due to indigence if the failure to pay the fine resulted from a willful refusal to pay the fine or a failure to make sufficient good faith efforts to pay it. The Government bears the burden of proof, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden of proof, by a preponderance of the evidence, of showing that any delinquency resulted from indigence.

13.34.6. Hearing Procedures.

13.34.6.1. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Strict evidentiary rules do not apply and hearsay statements are admissible.

13.34.6.2. The accused may testify and present witnesses and documentary evidence. Witness testimony may be presented through sworn or unsworn statements, affidavits, depositions, prior testimony, stipulations of expected testimony, or telephone conference. The accused may not compel the production of a witness at Government expense unless the request is made to the hearing officer, in writing, before the hearing and the hearing officer determines:

13.34.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

13.34.6.2.2. The witness is available to testify; and

13.34.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g., written statements, affidavits, stipulations, or telephone conference).

13.34.6.3. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

13.34.6.4. The accused may be represented at the hearing by a civilian attorney or civilian representative of the accused's choice at no cost to the Government. The accused is also entitled to representation by either an Area Defense Counsel or military counsel of the accused's selection, if reasonably available. See paragraph 10.4. The accused is not entitled to representation by more than one military counsel.

13.34.6.5. A court reporter reports the hearing and prepares a summarized record of the proceeding. The record includes a summary of the evidence presented and any objections or requests considered by the hearing officer.

13.34.6.6. The hearing officer submits a written report to the convening authority through the SJA, including a statement of the evidence relied upon to support the findings. If the hearing officer chooses to make the findings and statement of evidence on the record, transcribe them verbatim. The hearing officer forwards the report and/or record to the convening authority.

13.34.6.7. The convening authority takes final action on the hearing officer's findings and determinations. The convening authority may adopt, modify, or reject the hearing officer's findings and determinations. If the hearing officer's findings and determinations are not adopted, the convening authority specifies the evidence relied upon and the reasons for the decision.

13.34.6.8. If the convening authority determines payment of the fine is delinquent and the failure to pay is not due to indigence, the convening authority may order the sentence of contingent confinement executed. A sample order executing contingent confinement is provided at Figure A9.9. If the convening authority determines the accused has made good faith efforts to pay the fine, but cannot because of indigency, the sentence of confinement may not be executed unless the convening authority determines that there is no other punishment adequate to meet the Government's interest in appropriate punishment. See R.C.M. 1113(d)(3). When electing not to execute confinement, the convening authority signs a supplemental order remitting contingent confinement. This supplemental order is attached to the ROT.

13.34.6.9. If the convening authority orders the accused into confinement or remits the contingent confinement, the action taken should be forwarded through the SJA to the military judge for completion of a new entry of judgment, which must be attached to the ROT.

13.34.6.10. Forward to AFLOA/JAJM a copy of the summarized record of the contingent confinement hearing for each copy of the ROT required by AFMAN 51-203, Chapters 3 and 13.

Section 13G—Notification of Adjudged Sentence, Convening Authority Action

13.35. Reporting by Base-Level SJA. In all courts-martial with automatic forfeitures under Article 58b, adjudged forfeitures, or reduction in grade (enlisted only), the SJA of the office that prosecuted the case must send a memorandum by the most expeditious means available to the AFPC and the member's finance office, with informational copies to AFSFC/FC and DFAS-DE/FJPC. (T-1) A template memorandum is at Figure A9.7. The referenced memorandum must be sent 14 days after the sentence is announced or within 24 hours of the entry of judgment, whichever is earlier. (T-1) If any portion of the punishment or automatic forfeitures is deferred, or if the convening authority waives any portion of the automatic forfeitures prior to the date of the message, the memorandum must include the terms of such deferment or waiver. (T-1) Notification is made via email to Defense Finance & Accounting Services at afcourtmarshals@dfas.mil; HQ AFPC/DPSOE at afpc.dpppwm@us.af.mil; and the Air Force Security Forces Center at afcorrections.appellateleave@us.af.mil.

13.36. Reporting by Convening Authority's Staff Judge Advocate. If the convening authority decides to take any action on a sentence more than 14 days after the sentence is announced, in any case where the approved sentence includes a reduction in grade or forfeitures (mandatory or adjudged), the SJA of the convening authority must send a second memorandum within twenty-four hours after the entry of judgment. (T-1) If any portion of the punishment or mandatory forfeiture is deferred or if the convening authority waives any portion of the mandatory forfeiture, the second memorandum must include the terms of such deferment or waiver. (T-1) The message should be sent to the same addressees listed on the Statement of Trial Results/Entry of Judgment distribution list discussed in paragraph 13.4 and, if the accused is confined, to the confinement facility. A template may be found at Figure A9.7. For members who enter a prisoner status requiring a permanent change of station, the memorandum should also be sent to the gaining Accounting and Finance Office (AFO).

Section 13H—Entry of Judgment (R.C.M. 1111; Article 60c, UCMJ).

13.37. Entry of Judgment. R.C.M. 1111, Article 60c, UCMJ. The Entry of Judgment reflects the results of the court-martial after all post-trial actions, rulings or orders.

13.37.1. The Entry of Judgment terminates trial proceedings and initiates appellate proceedings.

13.37.2. The convening authority's action in a SCM serves as the entry of judgment. There is no need to issue a separate document. Sample action language for SCMs is available at Figure A9.10.

13.38. Preparing the Entry of Judgment.

13.38.1. Trial counsel is responsible for providing the military judge a draft of the Entry of Judgment. The Entry of Judgment must include the contents listed in R.C.M. 1111(b), and the Statement of Trial Results must be included as an attachment. (T-0) Trial counsel must use the templates included at Figures A9.1 and 9.2. (T-1) An editable Word document version of both figures can be located on the Virtual Military Justice Deskbook. **Note:** In cases where an expurgated Entry of Judgment is required, both an expurgated and unexpurgated Entry of Judgment must be prepared and signed by the military judge. (T-1) Refer to paragraph 13.5 to determine whether an expurgated Entry of Judgment is required.

13.38.2. Once drafted, trial counsel submits the Entry of Judgment to the military judge for signature in accordance with guidance provided by AF/JAT.

13.38.3. First Indorsement. After the Entry of Judgment is signed by the military judge and returned, the SJA signs and attaches to the Entry of Judgment a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. (T-1) See Chapter 15 for further information on this requirement. Templates are located at A9.1 and A9.2. The first indorsement is distributed with the Entry of Judgment. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in their signature block.

13.39. Distributing the Entry of Judgment. The Entry of Judgment and first indorsement must be distributed in accordance with the Statement of Trial Results/Entry of Judgment Distribution List on the Virtual Military Justice Deskbook. (T-1) Refer to paragraph 13.5 to determine whether the Entry of Judgment must be expurgated.

Section 13I—Post-Trial Confinement

13.40. Entry into Post-Trial Confinement. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, is used to enter an accused into post-trial confinement.

13.40.1. **Processing the DD Form 2707.** When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The sentence adjudged by the court is included in item 5, even in cases where a plea agreement provides for a lesser sentence than that adjudged by the court. The person directing confinement, typically the trial counsel, signs item 7(a). The SJA signs item 8(d) as the officer conducting a legal review and approval. The same person cannot sign both item 7(a) and 8(d). Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

13.40.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner’s Correctional Treatment File.

13.40.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

13.41. Effect of Pretrial Confinement. Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian, or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States*

Chapter 15

SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

Section 15A—Crimes Against Children and Sexually Violent Offender Notification

15.1. General Provision. If the member has been convicted of a sexually violent offense or certain offenses against a minor, the Air Force is required to provide notice to federal, state, and local officials prior to the member's release from confinement, and the member may be required to register as a sex offender under state law. (T-0). See *Sex Offender Registration and Notification Act*, 34 U.S.C. § 20901 et al. (2006); see also *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (1994), 42 U.S.C. § 14071, Pub. L. 105-119, Title I, § 115(a)(8)(C)(i), 111 Stat. 2466 (1997); *Megan's Law*, Pub. L. 104-145 (1994), *modifying* 42 U.S.C. § 13701, *et seq.*; *Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and Megan's Law*, Department of Justice A.G. Order No. 2196-98 (1998); *Pam Lyncher Sex Offender Tracking and Identification Act*, Pub. L. 104-236, 110 Stat. 3093 (1996); *Jacob Wetterling Improvements Act*, Pub. L. 105-119 § 115 (1998); *Protection of Children from Sexual Predators Act*, Pub. L. 105-314, 112 Stat. 2974 (1998); *Adam Walsh Child Protection and Safety Act*, Pub. L. 109-248 (2006); The Acts are available at the Department of Justice website <http://www.ojp.usDoJ.gov/smart/legislation.htm>.

15.2. Notification upon Conviction. State sex offender registry and United States Marshals Service National Sex Offender Targeting Center notifications for service members convicted as sex offenders, subsequent to conviction under the UCMJ, and incarceration in a DoD Component confinement facility, will be carried out in accordance with procedures in DoD Instruction 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*. (T-0) See also AFI 31-105. Confinement facilities are notified that a member is subject to this notification requirement by a required annotation on the Report of Result of Trial Memorandum or Statement of Trial Results, which is distributed to the confinement facility upon completion.

15.3. Report of Results of Trial Memorandum. If a member is convicted of an offense referred to trial prior to 1 January 2019 that triggers the sex offender notification requirement (with or without confinement), the SJA or designee ensures the Report of Result of Trial memorandum indicates that compliance with this section is required. (T-1) See Figure A11.1, paragraph A11.3.1.4.4.

15.4. Statement of Trial Results and Entry of Judgment. If a member is convicted of an offense referred to trial on or after 1 January 2019, the appropriate box must be completed on the 1st Indorsement of the Statement of Trial Results and the Entry of Judgment by the SJA. (T-1) See paragraphs 13.3.3 and 13.38.1 and Attachment 9.

15.5. Qualifying Offenses. DoDI 1325.07, Appendix 4 to Enclosure 2, includes a list of offenses which trigger sex offender notification requirements. **Note:** Sex offender registration requirements vary by state and may be triggered by offenses not listed in Enclosure 2. A member convicted of an offense that does not trigger sex offender notification requirements under DoDI 1325.07 may still be required to register as a sex offender under state law.

15.5.1. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Further questions about whether an offense triggers notification requirements may be directed to AFLOA/JAJM.

15.5.2. The Security Forces Confinement Officer, or designee responsible for custody of the inmate, ensures compliance with federal and state laws with regards to sex offender registration and notifications to civilian agencies, in accordance with the requirements detailed in AFI 31-105 and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. (T-0)

15.6. No Post-trial Confinement. When compliance with Section 15A is required, but confinement is not part of the adjudged punishment (or sufficient pretrial or illegal pretrial confinement credit completely offsets the term of confinement imposed at trial):

15.6.1. The SJA notifies the appropriate corrections officer (or the Security Forces commander, if there is no corrections officer), in writing, within twenty-four hours of the member's conviction. (T-1) For purposes of this section, conviction includes announcement of the sentence. This notification occurs via distribution of the Statement of Trial Results for charges and specifications referred to court-martial on or after 1 January 2019, Report of Result of Trial for charges and specifications referred to court-martial prior to 1 January 2019, and DD Form 2707-1 irrespective of the date. Both forms must be distributed to the confinement facility. (T-1)

15.6.2. The corrections officer, or the Security Forces commander, as appropriate, ensures that the notifications required in AFI 31-105 are made. (T-1)

15.7. Convictions by a Host Country. Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with Section 15A is required in these cases, the SJA notifies the appropriate individuals. It is the SJA's responsibility to ensure the offender completes the DD Form 2791, *Notice Of Release/Acknowledgement Of Convicted Sex Offender Registration Requirements*, or equivalent document, upon release from the host nation. (T-1) The DD Form 2791 and copies of the ROT should be provided to the appropriate federal, state, and local law enforcement by DoD in accordance with paragraph 15.2 and DoDI 1325.07.

Section 15B—Criminal Indexing and Fingerprint Collection (Title 28 United States Code § 534; 28 C.F.R. Sections 20.30-38; DoDI 5505.11)

15.8. General Provision. The Air Force, through AFOSI and Security Forces, submits offender criminal history record information and fingerprints to the FBI ("criminal indexing") when there is probable cause to believe an identified individual committed a qualifying offense. (T-0) See DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*; 28 C.F.R. Part 20; 28 U.S.C. § 534.

15.8.1. Criminal History Record Information. Criminal history record information reported in accordance with DoDI 5505.11 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, nonjudicial punishment; administrative action; or administrative discharge). **Note:** Issuance of a Military Protective Order (MPO) in accordance with Section 16I is also indexed in the National Crime Information Center (NCIC). (T-0) See Title 10 United States Code § 1567a.

15.8.2. Identified Individuals. Provided the qualifications in paragraphs 15.9-15.10. are met, the Air Force submits criminal history data on any military member or civilian

investigated by an Air Force law enforcement agency (AFOSI or Security Forces). Likewise, the Air Force submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in paragraph 15.9.

15.9. Qualifying Offenses. Qualifying offenses are listed in DoDI 5505.11. In addition to these offenses, issuance of an MPO also triggers a requirement for indexing in NCIC.

15.10. Probable Cause Requirement. Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. The collection of fingerprints under this paragraph does not require a search authorization or consent of the person whose fingerprints are being collected.

15.11. SJA Coordination Requirement. The law enforcement agency (e.g., AFOSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. See paragraphs 15.9. and 15.10. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise AFOSI or Security Forces for purposes of criminal history indexing. (T-0)

15.12. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., AFOSI or Security Forces) submits the required data for inclusion in NCIC in accordance with DoDI 5505.11.

15.13. Final Disposition Requirement.

15.13.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, conviction of a lesser included offense, sentence data, etc.) is submitted by AFOSI or Security Forces for each qualifying offense reported in NCIC. AFOSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). In the case of a court-martial, this final disposition is memorialized on a Report of Result of Trial or Statement of Trial Results, and on the Court-Martial Order or Entry of Judgment, whichever is applicable. A first indorsement signed by the SJA must accompany the Statement of Trial Results and Entry of Judgment. (T-1)

15.13.2. Templates for the Statement of Trial Results, Entry of Judgment, and first indorsement are located at Figures A9.1 and A9.2. See paragraphs 13.3.3 and 13.38.1.

15.13.3. Because the Entry of Judgment may differ from the adjudged findings and sentence, both the Statement of Trial Results and Entry of Judgment must be promptly distributed to the local AFOSI detachment, Security Forces, and AFOSI/XI. (T-1) See paragraphs 13.3.3 and 13.39.

15.13.4. For information regarding final disposition where the final disposition consists of nonjudicial punishment, see AFI 51-202.

15.13.5. In cases where the allegations involve offenses listed in paragraphs 5.7.1. through 5.7.3., and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local AFOSI detachment and AFOSI/XI in accordance with paragraph 5.7.5.2. (T-1)

15.13.6. For all other final dispositions which must be submitted in accordance with Section 15E and DoDI 5505.11, the SJA must ensure disposition data requested by the local AFOSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. (T-1) See Section 15E for further distribution guidance.

15.14. Expungement of Criminal History Data and Fingerprints. Expungement requests are processed in accordance with guidance promulgated by the law enforcement agency responsible for submission to NCIC.

Section 15C—DNA Collection (10 U.S.C. § 1565; DoDI 5505.14)

15.15. General Provision. The Air Force, through AFOSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when there is probable cause to believe an identified individual committed a qualifying offense. (T-0) See DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*; 10 U.S.C. 1565; 34 U.S.C. § 50702, *Collection and Use of DNA identification information from certain Federal Offenders*; 28 C.F.R. 28.12.

15.16. Qualifying Offenses. Qualifying offenses are listed in DoDI 5505.14.

15.17. Probable Cause Requirement. DNA collection in accordance with DoDI 5505.14 occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. The collection of DNA under this paragraph does not require a search authorization or consent of the person whose DNA is being collected.

15.18. SJA Coordination Requirement. There is no requirement that a law enforcement agency (AFOSI or Security Forces) coordinate with the legal office prior to collecting DNA for a qualifying offense. However, the law enforcement agency coordinates with government counsel prior to forwarding DNA for inclusion in CODIS where the forwarding is based solely upon a determination of probable cause, rather than other triggers for collection and forwarding under DoDI 5505.14 and paragraph 15.20 below.

15.19. Collection of DNA by Commanders. In cases investigated by AFOSI or Security Forces, the applicable investigative agency collects DNA where DNA collection is required. In commander directed investigations or inquiries, the commander will coordinate with the servicing SJA and Security Forces, who will collect the DNA where it is required. (T-1)

15.20. Timing of Collection and Forwarding. AFOSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14.

15.20.1. DNA may be collected upon a determination of probable cause that the identified suspect committed a qualifying offense. DNA may be forwarded at the time of the probable cause determination, provided AFOSI or Security Forces, whichever is applicable, makes the determination in coordination with government counsel.

15.20.2. DNA may be collected and forwarded, or forwarded if already collected, at preferral of charges, provided the charges preferred are qualifying offenses.

15.20.3. DNA may be collected and forwarded, or forwarded if already collected, when a service member is ordered into pre-trial confinement for a qualifying offense after the

completion of the commander's 72-hour memorandum, if DNA has not already been submitted related to that specific qualifying offense.

15.20.4. DNA may be collected and forwarded, or forwarded if already collected, if a military member is convicted at a general or special court-martial for a qualifying offense.

15.20.5. If a service member is acquitted of all qualifying offenses at a SPCM or GCM and no DNA has been forwarded, DNA is not forwarded (or collected, if applicable) for the qualifying offenses. If additional qualifying offenses have not been adjudicated, paragraphs 15.20.1. through 15.20.3. apply.

15.21. SJA Coordination with Commanders. Base-level SJAs are required to brief commanders about DNA processing requirements and advise commanders when samples must be collected in commander-directed investigations. (T-1) The suspect's commander coordinates with Security Forces to ensure the DNA sample is obtained and forwarded to USACIL for inclusion in CODIS in accordance with DoDI 5505.14.

15.22. Report of Result of Trial. In cases where specifications alleging qualifying offenses were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be annotated on the Report of Result of Trial. See Figure A11.1, paragraph A11.3.1.4.4.

15.23. Court-Martial Order. In cases where specifications alleging qualifying offenses were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more qualifying offenses, "DNA PROCESSING IS REQUIRED" must be annotated in the header. (T-1)

15.24. Statement of Trial Results and Entry of Judgment. In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the 1st Indorsement of the Statement of Trial Results and Entry of Judgment by the SJA. See paragraphs 13.3.3 and 13.38.1 and Figures A9.1 and A9.2.

15.25. Final Disposition Requirement. As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, as noted in paragraph 15.20, final disposition of court-martial charges must be forwarded to AFOSI and Security Forces to ensure DNA is appropriately handled. (T-1) The final disposition is memorialized on the following forms: Report of Result of Trial memorandum (for offenses referred to trial prior to 1 January 2019) or Statement of Trial Results (for offenses referred to trial on or after 1 January 2019), and on the Court-Martial Order or Entry of Judgment, whichever is applicable. A first indorsement signed by the SJA must accompany the Statement of Trial Results and Entry of Judgment. (T-1) Templates for the Statement of Trial Results, Entry of Judgment, and first indorsement are located at Figures A9.1 and A9.2. Because the Entry of Judgment may differ from the adjudged findings and sentence, both the Statement of Trial Results and Entry of Judgment must be promptly distributed to the local AFOSI detachment, Security Forces and AFOSI/XI. (T-1) See paragraphs 13.3.9, 13.4. and 13.39. In cases where the allegations involve offenses listed in paragraphs 5.7.1. through 5.7.3., and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to AFOSI in accordance with paragraph 5.7.5.2. (T-1) For all other dispositions, the SJA must ensure disposition data requested by the local AFOSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. (T-1) See Section 15E for further distribution guidance.

15.26. Expungement of DNA. DoD expungement requests are processed in accordance with guidelines promulgated in DoDI 5505.14. If a current service member whose DNA was collected and forwarded for inclusion in CODIS requests expungement in writing through a commander who meets the requirements in DoDI 5505.14, the SJA shall advise the commander and criminal investigators whether expungement is authorized. (T-1) Expungement is authorized only if the case results in acquittal for all charged offenses for which DNA collection is mandated; findings of guilty are disapproved or set aside for all offenses for which DNA collection is mandated; or the case is disposed of by referral to SCM, nonjudicial punishment, administrative action, or a decision to take no action. See DoDI 5505.14. Former service members must follow the procedures outlined in DoDI 5505.14. (T-0)

Section 15D—Possession or Purchase of Firearms Prohibited (18 U.S.C. § 921-22; 27 C.F.R. 478.11)

15.27. General Provision. 18 U.S.C. § 922 prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person that fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement, etc.).

15.28. Categories of Prohibition. (18 U.S.C. §§ 922(g), 922(n))

15.28.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year. If a service member is convicted of a crime for which the maximum punishment listed in the MCM exceeds a period of one year, this prohibition is triggered, regardless of the term of confinement adjudged or approved. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

15.28.2. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

15.28.3. Fugitives from justice. 18 U.S.C. § 922(g)(12).

15.28.4. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802. 18 U.S.C. § 922(g)(3).

15.28.4.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. See 27 C.F.R. 478.11.

15.28.4.2. The following conditions trigger the prohibition under 18 U.S.C. 922(g)(3): Conviction or nonjudicial punishment for use or possession, within the last year, of a controlled substance; admission to qualifying drug use; positive urinalysis result; administrative discharge for drug use or drug rehabilitation failure. **Note:** This list is not intended to be exhaustive. See 27 C.F.R. 478.11.

15.28.4.3. Convictions under this rule do not necessarily trigger the requirement for DNA submission under DoDI 5505.14 and Section 15C.

15.28.5. Any person adjudicated as a mental defective or who has been committed to a mental institution. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

15.28.6. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

15.28.7. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6).

15.28.8. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

15.28.9. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under Section 15B. See also Section 16I.

15.28.10. Persons convicted of a misdemeanor crime of domestic violence (the “Lautenberg Amendment”). 18 U.S.C. § 922(g)(9). This includes conviction at a GCM or SPCM for any offense that includes the use or attempted use of physical force or threatened use of a deadly weapon against a person who is a current or former spouse, child or ward, a person with whom the accused shares a child in common, or a current or former intimate partner with whom the accused shares or has shared a common domicile. **Note:** Government counsel and law enforcement must look at this on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, etc.) meet the statutory criteria for a “crime of domestic violence.” (T-1) See 10 U.S.C. § 1562; DoDI 6400.07.

15.28.10.1. A “crime of domestic violence” is an offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. The alleged offender must be (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, (5) a person similarly situated to a spouse, parent or guardian of the victim. See DoDI 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*; 18 U.S.C. § 922.

15.28.10.2. Qualifying convictions include a “crime of domestic violence” tried by GCM or SPCM which otherwise meets the elements of a crime of domestic violence as defined in paragraph 15.28.10.1. 18 U.S.C. § 922(d) and (g). SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of nonjudicial punishment under Article 15, UCMJ.

15.29. Report of Results of Trial Memorandum. In cases where specifications alleging offenses which trigger any prohibition under 18 U.S.C. § 922 were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more such offenses, the appropriate box must be annotated on the Report of Result of Trial. (T-1) **Note:** If the accused is convicted of a

crime of domestic violence as defined in paragraph 15.28.10.1. and 18 U.S.C. § 922, both the “Firearms Prohibition” and “Domestic Violence Conviction” blocks should be marked “yes.”

15.30. Court-Martial Order. In cases where specifications alleging qualifying offenses were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more qualifying offenses, “FIREARMS PROHIBITION – 18 U.S.C. § 922” must be annotated in the header. (T-1) In the event the prohibition results from a conviction for domestic violence, “CRIME OF DOMESTIC VIOLENCE – 18 U.S.C. § 922(g)(9)” should be listed in the header.

15.31. Statement of Trial Results. In cases where specifications alleging offenses which trigger a prohibition under 18 U.S.C. § 922 were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the 1st Indorsement of the Statement of Trial Results by the SJA. (T-1) **Note:** If the accused is convicted of a crime of domestic violence as defined in paragraph 15.28.10.1. and 18 U.S.C. § 922, both the “Firearms Prohibition” and “Domestic Violence Conviction” blocks should be marked “yes.”

15.32. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, as noted in paragraph 15.13. and 15.25., final disposition of court-martial charges must be forwarded to the local AFOSI detachment, Security Forces, and AFOSI/XI to ensure reporting pursuant to 18 U.S.C. § 921-22 is appropriately handled. The final disposition is memorialized on a Report of Result of Trial or Statement of Trial Results, and on the Court-Martial Order or Entry of Judgment, whichever is applicable. Because the Entry of Judgment may differ from the adjudged findings and sentence, both the Statement of Trial Results and Entry of Judgment must be promptly distributed to the local AFOSI detachment, Security Forces, and AFOSI/XI. (T-1) A first indorsement signed by the SJA must accompany each. (T-1) Templates for the Statement of Trial Results, Entry of Judgment, and first indorsement are located at Figures A9.1 and A9.2. See paragraphs 13.4. and 13.39. The SJA must ensure disposition data requested by the local AFOSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. (T-1) See Section 15E for further distribution guidance.

15.33. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of the conviction on the accused’s ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member’s authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense under the Lautenberg Amendment; and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition. (T-1)

Section 15E—Distribution of Court-Martial Data for Indexing Purposes

15.34. General Provision. In order to ensure that titling and indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the local AFOSI detachment, and Security Forces Reports and Analysis (SFS/S2I), and the Air Force Indexing Cell:

15.34.1. Charge sheets in cases referred to any court-martial; (T-1)

15.34.2. Report of Result of Trial memoranda, regardless of verdict or sentence; (T-1)

15.34.3. Statement of Trial Results, regardless of verdict or sentence; (T-1)

15.34.4. Court-martial orders; (T-1)

15.34.5. Entry of Judgment; (T-1)

15.34.6. Final order reflecting judgment of the appellate court, TJAG or Secretary of the Air Force, where applicable; (T-1) and

15.34.7. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under Sections 15B-15D of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with paragraph 5.7; nonjudicial punishment records in accordance with AFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, etc.). (T-1)

15.34.8. **General Courts-Martial Continuances, Delays and Abatements.** Any continuance, delay or abatement that results in the announcement of a sentence or acquittal in a general court-martial occurring more than six months after referral may require modification of disposition information in the National Instant Background Check System (NICS). Government counsel must notify the investigating agency (e.g., local AFOSI detachment or Security Forces) and Air Force Indexing Cell in the event a continuance or delay is granted or abatement ordered in a general court-martial. (T-1)

15.35. Electronic Submission Preferred. These documents should be submitted to the Air Force Indexing Cell electronically to ensure prompt processing. Documents should be submitted to AFOSI.XI.AFCriminalIndexPM@us.af.mil and may be submitted as attachments or via other secure electronic method.

Section 15F—Protective Order Submissions

15.36. National Crime Information Center (NCIC) Submission. When a commander issues a Military Protective Order (MPO), the commander must forward the MPO to Security Forces in accordance with Section 16I. (T-0) Security Forces enters the MPO into NCIC. The commander also notifies Security Forces when any terms are modified or the MPO is terminated. (T-0) SJAs must be cognizant of these requirements and appropriately advise commanders of their responsibilities and the collateral effects of issuing, modifying or terminating MPOs. (T-1)

Attachment 9**POST-SENTENCING TEMPLATES FOR CASES REFERRED TO TRIAL ON OR
AFTER 1 JANUARY 2019****Figure A9.1. Statement of Trial Results and Entry of Judgment – Military Judge
Sentencing Applying Military Justice Act of 2016 Sentencing Rules**

Note: This form only applies to special and general courts-martial where the military judge adjudged the sentence and where either 1) all charged offenses occurred on/after 1 January 2019, or 2) offenses occurred before 1 January 2019 and on/after 1 January 2019 and the Accused opted-in to the Military Justice Act sentencing rules. For all other cases referred on/after 1 January 2019, use Figure A9.2.

Note: See Virtual Military Justice Deskbook for fillable copy of this form.

**STATEMENT OF TRIAL RESULTS
IN THE CASE OF**
United States v. TSgt John J. Smith

Date: _____ Sentence/Acquittal Date: _____

Name of Accused: _____ Grade: _____ SSN: _____

Organization: _____

Type of Court-Martial: _____

Findings Forum: _____ Sentencing Forum: Military Judge Enlisted Members: _____

If charged offenses occurred both before and after 1 January 2019, did the Accused opt-in to the sentencing rules in effect on 1 January 2019? Yes _____ No _____ N/A _____

Summary of charge(s), specification(s), pleas, and findings:

Charge(s)	Arraigned Offenses	P	F	Confinement			Fine
				Term	Concurrent with	Consecutive with	

Total Adjudged Confinement: _____ Total Fine: _____

Days of Pretrial Confinement Credit: _____ Days of Judicially Ordered Credit: _____

Remaining Portions of Adjudged Sentence: _____

Punitive Discharge: _____

Forfeitures of Pay and/or Allowances: _____

Reduction in Pay Grade: _____ Reprimand: _____

Hard Labor without Confinement: _____ Restriction: _____

Plea Agreement Involved: _____ Plea Agreement Limitations on Punishment: _____

Suspension Recommendation: _____

JANE DOE, Colonel, USAF
Military Judge

ENTRY OF JUDGMENT IN THE CASE OF UNITED STATES V. _____

1st Ind., Entry of Judgment, Name and Rank of Accused, dated _____.

FROM: <<Staff Judge Advocate>>, <<Unit/Installation>>

MEMORANDUM FOR: ALL REVIEWING AUTHORITIES

The following criminal indexing is required, following Entry of Judgment, according to the references listed:

DNA Processing Required Under 10 U.S.C. § 1565 and DoDI 5505.14: _____

Firearm Prohibition Triggered Under 18 U.S.C. § 922: _____

Domestic Violence Conviction Under 18 U.S.C. § 922(g)(9): _____

Sex Offender Notification in accordance with DoDI 1325.07: _____

Fingerprint Card and Final Disposition in accordance with DoDI 5505.11: _____

LAWYER PERSON, Colonel, USAF
Staff Judge Advocate

Distribution:

1 – List All Required Parties

|

STATEMENT OF TRIAL RESULTS
IN THE CASE OF
United States v. TSgt John J. Smith

Date: _____ Sentence/Acquittal Date: _____

Name of Accused: _____ Grade: _____ SSN: _____

Organization: _____

Type of Court-Martial: _____

Findings Forum: _____ Sentencing Forum: _____ Enlisted Members: _____

If charged offenses occurred both before and after 1 January 2019, did the Accused opt-in to the sentencing rules in effect on 1 January 2019? Yes _____ No _____ N/A _____

Summary of charge(s), specification(s), pleas, and findings:

Charge(s)	Arraigned Offenses	Pleas	Findings

Adjudged Confinement: _____ Fine: _____

Days of Pretrial Confinement Credit: _____ Days of Judicially Ordered Credit: _____

Remaining Portions of Adjudged Sentence: _____

Punitive Discharge: _____

Forfeitures of Pay and/or Allowances: _____

Reduction in Pay Grade: _____ Reprimand: _____

Hard Labor without Confinement: _____ Restriction: _____

Plea Agreement Involved: _____ Plea Agreement Limitations on Punishment: _____

Suspension Recommendation: _____

JANE DOE, Colonel, USAF
 Military Judge

Figure A9.2. Statement of Trial Results and Entry of Judgment – Member Sentencing (All Cases) or Military Judge Sentencing Applying pre-Military Justice Act of 2016 Sentencing Rules

Note: This form applies to all general and special courts-martial with member sentencing. This form also applies to military judge sentencing only for cases using pre-Military Justice Act of 2016 sentencing rules. For military judge sentencing cases applying Military Justice Act of 2016 sentencing rules (i.e., segmented sentencing), use Figure A9.1.

Note: See Virtual Military Justice Deskbook for fillable copy of this form.

ENTRY OF JUDGMENT IN THE CASE OF UNITED STATES V. _____

1st Ind., Entry of Judgment, dated _____.

FROM: <<Staff Judge Advocate>>, <<Unit/Installation>>

MEMORANDUM FOR: ALL REVIEWING AUTHORITIES

The following criminal indexing is required, following Entry of Judgment, according to the references listed:

DNA Processing Required Under 10 U.S.C. § 1565 and DoDI 5505.14: _____

Firearm Prohibition Triggered Under 18 U.S.C. § 922: _____

Domestic Violence Conviction Under 18 U.S.C. § 922(g)(9): _____

Sex Offender Notification in accordance with DoDI 1325.07: _____

Fingerprint Card and Final Disposition in accordance with DoDI 5505.11: _____

LAWYER PERSON, Colonel, USAF
Staff Judge Advocate

Distribution:

1 – See Distro List



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

DAFI51-201_DAFGM2024-03

3 October 2024

MEMORANDUM FOR DISTRIBUTION C
MAJCOMs/FLDCOMs/FOAs/DRUs

FROM: HQ USAF/JA
1420 Air Force Pentagon
Washington, DC 20330-1420

SUBJECT: Department of the Air Force Guidance Memorandum to Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*

By Order of the Secretary of the Air Force, this Department of the Air Force Guidance Memorandum (DAFGM) immediately changes DAFI 51-201, *Administration of Military Justice*. Compliance with this memorandum is mandatory. To the extent its directions are inconsistent with other Department of the Air Force publications, the information herein prevails, in accordance with Department of the Air Force Instruction (DAFI) 90-160, *Publications and Forms Management* and Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes and Procedures*.

This guidance is applicable to the entire Department of the Air Force (DAF), including uniformed members of the Regular Air Force, United States Space Force, Air Force Reserve and Air National Guard, except where noted otherwise, all DAF civilian employees and those with a contractual obligation to abide by the terms of DAF issuances.

This DAFGM renews previous guidance and adds requirements for notifying AF/JA/JG for Article 62, Uniform Code of Military Justice (UCMJ) matters, utilizing the Post-Trial Processing Dashboard, and completing the AF/JAT End of Trial Documents and Article 140a, UCMJ, checklists and certifications.

This memorandum becomes void after one year has elapsed from the date of this memorandum, or upon incorporation by interim change (IC) or rewrite of the affected publication, whichever is earlier.

CHARLES L. PLUMMER
Lieutenant General, USAF
The Judge Advocate General

Attachment:
Guidance Changes

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-201**



24 JANUARY 2024

Law

**ADMINISTRATION OF MILITARY
JUSTICE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at www.e-Publishing.af.mil for downloading or ordering.

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JAJ
(Brig Gen Gail E. Crawford)

Supersedes: DAFI 51-201_DAFGM2023-01, 28 September 2023

Pages: 264

This instruction implements Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the Uniform Code of Military Justice (UCMJ), Manual for Courts-Martial (MCM), including the Rules for Courts-Martial (R.C.M.) and Military Rules of Evidence (M.R.E.), and applicable Department of Defense (DoD) guidance. This publication is applicable to the entire Department of the Air Force (DAF), including uniformed members of the Regular Air Force, United States Space Force, Air Force Reserve and Air National Guard, except where noted otherwise, all DAF civilian employees and those with a contractual obligation to abide by the terms of DAF issuances. Commands may supplement this instruction only with the prior, written approval of the Military Justice Law and Policy Division (AF/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This Instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by DoD Directive (DoDD) 5400.11, *DoD Privacy Program*. The applicable System of Records Notice (SORN), "Military Justice and Civilian Criminal Case Records," DoD 0006, is available at <https://www.federalregister.gov/documents/2021/05/25/2021-10367/privacy-act-of-1974-system-of-records>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the DAF Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through major command (MAJCOM) or field command (FLDCOM) functional managers. The authorities to waive requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes*

and Procedures, for a description of the authorities associated with the Tier numbers. For tiered items, submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to AF/JAJM, the publication OPR. Commanders may not waive non-tiered compliance items in this instruction. See DAFMAN 90-161, paragraph 9.2.2. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Department of the Air Force.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. This document implements requirements contained in the Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA) and FY 2023 NDAA, as well as Executive Order (EO) 14103, *2023 Amendments to the Manual for Courts-Martial, United States*. It contains guidance to implement establishment of the Office of the Special Trial Counsel (OSTC) and guidance concerning UCMJ amendments to sentencing rules and appellate rights.

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Chapter 20

STR THROUGH EOJ (POST-TRIAL PROCESS)

Section 20A—General Post-Trial Overview

20.1. Applicability. This chapter applies only to GCMs and SPCMs in which charges were referred on or after 1 January 2019. For SCMs, see [Chapter 23](#). For cases referred before 1 January 2019, contact AF/JAJM for assistance.

20.2. Definition of “Victim” for Post-Trial. Practitioners should be cognizant of the changing definition of victim throughout the post-trial process. In certain circumstances, “victim” refers to any victim named in a specification, regardless of whether the specification resulted in a conviction. In other circumstances, “victim” refers only to named victims whose specifications resulted in a conviction.

20.2.1. Any victim, regardless of whether that victim’s allegation resulted in a conviction, receives the STR and the EoJ. R.C.M. 1101(d), 1111(f).

20.2.2. Any victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense for which the accused was found guilty receives an opportunity to submit matters to the convening authority under R.C.M. 1106A(b)(2).

20.2.3. A victim named in a specification who testified during the proceeding automatically receives a copy of the certified ROT, regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT. R.C.M. 1112(e).

Section 20B—STR

20.3. Requirement for a STR and Exceptions to Requirement. Following final adjournment in a GCM or SPCM, the military judge must ensure an STR is prepared and signed by the military judge. **(T-0)** However, in cases where the accused was arraigned and the trial resulted in a full acquittal, mistrial, dismissal of charges, or is otherwise terminated without findings, there is no requirement for a STR. In such cases, complete and distribute an EoJ as outlined in [Section 20I](#). Do not complete a STR in SCMs. See [Chapter 23](#) for further guidance in SCMs.

20.4. Mandatory Contents of STR. The STR must contain the content required under R.C.M. 1101. **(T-0) Note:** In cases where an expurgated STR is required, both an expurgated and unexpurgated STR must be prepared and signed by the military judge. See [paragraph 20.8](#) for discussion of expurgated and unexpurgated Statements of Trial Results. Trial counsel and military judges must follow the format and checklists provided on the VMJD and AF/JAJM Teams page.

20.5. Military Judge Recommendation for Suspension of Sentence. See [paragraph 19.22](#) for guidance.

20.6. Requirement for First Indorsement to STR. Prior to distribution, the SJA must sign and attach to the STR a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal record history indexing is required in accordance with DoDI 5505.11, *Fingerprint Reporting Requirements*; firearm prohibitions are triggered; and/or sex offender

notification is required. See [Chapter 29](#) and AFMAN 71-102 for further information. Templates are available on the VMJD and AF/JAJM Teams page. The first indorsement is distributed with the STR. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.7. Distributing the STR. The SJA distributes the STR and first indorsement to those recipients identified in the STR/EoJ distribution list on the VMJD and AF/JAJM Teams page.

20.8. Unexpurgated and Expurgated Statements of Trial Results.

20.8.1. An expurgated copy of the STR is required in every case that otherwise requires a STR when the contents of a STR includes classified or other matters implicating privacy interests, as annotated in the paragraphs below. In such cases, legal offices must prepare both an expurgated and unexpurgated copy. The version with the content replaced is called the expurgated STR. Only certain parties receive the unexpurgated version. See [paragraph 20.8.2](#). When making expurgated copies, the initials should match the way the name is written on the charge sheet (e.g., “Jane Doe” becomes “J.D.” and “Jane B. Doe” or “Jane Belinda Doe” becomes “J.B.D.”) Make the following substitutions in the expurgated STR:

20.8.1.1. Names of individuals who were children under 16 years of age at the time of the offense are replaced with initials, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR). **Note:** If offenses only contain names of victims listed in this paragraph, only an expurgated copy of the STR is required;

20.8.1.2. Names of victims who were under 18 years of age at the time of the offense are replaced with initials when the charged offense is a child pornography offense, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR);

20.8.1.3. Names of sex offense victims are replaced with initials, regardless of the final outcome of the case. **Note:** For purposes of expurgation, a “sex offense” is any offense which requires sex offender notification in accordance with DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*.

20.8.1.4. Names of victims listed in paragraphs [20.8.1.1-20.8.1.3](#) when listed in other offenses on the charge sheet should be replaced with initials, regardless of the final outcome of the case (e.g., if the same victim is listed as the victim of an Article 128, UCMJ, offense and an Article 120, UCMJ, offense, the victim’s name should be expurgated in both offenses such that the name cannot be ascertained from the Article 128, UCMJ, charge); and

20.8.1.5. Classified information is replaced with asterisks.

20.8.2. Distribution.

20.8.2.1. Unexpurgated Statements of Trial Results—Classified Cases. If an unexpurgated STR contains classified information, ensure the STR is properly marked with classified markings in accordance with the classification guide; then do not distribute it to any party. Provide the unexpurgated classified STR to AF/JAJM as part of the original ROT and maintain an unexpurgated classified copy in the legal office’s copy of the ROT in a container authorized to store classified information. For more information on the storage and transfer of classified information, see DAFMAN 51-203.

20.37.6.9. The convening authority's contingent confinement order should be forwarded through the SJA to the military judge for completion of a new EoJ, which must be attached to the ROT.

20.37.6.10. Forward to AF/JAJM a copy of the summarized record of the contingent confinement hearing, any order, and modified EOJ for each copy of the ROT required by DAFMAN 51-203.

Section 20H—Notification of Adjudged Sentence, EoJ

20.38. 14-Day Memorandum and 24-Hour Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade, a 24-Hour Memorandum ([paragraph 20.38.2](#)) is required. In such cases, if the EoJ is not complete within 14 days, both a 14-Day Memorandum ([paragraph 20.38.1](#)), and a 24-Hour Memorandum ([paragraph 20.38.2](#)) must be accomplished and distributed. However, if the EoJ is completed within 14 days, a 14-Day Memorandum is not required.

20.38.1. 14-Day Memorandum. The SJA of the office that prosecuted the case must send a memorandum 14 days after the sentence is announced or within 24 hours of the EoJ, whichever is earlier, via email to the recipients listed on the template memorandum located on the VMJD and AF/JAJM Teams page. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD and AF/JAJM Teams page.

20.38.2. 24-Hour Memorandum. If the EoJ is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the EoJ via email to the recipients listed on the template memorandum located on the VMJD and AF/JAJM Teams page. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD and AF/JAJM Teams page.

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ)

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see [Section 23F](#). In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings (to include discharge in lieu of court-martial), an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111(e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0)** Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance

with R.C.M. 1104(b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0)** Practitioners must use the format and checklists for the EoJ that is posted on the VMJD and AF/JAJM Teams page.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated and unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer to [paragraph 20.8](#) to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. § 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See [Chapter 29](#) for further information on this requirement. Templates are located on the VMJD and AF/JAJM Teams page. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page within five duty days of completion.

Section 20J—Post-Trial Confinement

20.43. Entry into Post-Trial Confinement. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, with original signatures goes with the accused and is used to enter an accused into post-trial confinement.

20.44. Processing the DD Form 2707.

20.44.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The person directing confinement, typically the trial counsel, fills out block 7. The SJA fills out block 8 as the officer conducting a legal review and approval. The same person cannot sign both block 7 and block 8. Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

20.44.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner’s Correctional Treatment File.

102. SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in **paragraph 29.30.7.1** and 18 U.S.C. § 922, both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §922 is appropriately handled.

29.33.1. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion of the EoJ. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See **Section 29E** for further distribution guidance.

29.33.2. In cases where a CFR is created after completion of appellate review, the CFR must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion. See **Chapter 27**.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of a conviction on the accused's ability to handle firearms or ammunition as part of their official duties in accordance with 18 U.S.C. §925(a)(1) and DoDI 6400.06, Section 9; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of a felony or misdemeanor crime of domestic violence in accordance with 18 U.S.C. §922(g)(1) and (g)(9) (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

Section 29E—Distribution of Court-Martial Data for Indexing Purposes

29.35. General Provision. In order to ensure that indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the applicable local DAF law enforcement agency and DAF-CJIC:

29.35.1. Charge sheets in all cases where charges are preferred;

29.35.2. Charge sheets in all cases referred to court-martial;

29.35.3. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.4. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;