

Department of Defense Forwards to Congress Proposed Changes to the Uniform Code of Military Justice
December 28, 2015

Today the Department of Defense forwarded to Congress a legislative proposal to reform the Uniform Code of Military Justice, the statutory framework of the military justice system. The proposal is based on the recommendations of the Military Justice Review Group, which conducted a detailed analysis of each Article of the UCMJ, including the historical background of the UCMJ, current practice, and comparison to federal civilian law.

In October 2013, former Secretary of Defense Chuck Hagel, in response to a request from the senior uniformed leadership, directed the review of the UCMJ and its implementation in the Manual for Courts-Martial. He also directed the review to consider the recommendations of a separate, congressionally-established panel that examined the systems used to investigate, prosecute and adjudicate adult sexual assault and related offenses in the military. Each of the military services detailed military personnel to serve as members of the Military Justice Review Group. Andrew S. Effron, former Chief Judge of the United States Court of Appeals for the Armed Forces, serves as Director of the MJRG.

“The services assigned a highly talented group of individuals to the MJRG,” said Effron. “Their comprehensive recommendations will contribute to the positive evolution of the military justice system.”

The Department’s proposal is the first comprehensive military justice reform package submitted to Congress by the Department of Defense in more than 30 years. The proposed legislation includes 37 statutory additions to the UCMJ, and substantive amendments to 68 current provisions of the UCMJ. Among the major reforms, the proposed legislation would:

- Strengthen the structure of the military justice system by: establishing selection criteria for military judges and mandating tour lengths; authorizing military judges to handle specified legal issues prior to referral of a case to court-martial; establishing the authority for military magistrates to preside over specified pre-referral matters; establishing a military judge-alone special court-martial similar to the judge-alone forum in civilian proceedings, with confinement limited to a maximum of six months and no punitive discharge; requiring issuance of guidance on the disposition of criminal cases similar to the United States Attorneys Manual, tailored to military needs; and mandating additional training for commanders and convening authorities focused on the proper exercise of UCMJ authority.
- Enhance fairness and efficiency in pretrial and trial procedures by: facilitating victim input on disposition decisions and providing for public access to court documents and pleadings; expanding the authority to subpoena documents during criminal investigations; replacing the current variable panel (military jury) sizes with a standardized number of panel members (military jurors) and a consistent voting percentage in order to convict in noncapital cases (75%); and requiring learned defense counsel in capital trials and appeals.
- Modernize military sentencing by: replacing the current sentencing standard with a system of judicial discretion guided by parameters and criteria; ensuring each offense receives separate consideration for purposes of sentencing to confinement; and providing for effective implementation of sentencing reforms by establishing sentencing by military judges in all non-capital trials.

- Streamline the post-trial process by eliminating redundant paperwork and requiring an entry of judgment by the military judge similar to federal civilian practice to mark the end of a court-martial.
- Reform military appellate practice by: providing servicemembers, like their civilian counterparts, with the opportunity to obtain judicial review in all cases; transforming the automatic appeal of cases to the service Courts of Criminal Appeals into an appeal of right in which the accused, upon advice of appellate defense counsel, would determine whether to file an appeal; focusing the appeal on issues raised by the parties and placing the burden to demonstrate factual insufficiency on the accused; establishing standards to review errors in guilty pleas similar to that in federal criminal cases; and permitting the government to appeal a sentence under conditions similar to those applied by federal civilian courts of appeals.
- Update the punitive articles by proposing new offenses, including Article 93a (Prohibited activities with military recruits and trainee by person in position of special trust; Article 121a (Fraudulent use of credit and debit cards); Article 123 (Offense concerning government computers); and Article 132 (Retaliation); and aligning the definition of “sexual act” in Article 120 with federal civilian criminal law.

The Department looks forward to working with Congress as lawmakers consider the recommendations.

The full report of the Military Justice Review Group, the legislative proposal forwarded to Congress, and a section-by-section analysis of the legislative proposal can be found at www.dod.gov/dodgc/mjrg.html.