

Staff Judge Advocate Recommendation Template User Guide

1. The Staff Judge Advocate Recommendation (SJAR) template has been updated to reflect changes to the post-trial process in the Fiscal Years (FY) 2014 and 2015 National Defense Authorization Acts (NDAA).

2. The template includes suggested language for the SJAR. Also, the template uses colored fonts to highlight particular language. **Green text** indicates that a choice, based on your independent assessment of the facts and applicable law, is required. **Red text** indicates language that may be required. If the *[red text]* is italicized and bracketed, it will require customized information. For example, the rank, name and service of the accused is incorporated into paragraph 1 of the template as follows:

"This recommendation is to assist you in deciding what action to take on the sentence in the court-martial of *[Rank Name Service of Accused]*."

In the Recommendation paragraph, the template signals that the SJA must make a choice, and includes language that may be required, but which does not require customization:

Option 1 Having reviewed the record of trial **If applicable:** and the matters submitted by the defense **If applicable:** and the victim, I recommend that you approve the sentence as adjudged and **If applicable:** , except for the punitive discharge, order the sentence executed in accordance with the UCMJ, the MCM, and applicable regulations. **If applicable:** The adjudged punitive discharge cannot be ordered executed until the case is deemed final on appeal. OR

Option 2...."

Once you decide which language to use, delete the other options and all green text. Then, change the red text to black. For example: Using the paragraph above, assume that the victim did not submit matters and the court-martial did not impose a punitive discharge. First, delete the green and unnecessary red text.

"Having reviewed the record of trial and the matters submitted by the defense I recommend that you approve the sentence as adjudged and order the sentence executed in accordance with the UCMJ, the MCM, and applicable regulations."

3. The template also includes embedded comments that reference some case law, highlight decision points and legal issues for your own independent consideration. Key comments are listed in the following paragraphs of this User Guide, as well, if you prefer to work from a "clean" template. You may view the embedded comments by clicking on the "Review" tab in Word, and selecting either "Reviewing Pane" or "Final: Show Markup" in the "Tracking" portion of the "Review" tab.

4. Key comments

- a. **Subj line**. Do not use SSN or EDIPI in the SJAR.

b. **Enclosures**

(1) The “Trial Counsel Memorandum of Substantial Assistance (TCMSA)” created by the FY14 NDAA, restores the Convening Authority’s (CA) full range of post-trial actions on the adjudged sentence. Include as an enclosure when applicable.

(2) Victim input on post-trial action, created by the FY14 NDAA, must be available to victims of offenses for which the Servicemember was convicted. If applicable, the CA must consider the input, so the SJAR (more likely the SJAR addendum), should incorporate the victim input into the recommendation.

c. **SJAR generally.** Because the FY14 NDAA curtailed the range of available post-trial actions for many offenses, the new template replaces old language suggesting broad (nearly unlimited) CA discretion, with language that takes the new statutory limits into account.

d. **Pre-trial agreements (PTA)**

(1) FY14 NDAA limits the CA’s authority to agree in a PTA to disapprove, commute, or suspend a minimum sentence for cases with a mandatory minimum sentence under Article 56(b). In those cases, the CA may only commute a dishonorable discharge (DD) to a bad-conduct discharge (BCD). Affected offenses are: Article 120(a) and (b); Article 120b((a) or (b), Article 125(a) and attempts to commit these offenses charged under Article 80, UCMJ. Note that other offenses with mandatory minimum sentences (Article 106, Article 118 (1) and (4)) are unaffected by the limitations in this provision, and CAs may disapprove, commute, or suspend the punishments, in whole or in part, pursuant to a PTA.

(2) **Breach.** Because certain action on adjudged punishments may only be done pursuant to a PTA, if a CA withdraws from a PTA (e.g., due to breach by the accused), a CA no longer has the option of taking such action despite the withdrawal, i.e., as a matter of clemency.

e. **Trial Counsel Memorandum of Substantial Assistance.** Created by the FY14 NDAA, TCMSAs give the Convening Authority’s (CA) the full range of post-trial actions on the adjudged sentence, regardless of mandatory minimum sentences. Include as an enclosure when applicable.

f. **Legal Error.** Corrective action for legal error is limited by Article 60 for other than qualifying offenses. Even in cases of legal error, findings may not be disapproved or commuted to lesser included offenses for many offenses. Further, CAs may not disapprove, commute, or suspend adjudged sentences of confinement for more than six months or punitive discharges. Possible redress of legal error could include, e.g., noting the legal error and recommending a remedy in the CAA for consideration by the NMCCA, or returning the case to the military judge for a post-trial Article 39(a) session.

g. **Defense matters.** Be aware that the new right of victims to submit matters for consideration for post-trial action may create multiple iterations of Defense submissions. New matters must be given to the Accused, with an opportunity to comment on those new matters.

h. **Victim's Post-trial Matters.** Added to comply with new R.C.M. 1106(d)(3) and 1106(f)-(f)(1). The CA must consider properly submitted matters in taking action on the findings and sentence.

i. **Qualifying Offenses.** Under FY15 NDAA, if a court-martial includes convictions for both a pre-24 June 2014 offense(s) and post-23 June 2014 offenses, the full, pre-FY14 NDAA Article 60 range of action on findings and sentence is available, except that mandatory minimum sentences for post-23 June 2014 penetrative sex offenses apply (see below).

j. **Mandatory Minimum Sentence.** The FY14 NDAA created a minimum sentence of Dishonorable Discharge or Dismissal for the following offenses: Sections (a) or (b) of Article 120 (penetrative sex offenses); Sections (a) or (b) of Article 120b (penetrative child sex offenses); Section (a) of Article 125 as amended (forcible sodomy); and attempts to commit the preceding offenses charged under Article 80.

k. **Recommendation.** Look for the following issues:

(1) **Multiple Specification Cases.** Cases that include multiple guilty findings for offenses that occurred on or after 24 June 2014, and no offenses that occurred earlier, if a CA wants to modify the **findings**, determining available action can be tricky. New Article 60 limitations of action on findings are contingent on the punishments adjudged or available for each offense, i.e., whether the offense is qualifying or other than qualifying. Since we use unitary sentencing, instead of offense-based sentencing, SJAs assessing available action may need to analyze the sentence to determine the portion of each adjudged punishment attributable to each offense. Before determining the available action on findings.

This same analysis would be required for action on **sentences** to determine whether an action would require a written explanation by the CA to be included in the CAA. In order to avoid what could be detailed analysis for a relatively minor point, it is recommended that a written explanation is included in the CAA for any action on the sentence, regardless of the classification of the offenses as qualifying or other than qualifying.

(2) **Straddling Offenses Cases.** Under FY15 NDAA, , if a court-martial includes guilty findings for both one or more offenses that occurred prior to 24 June 2014, and one or more offenses that occurred on or after 24 June 2014, then for all offenses, the pre-FY14 NDAA Article 60 range of action on findings and sentence is available, except that mandatory punitive discharges for penetrative sex offenses committed on or after 24 June 2014 still apply.

l. **Signature block.** The SJA must sign personally- DSJAs may not sign unless officially Acting as the SJA and he must sign as the Acting SJA.

m. **Copy to.** Because victims now have the right to receive the SJAR and ROT, as well as the right to submit matters to the CA for consideration for post-trial action, victims of the offenses for which the Accused was convicted should be copied. Copies should normally be given through VLC, if applicable. Be sure to redact as appropriate.

4. Point of Contact. Please contact the Military Justice Branch at 703-614-1513 with any questions.