

Filed on October 29, 2024

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

UNITED STATES,
Appellee,

v.

BRANDON A. WOOD,
Senior Airman (E-4),
United States Air Force,
Appellant.

Crim. App. Dkt. No. 40429
USCA Dkt. No. 25-0005/AF

SUPPLEMENT TO THE PETITION FOR GRANT OF REVIEW

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

| | | |
|--------------------------|---|---------------------------|
| UNITED STATES, |) | SUPPLEMENT TO THE |
| <i>Appellee,</i> |) | PETITION FOR GRANT |
| |) | OF REVIEW |
| v. |) | |
| |) | Crim. App. Dkt. No. 40429 |
| BRANDON A. WOOD, |) | |
| Senior Airman (E-4), |) | USCA Dkt. No. 25-0005/AF |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | October 29, 2024 |

ISSUES PRESENTED

I. Whether, in light of *United States v. Williams*, __ M.J. __, CAAF LEXIS 501 (C.A.A.F. 2024), the Air Force Court of Criminal Appeals had jurisdiction under Article 66(d)(2), Uniform Code of Military Justice, to provide appropriate relief for the erroneous firearm prohibition on the indorsement to the entry of judgment.

II. 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 indorsement to the entry of judgment.

III. Whether review by the United States Court of Appeals for the Armed Forces of the 18 U.S.C. § 922 prohibition noted on the indorsement to the entry of judgment would satisfy this Court’s prudential case or controversy doctrines.

IV. As applied to Senior Airman Wood, whether 18 U.S.C. § 922 is constitutional in light of recent precedent from the Supreme Court of the United States.

STATEMENT OF STATUTORY JURISDICTION

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

STATEMENT OF THE CASE

On October 18, 2022, a military judge sitting as a general court-martial convicted Senior Airman (SrA) Brandon A. Wood (Appellant), consistent with his pleas, of one specification of possession of child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 120; Entry of Judgment (EOJ) (Dec. 13, 2022).² The military judge sentenced SrA Wood to be reprimanded, reduced to the grade of E-1, confined for 12 months, and dishonorably discharged. R. at 155. The convening authority took no action on the findings or adjudged sentence but waived the automatic forfeitures for a period of six months for the benefit of SrA Wood's dependent. Convening Authority Decision on Action (Nov. 17, 2022).

At the AFCCA, SrA Wood personally raised whether the firearm bar contained in his record of trial was constitutional as applied to him. *United States v.*

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

² The initialism "EOJ" is used to reference the document at issue, whereas the phrase "entry of judgment" is used to address the legal process mandated by Article 60c, UCMJ, 10 U.S.C. § 860c.

Wood, No. ACM 40429, slip op. at 2 (A.F. Ct. Crim. App. Aug. 13, 2024) (Appendix A). On August 13, 2024, the AFCCA affirmed the findings as correct in law and fact and dismissed the firearm issue due to lack of jurisdiction, citing *United States v. Vanzant*, 84 M.J. 671, 681 (A.F. Ct. Crim. App. 2024), and *United States v. Lepore*, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021) (en banc). *Id.*

On September 19, 2024, SrA Wood moved for reconsideration out of time on the issue of whether the firearm bar was unconstitutionally applied to him. Order, *United States v. Wood*, No. ACM 40429 (A.F. Ct. Crim. App. Sept. 30, 2024) (Appendix B). The AFCCA denied the motion for reconsideration out of time. *Id.*

STATEMENT OF FACTS

SrA Wood pled guilty to possessing six videos of child pornography. R. at 62. Five of the videos were from—and of—a prior girlfriend. R. at 62. She was 16 years old when she made videos of herself masturbating and sent them to SrA Wood. R. at 63. The sixth video was from an unknown individual who advertised they would share nude content. R. at 64. The user sent SrA Wood a video, which he downloaded to his phone before viewing. R. at 64. The video contained child pornography, which SrA Wood did not expect, but he did not delete the video from his phone. R. at 64-65. The military judge accepted SrA Wood's pleas, found him guilty, and sentenced him. R. at 114, 120, 155.

After the military judge signed the EOJ, the Government determined SrA Wood qualified for a firearms prohibition under 18 U.S.C. § 922 by marking “Yes” on “Firearm Prohibition Triggered” on the Staff Judge Advocate’s indorsement to the EOJ. 1st Ind., Entry of Judgment, SrA Brandon A. Wood (Dec. 13, 2022). The Staff Judge Advocate’s indorsement was not an attachment listed on the EOJ, but a separate document that became the third page of the EOJ. *Id.*; EOJ.

SrA Wood challenged this restriction before the AFCCA. Merits Brief, App. A at 1, 3-5. He broadly argued the AFCCA had jurisdiction under Article 66, UCMJ, and asked as the remedy for the AFCCA to “correct the Statement of Trial [STR] results.” *Id.* Although his prayer for relief focused on the STR, his argument and factual analysis also included the EOJ. *Id.* The AFCCA rejected the challenge for lack of jurisdiction. Appendix A at 2 (citing *Vanzant*, 84 M.J. at 681; *Lepore*, 81 M.J. at 763).

In his motion for reconsideration out of time, SrA Wood argued that the AFCCA had jurisdiction to review the indorsement to the EOJ under Article 66(d)(2), UCMJ, pursuant to *United States v. Williams*, __ M.J. __, 2024 CAAF LEXIS 501 (C.A.A.F. 2024). Appellant’s Motion for Reconsideration Out of Time (Sept. 19, 2024). The AFCCA did not reconsider SrA Wood’s case. Appendix B.

REASONS TO GRANT REVIEW

SrA Wood's case involves jurisdictional questions that remain unresolved by the AFCCA and this Court after *United States v. Williams*, __ M.J. __, 2024 CAAF LEXIS 501 (C.A.A.F. 2024). Unlike the Army, the Air Force completes its final 18 U.S.C. § 922(g) notification *after* entry of judgment (Article 60c, UCMJ, 10 U.S.C. § 860c). As a result, SrA Wood's case is factually distinct from *Williams*, and the AFCCA had jurisdiction³ to consider the post-trial processing error in his case under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). The AFCCA held it did not have jurisdiction, even though SrA Wood showed a post-trial error occurring after the entry of judgment. He also requested reconsideration following *Williams*, which the AFCCA declined. Appellant's Motion for Reconsideration Out of Time; Appendix B. Consequently, the AFCCA's determination that there was no jurisdiction to review this error in post-trial processing conflicts with this Court's decision in *Williams*. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *14; C.A.A.F. R. 21(b)(5)(B). This Court should grant review to clarify the AFCCA's authority to act under Article 66(d)(2), UCMJ.⁴

³ Jurisdiction to review a case has two separate but related parts: first, whether there is jurisdiction over the case, and second, whether there is authority to act. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *8. The jurisdictional question here concerning AFCCA is focused on authority to act.

⁴ As *Williams* appears to control this issue, *see* Section 1 below, granting and summarily remanding to the AFCCA for proper consideration of the issue would also be appropriate. *See, e.g., Garland v. Range*, 144 S. Ct. 2706 (2024) (summarily

As for this Court’s jurisdiction, the overall justiciability of the firearm bar, and the underlying constitutional issue, those questions remain open after *Williams*. See generally *Williams*, __ M.J. __, 2024 CAAF LEXIS 501. Moreover, this Court has already granted review of these same issues. Order Granting Review, *United States v. Johnson*, No. 24-0004/SF (C.A.A.F. Sept. 24, 2024). SrA Wood’s case should be granted as a trailer case to *Johnson* for resolution of Issues II, III, and IV presented. Further analysis as to why this Court should grant Issue I continues below.

Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Hale*, 78 M.J. 268, 270 (C.A.A.F. 2019); *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017).

*Law and Analysis*⁵

1. The AFCCA had authority to grant appropriate relief for any demonstrated error in post-trial processing occurring after the entry of judgment.

The AFCCA did not explain its rejection of SrA Wood’s error. Appendix A at 2. Rather, it cited two cases that state correcting a firearms prohibition is a collateral matter outside the court’s review authority because it falls outside the

granting, vacating, and remanding for further consideration in light of new controlling precedent); *United States v. Harris*, 75 M.J. 448 (C.A.A.F. 2016) (summarily granting and remanding to the service court for consideration of the granted issue).

⁵ The analysis herein focuses only on the first issue presented, that the AFCCA had jurisdiction.

“findings and sentence” entered into the record. *Vanzant*, 84 M.J. at 673, 680; *see Lepore*, 81 M.J. at 760 (analyzing an earlier version of Article 66, UCMJ, with the same language). The language in the cited opinions indicates that the lower court only assessed its authority to review and act under Article 66(d)(1), UCMJ. Article 66(d)(1), UCMJ, provides, “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 ([A]rticle 60c).” (emphasis added). The citation to *Vanzant* and *Lepore* highlights that the AFCCA did not consider any other basis for jurisdiction in SrA Wood’s case, such as Article 66(d)(2), UCMJ. But Article 66(d)(2), UCMJ, applies at the time the firearm bar is noted in Air Force post-trial processing, as supported by this Court’s analysis in *Williams*.

By order of the Secretary of the Air Force, the Judge Advocate General of the Air Force published Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* (Apr. 14, 2022) (Appendix C), which outlines the applicable procedures for Air Force post-trial processing, including the timing of the creation of the EOJ and the indorsement at issue. In the Air Force, “*after* the [EOJ] is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered.” DAFI 51-201, at ¶ 20.41 (emphasis

added). Section 20I of DAFI 51-201 distinguishes the EOJ from the indorsement. *Compare* DAFI 51-201, at ¶ 20.40, *with* DAFI 51-201, at ¶ 20.41.

While the EOJ must include the STR and any “other information” required by the Secretary of the Air Force (R.C.M. 1111(b)), the operative firearm notification is not in the EOJ when it is signed by the military judge. *Compare Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *6, *with* DAFI 51-201, at ¶¶ 20.40.1, 29.33. Rather, the Secretary of the Air Force directs the Staff Judge Advocate to separately complete the indorsement with the 18 U.S.C. § 922 notification, which gets incorporated into the EOJ for “final disposition” *after* Article 60c, UCMJ, action. DAFI 51-201, at ¶¶ 20.41, 29.32, 29.33. The indorsement becomes a part of the EOJ, but it chronologically occurs after the military judge enters the judgment into the record. Even then, it is still a separate document appended to the EOJ.

In *Williams*, this Court considered the Army’s post-trial processing procedure where the STR, containing the only firearm bar, was completed by the military judge and incorporated into the entry of judgment before the military judge signed the judgment. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *6. Under those circumstances, this Court held that the plain language of Article 66(d)(2), UCMJ, prohibited the Army Court of Criminal Appeals from changing the STR firearm bar notation—since that notation came before action under Article 60c, UCMJ. *Id.* at *14. However, the situation here is different. In the Air Force, the controlling firearm

disposition notice occurs “after the judgment was entered into the record,” in accordance with the plain language of Article 66(d)(2), UCMJ. Consequently, based on the Air Force’s unique post-trial processing, 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.

2. Unlike the appellant in *Williams*, SrA Wood meets the factual predicate to trigger the AFCCA’s review under Article 66(d)(2), UCMJ.

When analyzing whether Article 66(d)(2), UCMJ, authorized the Army Court of Criminal Appeals to modify the STR firearm notation in *Williams*, this Court relied on the plain language of the statute. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *13-14. Using the same analysis, here, SrA Wood’s erroneous and unconstitutional firearm prohibition falls squarely within the AFCCA’s review authority under Article 66(d)(2), UCMJ.

First, “the accused demonstrated error.” Article 66(d)(2), UCMJ. In his brief to the AFCCA, SrA Wood demonstrated he was erroneously deprived of his right to bear arms pursuant to *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022). Merits Brief, App. A at 1-3. Unlike in *Williams*, where no such “error” was raised, SrA Wood directly challenged the firearm prohibition, and the AFCCA could have resolved the error by analyzing whether 18 U.S.C. § 922(g) applied to SrA Wood. *Id.* at 2-3.

In personally raising this error, SrA Wood broadly framed the AFCCA’s jurisdiction under Article 66, UCMJ, and sought relief through correction of the STR, similar to the approach in *Williams*. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *11. However, throughout his briefing, SrA Wood made references to the EOJ, which included the indorsement containing the firearms prohibition. Merits Brief, App. A at 1, 4-5. While the AFCCA could not correct the erroneous firearms bar associated with STR, it could have corrected the erroneous firearm notation on the indorsement to the EOJ, which was completed after the entry of judgment during post-trial processing. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *14-15; *see supra* at 7-9 (discussing timing in detail). Despite his initial jurisdictional and remedy framing at the AFCCA, the facts about the firearm bar and the issue presented have not changed. Rather, the issue of jurisdiction has been clarified, and unlike the appellant in *Williams*, SrA Wood demonstrated an error that the AFCCA had authority to consider under Article 66(d)(2), UCMJ. *See United States v. Tovarchavez*, 78 M.J. 458, 462 (C.A.A.F. 2019) (“An appellant gets the benefit of changes to the law . . .”).

Second, the error on the indorsement that deprived SrA Wood of his constitutional right to bear arms occurred in the “processing of the court-martial after the judgment was entered into the record under section 860c . . . ([A]rticle 60c).” Article 66(d)(2), UCMJ. Here, the First Indorsement was completed after the

military judge signed the EOJ, i.e., *after* the military judge entered the judgment into the record under Article 60c, UCMJ. DAFI 51-201, at ¶ 20.41. Nothing in the record proves otherwise, and there is no indication that the Government violated its own regulations. *Compare* EOJ (showing military judge signed at 16:18:14 eastern time on Dec. 13, 2022), *with* 1st Ind., Entry of Judgment, SrA Brandon A. Wood (Dec. 13, 2022) (showing SJA signed at 16:59:58 central time on Dec. 13, 2022, approximately two hours after the military judge signed the EOJ). Therefore—unlike how the issue was factually raised in *Williams*, i.e., prior to the entry of judgment—here, the error raised occurred after the entry of judgment, satisfying the final triggering criterion under Article 66(d)(2), UCMJ.

Consequently, the AFCCA had jurisdiction under Article 66(d)(2), UCMJ, to decide whether SrA Wood was deprived of his constitutional right to bear arms by virtue of the Air Force’s post-trial processing.

WHEREFORE, SrA Wood respectfully requests this Court grant review.

Respectfully Submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on October 29, 2024, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division on the same date.

A handwritten signature in blue ink, appearing to read 'S. Castanien', with a stylized, cursive script.

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CERTIFICATE OF COMPLIANCE
WITH RULES 21(b) & 37

This supplement complies with the type-volume limitation of Rules 21(b) because it contains 2,612 words.

This brief complies with the typeface and type-style requirements of Rule 37 because it has been prepared in a proportional typeface using Microsoft Word with Times New Roman 14-point typeface.

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

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Appendix A

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 40429

UNITED STATES

Appellee

v.

Brandon A. WOOD

Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 13 August 2024

Military Judge: Christopher D. James (arraignment); Dayle P. Percle.

Sentence: Sentence adjudged 18 October 2022 by GCM convened at Barksdale Air Force Base, Louisiana. Sentence entered by military judge on 13 December 2022: Dishonorable discharge, confinement for 12 months, reduction to E-1, and a reprimand.

For Appellant: Major Spencer R. Nelson, USAF.

For Appellee: Colonel Steven R. Kaufman, USAF; Lieutenant Colonel Thomas J. Alford, USAF; Lieutenant Colonel J. Pete Ferrell, USAF; Major Jocelyn Q. Wright, USAF; Mary Ellen Payne, Esquire.

Before: JOHNSON, GRUEN, and KEARLEY, *Appellate Military Judges*.

**This is an unpublished opinion and, as such, does not serve as
precedent under AFCCA Rule of Practice and Procedure 30.4.**

PER CURIAM:

A military judge sitting as a general court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of one specification of wrongful possession of child pornography in violation of Article 134,

Uniform of Code Military Justice (UCMJ), 10 U.S.C. § 934.¹ The military judge sentenced Appellant to a dishonorable discharge, confinement for 12 months, reduction to the grade of E-1, and a reprimand. The convening authority took no action on the findings and did not modify the adjudged sentence. The convening authority denied Appellant's request for deferment of the reduction to the grade of E-1, but waived automatic forfeitures for six months for the benefit of Appellant's dependent child.

Appellant raises one issue on appeal: whether as applied to Appellant, reference to 18 U.S.C. § 922 in the Statement of Trial Results and entry of judgment is unconstitutional where the Government cannot demonstrate that barring his possession of firearms is "consistent with the nation's historical tradition of firearm regulation"² when he was not convicted of a violent offense.³ After carefully considering this issue and for the reasons explained in *United States v. Vanzant*, __ M.J. __, No. ACM 22004, 2024 CCA LEXIS 215, at *24 (A.F. Ct. Crim. App. 28 May 2024) and *United States v. Lepore*, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021) (en banc), we find Appellant is not entitled to relief.

In this case, Appellant did not raise the issue of the convening authority's failure to provide a reason in writing for the denial of the request for deferment. We, however, address this issue sua sponte. The convening authority's Decision on Action Memorandum indicates Appellant requested waiver of forfeitures for six months and deferment of reduction in grade for six months. The convening authority granted the request for waiver of automatic forfeitures, but expressly denied the deferment request. However, the convening authority did not provide a reason in writing for the denial of the request for deferment of reduction in grade. The record discloses no indication the Defense objected or moved for correction of the convening authority's failure to address the reasons why he denied the request to defer reduction in grade.

We review a convening authority's denial of a deferment request for an abuse of discretion. *United States v. Sloan*, 35 M.J. 4, 6 (C.M.A. 1992), *overruled on other grounds by United States v. Dinger*, 77 M.J. 447, 453 (C.A.A.F. 2018); Rule for Courts-Martial (R.C.M.) 1103(d)(2). "When a convening authority acts on an [appellant]'s request for deferment of all or part of an adjudged sentence, the action must be in writing (with a copy provided to the [appellant])

¹ All references to the UCMJ and the Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

² Citing *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2130 (2022).

³ Appellant personally raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

and must include the reasons upon which the action is based.” *Id.* at 7 (footnote omitted); *see also* R.C.M. 1103(d)(2) (“The action of the authority acting on the deferment request shall be in writing” and “provided to the accused.”).

“A motion to correct an error in the action of the convening authority shall be filed within five days after the party receives the convening authority’s action.” R.C.M. 1104(b)(2)(B).

Because Appellant did not object or move to correct an error in the convening authority’s decision on action, we review the convening authority’s decision therein to deny the deferment for plain error. *See United States v. Ahern*, 76 M.J. 194, 197 (C.A.A.F. 2017) (citations omitted) (noting appellate courts review forfeited issues for plain error). Under the longstanding precedent of *Sloan*, the convening authority’s failure to state the reasons he denied the request to defer reduction in rank was an error. *See* 35 M.J. at 7. For purposes of our analysis, we assume without holding the error was clear or obvious. However, under the circumstances of this case, we find no material prejudice to Appellant. Appellant bore “the burden of showing that the interests of [himself] and the community in deferral outweigh[ed] the community’s interests in imposition of the punishment on its effective date.” R.C.M. 1103(d)(2). Appellant not only forfeited the issue at the time, but he has not alleged on appeal prejudicial error by the convening authority. Furthermore, the convening authority granted Appellant’s request to waive automatic forfeitures for the benefit of his dependent child pursuant to Article 58b, UCMJ, 10 U.S.C. § 858b. Given Appellant requested deferral of his reduction in rank “because his paycheck is going to his family,” we are confident the convening authority entertained the rationale for the requested waiver *and* deferral. There is no indication the convening authority entertained an improper rationale for denying deferment of reduction in rank and we find Appellant’s material rights were not substantially prejudiced by the convening authority’s failure to state the reasons for the denial.

The findings and sentence as entered are correct in law and fact, and no error materially prejudicial to Appellant’s substantial rights occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

Appendix B

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

| | | |
|---------------------|---|----------------------|
| UNITED STATES |) | No. ACM 40429 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Brandon A. WOOD |) | |
| Senior Airman (E-4) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Special Panel |

On 19 September 2024, Appellant moved for this court to reconsider out of time its decision in *United States v. Wood*, No. ACM 40429, 2024 CCA LEXIS 334 (A.F. Ct. Crim. App. 13 Aug. 2024) (per curiam) (unpub. op.). The Government opposed the motion on 25 September 2024.

The court has considered Appellant's motion out of time, the Government's opposition, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 30th day of September, 2024,

ORDERED:

Appellant's motion for reconsideration is **DENIED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

Appendix C

is earlier, via email to the recipients listed on the template memorandum located on the VMJD. 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.

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. 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.

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, 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.

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. 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 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.

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

20.44.4. Failure to comply with these procedural processes does not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

20.45. Effect of Pretrial Confinement. Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian (at the request of the military), or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (AFCCA 1995); and *United States v. Pinson*, 54 M.J. 692 (AFCCA 2001). An accused may also be awarded judicially ordered credit for restriction tantamount to confinement, prior NJP for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ. See e.g., *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989).

20.45.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the STR and EoJ.

20.45.2. Any credit for pretrial confinement should be clearly reflected on the STR, EoJ and DD Form 2707, along with the source of each portion of credit and total days of credit awarded.

Chapter 29

SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

Section 29A—Sex Offender Notification

29.1. General Provision. If the member has been convicted of certain “qualifying offenses” potentially requiring sex offender registration the DAF is required to notify federal, state, and local officials. **(T-0).** As noted in the STR/EoJ Distribution List on the VMJD, a copy of the STR and EoJ, to include attachments and the first indorsements, including any placement of the accused on excess or appellate leave status, must be distributed to the AFSFC, afcorrections.appellateleave@us.af.mil, and DAF-CJIC, daf-cjic@us.af.mil.

29.2. Qualifying Offenses. See DoDI 1325.07 for a list of offenses which require DAF notification to federal, state, and local officials.

29.2.1. Federal, state and local governments may require an individual to register as a sex offender for offenses that are not included on this list; therefore, this list identifies offenses for which notification is required by the DAF but is not inclusive of all offenses that trigger sex offender registration.

29.2.2. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Questions about whether an offense triggers notification requirements may be directed to the DAF-CJIC Legal Advisor (HQ AFOSI/JA)

29.3. Notification Requirement. The DAF must notify federal, state, and local officials when a DAF member is convicted of a qualifying offense at GCM or SPCM. This requirement applies regardless of whether or not the individual is sentenced to confinement. See DoDI 1325.07, and AFMAN 31-115, Vol 1. The DAF executes this requirement via AF confinement officer/NCO/liaison officer notification to the relevant jurisdictions using the DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. See AFMAN 71-102, Chapter 3.

29.4. Timing of Notification.

29.4.1. In cases where the member is sentenced to and must serve post-trial confinement, the notification must be made prior to release from confinement. **(T-0). Note:** The member may not be held beyond the scheduled release date for purposes of making the required notifications. This notification is accomplished by the security forces confinement officer, or designee responsible for custody of the inmate, in accordance with the requirements detailed in AFMAN 31-115, Vol 1; AFMAN 71-102; and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. **(T-0).**

29.4.2. In cases where the offender will not serve post-trial confinement either because (1) no confinement was adjudged, or (2) confinement credit exceeds adjudged confinement, the SJA must notify the servicing confinement NCO/officer or SFS/CC in writing within 24 hours of conviction. Once informed by the SJA that the member was convicted of a qualifying offense, the confinement officer or SFS/CC ensures the notifications are made in accordance with AFMAN 71-102, AFMAN 31-115V1, and DoDI 5525.20.

29.5. Legal Office Responsibilities. SJAs are not responsible for directly notifying federal, state and local law enforcement of qualifying convictions. However, SJAs must ensure their support responsibilities are accomplished in order to ensure the DAF is meeting its obligations under federal law and DoD policy. SJAs facilitate the notification requirement in two ways: (1) completion and distribution of post-trial paperwork in accordance with this instruction and the STR/EoJ Distribution List on the VMJD; and (2) notification of the installation confinement officer/NCO in cases where the offender is convicted but not required to serve post-trial confinement, in accordance with this instruction. See [paragraph 29.6](#) and [paragraph 29.7](#) and AFMAN 71-102, Chapter 3.

29.6. STR and EoJ. If a member is convicted of a qualifying offense referred to trial by general or special court-martial on or after 1 January 2019, the appropriate box must be initialed on the first indorsement of the STRs and the EoJ by the SJA. The first indorsement format, and guidance for completion are located on the VMJD.

29.7. Notification to the Installation Confinement Officer/NCO. In cases where the member was convicted of a qualifying offense at a general or special court-martial but no post-trial confinement will be served, the SJA must notify, in writing, the confinement officer (or SFS/CC if no confinement officer/NCO is at that installation) of the conviction and sentence within 24 hours of announcement of the verdict. The corrections officer, or the SFS/CC, as appropriate, ensures that the notifications required in AFMAN 31-115, Vol 1 and AFMAN 71-102 are made.

29.8. 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 29A](#) is required in these cases, the SJA notifies the confinement officer or SFS/CC, as required. It is the SJA's responsibility to ensure the offender completes their portion of the DD Form 2791, or equivalent document, upon release from the host nation. The DD Form 2791 and copies of the ROT must be provided to the appropriate federal, state, and local law enforcement in accordance with [paragraph 29.3](#) and [paragraph 29.4](#), and DoDI 1325.07.

Section 29B—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. §§ 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)

29.9. General Provision. The DAF, through OSI and Security Forces, submits offender CHRI and fingerprints to the FBI when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See AFMAN 71-102; DoDI 5505.11; 28 C.F.R. §§ 20.30, et seq.; and 28 U.S.C. § 534. Such data is submitted to and maintained in the Interstate Identification Index (III), maintained as part of the FBI's National Crime Information Center (NCIC).

29.10. Criminal History Record Information. CHRI reported in accordance with DoDI 5505.11 and AFMAN 71-102 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, NJP; administrative action; or administrative discharge).

29.11. Identified Individuals.

29.11.1. The DAF submits CHRI and fingerprints on any military member or civilian investigated by a DAF law enforcement agency (OSI or Security Forces) when a probable cause determination has been made that the member committed a qualifying offense.

29.11.2. The DAF 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 AFMAN 71-102 and DoDI 5505.1 when a probable cause determination has been made that the member committed an equivalent offense.

29.12. Disposition Data. The DAF, through DAF-CJIC, OSI and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, NJP, certain administrative actions, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

29.13. Qualifying Offenses. Qualifying offenses for fingerprinting requirements constitute either (1) serious offenses; or (2) non-serious offenses accompanied by a serious offense. See 28 CFR. 20.32. A list of offenses that, unless accompanied by a serious offense, do not require submission of data to III is located in AFMAN 71-102, Attachment 5.

29.14. Military Protective Orders. Issuance of an MPO also triggers a requirement for indexing in NCIC. See [paragraph 29.39](#) and AFMAN 71-102; 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*.

29.15. Qualifying Offenses Investigated by Commander Directed Investigation (CDI). If any qualifying offense was investigated via CDI or inquiry and is subsequently preferred to trial by SPCM or GCM, then CHRI and fingerprints must be submitted to III in accordance with AFMAN 71-102 and DoDI 5505.11. SJAs must ensure they advise commanders as to the requirement to consult with SFS and OSI to obtain and forward CHRI and fingerprints in accordance with that mandate. **Note:** If charges are not preferred, then CHRI and fingerprints are not submitted to III; however, if charges are preferred and later withdrawn, CHRI and fingerprints must be submitted. **(T-0).**

29.16. 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. See AFMAN 71-102; DoDI 5505.11. The collection of fingerprints under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose fingerprints are being collected.

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

29.18. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data in accordance with AFMAN 71-102 and DoDI 5505.11.

29.19. Legal Office Final Disposition Requirement.

29.19.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a lesser included offense, sentence data, nonjudicial punishment, no action) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI 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). If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.19.2. The required format for the first indorsement is located on the VMJD.

29.19.3. The servicing legal office will provide disposition documentation to the local Security Forces, OSI, and DAF-CJIC within five duty days of completion of the documents discussed in paragraphs [29.19.4-29.19.7](#).

29.19.4. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ must be distributed to the local DAF investigative agency that was responsible for the case (e.g., OSI or Security Forces) and DAF-CJIC within five duty days of completion of the EoJ.

29.19.5. For information regarding final disposition where the final disposition consists of NJP, see DAFI 51-202.

29.19.6. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local OSI detachment and DAF-CJIC in accordance with [paragraph 10.3.2](#)
Note: Do not forward the sexual assault legal review, only the convening authority notification memorandum.

29.19.7. For all other final dispositions which must be submitted in accordance with [Section 29E](#), AFMAN 71-102, and DoDI 5505.11, the SJA must ensure disposition data is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

29.20. Expungement of Criminal History Data and Fingerprints. Expungement requests are processed in accordance with guidance promulgated in AFMAN 71-102.

Section 29C—DNA Collection (10 U.S.C. §

1565; DoDI 5505.14, DNA Collection and Submission Requirements for Law Enforcement)

29.21. General Provision. The DAF, through OSI 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 fingerprints are collected pursuant to DoDI 5505.11. **(T-0).** See DoDI 5505.14; 10 U.S.C. 1565; 34 U.S.C. §

40702, *Collection and use of DNA identification information from certain federal offenders*; 28 C.F.R. § 28.12, *Collection of DNA samples*.

29.22. Qualifying Offenses. DNA collection and submission is required when fingerprints are collected pursuant to DoDI 5505.11. DNA is not collected or submitted for the non-serious offenses enumerated in AFMAN 71-102, Attachment 5 unless they are accompanied by a serious offense requiring fingerprint collection in accordance with DoDI 5505.11.

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

29.24. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel prior to submission of DNA for inclusion in CODIS in accordance with AFMAN 71-102. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

29.25. Timing of Collection and Forwarding. OSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14 and AFMAN 71-102. If not previously submitted to USACIL, the appropriate DAF law enforcement agency (i.e., OSI or Security Forces) will collect and submit DNA samples from service members: against whom court-martial charges are preferred in accordance with RCM 307 of the MCM; ordered into pretrial confinement after the completion of the commander's 72-hour memorandum required by RCM 305(h)(2)(C) of the MCM; and convicted by general or special court-martial.

29.26. STR and EoJ. 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 first indorsement of the STR and EoJ by the SJA.

29.27. Final Disposition Requirement. As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, final disposition of court-martial charges must be forwarded to OSI and Security Forces to ensure DNA is appropriately handled.

29.27.1. The final disposition is memorialized on the following forms: STR and EoJ, whichever is applicable. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.27.2. Formats for the STR, EoJ, and first indorsement are located on the VMJD.

29.27.3. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to OSI in accordance with [paragraph 29.19.6](#).

29.27.4. For all other dispositions, the SJA must ensure disposition data for qualifying offenses is provided to ensure timely and accurate inclusion of final disposition data. Disposition documentation must be distributed to the local OSI detachment, Security Forces and DAF-CJIC within five duty days of completion of the final disposition. See [Section 29E](#) for further distribution guidance.

29.28. Expungement of DNA. DoD expungement requests are processed in accordance with guidelines promulgated in AFMAN 71-102 and DoDI 5505.14.

Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. §

921-922, Definitions; 27 C.F.R. § 478.11)

29.29. General Provision. 18 U.S.C. § 922, *Unlawful acts*, 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 who 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). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. 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).

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

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. 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. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within

the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. 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).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See **paragraph 29.33.2**. The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

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

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or

guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. 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 NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. 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).

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

29.30.10. 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 29B](#).

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. **Form of Notice.** A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. **SJA Responsibility to Notify.** In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: daf.cjic@us.af.mil. The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

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. §§ 921-922 is appropriately handled. 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 five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. 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.

29.34. 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 of misdemeanor domestic violence (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 cases referred to general courts-martial, where any charged offense has a possible sentence to confinement greater than one year;
- 29.35.2. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.3. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.4. In SCMs for drug use or possession that would trigger firearm prohibitions, the final completed DD Form 2329 and first indorsement;
- 29.35.5. Certification of Final Review in any case where any offense qualifies for any type of indexing discussed in this chapter;
- 29.35.6. Notification of outcome of any cases as to qualifying offenses litigated at or disposed of via magistrate court;
- 29.35.7. Order pursuant to Article 73, UCMJ, for a new trial, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.8. Order for a rehearing on the findings or sentence of a case, pursuant to Article 63, UCMJ and
- 29.35.9. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under [Sections 29B-D](#) of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with [paragraph 10.2](#); NJP records in accordance with DAFI 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, administrative paperwork for drug use or possession).