

TITLE V—MILITARY PERSONNEL POLICY

Subtitle B—Military Justice Reform

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TITLE V—MILITARY PERSONNEL POLICY

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Subtitle B—Military Justice Reform

3

SEC. 511. SPECIAL VICTIM PROSECUTORS.

4

(a) IN GENERAL.—Subchapter V of chapter 47 of title 10, United States Code, is amended

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by inserting after section 824 (article 24 of the Uniform Code of Military Justice) the following

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new section:

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“§ 824a. Art. 24a. Special victim prosecutors

8

“(a) DETAIL OF SPECIAL VICTIM PROSECUTORS AND ASSISTANT SPECIAL VICTIM

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PROSECUTORS.—Each Secretary concerned shall detail commissioned officers to serve as special

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victim prosecutors and assistant special victim prosecutors.

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“(b) QUALIFICATIONS.—A special victim prosecutor or assistant special victim prosecutor

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shall be a commissioned officer who—

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“(1) is a member of the bar of a Federal court or a member of the bar of the

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highest court of a State; and

1 “(2) is certified to be qualified, by reason of education, training, experience, and
2 temperament, for duty as a special victim prosecutor or assistant special victim
3 prosecutor by the Judge Advocate General of the armed force of which the officer is a
4 member.

5 “(c) DUTIES AND AUTHORITIES.—

6 “(1) IN GENERAL.—Special victim prosecutors and assistant special victim
7 prosecutors shall carry out the duties described in this chapter (the Uniform Code of
8 Military Justice) and any other duties prescribed by the Secretary of Defense, in
9 consultation with the Secretary of Homeland Security, by regulation.

10 “(2) DETERMINATION OF SPECIAL VICTIM OFFENSE; RELATED CHARGES.—

11 “(A) AUTHORITY.—A special victim prosecutor shall have exclusive
12 authority to determine if a reported offense is a special victim offense and shall
13 exercise authority over any such offense in accordance with this chapter (the
14 Uniform Code of Military Justice).

15 “(B) RELATED OFFENSES.—If a special victim prosecutor determines that a
16 reported offense is a special victim offense, the special victim prosecutor may
17 also exercise authority over any reported offense that the special victim
18 prosecutor determines to be related to the special victim offense and any other
19 reported offense by a person alleged to have committed a special victim offense.

20 “(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—Subject to paragraph (4), with
21 respect to charges and specifications alleging any offense over which a special victim
22 prosecutor exercises authority, a special victim prosecutor shall have exclusive authority
23 to, in accordance with this chapter (the Uniform Code of Military Justice)—

1 “(A) on behalf of the Government, dismiss the charges and specifications
2 or make a motion to dismiss the charges and specifications;

3 “(B) refer the charges and specifications for trial by a special or general
4 court-martial;

5 “(C) enter into a plea agreement; and

6 “(D) determine if an ordered rehearing is impracticable.

7 “(4) DEFERRAL TO CONVENING AUTHORITY.—If a special victim prosecutor
8 exercises authority over an offense and elects not to prefer charges and specifications for
9 such offense or, with respect to charges and specifications for such offense preferred by a
10 person other than a special victim prosecutor, elects not to refer such charges and
11 specifications, a convening authority may exercise any of the authorities of the convening
12 authority under this chapter (the Uniform Code of Military Justice) with respect to such
13 offense, except that the convening authority may not refer charges and specifications for
14 a special victim offense for trial by special or general court-martial.”.

15 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of
16 subchapter V of chapter 47 of title 10, United States Code (the Uniform Code of Military
17 Justice), is amended by inserting after the item relating to section 824 (article 24) the following
18 new item:

 “824a. Art. 24a. Special victim prosecutors.”.

19 **SEC. 512. DEPARTMENT OF DEFENSE POLICIES WITH RESPECT TO SPECIAL**
20 **VICTIM PROSECUTORS AND ESTABLISHMENT OF OFFICES OF**
21 **SPECIAL VICTIM PROSECUTORS WITHIN MILITARY**
22 **DEPARTMENTS.**

1 (a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by inserting
2 after section 1044e the following new section:

3 **“§ 1044f. Special victim prosecutors: Department of Defense policies; establishment of**
4 **Offices of Special Victim Prosecutors**

5 “(a) POLICIES REQUIRED.—The Secretary of Defense shall establish policies with respect
6 to the appropriate mechanisms and procedures that the Secretaries of the military departments
7 shall establish and carry out relating to the activities of special victim prosecutors, including
8 expected milestones for the Secretaries to fully implement such mechanisms and procedures.

9 “(b) MILITARY DEPARTMENT OFFICES OF SPECIAL VICTIM PROSECUTORS.—

10 “(1) ESTABLISHMENT.—Each Secretary of a military department shall establish
11 within the office of such Secretary an Office of Special Victim Prosecutors. The head of
12 each such Office of Special Victim Prosecutors shall report directly to each such
13 Secretary.

14 “(2) ASSIGNMENT OF SPECIAL VICTIM PROSECUTORS.—Notwithstanding section
15 806 of this title (article 6 of the Uniform Code of Military Justice), and subject to
16 subsection (c) of this section, each special victim prosecutor and assistant special victim
17 prosecutor detailed by the Secretary of a military department shall be assigned to an
18 Office of Special Victim Prosecutors established by such Secretary.

19 “(c) AUTHORITY TO ESTABLISH AN OFFICE OF SPECIAL VICTIM PROSECUTORS WITHIN THE
20 OFFICE OF THE SECRETARY OF DEFENSE.—

21 “(1) CONDITIONS REQUIRED.—If the Secretary of Defense determines that the
22 Secretary of a military department has not established or is not carrying out the
23 appropriate mechanisms and procedures described in subsection (a) with respect to an

1 armed force, the Secretary of Defense may establish within the Office of the Secretary of
2 Defense the Office of Special Victim Prosecutors (in this subsection referred to as the
3 ‘Office’).

4 “(2) DIRECTOR.—If the Secretary establishes or reestablishes the Office in
5 accordance with this section, the Secretary shall appoint a Director of the Office of
6 Special Victim Prosecutors, who shall be appointed from civilian life and who shall have
7 such duties and responsibilities with respect to special victim prosecutors and assistant
8 special victim prosecutors as the Secretary considers appropriate.

9 “(3) DETAIL OF SPECIAL VICTIM PROSECUTORS AND ASSISTANT SPECIAL VICTIM
10 PROSECUTORS.—If the Secretary establishes or reestablishes the Office in accordance
11 with this subsection, the special victim prosecutors and assistant special victim
12 prosecutors of each armed force with respect to which the Secretary of Defense
13 determines the appropriate mechanisms and procedures described in subsection (a) have
14 not been established or are not being carried out shall be assigned to the Office.

15 “(4) TRANSFER OF RESPONSIBILITIES TO MILITARY DEPARTMENTS.—If the
16 Secretary of Defense determines that the Secretary of a military department has
17 established appropriate mechanisms and procedures with respect to the activities of
18 special victim prosecutors and assistant special victim prosecutors of an armed force that
19 are assigned to the Office in accordance with this section, the Secretary of Defense may
20 transfer the special victim prosecutors and assistant special victim prosecutors of that
21 armed force to the Secretary of that military department and terminate the duties and
22 responsibilities of the Director with respect to special victim prosecutors and assistant
23 special victim prosecutors of that armed force.

1 “(5) DISESTABLISHMENT OF OFFICE.—(A) If the Secretary of Defense transfers all
2 special victim prosecutors and assistant special victim prosecutors assigned to the Office
3 to the Secretaries of the military departments in accordance with paragraph (4), the
4 Secretary of Defense shall disestablish the Office.

5 “(B) If at any time following disestablishment of the Office under subparagraph
6 (A) the Secretary of Defense determines there is a need to reestablish the Office and
7 reassign special victim prosecutors and assistant special victim prosecutors detailed by
8 the Secretary of a military department to the Office, the Secretary of Defense may
9 reestablish the Office in accordance with this section.

10 “(6) NOTICE TO CONGRESS.—If the Secretary of Defense establishes or
11 reestablishes the Office under this section, the Secretary shall provide notice of the
12 establishment or reestablishment to the Committees on Armed Services of the Senate and
13 the House of Representatives.”.

14 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter
15 53 of title 10, United States Code, is amended by inserting after the item relating to section
16 1044e the following new item:

 “1044f. Special victim prosecutors: Department of Defense policies; establishment of Offices of Special Victim
 Prosecutors.”.

17 **SEC. 513. DEFINITION OF MILITARY MAGISTRATE, SPECIAL VICTIM OFFENSE,**
18 **AND SPECIAL VICTIM PROSECUTOR.**

19 Section 801 of title 10, United States Code (article 1 of the Uniform Code of Military
20 Justice), is amended—

21 (1) by inserting after paragraph (10) the following new paragraph:

1 “(11) The term ‘military magistrate’ means a commissioned officer certified for
2 duty as a military magistrate in accordance with section 826a of this title (article 26a of
3 the Uniform Code of Military Justice).”; and

4 (2) by adding at the end the following new paragraphs:

5 “(17) The term ‘special victim offense’ means—

6 “(A) an offense under section 917a (article 117a), section 920 (article
7 120), section 920b (article 120b), section 920c (article 120c), section 920d (article
8 120d), section 928b (article 128b), section 930 (article 130), or section 932
9 (article 132) of this chapter (the Uniform Code of Military Justice);

10 “(B) a conspiracy to commit an offense specified in subparagraph (A) as
11 punishable under section 881 of this title (article 81);

12 “(C) a solicitation to commit an offense specified in subparagraph (A) as
13 punishable under section 882 of this title (article 82); or

14 “(D) an attempt to commit an offense specified in subparagraph (A), (B),
15 or (C) as punishable under section 880 of this title (article 80).

16 “(18) The term ‘special victim prosecutor’ means a judge advocate detailed as a
17 special victim prosecutor in accordance with section 824a of this title (article 24a of the
18 Uniform Code of Military Justice).”.

19 **SEC. 514. CLARIFICATION RELATING TO WHO MAY CONVENE COURTS-**

20 **MARTIAL.**

21 (a) GENERAL COURTS-MARTIAL.—Section 822(b) of title 10, United States Code (article
22 22(b) of the Uniform Code of Military Justice), is amended—

23 (1) by striking “If any” and inserting “(1) If any”; and

1 (2) by adding at the end the following new paragraph:

2 “(2) A commanding officer shall not be considered an accuser solely due to the role of
3 the commanding officer in convening a general court-martial to which charges and specifications
4 were referred by a special victim prosecutor in accordance with this chapter (the Uniform Code
5 of Military Justice).”.

6 (b) SPECIAL COURTS-MARTIAL.—Section 823(b) of title 10, United States Code (article
7 23(b) of the Uniform Code of Military Justice), is amended—

8 (1) by striking “If any” and inserting “(1) If any”; and

9 (2) by adding at the end the following new paragraph:

10 “(2) A commanding officer shall not be considered an accuser solely due to the role of
11 the commanding officer in convening a special court-martial to which charges and specifications
12 were referred by a special victim prosecutor in accordance with this chapter (the Uniform Code
13 of Military Justice).”.

14 **SEC. 515. SELECTION PROCESS FOR MEMBERS TO SERVE ON COURTS-**
15 **MARTIAL.**

16 Section 825(e) of title 10, United States Code (article 25(e) of the Uniform Code of
17 Military Justice), is amended—

18 (1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4),
19 respectively;

20 (2) by inserting before paragraph (2), as redesignated by paragraph (1) of this
21 section, the following new paragraph:

1 “(1) When convening a court-martial, the convening authority shall detail as members
2 thereof members of the armed forces under such regulations as the President may prescribe.”;
3 and

4 (3) in paragraph (3) (as so redesignated), by striking the first sentence.

5 **SEC. 516. DETAIL OF TRIAL COUNSEL.**

6 Section 827 of title 10, United States Code (article 27 of the Uniform Code of Military
7 Justice), is amended by adding at the end the following new subsection:

8 “(e)(1) For each general and special court-martial for which charges and specifications
9 were referred by a special victim prosecutor—

10 “(A) a special victim prosecutor or an assistant special victim prosecutor shall be
11 detailed as trial counsel;

12 “(B) a special victim prosecutor may detail a special victim prosecutor or an
13 assistant special victim prosecutor as an assistant trial counsel; and

14 “(C) a special victim prosecutor may request that a counsel other than a special
15 victim prosecutor or assistant special victim prosecutor be detailed as an assistant trial
16 counsel.

17 “(2) Details of counsel under this subsection shall be made in accordance with
18 regulations prescribed by the President.”.

19 **SEC. 517. PRELIMINARY HEARING.**

20 (a) **DETAIL OF HEARING OFFICER; WAIVER.**—Subsection (a)(1) of section 832 of title 10,
21 United States Code (article 32 of the Uniform Code of Military Justice), is amended—

22 (1) in subparagraph (A), by striking “hearing officer” and all that follows and
23 inserting “hearing officer detailed in accordance with subparagraph (C).”;

1 (2) in subparagraph (B), by striking “written waiver” and all that follows and
2 inserting the following: “written waiver to—

3 “(i) except as provided in clause (ii), the convening authority and the convening
4 authority determines that a hearing is not required; and

5 “(ii) with respect to charges and specifications over which the special victim
6 prosecutor is exercising authority in accordance with section 824a of this title (article 24a
7 of the Uniform Code of Military Justice), the special victim prosecutor and the special
8 victim prosecutor determines that a hearing is not required.”; and

9 (3) by adding at the end the following new subparagraph:

10 “(C)(i) Except as provided in clause (ii), the convening authority shall detail a hearing
11 officer.

12 “(ii) If a special victim prosecutor is exercising authority over the charges and
13 specifications subject to a preliminary hearing under this section (article), the special victim
14 prosecutor shall request a military judge or military magistrate to serve as the hearing officer,
15 and a military judge or military magistrate shall be provided, in accordance with regulations
16 prescribed by the President.”.

17 (b) REPORT OF PRELIMINARY HEARING OFFICER.—Subsection (c) of such section is
18 amended—

19 (1) in the heading, by inserting “OR SPECIAL VICTIM PROSECUTOR” after
20 “CONVENING AUTHORITY”; and

21 (2) in the matter preceding paragraph (1) by striking “to the convening authority”
22 and inserting “to the convening authority or, in the case of a preliminary hearing in which

1 the hearing officer is provided at the request of a special victim prosecutor, to the special
2 victim prosecutor.”.

3 **SEC. 518. ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR**
4 **TRIAL.**

5 Section 834 of title 10, United States Code (article 34 of the Uniform Code of Military
6 Justice), is amended—

7 (1) in subsection (a)(1) in the matter preceding subparagraph (A) in the first
8 sentence, by striking “Before referral” and inserting “Subject to subsection (c), before
9 referral”;

10 (2) in subsection (b), by striking “Before referral” and inserting “Subject to
11 subsection (c), before referral”;

12 (3) by redesignating subsections (c) and (d) as subsections (d) and (e),
13 respectively;

14 (4) by inserting after subsection (b) the following new subsection:

15 “(c) SPECIAL VICTIM OFFENSES.—A referral to a general or special court-martial for trial
16 of charges and specifications over which a special victim prosecutor exercises authority may
17 only be made—

18 “(1) by a special victim prosecutor; or

19 “(2) in the case of charges and specifications that do not allege a special victim
20 offense and for which a special victim prosecutor declines to prefer or, in the case of
21 charges and specifications preferred by a person other than a special victim prosecutor,
22 refer charges, by the convening authority in accordance with this section.”; and

1 (5) in subsection (e), as redesignated by paragraph (3) of this section, by inserting
2 “or, with respect to charges and specifications over which a special victim prosecutor
3 exercises authority in accordance with section 824a of this title (article 824a of the
4 Uniform Code of Military Justice), a special victim prosecutor,” after “convening
5 authority”.

6 **SEC. 519. FORMER JEOPARDY.**

7 Section 844(c) of title 10, United States Code (article 44(c) of the Uniform Code of
8 Military Justice), is amended—

9 (1) in paragraph (1) in the matter following subparagraph (B), by inserting “or the
10 special victim prosecutor” after “the convening authority”; and

11 (2) in paragraph (2) in the matter following subparagraph (B), by inserting “or the
12 special victim prosecutor” after “the convening authority”.

13 **SEC. 520. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE IN**
14 **TRIALS BY COURT-MARTIAL.**

15 Section 846(d)(2) of title 10, United States Code (article 46(d)(2) of the Uniform Code of
16 Military Justice), is amended—

17 (1) by striking “only if a general court-martial” and inserting the following: “only
18 if—

19 “(A) a general court-martial”;

20 (2) in subparagraph (A), as designated by paragraph (1) of this section, by striking
21 “a subpoena or a military judge” and inserting the following: “a subpoena;

22 “(B) a military judge”;

1 (3) in subparagraph (B), as designated by paragraph (2) of this section, by striking
2 the period at the end and inserting “; or”; and

3 (4) by adding at the end the following new subparagraph:

4 “(C) a special victim prosecutor issues such a subpoena.”.

5 **SEC. 521. PLEA AGREEMENTS.**

6 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—Subsection (a) of section 853a of title 10,
7 United States Code (article 53a of the Uniform Code of Military Justice), is amended—

8 (1) in paragraph (1), by striking “At any time” and inserting “Subject to paragraph
9 (3), at any time”; and

10 (2) by adding at the end the following new paragraph:

11 “(3) With respect to charges and specifications referred to court-martial by a special
12 victim prosecutor, a plea agreement under this section may only be entered into between a
13 special victim prosecutor and the accused. Such agreement shall be subject to the same
14 limitations and conditions applicable to other plea agreements under this section (article).”.

15 (b) BINDING EFFECT.—Subsection (d) of such section (article) is amended by inserting
16 after “parties” the following: “(including the convening authority and the special victim
17 prosecutor in the case of a plea agreement entered into under subsection (a)(3))”.

18 **SEC. 522. DETERMINATIONS OF IMPRACTICALITY OF REHEARING.**

19 (a) TRANSMITTAL AND REVIEW OF RECORDS.—Section 865(e)(3)(B) of title 10, United
20 States Code (article 65(e)(3)(B) of the Uniform Code of Military Justice), is amended—

21 (1) by striking “IMPRACTICAL.—If the Judge Advocate General” and inserting the
22 following: “IMPRACTICAL.—

1 “(i) IN GENERAL.—Subject to clause (ii), if the Judge Advocate
2 General”; and

3 (2) by adding at the end the following new clause:

4 “(ii) CASES REFERRED BY SPECIAL VICTIM PROSECUTOR.—If a case
5 was referred to trial by a special victim prosecutor, a special victim
6 prosecutor shall determine if a rehearing is impractical and shall dismiss
7 the charges if the special victim prosecutor so determines.”.

8 (b) COURTS OF CRIMINAL APPEALS.—Section 866(f)(1)(C) of title 10, United States Code
9 (article 66(f)(1)(C) of the Uniform Code of Military Justice), is amended—

10 (1) by striking “IMPRACTICABLE.—If the Court of Criminal Appeals” and
11 inserting the following: “IMPRACTICABLE.—

12 “(i) IN GENERAL.—Subject to clause (ii), if the Court of Criminal
13 Appeals”; and

14 (2) by adding at the end the following new clause:

15 “(ii) CASES REFERRED BY SPECIAL VICTIM PROSECUTOR.—If a case
16 was referred to trial by a special victim prosecutor, a special victim
17 prosecutor shall determine if a rehearing is impracticable and shall dismiss
18 the charges if the special victim prosecutor so determines.”.

19 (c) REVIEW BY THE COURT OF APPEALS FOR THE ARMED FORCES.—Section 867(e) of title
20 10, United States Code (article 67(e) of the Uniform Code of Military Justice), is amended by
21 adding at the end the following new sentence: “Notwithstanding the preceding sentence, if a case
22 was referred to trial by a special victim prosecutor, a special victim prosecutor shall determine if

1 a rehearing is impracticable and shall dismiss the charges if the special victim prosecutor so
2 determines.”.

3 (d) REVIEW BY JUDGE ADVOCATE GENERAL.—Section 869(c)(1)(D) of title 10, United
4 States Code (article 69(c)(1)(D) of the Uniform Code of Military Justice), is amended—

5 (1) by striking “If the Judge Advocate General” and inserting “(i) Subject to
6 clause (ii), if the Judge Advocate General”; and

7 (2) by adding at the end the following new clause:

8 “(ii) If a case was referred to trial by a special victim prosecutor, a special victim
9 prosecutor shall determine if a rehearing is impractical and shall dismiss the charges if the
10 special victim prosecutor so determines.”.

11 **SEC. 523. PUNITIVE ARTICLE ON SEXUAL HARASSMENT.**

12 (a) IN GENERAL.—Subchapter X of chapter 47 of title 10, United States Code (the
13 Uniform Code of Military Justice), is amended by inserting after section 920c (article 120c) the
14 following new section (article):

15 **“§ 920d. Art. 120d. Sexual harassment**

16 “(a) IN GENERAL.—Any person subject to this chapter who commits sexual harassment
17 against another person shall be punished as a court-martial may direct.

18 “(b) ELEMENTS.—A person subject to this chapter commits sexual harassment when—

19 “(1) such person knowingly—

20 “(A) makes a sexual advance;

21 “(B) demands or requests a sexual favor; or

22 “(C) engages in other conduct of a sexual nature;

1 “(2) the conduct described in paragraph (1) that such person committed is
2 unwelcome;

3 “(3) under the circumstances, such conduct would cause a reasonable person to—

4 “(A) believe that submission to such conduct would be made, either
5 explicitly or implicitly, a term or condition of a person’s military duties, job, pay,
6 career, benefits, or entitlements;

7 “(B) believe that submission to, or rejection of, such conduct would be
8 used as a basis for military career or employment decisions affecting that person;
9 or

10 “(C) perceive an intimidating, hostile, or offensive duty or working
11 environment due to the severity, repetitiveness, or pervasiveness of such conduct;
12 and

13 “(4) a person, who by some duty or military-related reason works or is associated
14 with the accused, did believe or perceive as described in subparagraph (A), (B), or (C) of
15 paragraph (3).

16 “(c) OTHER CONDUCT.—For purposes of subsection (b)(1)(C), whether other conduct is of
17 a sexual nature shall be dependent upon the circumstances of the act alleged and may include
18 conduct that, without context, would not appear to be sexual in nature.

19 “(d) LOCATION AND MEANS OF ACT.—An act constituting sexual harassment under this
20 section (article)—

21 “(1) may occur at any location and without regard to whether the victim or
22 accused is on or off duty at the time of the alleged act;

23 “(2) does not require physical proximity between the victim and the accused; and

1 “(3) may be committed through any means, including written, oral, online, or
2 other electronic means.”.

3 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such
4 subchapter is amended by inserting after the item relating to section 920c (article 120c) the
5 following new item:

 “920d. Art. 120d. Sexual harassment.”

6 **SEC. 524. CLARIFICATION OF APPLICABILITY OF DOMESTIC VIOLENCE AND**
7 **STALKING TO DATING PARTNERS.**

8 (a) ARTICLE 128B; DOMESTIC VIOLENCE.—Section 928b of title 10, United States Code
9 (article 128b of the Uniform Code of Military Justice), is amended—

10 (1) in the matter preceding paragraph (1), by striking “Any person” and inserting

11 “(a) IN GENERAL.—Any person”;

12 (2) in subsection (a), as designated by paragraph (1) of this section, by inserting

13 “a dating partner,” after “an intimate partner,” each place it appears; and

14 (3) by adding at the end the following new subsection:

15 “(b) DEFINITIONS.—In this section (article), the terms ‘dating partner’, ‘immediate
16 family’, and ‘intimate partner’ have the meaning given such terms in section 930 of this title
17 (article 130 of the Uniform Code of Military Justice).”.

18 (b) ARTICLE 130; STALKING.—Section 930 of such title (article 130 of the Uniform Code
19 of Military Justice) is amended—

20 (1) in subsection (a), by striking “or to his or her intimate partner” each place it
21 appears and inserting “to his or her intimate partner, or to his or her dating partner”;

22 (2) in subsection (b)—

1 (A) by redesignating paragraphs (3) through (5) as paragraphs (4) through
2 (6), respectively; and

3 (B) by inserting after paragraph (2) the following new paragraph:

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

7 “(A) the length of the relationship;

8 “(B) the type of relationship; and

9 “(C) the frequency of interaction between the persons involved in the
10 relationship.”.

11 **SEC. 525. SENTENCING REFORM.**

12 (a) ARTICLE 53; FINDINGS AND SENTENCING.—Section 853 of title 10, United States
13 Code (article 53 of the Uniform Code of Military Justice), is amended—

14 (1) in subsection (b), by amending paragraph (1) to read as follows:

15 “(1) GENERAL AND SPECIAL COURTS-MARTIAL.—Except as provided in
16 subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by
17 general or special court-martial, the military judge shall sentence the accused. The
18 sentence determined by the military judge constitutes the sentence of the court-
19 martial.”;

20 (2) in subsection (c)—

21 (A) by amending paragraph (1) to read as follows:

22 “(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for
23 which the court-martial may sentence the accused to death—

1 “(A) the members shall determine—

2 “(i) whether the sentence for that offense shall be death or life in
3 prison without eligibility for parole; or

4 “(ii) whether the matter shall be returned to the military judge for
5 determination of a lesser punishment; and

6 “(B) the military judge shall sentence the accused for that offense in
7 accordance with the determination of the members under subparagraph (A).”; and

8 (B) in paragraph (2), by striking “the court-martial” and inserting “the
9 military judge”.

10 (b) ARTICLE 53A; PLEA AGREEMENTS.—Section 853a of title 10, United States Code
11 (article 53a of the Uniform Code of Military Justice), as amended by section 521 of this Act, is
12 further amended—

13 (1) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e),
14 respectively; and

15 (2) by inserting after subsection (a) the following new subsection:

16 “(b) ACCEPTANCE OF PLEA AGREEMENT.—Subject to subsection (c), the military judge of
17 a general or special court-martial shall accept a plea agreement submitted by the parties, except
18 that—

19 “(1) in the case of an offense with a sentencing parameter under section 856 of
20 this title (article 56), the military judge may reject a plea agreement that proposes a
21 sentence that is outside the sentencing parameter if the military judge determines that the
22 proposed sentence is plainly unreasonable; and

1 “(2) in the case of an offense with no sentencing parameter under section 856 of
2 this title (article 56), the military judge may reject a plea agreement that proposes a
3 sentence if the military judge determines that the proposed sentence is plainly
4 unreasonable.”.

5 (c) ARTICLE 56; SENTENCING.—Section 856 of title 10, United States Code (article 56 of
6 the Uniform Code of Military Justice), is amended—

7 (1) in subsection (c)—

8 (A) in paragraph (1)—

9 (i) in subparagraph (C)(vii), by striking “and” at the end;

10 (ii) in subparagraph (D), by striking the period at the end and

11 inserting “; and”; and

12 (iii) by adding at the end the following new subparagraph:

13 “(E) the applicable sentencing parameters or sentencing criteria prescribed
14 under this section.”;

15 (B) by striking paragraphs (2) through (4) and inserting the following new
16 paragraphs:

17 “(2) APPLICATION OF SENTENCING PARAMETERS IN GENERAL AND SPECIAL COURTS-
18 MARTIAL.—

19 “(A) REQUIREMENT TO SENTENCE WITHIN PARAMETERS.—Except as
20 provided in subparagraph (B), in a general or special court-martial in which the
21 accused is convicted of an offense for which there is a sentencing parameter
22 under subsection (d), the military judge shall sentence the accused for that offense
23 within the applicable parameter.

1 “(B) EXCEPTION.—The military judge may impose a sentence outside a
2 sentencing parameter upon finding specific facts that warrant such a sentence. If
3 the military judge imposes a sentence outside a sentencing parameter under this
4 subparagraph, the military judge shall include in the record a written statement of
5 the factual basis for the sentence.

6 “(3) USE OF SENTENCING CRITERIA IN GENERAL AND SPECIAL COURTS-MARTIAL.—
7 In a general or special court-martial in which the accused is convicted of an offense for
8 which there are sentencing criteria under subsection (d), the military judge shall consider
9 the applicable sentencing criteria in determining the sentence for that offense.

10 “(4) OFFENSE-BASED SENTENCING IN GENERAL AND SPECIAL COURTS-MARTIAL.—
11 In announcing the sentence under section 853 of this title (article 53) in a general or
12 special court-martial, the military judge shall, with respect to each offense of which the
13 accused is found guilty, specify the term of confinement, if any, and the amount of the
14 fine, if any. If the accused is sentenced to confinement for more than one offense, the
15 military judge shall specify whether the terms of confinement are to run consecutively or
16 concurrently.

17 “(5) INAPPLICABILITY TO DEATH PENALTY.—Sentencing parameters and
18 sentencing criteria shall not apply to a determination of whether an offense should be
19 punished by death.

20 “(6) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—
21 (A) If an offense is subject to a sentence of confinement for life, a court-martial may
22 impose a sentence of confinement for life without eligibility for parole.

1 “(B) An accused who is sentenced to confinement for life without eligibility
2 for parole shall be confined for the remainder of the accused’s life unless—

3 “(i) the sentence is set aside or otherwise modified as a result of—

4 “(I) action taken by the convening authority or the Secretary
5 concerned; or

6 “(II) any other action taken during post-trial procedure or review
7 under any other provision of subchapter IX of this chapter (the Uniform
8 Code of Military Justice);

9 “(ii) the sentence is set aside or otherwise modified as a result of action
10 taken by a court of competent jurisdiction; or

11 “(iii) the accused receives a pardon or another form of Executive
12 clemency.”;

13 (2) by redesignating subsection (d) as subsection (e);

14 (3) by inserting after subsection (c) the following new subsection:

15 “(d) ESTABLISHMENT OF SENTENCING PARAMETERS AND SENTENCING CRITERIA.—

16 “(1) IN GENERAL.—The President shall prescribe regulations establishing
17 sentencing parameters and sentencing criteria in accordance with this subsection. Such
18 parameters and criteria—

19 “(A) shall cover sentences of confinement; and

20 “(B) may cover lesser punishments, as the President determines
21 appropriate.

22 “(2) SENTENCING PARAMETERS.—Sentencing parameters established under
23 paragraph (1) shall—

1 “(A) identify a delineated sentencing range for an offense that is
2 appropriate for a typical violation of the offense, taking into consideration—
3 “(i) the severity of the offense;
4 “(ii) the guideline or offense category that would apply to the
5 offense if the offense were tried in a United States district court;
6 “(iii) any military-specific sentencing factors; and
7 “(iv) the need for the sentencing parameter to be sufficiently broad
8 to allow for individualized consideration of the offense and the accused;
9 “(B) include no fewer than five and no more than twelve offense
10 categories;
11 “(C) assign each offense under this chapter to an offense category unless
12 the offense is identified as unsuitable for sentencing parameters under paragraph
13 (4)(F)(ii);
14 “(D) delineate the confinement range for each offense category by setting
15 an upper confinement limit and a lower confinement limit; and
16 “(E) be neutral as to the race, color, religion, national origin, ethnicity,
17 gender, gender identity, disability, sexual orientation, and socioeconomic status of
18 offenders.
19 “(3) SENTENCING CRITERIA.—Sentencing criteria established under paragraph (1)
20 shall identify offense-specific factors the military judge should consider and any
21 collateral effects of available punishments that may aid the military judge in determining
22 an appropriate sentence when there is no applicable sentencing parameter for a specific
23 offense.

1 “(4) MILITARY SENTENCING PARAMETERS AND CRITERIA BOARD.—

2 “(A) IN GENERAL.—There is established within the Department of Defense
3 a board, to be known as the ‘Military Sentencing Parameters and Criteria Board’
4 (referred to in this subsection as the ‘Board’).

5 “(B) VOTING MEMBERS.—The Board shall have five voting members, as
6 follows:

7 “(i) The four chief trial judges designated under section 826(g) of
8 this title (article 26(g)), except that, if the chief trial judge of the Coast
9 Guard is not available, the Judge Advocate General of the Coast Guard
10 may designate as a voting member a judge advocate of the Coast Guard
11 with substantial military justice experience.

12 “(ii) A trial judge of the Navy, designated under regulations
13 prescribed by the President, if the chief trial judges designated under
14 section 826(g) of this title (article 26(g)) do not include a trial judge of the
15 Navy.

16 “(iii) A trial judge of the Marine Corps, designated under
17 regulations prescribed by the President, if the chief trial judges designated
18 under section 826(g) of this title (article 26(g)) do not include a trial judge
19 of the Marine Corps.

20 “(C) NONVOTING MEMBERS.—The Attorney General, the Chief Judge of
21 the Court of Appeals for the Armed Forces, the Chairman of the Joint Chiefs of
22 Staff, and the General Counsel of the Department of Defense shall each designate
23 one nonvoting member of the Board.

1 “(D) CHAIR AND VICE-CHAIR.—The Secretary of Defense shall designate
2 one voting member as chair of the Board and one voting member as vice-chair.

3 “(E) VOTING REQUIREMENT.—An affirmative vote of at least three
4 members is required for any action of the Board under this subsection.

5 “(F) DUTIES OF BOARD.—The Board shall have the following duties:

6 “(i) As directed by the President, the Board shall submit to the
7 President for approval—

8 “(I) sentencing parameters for all offenses under this
9 chapter (other than offenses that the Board identifies as unsuitable
10 for sentencing parameters in accordance with clause (ii)); and

11 “(II) sentencing criteria to be used by military judges in
12 determining appropriate sentences for offenses that are identified
13 as unsuitable for sentencing parameters in accordance with clause
14 (ii).

15 “(ii) Identify each offense under this chapter that is unsuitable for
16 sentencing parameters. The Board shall identify an offense as unsuitable
17 for sentencing parameters if—

18 “(I) the nature of the offense is indeterminate and
19 unsuitable for categorization; and

20 “(II) there is no similar criminal offense under the laws of
21 the United States or the laws of the District of Columbia.

1 “(iii) In developing sentencing parameters and criteria, the Board
2 shall consider the sentencing data collected by the Military Justice Review
3 Panel pursuant to section 946(f)(2) of this title (article 146(f)(2)).

4 “(iv) In addition to establishing parameters for sentences of
5 confinement under clause (i)(I), the Board shall consider the
6 appropriateness of establishing sentencing parameters for punitive
7 discharges, fines, reductions, forfeitures, and other lesser punishments
8 authorized under this chapter.

9 “(v) The Board shall regularly—

10 “(I) review, and propose revision to, in consideration of
11 comments and data coming to the Board’s attention, the sentencing
12 parameters and sentencing criteria prescribed under paragraph (1);
13 and

14 “(II) submit to the President, through the Secretary of
15 Defense, proposed amendments to the sentencing parameters and
16 sentencing criteria, together with statements explaining the basis
17 for the proposed amendments.

18 “(vi) The Board shall develop means of measuring the degree to
19 which applicable sentencing, penal, and correctional practices are effective
20 with respect to the sentencing factors and policies set forth in this section.

21 “(vii) In fulfilling its duties and in exercising its powers, the Board
22 shall consult authorities on, and individual and institutional representatives
23 of, various aspects of the military criminal justice system. The Board shall

1 establish separate advisory groups consisting of individuals with current or
2 recent experience in command and in senior enlisted positions, individuals
3 with experience in the trial of courts-martial, and such other groups as the
4 Board deems appropriate.

5 “(viii) The Board shall submit to the President, through the
6 Secretary of Defense, proposed amendments to the rules for courts-martial
7 with respect to sentencing proceedings and maximum punishments,
8 together with statements explaining the basis for the proposed
9 amendments.

10 “(ix) The Board may issue non-binding policy statements to
11 achieve the Board’s purposes and to guide military judges in fashioning
12 appropriate sentences, including guidance on factors that may be relevant
13 in determining where in a sentencing parameter a specification may fall, or
14 whether a deviation outside of the sentencing range may be warranted.

15 “(x) The Federal Advisory Committee Act (5 U.S.C. App.) shall
16 not apply with respect to the Board or any advisory group established by
17 the Board.”; and

18 (4) in subsection (e)(1), as redesignated by paragraph (2) of this subsection—

19 (A) in subparagraph (A), by striking “or” at the end;

20 (B) by redesignating subparagraph (B) as subparagraph (C);

21 (C) by inserting after subparagraph (A) the following new subparagraph:

1 “(B) in the case of a sentence for an offense with a sentencing parameter
2 under this section, the sentence is a result of an incorrect application of the
3 parameter; or”;

4 (D) in subparagraph (C), as redesignated by subparagraph (B) of this
5 paragraph, by striking “, as determined in accordance with standards and
6 procedures prescribed by the President”.

7 (d) ARTICLE 66; COURTS OF CRIMINAL APPEALS.—Section 866 of title 10, United States
8 Code (article 66 of the Uniform Code of Military Justice), as amended by section 522 of this Act,
9 is further amended—

10 (1) in subsection (d)(1)(A), by striking the third sentence; and

11 (2) by amending subsection (e) to read as follows:

12 “(e) CONSIDERATION OF SENTENCE.—

13 “(1) IN GENERAL.—In considering a sentence on appeal, other than as provided in
14 section 856(e) of this title (article 56(e)), the Court of Criminal Appeals may consider—

15 “(A) whether the sentence violates the law;

16 “(B) whether the sentence is inappropriately severe—

17 “(i) if the sentence is for an offense for which there is no
18 sentencing parameter under section 856(d) of this title (article 56(d)); or

19 “(ii) in the case of an offense with a sentencing parameter under
20 section 856(d) of this title (article 56(d)), if the sentence is above the upper
21 range of such sentencing parameter;

1 “(C) in the case of a sentence for an offense with a sentencing parameter
2 under section 856(d) of this title (article 56(d)), whether the sentence is a result of
3 an incorrect application of the parameter;

4 “(D) whether the sentence is plainly unreasonable; and

5 “(E) in review of a sentence to death or to life in prison without eligibility
6 for parole determined by the members in a capital case under section 853(d) of
7 this title (article 53(d)), whether the sentence is otherwise appropriate, under rules
8 prescribed by the President.

9 “(2) RECORD ON APPEAL.—In an appeal under this subsection or section 856(e) of
10 this title (article 56(e)), other than review under subsection (b)(2), the record on appeal
11 shall consist of—

12 “(A) any portion of the record in the case that is designated as pertinent by
13 any party;

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

15 “(C) any information required by rule or order of the Court of Criminal
16 Appeals.”.

17 (e) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The amendments made by this section shall take effect on the
19 date that is two years after the date of the enactment of this Act and shall apply to
20 sentences adjudged in cases in which all findings of guilty are for offenses that occurred
21 after the date that is two years after the date of the enactment of this Act.

22 (2) IMPLEMENTATION OF SENTENCING PARAMETERS AND CRITERIA.—

1 (A) IN GENERAL.—The President shall prescribe regulations setting forth
2 the sentencing parameters and criteria required by subsection (d) of section 856 of
3 title 10, United States Code (article 56 of the Uniform Code of Military Justice),
4 as added by subsection (c) of this section.

5 (B) EFFECTIVE DATES.—The regulations under subparagraph (A) shall take
6 effect on a date determined by the President which shall be not later than four
7 years after the date of enactment of this Act and shall apply only to sentences
8 adjudged in cases in which all findings of guilty are for offenses that occurred
9 after the date on which the regulations required by subparagraph (A) are
10 prescribed.

11 (C) INTERIM AUTHORITY OF JUDGES.—If the regulations required by
12 subparagraph (A) have not been prescribed as of the date on which the
13 amendments made by this section take effect under paragraph (1), each sentence
14 adjudged in accordance with the amendments made by this section and the terms
15 of the effective date under paragraph (1) shall be made as if no sentencing
16 parameter or criteria for that offense has been prescribed until such time as such
17 regulations are issued that include such a sentencing parameter or criteria.

18 (f) REPEAL OF SECRETARIAL GUIDELINES ON SENTENCES FOR OFFENSES COMMITTED
19 UNDER THE UNIFORM CODE OF MILITARY JUSTICE.—Section 537 of the National Defense
20 Authorization Act for Fiscal Year 2020 (10 U.S.C. 856 note; Public Law 116–92) is repealed.

21 **SEC. 526. STUDY ON MILITARY COURT PROTECTIVE ORDERS AND**
22 **MANDATORY RESTITUTION.**

1 (a) STUDY.—The Secretary of Defense shall conduct a study on the feasibility and
2 advisability of—

3 (1) establishing authority for the issuance of military court protective orders that
4 would be enforceable in civilian Federal and state courts; and

5 (2) authorizing mandatory restitution as a component of the sentence for a
6 conviction of an offense under chapter 47 of title 10, United States Code (the Uniform
7 Code of Military Justice).

8 (b) REPORT.—Not later than April 30, 2022, the Secretary of Defense shall submit to the
9 Committees on Armed Services of the Senate and the House of Representatives a report
10 containing the results of the study required under subsection (a).

11 **SEC. 527. EFFECTIVE DATE.**

12 (a) IN GENERAL.—Except as provided in subsection (b) and in section 525(e), the
13 amendments made by this subtitle shall take effect on the date that is two years after the date of
14 the enactment of this Act and shall apply with respect to offenses that occur after that date.

15 (b) REGULATIONS.—

16 (1) REQUIREMENT.—The President shall prescribe regulations to carry out this
17 subtitle not later than two years after the date of the enactment of this Act.

18 (2) IMPACT OF DELAY OF ISSUANCE.—If the President does not prescribe
19 regulations to carry out this subtitle before the date that is two years after the date of the
20 enactment of this Act, the amendments made by this subtitle shall take effect on the date
21 on which such regulations are prescribed and shall apply with respect to offenses that
22 occur on or after that date.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how
the legislative text would amend existing law.]**

Section-by-Section Analysis

This proposal would transfer the authority to refer charges for special victim offenses and related offenses from a convening authority to a special victim prosecutor. The changes to law in this proposed subtitle that would execute the transfer, as well as make other improvements in the adjudication of alleged sex-related offenses, are as follows:

Section 511. Special victim prosecutors. This section would insert a new article 24a (10 U.S.C. § 824a) into title 10, United States Code, creating the positions of special victim prosecutor and assistant special victim prosecutor and prescribing their duties. Special victim prosecutors will have exclusive authority in special victim cases to—

- (A) refer charges and specifications for trial by a special or general court-martial;
- (B) enter into a plea agreement;
- (C) dismiss the charges and specifications on behalf of the Government or make a motion on behalf of the Government to dismiss the charges and specifications; and
- (D) determine whether any rehearing ordered by a judicial authority or other post-trial review authority is impracticable.

If a special victim prosecutor opts not to refer charges against a member of the Armed Forces in a special victim case, this section authorizes a duly authorized commander to take any administrative or disciplinary action against the member for an alleged special victim offense other than referral of charges to a special or general court-martial. In the event that the special victim prosecutor considers an alleged non-special victim offense in conjunction with one or more alleged special victim offenses and opts against referring charges for that alleged offense, a duly authorized commander may take any administrative or disciplinary action concerning that alleged non-special victim offense, including referral of charges to a special or general court-martial.

Section 512. Department of Defense policies with respect to special victim prosecutors. This section would insert a new section 1044f into title 10 concerning the prosecution of special victim offenses within the Department of Defense. The Secretary of Defense will prescribe mechanisms and procedures that the military departments will use to implement this subtitle's provisions concerning special victim prosecutors, assistant special victim prosecutors, and their authorities. Included in this guidance from the Secretary of Defense will be milestones that the military departments will be expected to meet to implement this subtitle. This section would also require the Secretaries of the military departments to establish within their offices an Office of Special Victims Prosecutors. Special victim prosecutors and assistant special victim prosecutors detailed within each military service would be assigned to the appropriate Office of Special Victims Prosecutors, whose head would report directly to the Secretary of the military department concerned.

The Secretary of Defense is authorized to create an Office of Special Victim Prosecutors within the Office of the Secretary of Defense, headed by a civilian director, in the event that the Secretary determines that a military department or a particular military service has failed to establish appropriate mechanisms and procedures to implement this subtitle. The special victim

prosecutors and assistant special victim prosecutors for the military department or particular military service that failed to implement this subtitle would then be transferred to the Office of Special Victim Prosecutors. Once a military department or particular military service that initially failed to implement this subtitle develops mechanisms and procedures that the Secretary of Defense deems sufficient, the Secretary of Defense may transfer special victim prosecutors and assistant special victim prosecutors back to that military department or particular military service. The Secretary of Defense may disestablish or reestablish the Office of Special Victim Prosecutors as warranted by the level of compliance of the Military Departments with this subtitle.

Section 513. Definition of military magistrate, special victim offense, and special victim prosecutor. This section amends article 1 of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. § 801) to define special victim offenses. The term “special victim offense” includes every allegation of a violation of the following UCMJ punitive articles: Article 117a (10 U.S.C. § 917a), Wrongful broadcast or distribution of intimate images; Article 120 (10 U.S.C. § 920), Rape and sexual assault generally; Article 120b (10 U.S.C. § 920b), Rape and sexual assault of a child; Article 120c (10 U.S.C. § 920c), Other sexual misconduct; Article 128b (10 U.S.C. § 928b), Domestic violence; Article 130 (10 U.S.C. § 930), Stalking; and Article 132 (10 U.S.C. § 932), Retaliation. The term “special victim offense” also includes conspiracies or solicitations to commit any of those offenses in violation of Articles 81 or 82 (10 U.S.C. §§ 881, 882). Finally, the term “special victim offense” includes any attempt to commit any of those offenses, any attempt to solicit the violation of one of any of those offenses, and any attempt to conspire to commit one of those offenses in violation of Article 80 (10 U.S.C. § 880). Under the new article 24a as proposed to be inserted by section 511, a special victim prosecutor would have exclusive authority to determine whether a case includes a special victim offense.

Section 514. Clarification relating to who may convene courts-martial. This section amends article 22 of the UCMJ (10 U.S.C. § 822) to provide that a general or special court-martial convening authority will not be deemed an accuser as a result of a special victim prosecutor referring charges to a court convened by that convening authority.

Section 515. Selection process for members to serve on courts-martial. This section amends article 25 of the UCMJ (10 U.S.C. § 825) to authorize the President to prescribe the manner in which general and special court-martial members are detailed. The President could exercise this authority to prescribe a method of detail in which commanders within the chain of command of either an accused or an alleged victim in a special victim case do not exercise discretion in the choice of court-martial members. Possible alternative methods include selection of court-martial members by a random method and selection of court-martial members by an administrative entity outside the chain of command of either the accused or an alleged victim. The proposed amendment would provide the President with flexibility to ensure that the selection method chosen is appropriate and to modify that selection method should the President determine it is not effective.

Section 516. Detail of trial counsel. This section adds a new subsection (e) to article 27 of the UCMJ (10 U.S.C. § 827) to specify who will represent the United States in special victim cases. In every such case, a special victim prosecutor or an assistant special victim prosecutor

must be detailed as trial counsel. A special victim prosecutor may also, in accordance with regulations prescribed by the President, detail an additional special victim prosecutor or assistant special victim prosecutor to serve as an assistant trial counsel. Finally, a special victim prosecutor may, in accordance with regulations prescribed by the President, request that a counsel who is not a special victim prosecutor or assistant special victim prosecutor be detailed as an assistant trial counsel in a special victim case. The latter authority could be used to seek the detail of a counsel assigned to the military installation where the alleged offense arose or where the case will be tried to assist the special victim prosecutor or assistant special victim prosecutor serving as the lead prosecutor in the case in circumstances where the assignment of such a counsel would be useful to the prosecution as determined by the special victim prosecutor.

Section 517. Preliminary hearing. This section amends article 32 of the UCMJ (10 U.S.C. § 832) to authorize a special victim prosecutor to convene a preliminary hearing and to receive the preliminary hearing officer's report. It also requires that the preliminary hearing officer in a special victim case be a military judge or military magistrate.

Section 518. Advice to convening authority before referral for trial. This section amends article 34 of the UCMJ (10 U.S.C. § 834) to provide a special victim prosecutor with exclusive authority to refer charges alleging special victim offenses for trial by a special or general court-martial. This section also reflects a convening authority's ability to refer for trial by a special or general court-martial a non-special victim offense over which a special victim prosecutor initially exercised authority but declined to refer charges.

Section 519. Former jeopardy. This section amends article 44 of the UCMJ (10 U.S.C. § 844) to reflect a special victims prosecutor's authority to dismiss charges or otherwise terminate a court-martial case in certain instances.

Section 520. Opportunity to obtain witnesses and other evidence in trials by court-martial. This section amends article 46 of the UCMJ (10 U.S.C. § 846) to authorize special victim prosecutors to issue pre-referral investigative subpoenas.

Section 521. Plea agreements. This section amends article 53a of the UCMJ (10 U.S.C. § 853a) to provide that in special victim cases, only a special victim prosecutor may enter into a plea agreement on behalf of the United States.

Section 522. Determinations of impracticality of rehearing. This section amends articles 65, 66, 67, and 69 of the UCMJ (10 U.S.C. §§ 865, 866, 867, and 869) to authorize only a special victim prosecutor to make a determination on behalf of the Government that a rehearing authorized by a military justice appellate authority in a special victim case is impracticable and, if so, to dismiss any affected charge.

Section 523. Punitive article on sexual harassment. This section establishes a stand-alone punitive article criminalizing sexual harassment.

Section 524. Clarification of applicability of domestic violence and stalking to dating partners. This section adds dating partners to the victims covered by the UCMJ's domestic

violence article (article 128b UCMJ (10 U.S.C. § 928b). It also adds a stalking victim's dating partner to the class of individuals the threatening of whom is addressed by the UCMJ's stalking article (article 130, UCMJ, 10 U.S.C. § 930). It also provides a definition of dating partner modeled on that in 18 U.S.C. § 2266.

Section 525. Sentencing Reform. This section amends various UCMJ articles to provide for judge-alone sentencing in all non-capital courts-martial. This change will better align military sentencing practice with Federal civilian sentencing practice, as well as the practice in the majority of state jurisdictions. Judicial sentencing with the benefit of nonbinding sentencing parameters and criteria will promote greater uniformity and consistency in court-martial sentences as well as enhanced efficiency by allowing court-martial members in non-capital cases to resume their normal duties once findings are adjudged.

This section provides that, for capital offenses, members will determine whether the sentence will include death, life without eligibility for parole, or such other lesser punishments as may be determined by the military judge. The military judge will then sentence the accused in accordance with the determination of the members, while adjudging such other lesser punishments as the military judge deems appropriate in accordance with regulations prescribed by the President.

Implementing rules will address judge-alone sentencing procedures, including with respect to: releasing the members, subject to recall, after the findings are announced in a non-capital case; the admissibility of sentencing information offered by the parties and the grounds for objection to such information; the rights of victims to participate in sentencing proceedings; the use of victim impact statements during sentencing; and the duties of trial and defense counsel before and during the proceeding. All sentences to confinement adjudged under these provisions will be segmented, with individual sentences to confinement adjudged for each offense of which the accused is convicted followed by a judicial determination of which portions of the confinement will run concurrently and which consecutively.

As in many civilian criminal justice systems, the nonbinding sentencing parameter for an offense will set a boundary on the judge's discretion, subject to a departure for case-specific reasons set forth by the judge on the record. Sentencing parameters are not required for those offenses for which it would be impracticable to set a parameter, such as unique military offenses that vary greatly in seriousness depending on the context. For such offenses, the sentence will be informed by sentencing criteria, which are factors that a judge must consider when adjudging a sentence for the offense, but which do not prescribe a specific punishment. The implementation of nonbinding parameters and criteria will reflect the best practices at the Federal and state level, and will replace the current practice of members or military judges adjudging sentences with little guidance.

For offenses with nonbinding parameters, military judges will retain discretion to sentence outside of the parameter range to fashion an appropriate individualized sentence. In cases where the military judge departs from a parameter's range, he or she must set forth on the record the reasons for the departure. Such departures may then be challenged on appeal by either

the government or the defense, with the reviewing courts having the benefit of the military judge's explanation for the departure.

This section also establishes within the Department of Defense a permanent Military Sentencing Parameters and Criteria Board, initially tasked with proposing to the President the military justice system's nonbinding sentencing parameters and criteria. After the President issues the nonbinding sentencing parameters and criteria, the Board will assess their performance and propose revisions as warranted.

The President will choose the date on which the nonbinding sentencing parameters and criteria become effective, which may be no more than four years from the date of enactment. This extended phase-in period, which may be longer than that provided for other portions of this subtitle, is designed to allow for careful study of nonbinding sentencing parameters and criteria before they are adopted by the President. Once adopted, to avoid *ex post facto* concerns, the nonbinding parameters and criteria will apply only in cases in which all findings of guilty are for offenses that occurred after the date on which the President issued them.

Section 526. Study on military court protective orders and mandatory restitution.

This section would direct the Secretary of Defense to conduct a study on the feasibility and advisability of providing authority for military court-issued protective orders and for authorizing mandatory restitution as part of sentencing under the UCMJ. Court-issued protective orders and mandatory restitution are both used in civilian justice systems and the Department is considering whether either or both might be useful in the context of the UCMJ, but believes further study is needed to gauge the impact and usefulness of both ideas.

Section 527. Effective date. This section establishes the effective date of two years after the date of enactment for the provisions in this subtitle other than implementation of nonbinding sentencing parameters and criteria, which is addressed separately. This section also includes a savings clause that will apply if the regulations necessary to implement the provisions in this subtitle are not issued within two years of enactment.

Changes to Existing Law: This proposal would make the following changes to title 10, United States Code, and the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92):

Title 10, United States Code

§ 801. Article 1. Definitions

In this chapter (the Uniform Code of Military Justice):

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

* * * * *

(11) The term “military magistrate” means a commissioned officer certified for duty as a military magistrate in accordance with section 826a of this title (article 26a of the Uniform Code of Military Justice).

* * * * *

(17) The term “special victim offense” means—

(A) an offense under section 917a (article 117a), section 920 (article 120), section 920b (article 120b), section 920c (article 120c), section 920d (article 120d), section 928b (article 128b), section 930 (article 130), or section 932 (article 132) of this chapter (the Uniform Code of Military Justice);

(B) a conspiracy to commit an offense specified in subparagraph (A) as punishable under section 881 of this title (article 81);

(C) a solicitation to commit an offense specified in subparagraph (A) as punishable under section 882 of this title (article 82); or

(D) an attempt to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 880 of this title (article 80).

(18) The term “special victim prosecutor” means a judge advocate detailed as a special victim prosecutor in accordance with section 824a of this title (article 24a of the Uniform Code of Military Justice).

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of Defense;

(3) the commanding officer of a unified or specified combatant command;

(4) the Secretary concerned;

(5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(6) the commander of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force, Marine Corps, or the commanding officer of a corresponding unit of the Space Force;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b)(1) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(2) A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a general court-martial to which charges and specifications

were referred by a special victim prosecutor in accordance with this chapter (the Uniform Code of Military Justice).

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by-

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force or Space Force military installation, auxiliary air field, or other place where members of the Army the Air Force, or the Space Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force or a corresponding unit of the Space Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- (7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b)(1) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(2) A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special court-martial to which charges and specifications were referred by a special victim prosecutor in accordance with this chapter (the Uniform Code of Military Justice).

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

- (A) the membership of the court-martial be comprised entirely of officers; or
- (B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When convening a court-martial, the convening authority shall detail as members thereof members of the armed forces under such regulations as the President may prescribe.

~~(12)~~ When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

~~(23) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament.~~ No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

~~(34)~~ The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed

for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel, defense counsel, or assistant defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c)(1) Defense counsel and assistant defense counsel detailed for a special court-martial shall have the qualifications set forth in subsection (b).

(2) Trial counsel and assistant trial counsel detailed for a special court-martial and assistant trial counsel detailed for a general court-martial must be determined to be competent to perform such duties by the Judge Advocate General, under such rules as the President may prescribe.

(d) To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(e)(1) For each general and special court-martial for which charges and specifications were referred by a special victim prosecutor—

(A) a special victim prosecutor or an assistant special victim prosecutor shall be detailed as trial counsel;

(B) a special victim prosecutor may detail a special victim prosecutor or an assistant special victim prosecutor as an assistant trial counsel; and

(C) a special victim prosecutor may request that a counsel other than a special victim prosecutor or assistant special victim prosecutor be detailed as an assistant trial counsel.

(2) Details of counsel under this subsection shall be made in accordance with regulations prescribed by the President.

§ 832. Art. 32. Preliminary hearing required before referral to general court-martial

(a) IN GENERAL.-(1)(A) Except as provided in subparagraph (B), a preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial. The

preliminary hearing shall be conducted by an impartial hearing officer detailed in accordance with subparagraph (C), detailed by the convening authority in accordance with subsection (b).

(B) Under regulations prescribed by the President, a preliminary hearing need not be held if the accused submits a written waiver to—

(i) except as provided in clause (ii), the convening authority and the convening authority determines that a hearing is not required; and

(ii) with respect to charges and specifications over which the special victim prosecutor is exercising authority in accordance with section 824a of this title (article 24a of the Uniform Code of Military Justice), the special victim prosecutor and the special victim prosecutor determines that a hearing is not required.

(C)(i) Except as provided in clause (ii), the convening authority shall detail a hearing officer.

(ii) If a special victim prosecutor is exercising authority over the charges and specifications subject to a preliminary hearing under this section (article), the special victim prosecutor shall request a military judge or military magistrate to serve as the hearing officer, and a military judge or military magistrate shall be provided, in accordance with regulations prescribed by the President..

(2) The purpose of the preliminary hearing shall be limited to determining the following:

(A) Whether or not the specification alleges an offense under this chapter.

(B) Whether or not there is probable cause to believe that the accused committed the offense charged.

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense.

(D) A recommendation as to the disposition that should be made of the case.

(b) HEARING OFFICER.—(1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who—

(A) whenever practicable, shall be a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)); or

(B) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of a hearing officer under paragraph (1)(B), a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)) shall be available to provide legal advice to the hearing officer.

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

(c) REPORT TO CONVENING AUTHORITY OR SPECIAL VICTIM PROSECUTOR.—After a preliminary hearing under this section, the hearing officer shall submit to the convening authority or, in the case of a preliminary hearing in which the hearing officer is provided at the request of a special victim prosecutor, to the special victim prosecutor, a written report (accompanied by a recording of the preliminary hearing under subsection (e)) that includes the following:

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a)(2), including a summary of relevant witness testimony and documentary evidence presented at the

hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial.

(2) Recommendations for any necessary modifications to the form of the charges or specifications.

(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that, under such rules as the President may prescribe, is relevant to disposition under sections 830 and 834 of this title (articles 30 and 34).

(4) A statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (f).

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§ 834. Art. 34. Advice to convening authority before referral for trial

(a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Subject to subsection (c), before ~~Before~~ referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense.

(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Subject to subsection (c), before ~~Before~~ referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(c) SPECIAL VICTIM OFFENSES.— A referral to a general or special court-martial for trial of charges and specifications over which a special victim prosecutor exercises authority may only be made—

(1) by a special victim prosecutor; or

(2) in the case of charges and specifications that do not allege a special victim offense and for which a special victim prosecutor declines to prefer or, in the case of charges and specifications preferred by a person other than a special victim prosecutor, refer charges, by the convening authority in accordance with this section.

(ed) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

- (1) to correct errors in form; and
- (2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

(de) REFERRAL DEFINED.—In this section, the term “referral” means the order of a convening authority or, with respect to charges and specifications over which a special victim prosecutor exercises authority in accordance with section 824a of this title (article 824a of the Uniform Code of Military Justice), a special victim prosecutor, that charges and specifications against an accused be tried by a specified court-martial.

§ 844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c)(1) A court-martial with a military judge alone is a trial in the sense of this section (article) if, without fault of the accused—

(A) after introduction of evidence; and

(B) before announcement of findings under section 853 of this title (article 53); the case is dismissed or terminated by the convening authority or the special victim prosecutor or on motion of the prosecution for failure of available evidence or witnesses.

(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

(B) before announcement of findings under section 853 of this title (article 53); the case is dismissed or terminated by the convening authority or the special victim prosecutor or on motion of the prosecution for failure of available evidence or witnesses.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have

equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

(1) before a court-martial, military commission, or court of inquiry;

(2) at a deposition under section 849 of this title (article 49); or

(3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

(A) for a court-martial, military commission, or court of inquiry;

(B) for a deposition under section 849 of this title (article 49);

(C) for an investigation of an offense under this chapter; or

(D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if—

(A) a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena; ~~or~~

(B) a military judge issues such a subpoena pursuant to section 830a of this title (article 30a); ~~or~~

(C) a special victim prosecutor issues such a subpoena.

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

(1) order that the subpoena or other process be modified or withdrawn, as appropriate; or

(2) order the person to comply with the subpoena or other process.

§ 853. Art. 53. Findings and sentencing

(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) SENTENCING GENERALLY.—

~~(1) GENERAL AND SPECIAL COURTS-MARTIAL.—~~

~~(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court martial, the military judge shall sentence the accused.~~

~~(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense by general or special court martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.~~

~~(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.~~

(1) GENERAL AND SPECIAL COURTS-MARTIAL.—Except as provided in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused. The sentence determined by the military judge constitutes the sentence of the court-martial.

(2) SUMMARY COURTS-MARTIAL.—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

(c) SENTENCING FOR CAPITAL OFFENSES.—

~~(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court martial may sentence the accused to death, the members shall determine whether the sentence for that offense shall be death or a lesser authorized punishment.~~

(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death—

(A) the members shall determine—

(i) whether the sentence for that offense shall be death or life in prison without eligibility for parole; or

(ii) whether the matter shall be returned to the military judge for determination of a lesser punishment; and

(B) the military judge shall sentence the accused for that offense in accordance with the determination of the members under subparagraph (A).

(2) LESSER AUTHORIZED PUNISHMENTS.—In accordance with regulations prescribed by the President, the ~~court-martial~~ military judge may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

(3) OTHER NON-CAPITAL OFFENSES.—In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in

accordance with subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

§ 853a. Art. 53a. Plea agreements

(a) IN GENERAL.—(1) Subject to paragraph (3), at ~~At~~ any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(3) With respect to charges and specifications referred to court-martial by a special victim prosecutor, a plea agreement under this section may only be entered into between a special victim prosecutor and the accused. Such agreement shall be subject to the same limitations and conditions applicable to other plea agreements under this section (article).

(b) ACCEPTANCE OF PLEA AGREEMENT.—Subject to subsection (c), the military judge of a general or special court-martial shall accept a plea agreement submitted by the parties, except that—

(1) in the case of an offense with a sentencing parameter under section 856 of this title (article 56), the military judge may reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable; and

(2) in the case of an offense with no sentencing parameter under section 856 of this title (article 56), the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable.

(bc) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2));

(4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.

(ed) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(de) BINDING EFFECT OF PLEA AGREEMENT.— Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties (including the convening authority and the special victim prosecutor in the case of a plea agreement entered into under subsection (a)(3)) and the court-martial.

§ 856. Art. 56. Sentencing

(a) SENTENCE MAXIMUMS.—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) SENTENCE MINIMUMS FOR CERTAIN OFFENSES.—(1) Except as provided in subsection (d) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

(c) IMPOSITION OF SENTENCE.—

(1) IN GENERAL.—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on—

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence—

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

- (iv) to promote adequate deterrence of misconduct;
- (v) to protect others from further crimes by the accused;
- (vi) to rehabilitate the accused; and
- (vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and
- (D) the sentences available under this chapter; and
- (E) the applicable sentencing parameters or sentencing criteria prescribed under this section.

~~(2) SENTENCING BY MILITARY JUDGE.— In announcing the sentence in a general or special court-martial in which the accused is sentenced by a military judge alone under section 853 of this title (article 53), the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.~~

~~(3) SENTENCING BY MEMBERS.— In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.~~

~~(4) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.— (A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.~~

~~(B) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—~~

~~(i) the sentence is set aside or otherwise modified as a result of—~~

~~(I) action taken by the convening authority or the Secretary concerned; or~~

~~(II) any other action taken during post-trial procedure and review under any other provision of subchapter IX of this chapter;~~

~~(ii) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or~~

~~(iii) the accused is pardoned.~~

(2) APPLICATION OF SENTENCING PARAMETERS IN GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) REQUIREMENT TO SENTENCE WITHIN PARAMETERS.—Except as provided in subparagraph (B), in a general or special court-martial in which the accused is convicted of an offense for which there is a sentencing parameter under subsection (d), the military judge shall sentence the accused for that offense within the applicable parameter.

(B) EXCEPTION.—The military judge may impose a sentence outside a sentencing parameter upon finding specific facts that warrant such a sentence. If the military judge imposes a sentence outside a sentencing parameter under this subparagraph, the military judge shall include in the record a written statement of the factual basis for the sentence.

(3) USE OF SENTENCING CRITERIA IN GENERAL AND SPECIAL COURTS-MARTIAL.—In a general or special court-martial in which the accused is convicted of an offense for

which there are sentencing criteria under subsection (d), the military judge shall consider the applicable sentencing criteria in determining the sentence for that offense.

(4) OFFENSE-BASED SENTENCING IN GENERAL AND SPECIAL COURTS-MARTIAL.—In announcing the sentence under section 853 of this title (article 53) in a general or special court-martial, the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(5) INAPPLICABILITY TO DEATH PENALTY.—Sentencing parameters and sentencing criteria shall not apply to a determination of whether an offense should be punished by death.

(6) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—(A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(i) the sentence is set aside or otherwise modified as a result of—

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure or review under any other provision of subchapter IX of this chapter (the Uniform Code of Military Justice);

(ii) the sentence is set aside or otherwise modified as a result of action taken by a court of competent jurisdiction; or

(iii) the accused receives a pardon or another form of Executive clemency.

(d) ESTABLISHMENT OF SENTENCING PARAMETERS AND SENTENCING CRITERIA.—

(1) IN GENERAL.—The President shall prescribe regulations establishing sentencing parameters and sentencing criteria in accordance with this subsection. Such parameters and criteria—

(A) shall cover sentences of confinement; and

(B) may cover lesser punishments, as the President determines appropriate.

(2) SENTENCING PARAMETERS.—Sentencing parameters established under paragraph (1) shall—

(A) identify a delineated sentencing range for an offense that is appropriate for a typical violation of the offense, taking into consideration—

(i) the severity of the offense;

(ii) the guideline or offense category that would apply to the offense if the offense were tried in a United States district court;

(iii) any military-specific sentencing factors; and

(iv) the need for the sentencing parameter to be sufficiently broad to allow for individualized consideration of the offense and the accused;

(B) include no fewer than five and no more than twelve offense categories;

(C) assign each offense under this chapter to an offense category unless the offense is identified as unsuitable for sentencing parameters under paragraph (4)(F)(ii);

(D) delineate the confinement range for each offense category by setting an upper confinement limit and a lower confinement limit; and

(E) be neutral as to the race, color, religion, national origin, ethnicity, gender, gender identity, disability, sexual orientation, and socioeconomic status of offenders.

(3) SENTENCING CRITERIA.—Sentencing criteria established under paragraph (1) shall identify offense-specific factors the military judge should consider and any collateral effects of available punishments that may aid the military judge in determining an appropriate sentence when there is no applicable sentencing parameter for a specific offense.

(4) MILITARY SENTENCING PARAMETERS AND CRITERIA BOARD.—

(A) IN GENERAL.—There is established within the Department of Defense a board, to be known as the ‘Military Sentencing Parameters and Criteria Board’ (referred to in this subsection as the ‘Board’).

(B) VOTING MEMBERS.—The Board shall have five voting members, as follows:

(i) The four chief trial judges designated under section 826(g) of this title (article 26(g)), except that, if the chief trial judge of the Coast Guard is not available, the Judge Advocate General of the Coast Guard may designate as a voting member a judge advocate of the Coast Guard with substantial military justice experience.

(ii) A trial judge of the Navy, designated under regulations prescribed by the President, if the chief trial judges designated under section 826(g) of this title (article 26(g)) do not include a trial judge of the Navy.

(iii) A trial judge of the Marine Corps, designated under regulations prescribed by the President, if the chief trial judges designated under section 826(g) of this title (article 26(g)) do not include a trial judge of the Marine Corps.

(C) NONVOTING MEMBERS.—The Attorney General, the Chief Judge of the Court of Appeals for the Armed Forces, the Chairman of the Joint Chiefs of Staff, and the General Counsel of the Department of Defense shall each designate one nonvoting member of the Board.

(D) CHAIR AND VICE-CHAIR.—The Secretary of Defense shall designate one voting member as chair of the Board and one voting member as vice-chair.

(E) VOTING REQUIREMENT.—An affirmative vote of at least three members is required for any action of the Board under this subsection.

(F) DUTIES OF BOARD.—The Board shall have the following duties:

(i) As directed by the President, the Board shall submit to the President for approval—

(I) sentencing parameters for all offenses under this chapter (other than offenses that the Board identifies as unsuitable for sentencing parameters in accordance with clause (ii)); and

(II) sentencing criteria to be used by military judges in determining appropriate sentences for offenses that are identified as unsuitable for sentencing parameters in accordance with clause (ii).

(ii) Identify each offense under this chapter that is unsuitable for sentencing parameters. The Board shall identify an offense as unsuitable for sentencing parameters if—

(I) the nature of the offense is indeterminate and unsuitable for categorization; and

(II) there is no similar criminal offense under the laws of the United States or the laws of the District of Columbia.

(iii) In developing sentencing parameters and criteria, the Board shall consider the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of this title (article 146(f)(2)).

(iv) In addition to establishing parameters for sentences of confinement under clause (i)(I), the Board shall consider the appropriateness of establishing sentencing parameters for punitive discharges, fines, reductions, forfeitures, and other lesser punishments authorized under this chapter.

(v) The Board shall regularly—

(I) review, and propose revision to, in consideration of comments and data coming to the Board's attention, the sentencing parameters and sentencing criteria prescribed under paragraph (1); and

(II) submit to the President, through the Secretary of Defense, proposed amendments to the sentencing parameters and sentencing criteria, together with statements explaining the basis for the proposed amendments.

(vi) The Board shall develop means of measuring the degree to which applicable sentencing, penal, and correctional practices are effective with respect to the sentencing factors and policies set forth in this section.

(vii) In fulfilling its duties and in exercising its powers, the Board shall consult authorities on, and individual and institutional representatives of, various aspects of the military criminal justice system. The Board shall establish separate advisory groups consisting of individuals with current or recent experience in command and in senior enlisted positions, individuals with experience in the trial of courts-martial, and such other groups as the Board deems appropriate.

(viii) The Board shall submit to the President, through the Secretary of Defense, proposed amendments to the rules for courts-martial with respect to sentencing proceedings and maximum punishments, together with statements explaining the basis for the proposed amendments.

(ix) The Board may issue non-binding policy statements to achieve the Board's purposes and to guide military judges in fashioning appropriate sentences, including guidance on factors that may be relevant

in determining where in a sentencing parameter a specification may fall, or whether a deviation outside of the sentencing range may be warranted.

(x) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board or any advisory group established by the Board.

(de) APPEAL OF SENTENCE BY THE UNITED STATES.—(1) With the approval of the Judge Advocate General concerned, and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

(A) the sentence violates the law; or

(B) in the case of a sentence for an offense with a sentencing parameter under this section, the sentence is a result of an incorrect application of the parameter; or

~~(BC) the sentence is plainly unreasonable, as determined in accordance with standards and procedures prescribed by the President.~~

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

§ 865. Art. 65. Transmittal and review of records

(a) TRANSMITTAL OF RECORDS.—

(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

* * * * *

(e) REMEDY.—

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

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

(3) REMEDY WITHOUT REHEARING.—

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

(B) DISMISSAL WHEN REHEARING IMPRACTICAL.—

(i) IN GENERAL.—Subject to clause (ii), if If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(ii) CASES REFERRED BY SPECIAL VICTIM PROSECUTOR.—If a case was referred to trial by a special victim prosecutor, a special victim prosecutor shall determine if a rehearing is impracticable and shall dismiss the charges if the special victim prosecutor so determines.

§ 866. Art. 66. Courts of Criminal Appeals

(a) COURTS OF CRIMINAL APPEALS.—

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

(2) ADDITIONAL QUALIFICATIONS.—In addition to any other qualifications specified in paragraph (1), any commissioned officer or civilian assigned as an appellate military judge to a Court of Criminal Appeals shall have not fewer than 12 years of experience in the practice of law before such assignment.

* * * * *

(d) DUTIES.—

(1) CASES APPEALED BY ACCUSED.—

(A) IN GENERAL.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B). ~~The Court may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.~~

(B) FACTUAL SUFFICIENCY REVIEW.—(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

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

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

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

~~(A) whether the sentence violates the law; and~~

~~(B) whether the sentence is plainly unreasonable.~~

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

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

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

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

(e) CONSIDERATION OF SENTENCE.—

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

(A) whether the sentence violates the law;

(B) whether the sentence is inappropriately severe—

(i) if the sentence is for an offense for which there is no sentencing parameter under section 856(d) of this title (article 56(d)); or

(ii) in the case of an offense with a sentencing parameter under section 856(d) of this title (article 56(d)), if the sentence is above the upper range of such sentencing parameter;

(C) in the case of a sentence for an offense with a sentencing parameter under section 856(d) of this title (article 56(d)), whether the sentence is a result of an incorrect application of the parameter;

(D) whether the sentence is plainly unreasonable; and

(E) in review of a sentence to death or to life in prison without eligibility for parole determined by the members in a capital case under section 853(d) of this title (article 53(d)), whether the sentence is otherwise appropriate, under rules prescribed by the President.

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

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

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

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

(f) LIMITS OF AUTHORITY.—

(1) SET ASIDE OF FINDINGS.—

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

(i) may affirm any lesser included offense; and

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

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

(C) DISMISSAL WHEN REHEARING IMPRACTICABLE.—

(i) IN GENERAL.—Subject to clause (ii), if the Court of Criminal Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

(ii) CASES REFERRED BY SPECIAL VICTIM PROSECUTOR.—If a case was referred to trial by a special victim prosecutor, a special victim prosecutor shall determine if a rehearing is impracticable and shall dismiss the charges if the special victim prosecutor so determines.

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

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

(B) order a rehearing.

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

* * * * *

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

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

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

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

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

* * * * *

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Notwithstanding the preceding sentence, if a case was referred to trial by a special victim prosecutor, a special victim prosecutor shall determine if a rehearing is impracticable and shall dismiss the charges if the special victim prosecutor so determines.

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

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

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

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

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

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

(D)(i) Subject to clause (ii), if the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(ii) If a case was referred to trial by a special victim prosecutor, a special victim prosecutor shall determine if a rehearing is impractical and shall dismiss the charges if the special victim prosecutor so determines.

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

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§ 928b. Art. 128b. Domestic violence

(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 (article), the terms “dating partner”, “immediate family”, and “intimate partner” have the meaning given such terms in section 930 of this title (article 130 of the Uniform Code of Military Justice).

§ 930. Art. 130. Stalking

(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, ~~or~~ 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, ~~or~~ 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, ~~or~~ 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; and

(C) the frequency of interaction 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.

**National Defense Authorization Act for Fiscal Year 2020
(Public Law 116-92)**

~~SEC. 537. GUIDELINES ON SENTENCES FOR OFFENSES COMMITTED UNDER THE UNIFORM CODE OF MILITARY JUSTICE.~~

~~(a) DEVELOPMENT OF GUIDELINES.— Not later than the date specified in subsection (d), the Secretary of Defense shall develop nonbinding guidelines on sentences for offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). The guidelines shall provide the sentencing authority with a suggested range of punishments, including suggested ranges of confinement, that will generally be appropriate for a violation of each offense under such chapter.~~

~~(b) SENTENCING DATA.— In developing the guidelines for sentences under subsection (a), the Secretary of Defense shall take into account the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of title 10, United States Code (article 146(f)(2) of the Uniform Code of Military Justice).~~

~~(c) SUBMITTAL TO CONGRESS.— Not later than the date specified in subsection (d), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives —~~

- ~~(1) the guidelines for sentences developed under subsection (a); and~~
- ~~(2) an assessment of the feasibility and advisability of implementing such guidelines in panel sentencing cases.~~

~~(d) DATE SPECIFIED.— The date specified in this subsection is the date that is not later than one year after the date on which the first report of the Military Justice Review Panel is submitted to the Committees on Armed Services of the Senate and the House of Representatives pursuant to section 946(f)(5) of title 10, United States Code (article 146(f)(5) of the Uniform Code of Military Justice).~~