



THE MILITARY JUSTICE ACT OF 2016

Public Law 114-328 (Division E)
Enacted Dec. 23, 2016

Historical Foundation: 18th Century to 20th Century Eve of WW I

- 1775 adoption of the British AW/AGNs
 - 1863 - jurisdiction over common law felonies in wartime
 - 1916 - jurisdiction over common law felonies in peacetime (except rape/murder in US); expanded jurisdiction over civilians accompanying the armed forces; express authority in the President to establish rules of evidence and procedure.
- Court-martial panel selected by the commander
 - Court-martial panel serves as both judge and jury
 - Primary reliance on non-lawyers as court-martial panel members and counsel
 - Focus primarily on unique military offenses. Trial of common law offenses largely limited to wartime
 - Review: within the chain of command. Evolution to greater involvement of judge advocates in review process

Historical Foundation: WW II - Pre-UCMJ

- 1920 - AWs - Statutory creation of BRs – first judicial-type appellate review(subject to review by TJAG); creation of law member position, predecessor to MJ, but serving as a panel member. Eliminated CA power to return case for reconsideration of acquittals.
- WWII experience and studies
- Post-WWII hearings
- 1947 Elston Act: Prohibition against UCI; self-incrimination protections; qualifications of law member and counsel; appellate review in case of punitive discharge.

Historical Foundation – UCMJ Structural Highlights (Post-enactment)

- 1950 - UCMJ - uniformity; judicial independence of BRs; replace law member with law officer with judicial powers to preside and rule; broad jurisdiction over common law felonies in both peacetime and wartime. Independent civilian appellate court.
- 1968 Act: created military judiciary; expanded judicial powers of law officer (now military judge) and provided authority for judge alone trials.
- 1980: President issues the Military Rules of Evidence
- 1981 amendments: overruled CMA decisions that had restricted MCM authority and that had made recruiter fraud a bar to jurisdiction.
- 1983 amendments: interlocutory government appeals to parallel civilian procedure. Direct S.Ct review by cert. in limited cases.
- 1984: President issues comprehensive rule-based Manual for Courts-Martial





**MILITARY
JUSTICE**

A magnifying glass with a black handle and a silver-colored frame is positioned diagonally. The lens is clear and contains the words "MILITARY JUSTICE" in a bold, green, serif font. The background is plain white.



National Defense Authorization Act for Fiscal Year 2006

Pub. L. No. 109-163
(2006)

amended art. 120;
created art. 120a stalking
offense; extended statute
of limitations for child
abuse offenses





National Defense Authorization Act for Fiscal Year 2007

Pub. L. No. 109-364 (2006)

amended art. 2(a)(10) to
provide court-martial
jurisdiction over civilians
accompanying an armed
force in the field in a
contingency operation

National Defense Authorization Act for Fiscal Year 2009

Pub. L. No. 111-84 (2009)

Sec. 506. Independent
Review of Judge
Advocate Requirements
of the Department of the
Navy

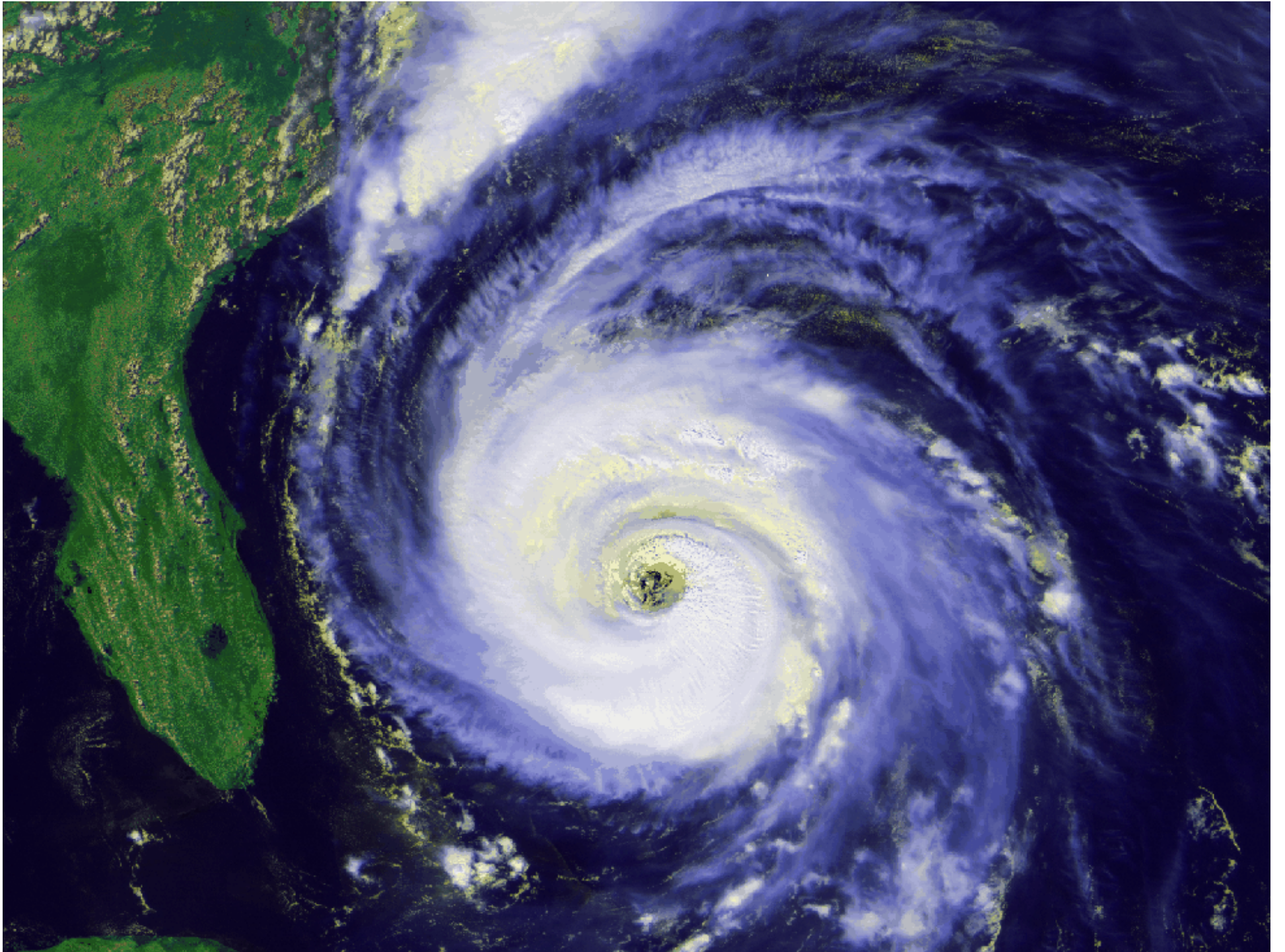




National Defense Authorization Act for Fiscal Year 2012

Pub. L. No. 112-81 (2011)

REFORM OF OFFENSES
RELATING TO RAPE,
SEXUAL ASSAULT, AND
OTHER SEXUAL
MISCONDUCT UNDER THE
UNIFORM CODE OF
MILITARY JUSTICE.



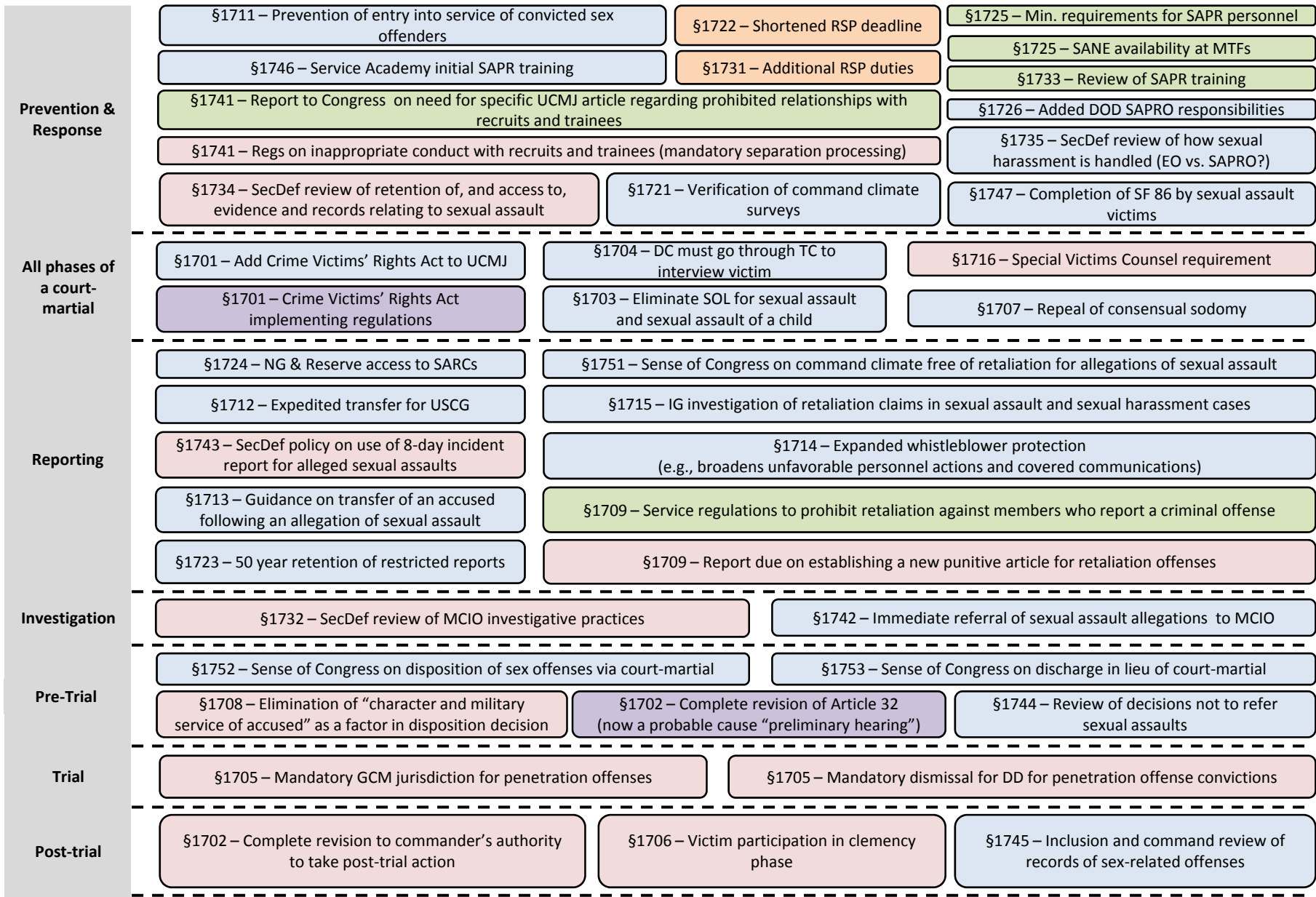
National Defense Authorization Act for Fiscal Year 2014

Title XVII—Sexual Assault Prevention and Response and Related Reforms

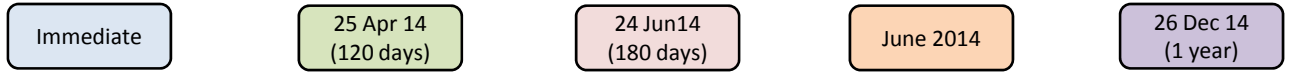
36 sections

16 military justice reforms

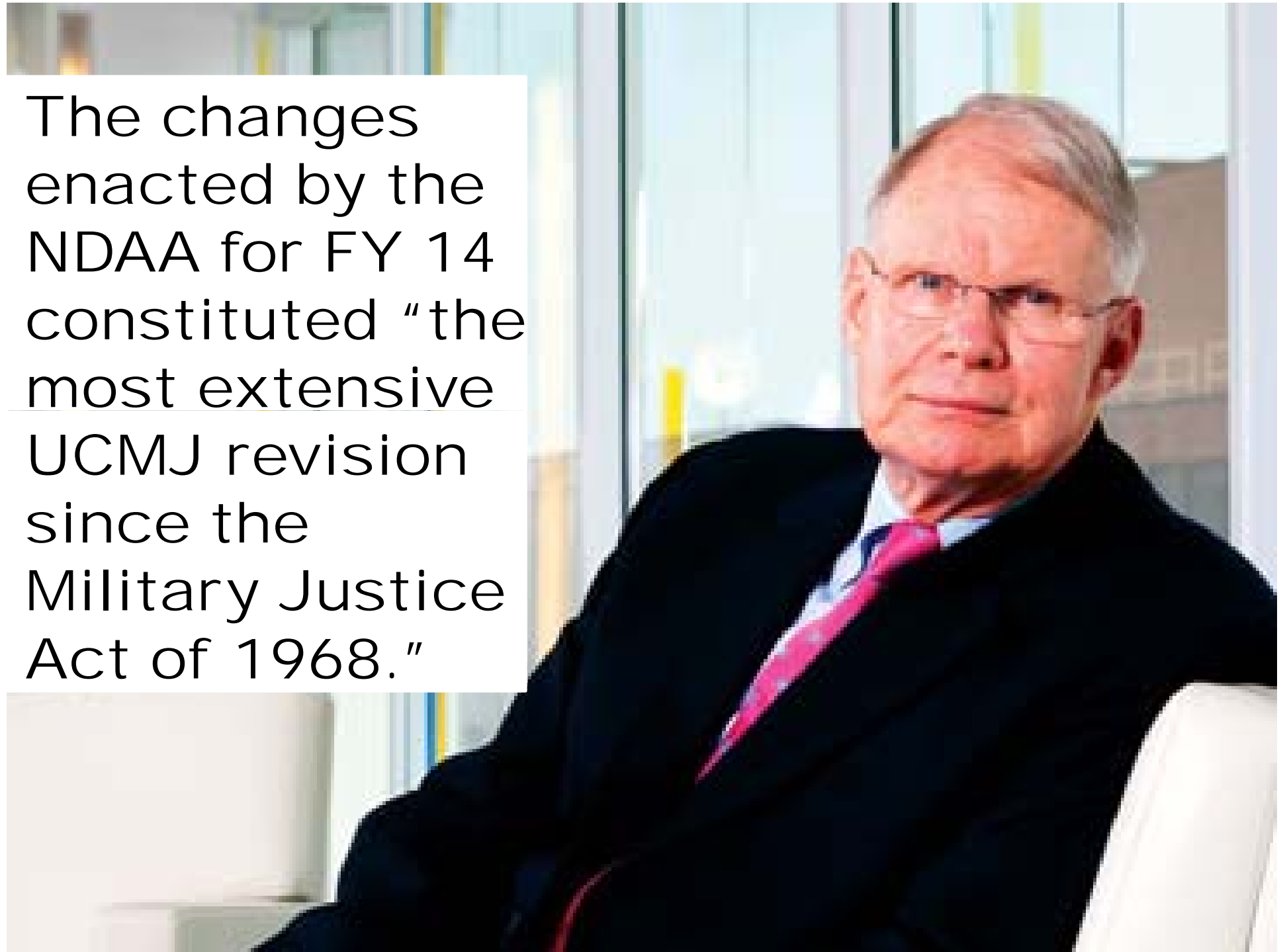




Effective dates



The changes enacted by the NDAA for FY 14 constituted "the most extensive UCMJ revision since the Military Justice Act of 1968."



BUT WAIT

BUT WAIT

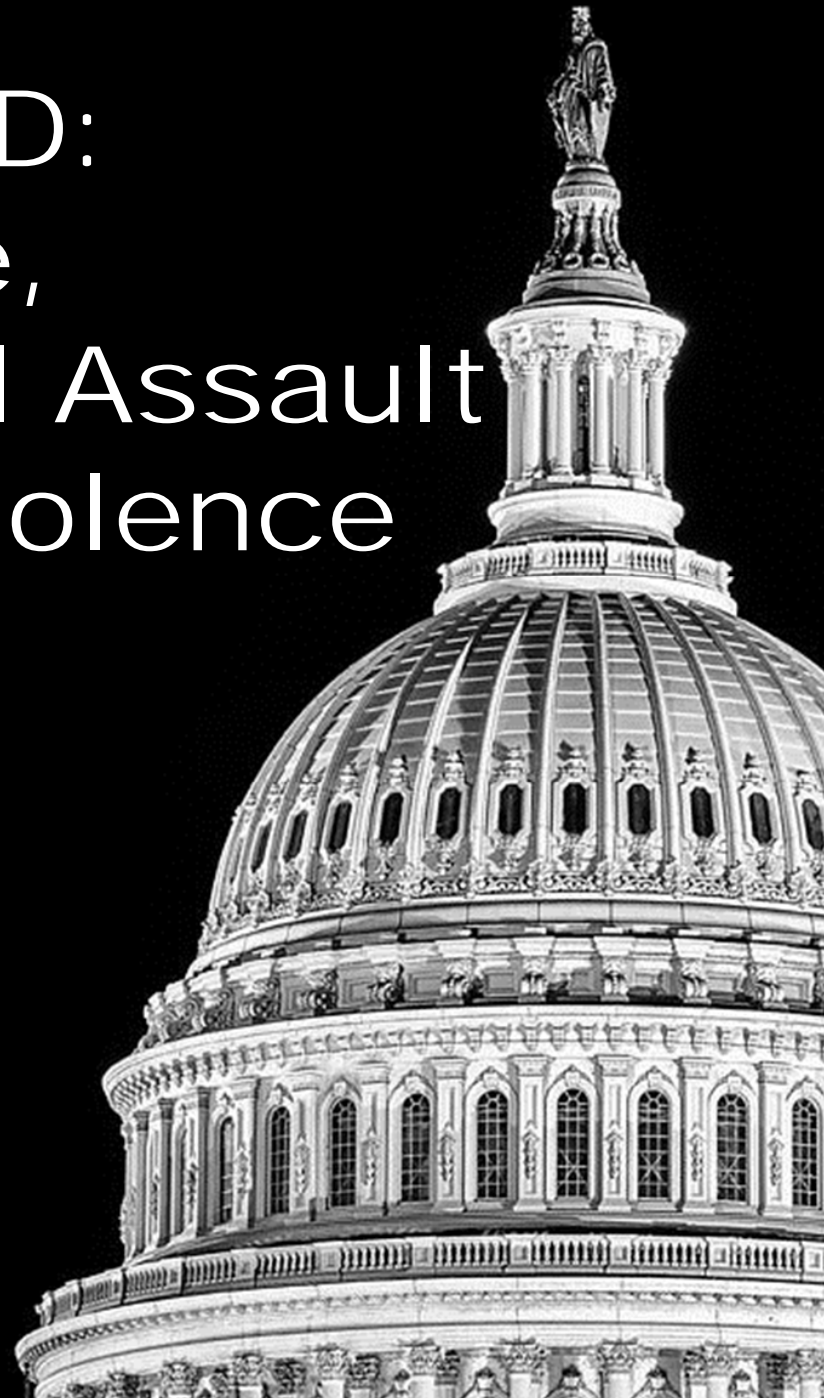
THERE'S MORE!

Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015



Title V, Subtitle D:
“Military Justice,
Including Sexual Assault
and Domestic Violence
Prevention and
Response”

17 Sections





National Defense Authorization Act for Fiscal Year 2016

Title V, Subtitle D:
“Military Justice, Including
Sexual Assault and Domestic
Violence Prevention and
Response”

12 sections

Victims' rights; expanded access
to and scope of SVC/VCL
representation

Uniform Code of Military Justice

Dec. 26, 2013 – Dec. 23, 2016
(excluding Military Justice Act of 2016)

Uniform Code of Military Justice

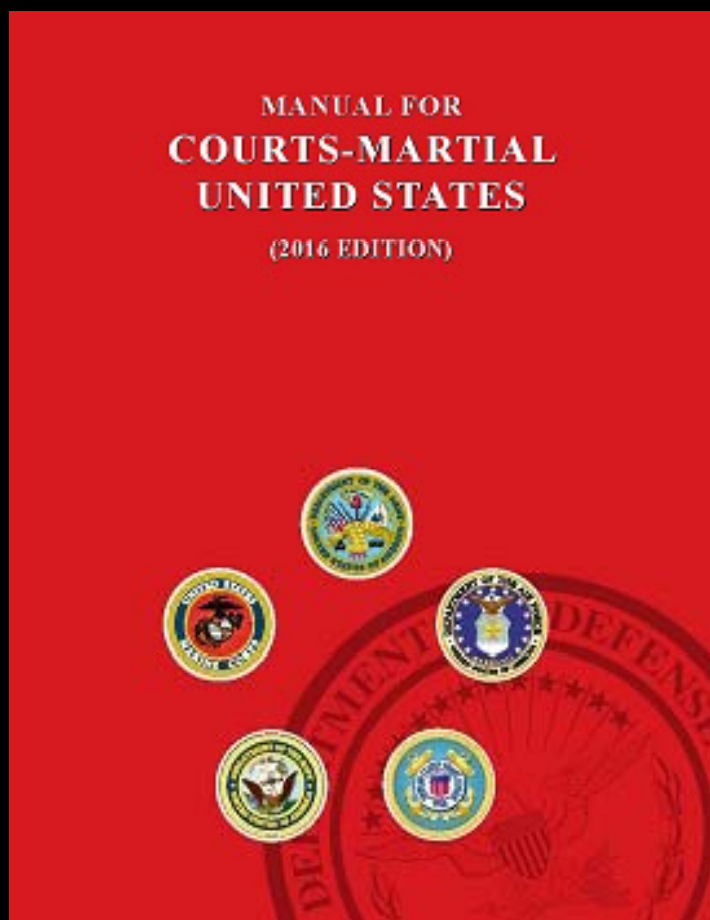
Dec. 26, 2013 – Dec. 23, 2016
(excluding Military Justice Act of 2016)

1 new UCMJ article enacted
(amended twice)

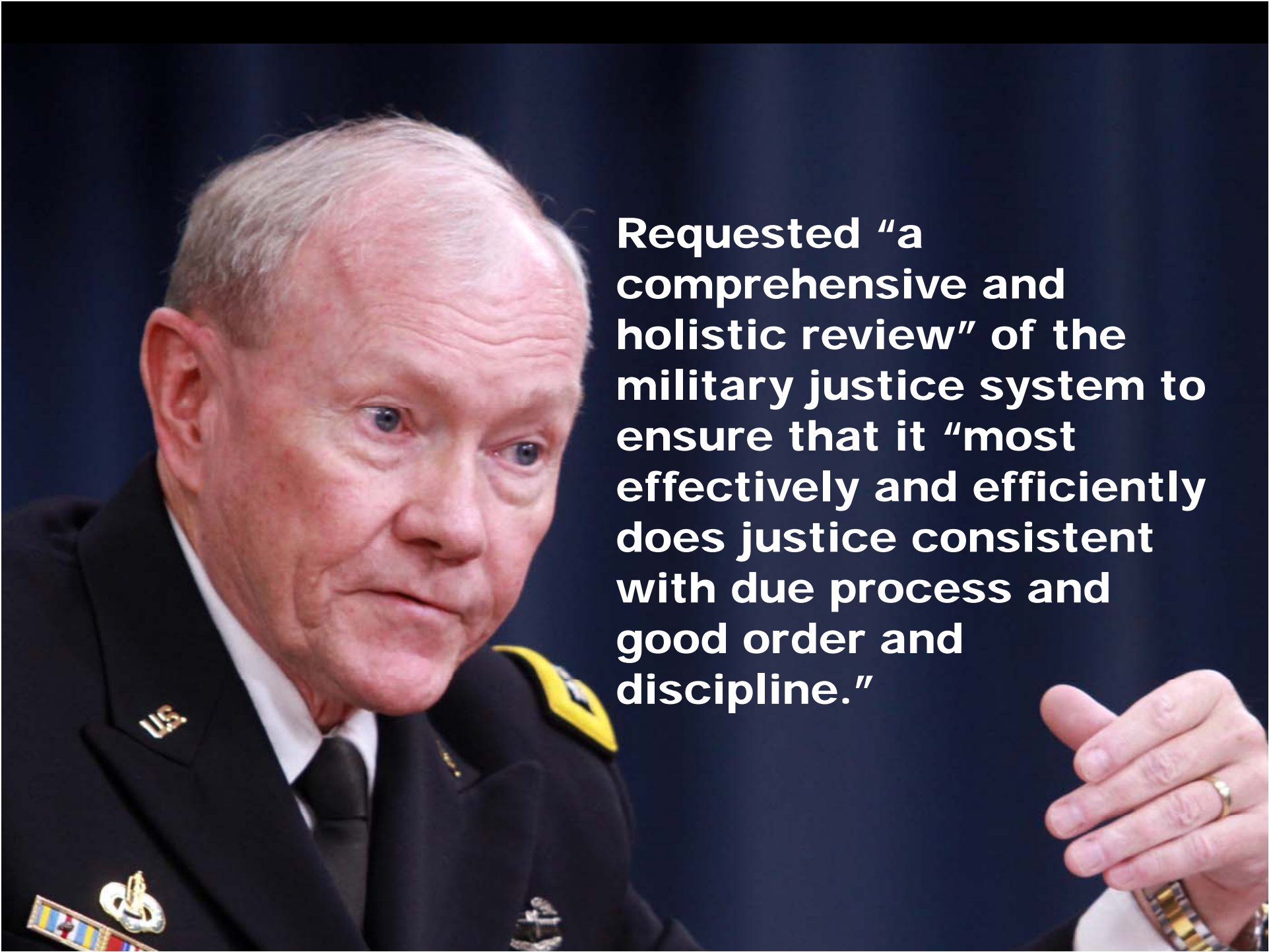
17 existing UCMJ articles amended
(6 amended twice)



Dec. 26, 2013 – Dec. 23, 2016



4 Executive
Orders amending
Manual for
Courts-Martial



Requested "a comprehensive and holistic review" of the military justice system to ensure that it "most effectively and efficiently does justice consistent with due process and good order and discipline."

MJRG GUIDING PRINCIPLES

SECDEF/GC DIRECTION

- Use the current UCMJ as a point of departure for a baseline reassessment
- Consider incorporation of practices used in U.S. district courts
- To the extent practicable, apply provisions uniformly across the Services
- Consider recommendations from federal advisory groups concerning military justice
- Draw upon the experience of staff members and consider a broad range of information

MJRG FOCAL POINTS

- Military discipline and national security
- Discipline - unique features of military law
- Justice and discipline in a democratic society
- Flexibility across a wide variety of national security environments and military personnel practices
- Periodic evaluation and recalibration

MJRG Process

Public Input

- MJRG website
<http://www.dod.mil/dodgc/mjrg.html>
- Letters: DoD/GC letters soliciting input from State Bar Associations, law schools, and public interest organizations
- Federal Register: 19 May 14 (79 FR 28688); 3 Sep 14 (79 FR 52306)

Panel Discussions

- **General and Flag Officer Panel**
 - Participation from each Service and the Joint Staff
- **Commander and Senior Enlisted Panels**
 - Participation by students and staff from the Marine Corps University, the Judge Advocate General's School and Legal Center, and National Defense University, including those with convening authority experience

Development and Coordination

- MJRG Teams – Article-by-Article review
- Advance consultation and coordination with the Judge Advocates General, SJA to the Commandant, and the Legal Advisor to the Joint Chiefs prior to completion of the 25 Mar 15 MJRG's initial UCMJ report
- Formal coordination of 25 Mar 15 recommendation within DoD
- Interagency coordination of DoD Proposal
- MJRG Legislative Report available at:
 - http://www.dod.gov/dodgc/images/report_part1.pdf
- Submission of DoD Proposal to Congress, Dec. 28, 2015

MJRG UCMJ Report

Contents

- Overview
- Executive Summary
- Legislative Report
 - Section A. Background
 - Part 1. Historical Perspective
 - Part 2. The Role of the MJRG
 - Section B. Statutory Review and Recommendations
 - Section C. Consolidated Legislative Proposal
 - Section D. Section-by-Section Analysis

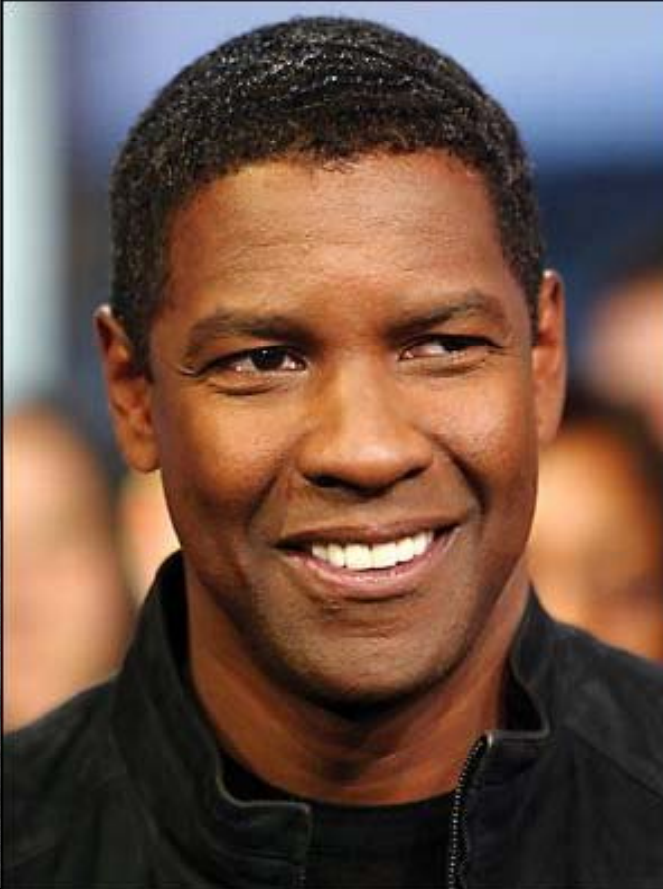
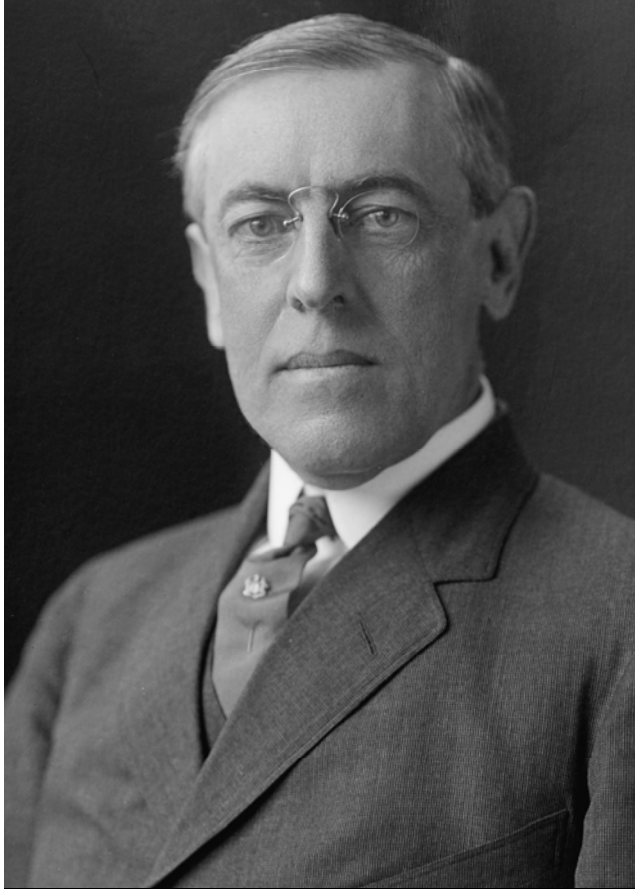
Article-by-Article Analysis

MJRG UCMJ Report (Sec. B)

Standard format for each Article or group of Articles

1. Summary of Proposal
2. Summary of the Current Statute
3. Historical Background
4. Contemporary Practice
5. Relationship to Federal Civilian Practice
6. Recommendation and Justification
7. Relationship to Objectives and Related Provisions
8. Legislative Proposal (if any)
9. Sectional Analysis (if legislative proposal included)











| SEC. 4701. DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS (In Thousands of Dollars) | | |
|---|--------------------|--------------------------|
| Program | FY 2017 Request | Conference Authorized |
| Office of Legacy Management | | |
| Legacy management | 140,306 | 140,306 |
| Program direction | 14,014 | 14,014 |
| Total, Office of Legacy Management | 154,320 | 154,320 |
| Defense-related activities | | |
| Defense related administrative support | | |
| Chief financial officer | 23,642 | 23,642 |
| Chief information officer | 93,074 | 93,074 |
| Project management oversight and assessments | 3,000 | 3,000 |
| Total, Defense related administrative support | 119,716 | 116,716 |
| Office of hearings and appeals | 5,919 | 5,919 |
| Subtotal, Other defense activities | 791,552 | 789,552 |
| Total, Other Defense Activities | 791,552 | 789,552 |

DIVISION E—UNIFORM CODE OF MILITARY JUSTICE REFORM

SEC. 5001. SHORT TITLE.

This division may be cited as the “Military Justice Act of 2016”.

TITLE LI—GENERAL PROVISIONS

Sec. 5101. Definitions.
 Sec. 5102. Clarification of persons subject to UCMJ while on inactive-duty training.
 Sec. 5103. Staff judge advocate disqualification due to prior involvement in case.
 Sec. 5104. Conforming amendment relating to military magistrates.
 Sec. 5105. Rights of victim.

SEC. 5101. DEFINITIONS.

(a) **MILITARY JUDGE.**—Paragraph (10) of section 801 of title 10, United States Code (article 1 of the Uniform Code of Military Justice), is amended to read as follows:

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

(b) **JUDGE ADVOCATE.**—Paragraph (13) of such section (article) is amended—

(1) in subparagraph (A), by striking “the Army or the Navy” and inserting “the Army, the Navy, or the Air Force”; and

(2) in subparagraph (B), by striking “the Air Force or”.

SEC. 5102. CLARIFICATION OF PERSONS SUBJECT TO UCMJ WHILE ON INACTIVE-DUTY TRAINING.

Paragraph (3) of section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended to read as follows:

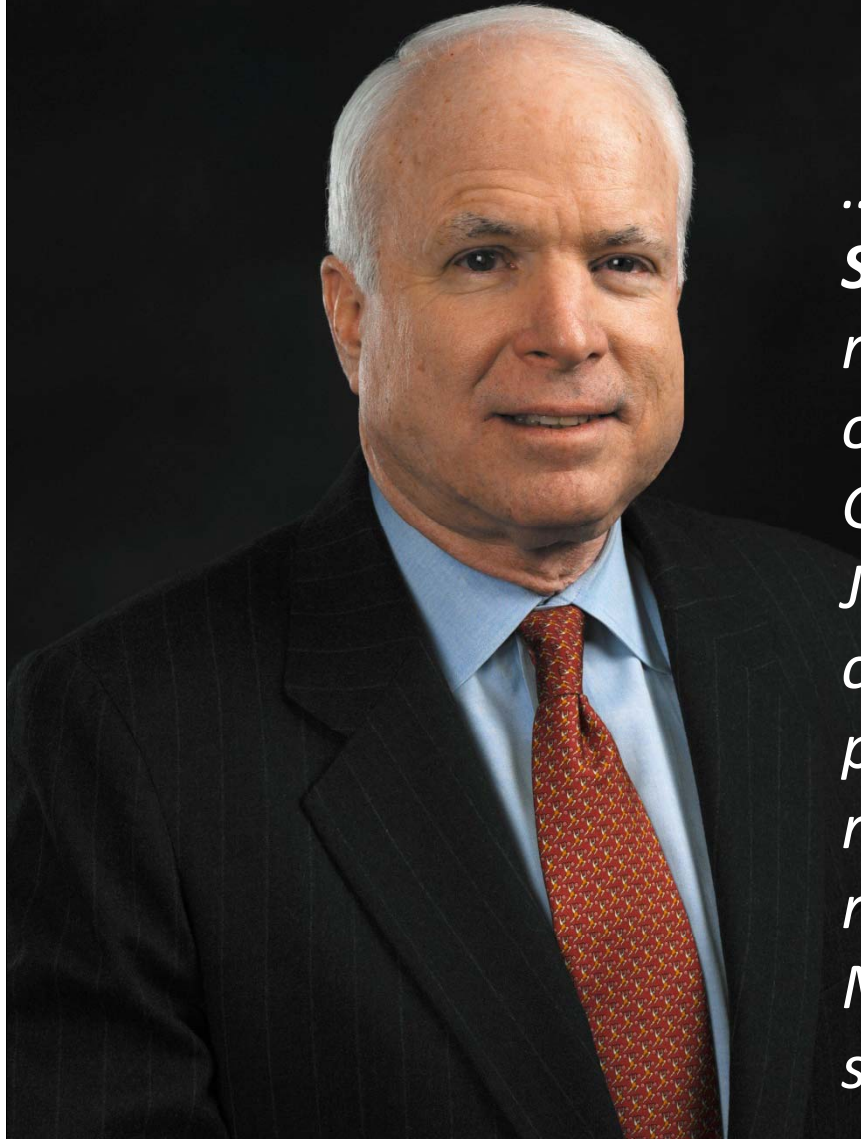
“(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

Sen. John McCain

Chairman, Senate Armed Services Committee

Statement on the filing of the Conference Report

Nov. 30, 2016



... Reforming the Military Justice System: The NDAA implements the recommendations of the Department of Defense Military Justice Review Group by incorporating the Military Justice Act of 2016 as amended by the committee. Taken together, the provisions contained in the conference report constitute the most significant reforms to the Uniform Code of Military Justice since it was enacted six decades ago.

Highlights of the Military Justice Act of 2016 (From Sen. McCain's Statement)

The conference report:

- *Strengthens the structure of the military justice system.*
- *Enhances fairness and efficiency in pretrial and trial procedures.*
- *Reforms sentencing, guilty pleas, and plea agreements.*
- *Streamlines the post-trial process.*
- *Modernizes military appellate practice.*
- *Increases transparency and independent review of the military justice system.*
- *Improves the functionality of punitive articles and proscribes additional acts.*
- *Incorporates best practices from federal criminal proceedings where applicable.*

Effective Dates and Implementation Period

- One year statutory deadline for the President to promulgate implementing regulations: not later than Dec. 23, 2017 for most provisions.
- Presidential authority to establish effective date for amendments made by the legislation.
 - Statutory deadline for provisions to become effective: not later than Jan. 1, 2019.
 - Note: a few provisions have specific implementation dates (e.g., Art. 140a public access to court-martial filings; case management and data collection)

Transitional Provisions

- Presidential authority to establish application of effective date of new provisions to ongoing cases
- Cases referred to trial before presidentially prescribed effective date: in general will proceed under pre-existing UCMJ/MCM provisions.
- Offenses committed prior to effective date: in general charges and authorized sentences will proceed under preexisting UCMJ/MCM provisions

Implementation Process

Step 1 - Draft proposals for the MCM – DoD

Directive 5500.17 (the Joint Service Committee on Military Justice - JSC) <http://jsc.defense.gov>

- Drafting by the Working Group of the JSC
- Review-Revision by the JSC
- Federal Register Notice of opportunity to comment.
- Public Hearings
- Further revisions by the JSC
- JSC submits a draft Executive Order to DoD/GC for formal coordination

Implementation Process

Step 2 - Coordination

- DOD/GC ensures internal DoD coordination
- Following coordination and adoption of an official DoD position, DOD/GC submits the proposed Executive Order to OMB for Interagency Coordination
- Following interagency coordination, including review of the proposed EO for form and substance by OMB, the proposed EO is submitted to the President.
- Action by the President – on or before Dec. 23, 2017

Implementation Process

Step 3 - Preparation for effective date application to courts-martial

- Training: commanders, NCOs, judge advocates, military judges, paralegals, court-reporters, military law enforcement personnel, others
- Revision of service-specific implementing regulations.
- Revision of the Military Judges Bench Book.
- Complete training and updating by the effective date set forth by the President in the MCM – not later than Jan. 1, 2019.

Enhancing Transparency

The Military Justice Act of 2016 --

- Public access to court-martial and appellate documents .
[§ 5504, Art. 140a]
- Uniform procedures for case management, data collection, and accessibility of court-martial information. [§ 5504, Art. 140a]
- Publication on the internet of all updates to the UCMJ and MCM. [§5503, Art. 137]
- Public access to disposition guidance on the exercise of prosecutorial discretion. [§5204, Art. 33].
- Eliminates the prohibition on consideration of the sentencing portion of a pretrial agreement during the sentencing phase of a court-martial. [§ 5237, Art. 53a]

Independent Reviews and Assessments

- Independent blue ribbon panel of experts to conduct periodic reviews and assessments of the UCMJ at regularly scheduled intervals.

[§ 5521, Art. 146]

Structural Foundation of the Military Justice System

- Selection criteria and minimum tour lengths for military trial and appellate judges. [§ 5184, Art. 26; § 5330, Art. 66]
- Authorizing military judges to issue rulings on certain issues that arise prior to referral. [§ 5202, Art. 30a]
- New option for disposition of certain offenses in a judge-alone special court-martial – 6 months max confinement and no punitive discharge authorized. [§5161, Art. 16]
- Military Magistrates Program [§ 5163, Art. 19; §5185, Art. 26a; §5202 Art. 30a]
- Disposition guidance [§ 5204, Art. 33]; and training for commanders and convening authorities focused on the proper exercise of UCMJ authority. [§ 5503, Art. 137]

Fairness and Efficiency in Pretrial and Trial Procedures

- Standard 8 members in a non-capital general court-martial; standard 12 members in a capital case; and standard 4 members in a special court-martial. [§ 5161, Art. 16; § 5183, Art. 25a]
- Panel votes on findings or sentence will require the concurrence of three-fourths of the panel members. In capital cases, however, the death penalty may be imposed for capital offenses only if the vote to convict is unanimous and the vote on the death penalty is unanimous. [§ 5235, Art. 52]
- Broadens the opportunity for enlisted personnel to serve on court-martial panels while providing an enlisted accused with the option of requesting trial before a panel composed of officers. [§ 5182, Art. 25]

... Pretrial and Trial Procedures

- Improves the quality of pre-referral investigations by expanding the authority to obtain documents during investigations through subpoenas and other processes. [§ 5228, Art. 46]
- Enhances the utility of the preliminary hearing report by focusing on the organization and presentation of information pertinent to the exercise of prosecutorial discretion and by providing an opp. for parties and victims to submit relevant information regarding the appropriate disposition of charges. [§5203, Art. 32]

... Pretrial and Trial Procedures

- Furthers the rights of victims by:
 - Creating the opportunity for victim input on disposition decisions at the preliminary hearing stage. [§ 5203, Art. 32]
 - Treating victims consistently with regard to defense counsel interviews and access to records of trial. [§ 5105, Art. 6b]



... Pretrial and Trial Procedures

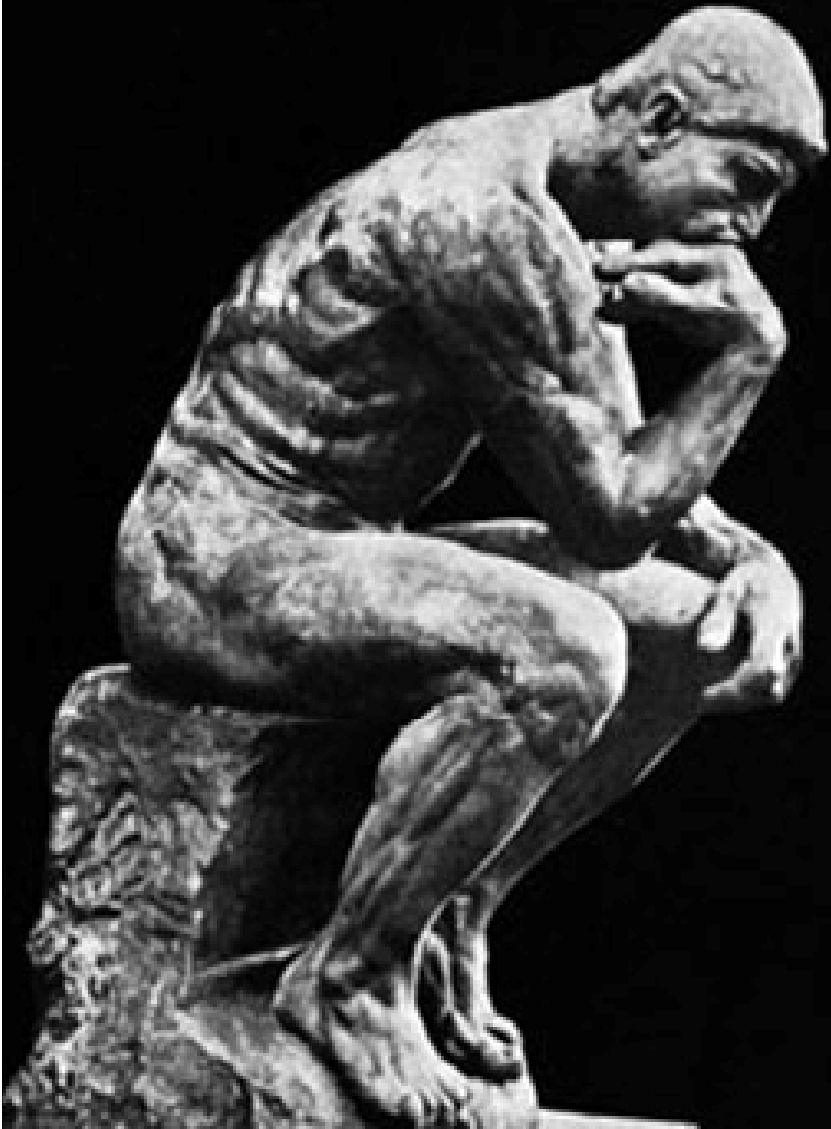
- Panel size/voting percentages
- PTAs
- Enlisted members



SENTENCING

Art. 56(c)

Sentencing Philosophy



Default =



Judicial sentencing

Unitary sentencing if sentence adjudged by members

Segmented sentencing for confinement and fine if adjudged by military judge, with a consecutive vs. concurrent ruling



Capital Cases

Number of members fixed at 12

Guilty pleas allowed for capital offenses

“Learned” defense counsel generally required at capital courts-martial and on capital appeals

Mandatory death sentence eliminated for spying in time of war

Streamlining the Post-Trial Process

- Eliminates redundant post-trial paperwork. [§§ 5322-23, Arts. 60a, 60b]
- Enhances clarity of post-trial actions by requiring an entry of judgment by the military judge similar to federal civilian practice to mark the completion of a special or general court-martial. [§§ 5324, Arts. 60c]
- Provides authority to suspend sentences in cases in which the military judge recommends a specific form of suspension and the convening authority approves a suspension within the military judge's recommendation. [§ 5322, Art. 60a]
- Simplifies the process of preparing and certifying records of trial. [§ 5238, Art. 54]

Military Appellate Practice

Provides servicemembers, like their civilian counterparts, with the opportunity to obtain judicial review in all cases by eliminating current restrictions that preclude direct appellate review in many cases.

- The Courts of Criminal Appeals will review automatically all non-capital cases in which the sentence includes a punitive separation or confinement for two years or more unless the accused waives or withdraws the appeal. [§ 5330, Art. 66]
- Servicemembers will have the opportunity to file an appeal with the Courts of Criminal Appeals in all other cases in which the sentence includes confinement for more than six months. [§ 5330, Art. 66]

... Military Appellate Practice

- Removes an artificial bar to interlocutory appeals by permitting the government to file interlocutory appeals in general and special courts-martial regardless of whether a punitive discharge could be adjudged. [§ 5326, Art. 62]
- Establishes a harmless error standard of review for guilty pleas similar to those applied by the federal civilian courts of appeal. [§ 5227, Art. 45]
- Permits the government to appeal a sentence under a standard similar to the test applied by the federal civilian courts of appeal. [§ 5301, Art. 56]
- Extends the time to petition for a new trial to three years after entry of judgment at the trial level, similar to the period for filing such motions in the federal civilian courts. [§5336, Art. 73]

Punitive Articles

- Improves the clarity of disciplinary standards by revising and restructuring the punitive articles of the UCMJ. [Title LX, §§ 5401-5452]
- Establishes specific statutory punitive articles to cover many forms of misconduct, such as kidnapping, that currently are addressed by Executive Order in the Manual for Courts-Martial.
- Revises the definition of “sexual act” and “incapable of consenting”. [§ 5430, Art. 120]
- Clarifies the prohibition against stalking (Article 130) to include cyberstalking and threats to intimate partners. [§ 5443, Art. 130]

... the Punitive Articles

... The Military Justice Act of 2016 ...

- Creates new enumerated offenses, including:
 - Article 93a: Prohibited activities with military recruit or trainee by person in position of special trust [§ 5410, Art. 93a]
 - Article 121a: Fraudulent use of credit cards, debit cards, and other access devices [§ 5432, Art. 121a]
 - Article 123: Offenses concerning Government computers [§ 5436, Art. 123]
 - Article 132: Retaliation [§ 5450, Art. 132]



TWICE THE CITIZEN

108 years



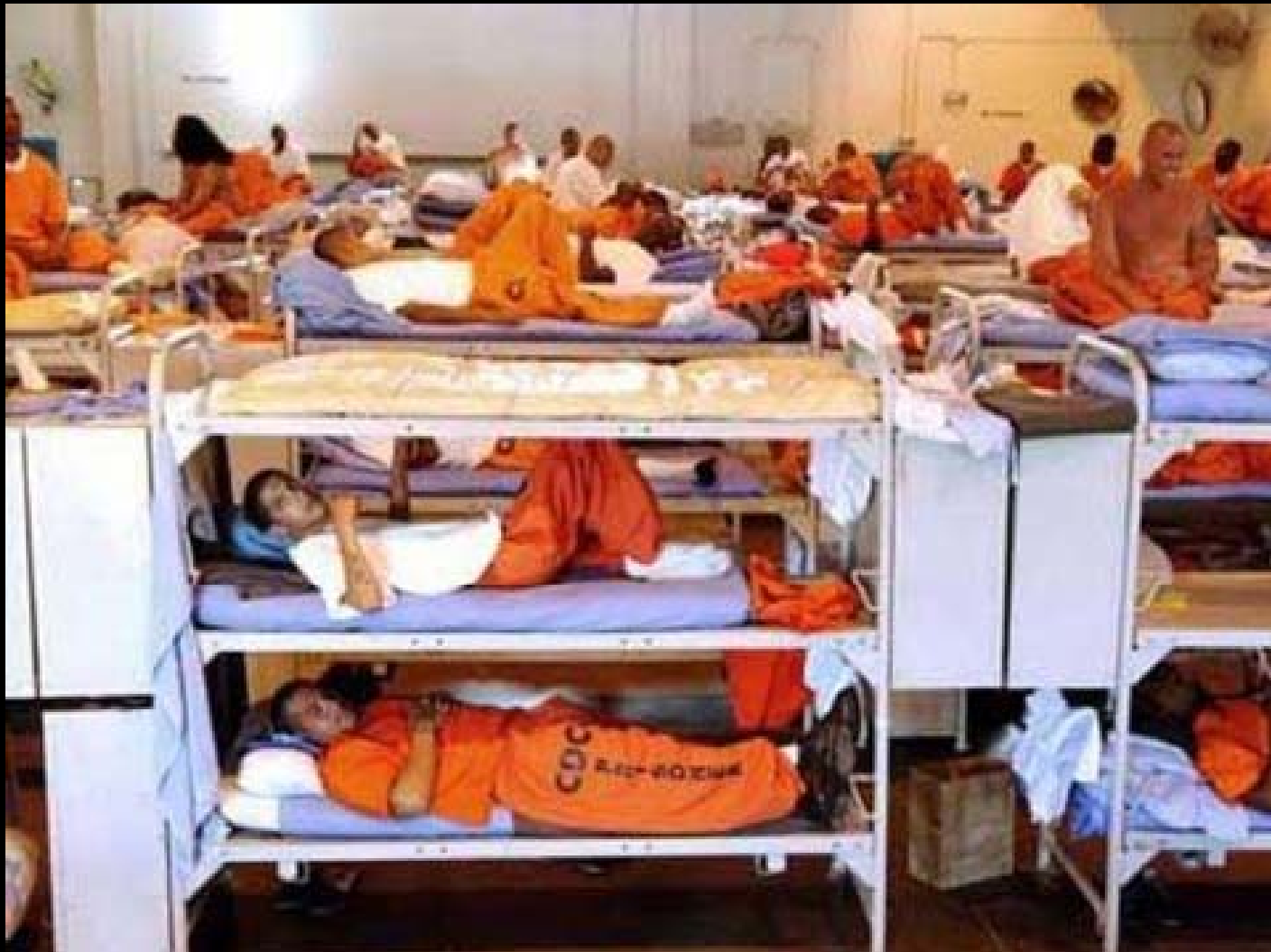
APRIL 23

U.S. ARMY RESERVE
BIRTHDAY



www.usar.army.mil/USARBirthday

Confinement with foreign nationals

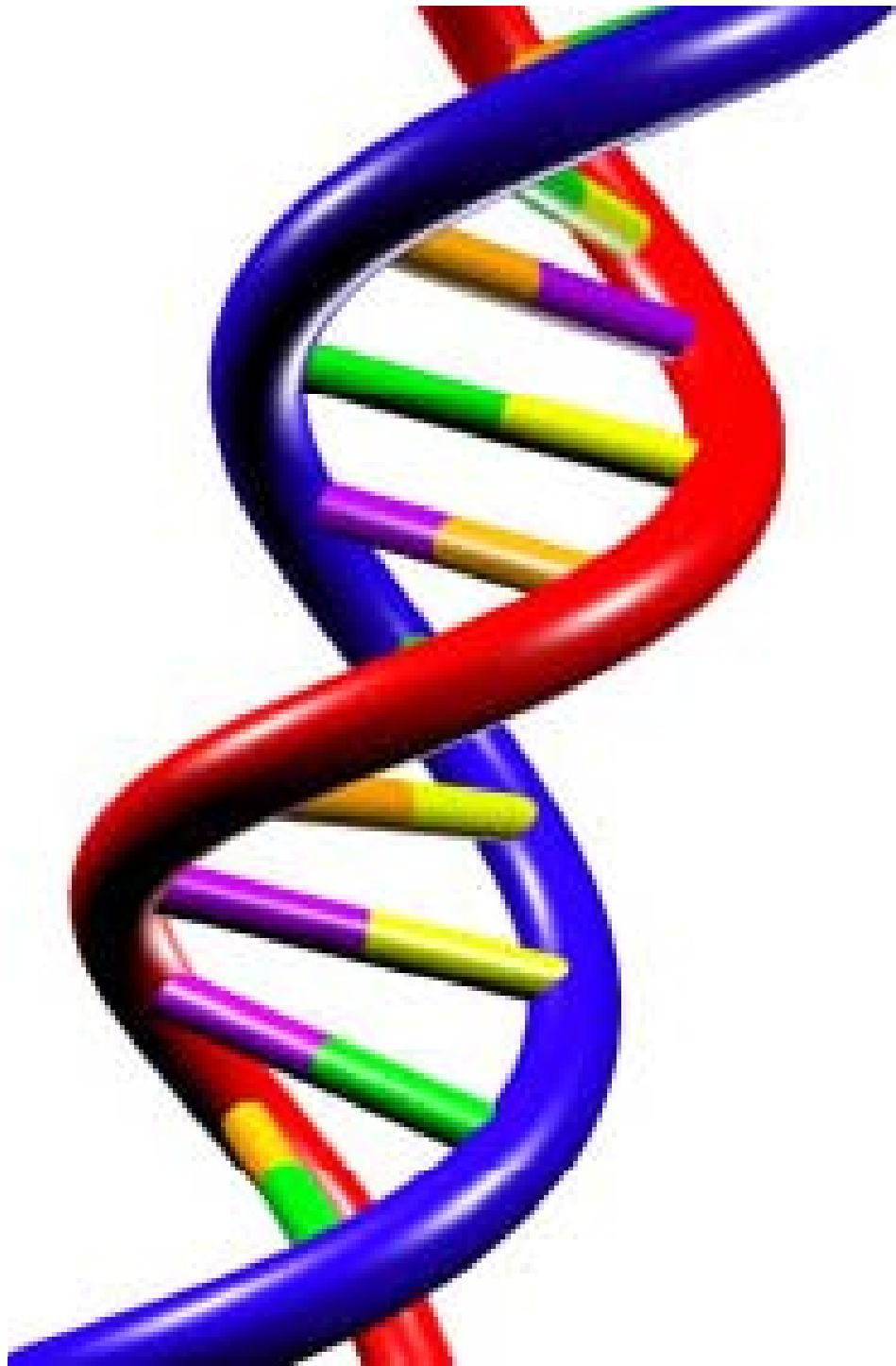


Nonjudicial Punishment



Nonjudicial Punishment





Selected Legislative Resources

Text of the Act:

<https://www.congress.gov/114/bills/s2943/BILLS-114s2943enr.pdf>

Conference Report - House Report 114-840, Nov. 30, 2016

<https://www.congress.gov/114/crpt/hrpt840/CRPT-114hrpt840.pdf>

Senate Bill (S. 2943) passed in the Senate (June 14, 2016).
(printed as passed, June 21, 2016)

<https://www.congress.gov/114/bills/s2943/BILLS-114s2943pap.pdf>

- **Senate Report** 114-255 (May 18, 2016)

<https://www.congress.gov/114/crpt/srpt255/CRPT-114srpt255.pdf>

... Legislative Resources



House Bill (H.R. 4909) as passed in the House (May 18, 2016)
(placed on the Senate Calendar. (printed as passed, June 21,
2016)

<https://www.congress.gov/114/bills/hr4909/BILLS-114hr4909pcs.pdf>

House Report 114-537 (parts 1 and 2) (May 4, 2016; May 12,
2016)

<https://www.congress.gov/114/crpt/hrpt537/CRPT-114hrpt537.pdf>

<https://www.congress.gov/114/crpt/hrpt537/CRPT-114hrpt537-pt2.pdf>



Questions?