EXECUTIVE ORDER
14130
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2024 AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801-946a), and in order to prescribe additions and amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Part II, Part III, Part IV, and Part V of the Manual for Courts-Martial, United States, are amended as described in the Annex attached to and made a part of this order.

Sec. 2. With this order, I hereby prescribe regulations for the randomized selection of qualified personnel as members of a court-martial to the maximum extent practicable, pursuant to section 543 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263 (10 U.S.C. 825(e)(4)).

Sec. 3. Except as provided in sections 4 and 5 of this order, these amendments shall take effect on the date of this order, subject to the following:

(a) Nothing in these amendments shall be construed to make punishable any act committed or omitted prior to the date of this order that was not punishable when committed or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action begun prior to the date of this order, and any such nonjudicial punishment proceeding,

restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 4. The amendments to Rule for Courts-Martial (R.C.M.) 908(c)(3), R.C.M. 1205(a), and R.C.M. 1209(a)(1) shall take effect on December 22, 2024, subject to the following:

(a) Nothing in these amendments shall be construed to make punishable any act committed or omitted prior to the effective date that was not punishable when committed or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date, and any such nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 5. The amendment to R.C.M. 503(a)(1) shall take effect on December 23, 2024, subject to the following:

(a) Nothing in this amendment shall be construed to make punishable any act committed or omitted prior to the effective date that was not punishable when committed or omitted.

(b) Nothing in this amendment shall be construed to invalidate any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date, and any such nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in the

same manner and with the same effect as if this amendment had not been prescribed.

THE WHITE HOUSE,

December 20, 2024.

ANNEX

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 104(a)(2) is deleted.

(b) R.C.M. 104(a)(3) is redesignated as R.C.M. 104(a)(2).

(c) R.C.M. 104(a)(2)(A), as redesignated by Section 1(b) of this annex, is amended to read as follows:

"(A) Nothing in this rule prohibits general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial."

(d) A new R.C.M. 104(b)(3) is inserted immediately after R.C.M. 104(b)(2) to read as follows:

"(3) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer."

(e) A new R.C.M. 104(c)(2) is inserted immediately after R.C.M. 104(c)(1) to read as follows:

"(2) *Evaluation of military judge.*

(A) *General courts-martial.* Unless the general court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of the convening authority's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed to a general court-martial that relates to the performance of duty as a military judge.

(B) *Special courts-martial.* The convening authority may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to a special court-martial that relates to the performance of duty as a military judge. When the military judge is normally rated or the military judge's report is reviewed by the convening authority, the manner in which such military judge will be rated or evaluated upon the performance of duty as a military judge may be as prescribed in regulations of the Secretary concerned, which shall ensure the absence of any command influence in the rating or

evaluation of the military judge's judicial performance."

(f) R.C.M. 305(h) is amended to read as follows:

"(h) *Who may direct release from confinement*. Any commander of a confinee or an officer appointed under regulations of the Secretary concerned to conduct a pretrial confinement review under R.C.M. 305(j) or (k) may direct the confinee's release. A military judge may direct release from pretrial confinement once charges for which the accused has been confined are referred or as part of a pre-referral proceeding conducted in accordance with R.C.M. 309. For purposes of this subsection (R.C.M. 305(h)), "any commander" includes the immediate or higher commander of the confinee and the commander of the installation on which the confinement facility is located."

(g) R.C.M. 309(b)(3) is amended to read as follows:

"(3) *Requests for relief from subpoena or other process*. A person in receipt of a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C), a victim whose personal or confidential information has been subpoenaed under 703(g)(3)(C)(ii), a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A(a), or a person ordered to sit for a deposition under R.C.M. 702(b)(2) may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive, or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order, as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government."

(h) R.C.M. 405(a) is amended to read as follows:

"(a) *In general*. Except as provided in R.C.M. 405(n), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and the appropriate disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court-

martial. The preliminary hearing enables the impartial assessment of the case so that the preliminary hearing report can meaningfully inform a disposition determination."

(i) R.C.M. 405(e)(1) is amended to read as follows:

"(1) Preliminary hearing officer.

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. The Judge Advocate General of the armed force of which the officer is a member, or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps, shall certify the judge advocate as having the requisite training and experience to serve as the preliminary hearing officer, in accordance with regulations prescribed by the Secretary concerned.

(B) When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(C) Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(D) The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(E) The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity."

(j) R.C.M. 405(i)(2)(A) is amended to read as follows:

"(A) *Military Witnesses*.

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government the names of proposed military witnesses whom the accused

requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness's testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness's testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). The defense has the burden of establishing that the witness is relevant, not cumulative, and necessary by a preponderance of the evidence.

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available and, if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final. If the military witness is unavailable as determined by this rule, the preliminary hearing officer may require an affidavit or other sufficiently reliable evidence unless it would unreasonably delay the proceedings or interfere with operational necessity or mission requirements. If the commanding officer determines that the witness is unavailable, the counsel for the Government shall obtain a written explanation from the commanding officer detailing the circumstances and rationale for the determination.

(iv) A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under

consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing."

(k) R.C.M. 405(i)(2)(B) is amended to read as follows:

"(B) *Civilian Witnesses*.

(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness's testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness's testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). The defense has the burden of establishing that the witness is relevant, not cumulative, and necessary by a preponderance of the evidence.

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness's testimony is relevant, not cumulative, and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for the witness's testimony. A civilian witness cannot be compelled to provide testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony."

(l) R.C.M. 405(i)(3)(A)(ii) is amended to read as follows:

"(ii) If the Government objects to the production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant,

not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). If the preliminary hearing officer determines that the evidence shall be produced, counsel for the Government shall make reasonable efforts to obtain the evidence. If such evidence is not reasonably available, the Government will include a written explanation documenting the unavailability of the evidence or efforts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m)."

(m) R.C.M. 405(i)(3)(B)(iii) is amended to read as follows:

"(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The defense has the burden of establishing that the evidence is relevant, not cumulative, and necessary by a preponderance of the evidence. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense-requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under R.C.M. 405(m)."

(n) R.C.M. 405(k)(1) is amended to read as follows:

"(1) *Generally.* The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused's rights under R.C.M. 405(g). Counsel for the Government will then present evidence. Upon the conclusion of counsel for the Government's presentation of evidence, defense counsel may present matters. Both counsel for the Government and defense counsel shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is relevant, not cumulative, and necessary for a determination of the issues under R.C.M. 405(a), the counsel for the Government shall produce such evidence in accordance with R.C.M. 405(i) unless it is not reasonably available. In such a

case, the Government will provide a written explanation documenting unavailability or efforts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m). Except as provided in R.C.M. 405(m)(2)(J), the preliminary hearing officer shall not consider evidence not presented at the preliminary hearing in making the determination under R.C.M. 405(a). The preliminary hearing officer shall not call witnesses *sua sponte*."

(o) R.C.M. 405(k)(2)(B) is amended to read as follows:

"(B) *Other evidence*. If relevant to the issues for determination under R.C.M. 405(a), a preliminary hearing officer may consider other evidence offered by either counsel for the Government or defense counsel, including statements, tangible evidence, or reproductions thereof, that the preliminary hearing officer determines is reliable. Written statements need not be sworn."

(p) The first sentence of R.C.M. 405(k)(4) is amended to read as follows:

"The accused shall be present for the preliminary hearing, except as otherwise noted in R.C.M. 405(k)(4)(B)."

(q) R.C.M. 405(m)(2) is amended to read as follows:

"(2) *Contents*. The preliminary hearing report is an impartial analysis of the case that meaningfully informs the referral authority when making an initial disposition determination and shall include:

(A) A statement of names and organizations or addresses of counsel for the Government and defense counsel and, if applicable, a statement of why either counsel was not present at any time during the proceedings;

(B) The recording of the preliminary hearing under R.C.M. 405(k)(5);

(C) For each specification, the preliminary hearing officer's reasoning and conclusions with respect to the issues for determination under R.C.M. 405(a), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(D) If applicable, a statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the Government refused to issue a pre-referral investigative subpoena that was directed by the preliminary hearing officer and the counsel's statement of the reasons for such refusal;

(G) Recommendations for any necessary modifications to the form of the charges and specifications;

(H) A statement of whether the preliminary hearing officer examined evidence or heard witnesses relating to any uncharged offenses in accordance with R.C.M. 405(f)(2), and, for each such offense, the preliminary hearing officer's reasoning and conclusions as to whether there is probable cause to believe that the accused committed the offense and whether the convening authority would have court-martial jurisdiction over the offense if it were charged;

(I) A notation of any objections if required under R.C.M. 405(k)(7);

(J) The recommendation and supporting analysis of the preliminary hearing officer as to the disposition that should be made of the charges and specifications in the interest of justice and discipline. In making this disposition recommendation, the preliminary hearing officer shall consider:

(i) any evidence admitted during the preliminary hearing;

(ii) matters submitted under R.C.M. 405(l);

(iii) the credibility and weight of the evidence; and

(iv) whether there is probably sufficient admissible evidence to obtain and sustain a conviction at trial.

(K) The written summary and analysis required by R.C.M. 405(l)(3)(A); and

(L) A notation as to whether the parties or the preliminary hearing officer considered any offense to be a covered offense."

(r) R.C.M. 503(a)(1) is amended to read as follows:

"(1) *In general.* The convening authority shall—

(A) detail qualified persons as members for courts-martial in accordance with the criteria described in Article 25;

(B) provide to the military judge—

(i) in a capital general court-martial, at least 24 detailed members for randomization;

(ii) in a non-capital general court-martial, at least 16 detailed members for randomization;

(iii) in a special court-martial, at least 8 detailed members for randomization; or

(iv) where a convening authority determines it to be impracticable to meet the requirements of R.C.M. 503(a)(1)(B)(i)–(iii) due to exceptional circumstances, a sufficient number of detailed members to allow for the randomization process in R.C.M. 911. Exceptional circumstances include circumstances in which the minimum required numbers of detailed members are not available due to a military necessity or exigency;

(C) consult with the servicing staff judge advocate prior to making a determination under R.C.M. 503(a)(1)(B)(iv) that it is impracticable to meet the requirements of R.C.M. 503(a)(1)(B)(i)-(iii);

(D) document in writing any determination under R.C.M. 503(a)(1)(B)(iv) that exceptional circumstances exist, pursuant to procedures prescribed by the Secretary concerned;

(E) state whether the military judge is—

(i) authorized to impanel a specified number of alternate members; or

(ii) authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain; and

(F) provide a list of the detailed members to the military judge to randomize in accordance with R.C.M. 911."

(s) R.C.M. 703(c)(2)(D) is amended to read as follows:

"(D) *Determination*. Trial counsel shall arrange for the presence of any witness listed by the defense unless trial counsel contends that the witness's production is not required under this rule. If trial counsel contends that the witness's production is not required by this rule, the matter may be submitted to the military judge. For good cause shown, the submission by the defense may be made by *ex parte* motion. If the military judge grants a motion for a witness, the trial counsel shall produce the witness or the proceedings may be abated."

(t) R.C.M. 703(d)(2)(B) is amended to read as follows:

"(B) If the military judge grants a motion for the appointment or employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute, shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under R.C.M. 703(g)(3)(G)."

(u) R.C.M. 703(g)(3)(C)(ii) is amended to read as follows:

"(ii) *Subpoenas for personal or confidential information about a victim*. After preferral, a subpoena requiring the production of personal or confidential information about a victim may be served on an individual or organization by those authorized to issue a subpoena under R.C.M. 703(g)(3)(E) or with the consent of the victim. Before issuing a subpoena under this provision and unless there are exceptional circumstances, the victim must be given timely notice so that the victim can move for relief under R.C.M. 703(g)(3)(I) or otherwise object."

(v) R.C.M. 703(g)(3)(I) is amended to read as follows:

"(I) *Relief.* If either a person subpoenaed or a victim whose personal or confidential information has been subpoenaed under subparagraph (g)(3)(C)(ii) requests relief on grounds that compliance is unreasonable, oppressive, or prohibited by law, the military judge or, if before referral, a military judge detailed under Article 30a shall review the request and shall—

(i) order that the subpoena be modified or quashed, as appropriate; or

(ii) order the person to comply with the subpoena."

(w) R.C.M. 803 is amended to read as follows:

"**Rule 803. Court-martial sessions without members under Article 39(a)**

A military judge who has been detailed to the court-martial may, under Article 39(a), after service of charges, call the court-martial into session without the presence of members. Such sessions may be held before and after assembly of the court-martial, and when authorized in these rules, after adjournment and before entry of the judgment in the record. All such sessions are a part of the trial and shall be conducted in the presence of the accused, defense counsel, and trial counsel, in accordance with R.C.M. 804, and shall be made a part of the record."

(x) R.C.M. 906(b)(12)(B) is amended to read as follows:

"(B) *As applied to sentence.* Where the military judge finds that the unreasonable multiplication of charges requires a remedy that focuses more appropriately on punishment than on findings, the military judge may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding, the remedy shall be that the terms of confinement for the affected specifications will run concurrently, as set forth in R.C.M. 1002(b)(2)(B)(iii). A ruling on this motion ordinarily should be deferred until after findings are entered."

(y) R.C.M. 908(c)(3) is amended to read as follows:

"(3) *Action following decision of Court of Criminal Appeals*. After the Court of Criminal Appeals has decided any appeal under Article 62, the accused may petition for review by the Court of Appeals for the Armed Forces, or the Judge Advocate General may certify a case to the Court of Appeals for the Armed Forces. The parties shall be notified of the decision of the Court of Criminal Appeals promptly. If the decision is adverse to the accused, the accused shall be notified of the decision and of the right to petition the Court of Appeals for the Armed Forces for review within 60 days. Such notification shall be made orally on the record at the court-martial or in accordance with R.C.M. 1203(d). If the accused is notified orally on the record, trial counsel shall forward by expeditious means a certificate that the accused was so notified to the Judge Advocate General who shall forward a copy to the clerk of the Court of Appeals for the Armed Forces when required by the Court. If the decision by the Court of Criminal Appeals permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. R.C.M. 1204 shall apply to petitions made, or cases certified, under R.C.M. 908 to the Court of Appeals for the Armed Forces. R.C.M. 1205 shall apply to petitions made under R.C.M. 908 to the Supreme Court."

(z) R.C.M. 1002(b)(2) is amended to read as follows:

"(2) *Concurrent or Consecutive Terms of Confinement.*

(A) If a sentence includes more than one term of confinement, the military judge shall determine whether the terms of confinement will run concurrently or consecutively. For each term of confinement, the military judge shall state whether the term of confinement is to run concurrently or consecutively with any other term or terms of confinement.

(B) The terms of confinement for two or more specifications shall run concurrently—

(i) when each specification involves the same victim and the same act or transaction;

(ii) when provided for in a plea agreement;

(iii) when the accused is found guilty of two or more specifications and the military judge finds that the charges or specifications are unreasonably multiplied; or

(iv) in a special court-martial, to the extent necessary to prevent the total confinement from exceeding the maximum confinement authorized under R.C.M. 201(f)(2).

(C) In all other circumstances, a military judge may exercise broad discretion in determining whether terms of confinement will run concurrently or consecutively consistent with R.C.M. 1002(c). Whether a term of confinement will run concurrently with another term of confinement should be determined only after determining the appropriate amount of confinement for each charge and specification."

(aa) R.C.M. 1112(f)(1) through (9) are redesignated as R.C.M. 1112(f)(2) through (10).

(bb) A new R.C.M. 1112(f)(1) is inserted immediately after R.C.M. 1112(f) to read as follows:

"(1) A copy of all materials required to be provided to the military judge pursuant to R.C.M. 309(a)(3);".

(cc) R.C.M. 1114(a) is amended to read as follows:

"(a) *Transcription of the complete record*. A certified verbatim transcript of the record of trial shall be prepared in all general and special courts-martial in which the judgment includes a finding of guilty."

(dd) A new R.C.M. 1118 is inserted immediately after R.C.M. 1117 to read as follows:

"Rule 1118. Retention of records of trial, general and special courts-martial

For each general or special court-martial, without regard to the outcome of the proceeding concerned, the record of trial, or one copy thereof, created in accordance with R.C.M. 1112 shall be retained in perpetuity. The destruction of a record of trial or any copy thereof prior to the issuance of this rule pursuant to a records disposition schedule shall not be a basis for relief at any court-martial or other proceeding under the UCMJ."

(ee) R.C.M. 1201(h)(1)(B) is amended to read as follows:

"(B) With respect to a general or special court-martial previously reviewed under paragraph (a)(1) or (2) where the Judge Advocate General determines the waiver or withdrawal was invalid under the law, order such a court-martial to be reviewed under R.C.M. 1203 by the Court of Criminal Appeals."

(ff) R.C.M. 1205(a) is amended to read as follows:

"(a) *Cases subject to review by the Supreme Court.* Under 28 U.S.C. § 1259 and Article 67a, decisions of the Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under Article 67(a)(1);

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under Article 67(a)(2);

(3) Cases in which the Court of Appeals for the Armed Forces granted or refused to grant a petition for review under Article 67(a)(3); and

(4) Cases other than those described in paragraphs (a)(1), (2), and (3) of this rule in which the Court of Appeals for the Armed Forces granted or refused to grant relief."

(gg) R.C.M. 1209(a)(1) is amended to read as follows:

"(1) *General and special courts-martial*. A conviction in a general or special court-martial is final when—

(A) Review is completed under R.C.M. 1201(a) (Article 65);

(B) Review is completed by a Court of Criminal Appeals and—

(i) The accused does not file a timely petition for review by the Court of Appeals for the Armed Forces and the case is not otherwise under review by that court; or

(ii) The Court of Appeals for the Armed Forces refused to grant review of such a petition or review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces, and—

(I) A petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) A petition for a writ of certiorari is denied or otherwise rejected by the Supreme Court; or

(III) Review is otherwise completed in accordance with the judgment of the Supreme Court."

(hh) R.C.M. 1301(a) is amended to read as follows:

"(a) *Composition*. A summary court-martial is composed of one commissioned officer on active duty. Unless otherwise prescribed by the Secretary concerned, a summary court-martial shall be of the same armed force as the accused. Summary courts-martial shall be conducted in accordance with the regulations of the military Service to which the accused belongs. Whenever practicable, a summary court-martial should be an officer whose grade is not below lieutenant of the Navy or Coast Guard or captain of the Army, Marine Corps, Air Force, or Space Force."

(ii) R.C.M. 1301(e) is amended to read as follows:

"(e) *Counsel*. The accused at a summary court-martial has a right to military defense counsel. The accused may expressly waive the right to be represented by defense counsel and may thereafter conduct the defense personally. Such waiver shall be accepted by the summary court-martial officer only upon finding that the accused is competent to understand the disadvantages of self-representation and that the waiver is voluntary and understanding. The right of the accused to conduct the defense personally may be revoked if the accused is disruptive or fails to follow basic rules of decorum and procedure."

(jj) R.C.M. 1302(a) is amended to read as follows:

"(a) *Who may convene summary courts-martial*. Unless limited by competent authority, summary courts-martial may be convened by:

(1) Any person who may convene a general or special court-martial;

(2) The commander of a detached company or other detachment of the Army unless such commander is the only commissioned officer with the company or detachment;

(3) The commander of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force unless such commander is the only commissioned officer with the detached squadron or other detachment of the Air Force or corresponding unit of the Space Force;

(4) The commander or officer in charge of any other command when empowered by the Secretary concerned unless such commander or officer in charge is the only commissioned

officer with the command; or

(5) A superior competent authority to any of the above if the superior competent authority considers it desirable unless such superior competent authority is the only commissioned officer with the command, in which case it shall be considered desirable that the matter be elevated until it reaches a superior competent authority whose command includes more than one commissioned officer."

(kk) R.C.M. 1304(b)(1)(M) is amended to read as follows:

"(M) The maximum sentence that the summary court-martial may adjudge if the accused is found guilty of the offense or offenses alleged;"

(ll) R.C.M. 1304(b)(1)(N) is amended to read as follows:

"(N) The accused's right to object to trial by summary court-martial; and".

(mm) A new R.C.M. 1304(b)(1)(O) is inserted immediately after R.C.M. 1304(b)(1)(N) to read as follows:

"(O) Unless waived by the accused, the accused's right to have detailed defense counsel present during the summary court-martial proceeding."

(nn) R.C.M. 1304(b)(2)(B) through (F) are redesignated as R.C.M. 1304(b)(2)(C) through (G).

(oo) A new R.C.M. 1304(b)(2)(B) is inserted immediately after R.C.M. 1304(b)(2)(A) to read as follows:

"(B) *Presence of defense counsel.*

(i) If the accused waives the right to have defense counsel present during the summary court-martial proceeding, the summary court-martial shall inquire into whether the waiver is knowing and voluntary.

(ii) Presence of defense counsel may be accomplished via remote means through the use of audiovisual technology only if the accused consents to the presence of counsel by remote means and there is the opportunity for confidential consultation with defense counsel during the summary court-martial proceeding."

Section 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

Mil. R. Evid. 513(a) is amended to read as follows:

"(a) *General Rule*. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication, including records of such communications, made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of diagnosis or treatment of the patient's mental or emotional condition."

Section 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 58.d. starting with the words "Sample specifications" is redesignated as Paragraph 58.e.

(b) Paragraph 78a.a. is amended to read as follows:

"a. *Text of Statute.*

(a) IN GENERAL.—Any person who—

(1) commits a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person;

(2) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person—

(A) commits an offense under this chapter against any person; or

(B) commits an offense under this chapter against any property, including an animal;

(3) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order;

(4) with intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order; or

(5) assaults a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangling or suffocating;

shall be punished as a court-martial may direct.

(b) DEFINITIONS.— In this section, the terms "dating partner", "immediate family", and "intimate partner" have the meanings given such terms in section 930 of this title (article 130)."

(c) Paragraph 78a.b. is amended to read as follows:

"b. *Elements*.

(1) *Commission of a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person.*

(a) That the accused committed a violent offense; and

(b) That the violent offense was committed against a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

[Note: Add the following as applicable]

(c) That the immediate family member was a child under the age of 16 years.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person.*

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any person; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*.

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any property, including an animal; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*.

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person.*

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(6) *Assaulting a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangulation or suffocation*.

(a) That the accused assaulted a spouse, an intimate partner, a dating partner, or an immediate family member of the accused;

(b) That the accused did so by strangulation or suffocation; and

(c) That the strangulation or suffocation was done with unlawful force or violence;

[Note: Add the following as applicable]

(d) That the person was a child under the age of 16 years."

(d) Subparagraphs 78a.c.(5) through (8) are redesignated as subparagraphs 78a.c.(6) through (9).

(e) A new subparagraph 78a.c.(5) is inserted immediately after subparagraph 78a.c.(4) to read as follows:

"(5) *Dating Partner.* The term "dating partner," in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship;

(C) the frequency of interaction between the persons involved in the relationship; and

(D) the extent of physical intimacy or sexual contact between the persons involved in the relationship.

The relative weight given to each of the named criteria in making the "dating partner" determination may vary depending on the facts and circumstances presented."

(f) Paragraph 78a.d. is amended to read as follows:

"d. *Maximum punishment*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement as follows:

(1) *Commission of a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years of confinement except for those violent offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ against any

property, including an animal, with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Confinement for 3 years.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Confinement for 5 years.

(6) *Assaulting a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangulation or suffocation*.

(a) *Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years*. Confinement for 11 years.

(b) *Other cases.* Confinement for 8 years."

(g) Paragraph 78a.e. is amended to read as follows:

"e. *Sample Specifications*.

(1) In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit a violent offense against _____, the (spouse) (intimate partner) (dating partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(2) In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against (any person) (a child under the age

of 16 years), to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(3) In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against any property, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(4) In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused, wrongfully violate a protection order by _____.

(5) In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20 __, violate a protection order, to wit: _____, with the intent to commit a violent offense, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element), against the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused.

(6) In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit an assault upon _____, the (spouse) (intimate partner) (dating partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, by unlawfully (strangling) (suffocating) him/her (with/by _____)."

(h) Paragraph 80.a. is amended to read as follows:

"a. *Text of statute*.

(a) IN GENERAL.—Any person subject to this chapter—

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, to his or her intimate partner, or to his or her dating partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, to his or her intimate partner, or to his or her dating partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, to his or her intimate partner, or to his or her dating partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term "conduct" means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term "course of conduct" means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term "dating partner", in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship;

(C) the frequency of interaction between the persons involved in the relationship; and

(D) the extent of physical intimacy or sexual contact between the persons involved in the relationship.

(4) The term "repeated", with respect to conduct, means two or more occasions of such conduct.

(5) The term "immediate family", in the case of a specific person, means—

(A) that person's spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or marriage.

(6) The term "intimate partner", in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship."

(i) Paragraph 80.b. is amended to read as follows:

"b. *Elements*.

(1) That the accused wrongfully engaged in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, to his or her intimate partner, or to his or her dating partner;

(2) That the accused had knowledge, or should have had knowledge, that the specific person would be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, to his or her intimate partner, or to his or her dating partner; and

(3) That the accused's conduct induced reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, to his or her intimate partner, or to his or her dating partner."

(j) A new subparagraph 80.c.(3) is inserted immediately after subparagraph 80.c.(2) to read as follows:

"(3) *Dating Partner.* The relative weight given to each of the named criteria in making the "dating partner" determination under Article 130(b)(3)(A)–(D) may vary depending on the facts and circumstances presented."

(k) Paragraph 80.e. is amended to read as follows:

"e. *Sample specification*s.

"In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), (on or about _____ 20 __) (from about_____ to about _____ 20 __), engage in a course of conduct directed at _____, that would cause a reasonable person to fear (death) (bodily harm, to wit:_____), to (himself) (herself) (a member of (his)(her) immediate family) ((his) (her) intimate partner) ((his) (her) dating partner); that the accused knew or should have known that the course of conduct would place _____ in reasonable fear of (death) (bodily harm, to wit _____) to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner) ((his) (her) dating partner); and that the accused's conduct placed _____ in reasonable fear of (death) (bodily harm, to wit:_____) to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner) ((his) (her) dating partner)."

(l) Paragraph 95.c.(4) is amended to read as follows:

"(4) "Child pornography" means material that contains either an obscene visual depiction of what appears to be a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct."

(m) Paragraph 95.c.(7) is amended to read as follows:

"(7) "Minor" means any person under the age of 18 years. With respect to obscene visual depictions of what appears to be a minor, it shall not be required that the minor depicted actually exist."

(n) Paragraph 95.c.(11) is amended to read as follows:

"(11) Visual depiction includes any developed or undeveloped photograph, picture, film or video; any digital or computer image, picture, film or video made, adapted, modified, or generated by any means, including those transmitted by any means including streaming media, even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image."

(o) Paragraph 95.c.(10)(e) is amended to read as follows:

"(e) lascivious exhibition of the anus, genitals, or pubic area of any person."

Section 4. Part V of the Manual for Courts-Martial, United States, is amended as follows:

A new paragraph 2A is inserted immediately after paragraph 2 to read as follows:

"**2A. Right to consult with counsel**

a. *Consultation before nonjudicial punishment proceeding*. Unless precluded by military exigencies, Servicemembers have the right to consult with counsel prior to the decision by the Servicemember under paragraph 4.b. of this Part.

b. *Consultation after nonjudicial punishment is imposed*. Servicemembers have a right to consult with counsel regarding an appeal under Paragraph 7.a. of this Part.

c. *No unreasonable delay*. The exercise of this right to consult shall not unreasonably delay the proceedings."

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