



RECENT AND UPCOMING CHANGES TO MILITARY JUSTICE

**VICTIM WITNESS ASSISTANCE PROGRAM TRAINING
30 AUGUST 2016**

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Executive Secretary, JSC**







OVERVIEW



- Sources of Military Law
- Recent Updates to the MCM
- Pending Updates to MCM
- Military Justice Act of 2016

Many of these changes affect the rights of victims and witnesses



SOURCES OF MILITARY LAW



U.S. Constitution

Congress
(U.S. Const. art. 1, sec 8. cl. 14)

Statutes
(U.S.C. Title 10; 10 U.S.C. 47 (UCMJ);
NDAAs)

Code Committee
Annual Review of UCMJ
(Art. 146, UCMJ)





SOURCES OF MILITARY LAW



- **Uniform Code of Military Justice**
 - Art. 6b, UCMJ – FY14/15/16 NDAAAs
 - Protection
 - Notice
 - Right to be reasonably heard
 - Art. 46, UCMJ – FY14/15 NDAAAs
 - Defense counsel interviews of victims



SOURCES OF MILITARY LAW



U.S. Constitution

President
(Art. 36, UCMJ)

Congress
(U.S. Const. art. 1, sec 8. cl. 14)

SecDef
(via DoD OGC)

Executive Orders

Statutes
(U.S.C. Title 10; 10 U.S.C. 47 (UCMJ);
NDAAs)

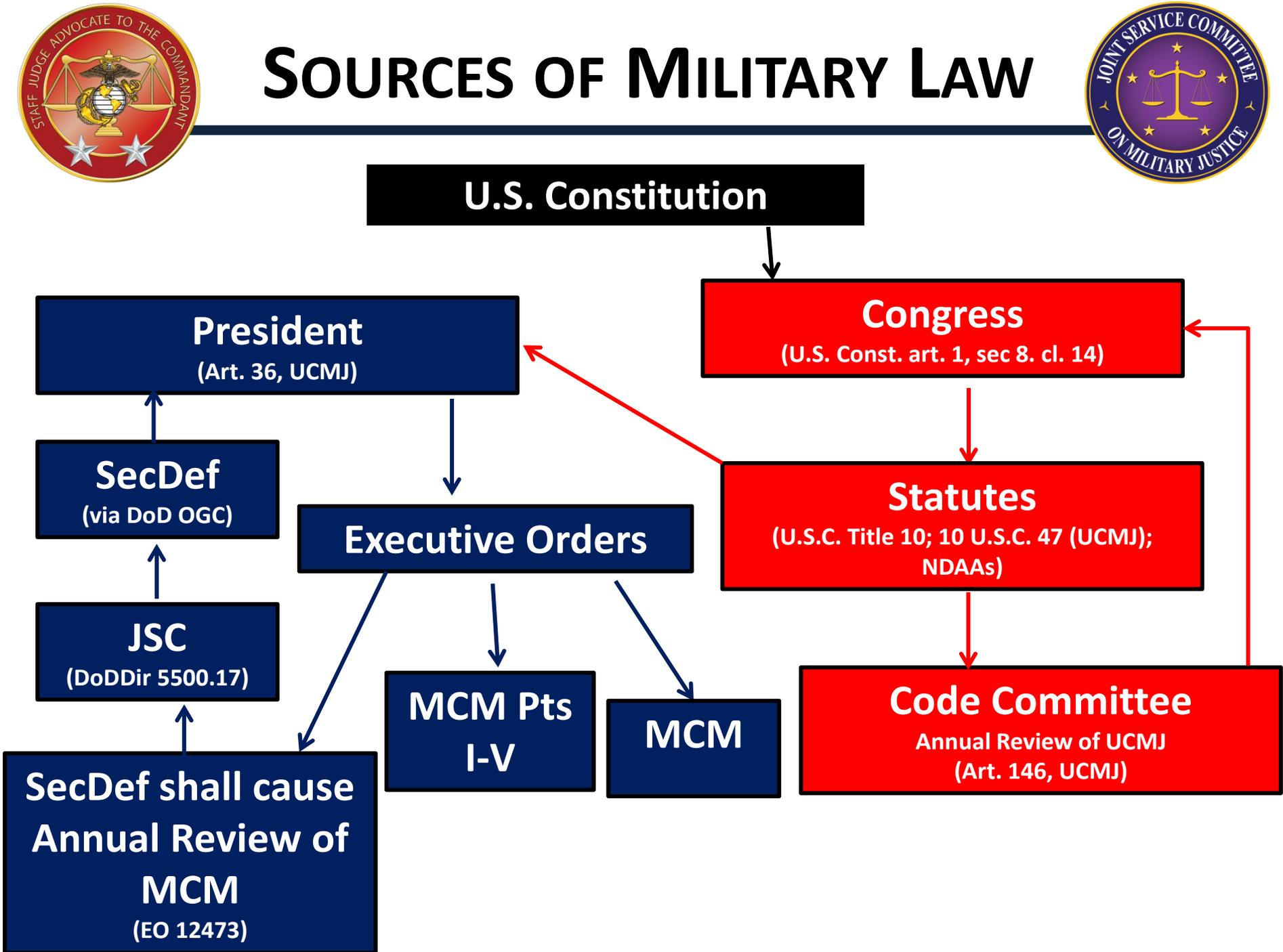
JSC
(DoDDir 5500.17)

**SecDef shall cause
Annual Review of
MCM**
(EO 12473)

**MCM Pts
I-V**

MCM

Code Committee
Annual Review of UCMJ
(Art. 146, UCMJ)





SOURCES OF MILITARY LAW



- **Manual for Courts-Martial**

- Rules for Courts-Martial

- R.C.M. 1001A – Victims' rights during presentencing
- R.C.M. 1005A – Victims' rights to submit matters

- Military Rules of Evidence

- Mil.R.Evid. 513/514



CHANGES TO UCMJ/MCM SINCE 2012



Changes to the UCMJ	Changes to the MCM
<p>Implemented</p> <p>FY12 NDAA: 8 Articles FY13 NDAA: 4 Articles FY14 NDAA: 14 Articles FY15 NDAA: 10 Articles <u>FY16 NDAA: 1 Article</u></p> <p>Total: 37 Articles</p>	<p>Implemented</p> <p>EO 13643 + Supplementary Mats EO 13669 + Supplementary Mats EO 13696 + Supplementary Mats <u>EO 13730 + Supplementary Mats</u></p> <p>Total: ~415 changes</p> <p>Pending Implementation</p> <p><u>Pending EO + Supplementary Mats</u></p> <p>Total: ~238 changes</p>

2014/15

Prevention & Response

\$1711 – Prevention of entry into service of convicted sex offenders	\$1722 – Shortened RSP deadline	\$1725 – Min. requirements for SAPR personnel	\$545 – Requires JPP to review & assess use of victims' mental health records
\$1746 – Service Academy initial SAPR training	\$1731 – Additional RSP duties	\$1725 – SANE availability at MTFs	\$1726 – Added DOD SAPRO responsibilities
\$1741 – Regs on inappropriate conduct with recruits and trainees (mandatory separation processing)	\$1741 – Report to Congress on need for specific UCMJ article regarding prohibited relationships with recruits and trainees	\$1733 – Review of SAPR training	\$546 – Provides that JPP will be succeeded by a 5-yr defense advisory committee
\$1734 – SecDef review of retention of, and access to, evidence and records relating to sexual assault	\$1721 – Verification of command climate surveys	\$1735 – SecDef review of how sexual harassment is handled (EO vs. SAPRO?)	\$531 - Prohibition on relationships between recruiters & a potential recruit "who is pursuing or has recently pursued becoming a member of the Armed Forces"
	\$1747 – Completion of SF 86 by sexual assault victims	\$531 - SVC/VLC prohibited from assisting w/ civil suits against US	\$539 - Victims who may be a Sexual Assault Forensic Examiner & requires certification standards

All phases of a court-martial

\$1701 – Add Crime Victims' Rights Act to UCMJ	\$1704 – DC must go through VLC to interview victim	\$1716 – Special Victims Counsel requirement	\$540 – Moves the final day of a CA judge's term from 9/30 to 10/31	\$537 - Adoption of Klemick standard for in camera reviews of MRE 513
\$1701 – Crime Victims' Rights Act implementing regulations	\$1703 – Eliminate SOL for sexual assault and sexual assault of a child	\$1707 – Repeal of consensual entry	\$531 - Crime victims' rights article limited to "an individual"	\$533 - Expands access to SVC/VLC for Service Component
\$534 - Within 180 days, Military Rules of Evidence must be amended to provide that where the victim has the right to be heard, the victim may exercise that right through counsel, especially a SA, under section 1044e	\$537 - R.C.M. 513 "Constitutional requirements for exception stricken. Privilege must be extended to cover lawyer license holders and other professional	\$534 - Service Secretaries must promulgate procedures to ensure that victims' counsel receive adequate notice of the scheduling of proceedings	\$532 - Depos limited to circumstances where "it is in the interest of justice that the testimony of the prospective witness be taken and preserved for use at a preliminary hearing under section 832 of this title (Article 832) or a court-martial."	

Reporting

\$1711 – Expedited transfer for USCG	\$1724 – NG reserves access to SARCS	\$1751 – Sense of Congress on command climate free of retaliation for allegations of sexual assault	\$1714 – Expanded whistleblower protection (e.g., broadens unfavorable personnel actions and covered communications)
\$1743 – SecDef policy on timing of day incident reports for all sexual assault	\$1725 – 30 year retention of restricted reports	\$1715 – IG investigation of retaliation claims in sexual assault and sexual harassment cases	\$543 - Within a year, CA must propose a plan to allow those who make restricted reports to have data about the offense and offender collected on a confidential basis to identify individuals who are suspected of perpetrating multiple sexual assaults. The plan must be executed within the next year.
\$1703 – Guide on transfer of an accused following an allegation of sexual assault	\$1709 – Service regulation to prohibit retaliation against members who report a crime of these	\$544 - Requires, within one year, a plan to create a domestic violence database	\$545 - Requires reports to include analysis of disposition of the most serious offense during a sexual assault, if the subject of an unrestricted report
\$1709 – Due on establishing a new punitive article for retaliation offenses			

Investigation

\$1732 – SecDef review of OIG investigative practices	\$1742 – Immediate referral of sexual assault allegations to MCIO
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Pre-Trial

\$1752 – Sense of Congress on disposition of sex offenses via court-martial	\$1753 – Sense of Congress on discharge in lieu of court-martial	\$531 - Term "Legal Guardian" eliminated for judge-appointed designee to assert victim rights of minors	\$534 - Victims must be consulted for preference as to exercise of military or civilian jurisdiction; CA must consider this preference
\$1708 – Elimination of "character and military service of accused" as a factor in disposition decision	\$1702 – Complete revision of Article 32 (now a probable cause "preliminary hearing") for all Article 32 hearings on or after 26 Dec 2015. Ability for Accused to waive Art 32 reinstated.	\$1744 – Review of decisions not to refer sexual assaults, requires ISIC, or Secretary review, and Secretary review if requested by Service Chief Prosecutor	

Trial

\$1705 – Mandatory CCA jurisdiction for penetration offenses	\$1705 – Mandatory dismissal for DD for penetration offense convictions	\$536 - Admissibility of good military character evidence limited to military-specific offenses	\$535 - Victims can petition CCA for writ of mandamus if they believe military judge erred in MRE 412/513 ruling	\$531 - CA authorized to take action on findings re: qualifying offenses
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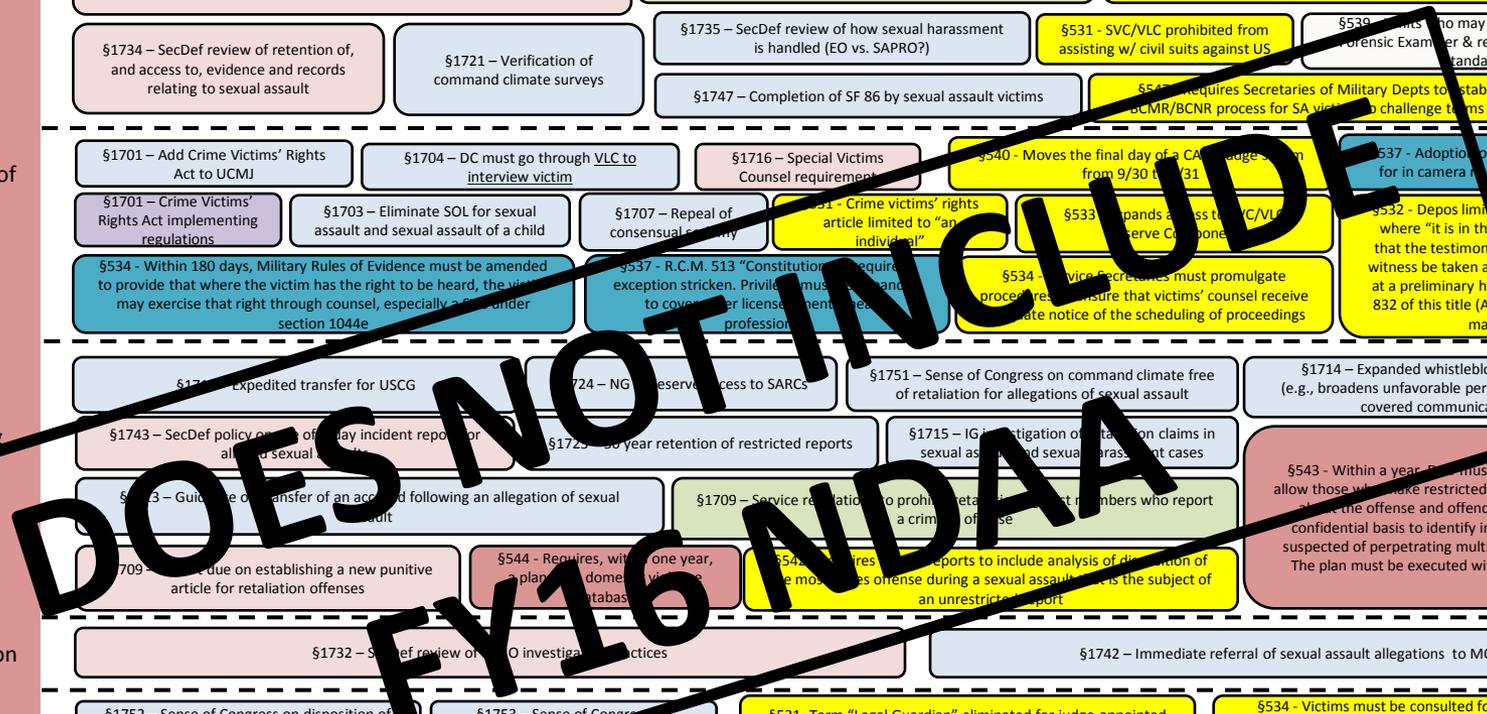
Post-trial

\$1702 – Complete revision to commander's authority to take post-trial action. Where a mandatory minimum punitive discharge was adjudged for a post 6/24/2014 offense, CA has old Article 60 powers where an accused is found guilty of offenses occurring before & after 6/24/2014	\$1706 – Victim participation in clemency phase	\$1745 – Inclusion and command review of records of sex-related offenses	\$538 - Allows return of personal property seized as evidence upon conclusion of proceedings
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Effective dates

Immediate changes in FY14 NDAA	25 Apr 14 (120 days after FY14 NDAA)	24 Jun 14 (180 days after FY14 NDAA)	June 2014	26 Dec 14 (1 year after FY14 NDAA)	Immediate changes in FY15 NDAA	18 Apr 15 (120 days after FY15 NDAA)	16 Jun 15 (180 days after FY15 NDAA)	19 Dec 15 (1 year after FY15 NDAA)
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NLT 30 days before termination of JPP (31 Aug 17)





EXECUTIVE ORDER 13696 – 17 JUN 15



- Implements Article 6b rights throughout MCM
 - Notice
 - Not to be excluded
 - Heard
- R.C.M. 404A and 405 – New Article 32 procedures
- R.C.M. 702 – Depositions
- R.C.M. 1001 and 1001A – Addresses crime victims' rights to be heard during presentencing and allows sworn or unsworn victim impact statements
- Mil.R.Evid. 513 and 514 – Requires a hearing prior to MJ ordering *in camera* review of matters



EXECUTIVE ORDER 13730 – 20 MAY 16



- R.C.M. 104 – Ratings for SVC/VLC
- R.C.M. 306 – Victim preference on jurisdiction
- R.C.M. 705 – Victim consultation on PTAs
- R.C.M. 1109 – Vacation hearing procedures
- R.C.M. 1203 – Procedures for victim writs of mandamus
- Part IV, para. 4.e. – Mandatory punitive discharge for attempts of certain SA crimes



PENDING EXECUTIVE ORDER



- Currently pending signature by the President
- Implements portions of FY12, FY14, and FY15 NDAAAs
- Provides elements, explanations, and sample specifications for Articles 120, 120b, and 120c
- Defense counsel interview of victims
- Indecent conduct
 - Prior “Indecent Acts with Another,” but no requirement for another person



MILITARY JUSTICE ACT OF 2016 (MJA16)



- 2013 - CJCS – General Dempsey requested DOD GC “conduct a comprehensive, holistic review of the UCMJ and the military justice system.”
- In December of 2015, the DoD submitted the MJA16 to Congress
- Proposes 37 new arts. and revisions to 68 arts.
- Both the House and Senate-passed versions of the FY17 NDAA include variations of the MJA16



MILITARY JUSTICE ACT OF 2016 (MJA16)



- Retains all recent rights provided to victims
- Additionally:
 - Pre-referral authorities
 - Judge-alone sentencing with parameters and criteria
 - The government may appeal sentences
 - Improvements to data collection, case management, and public access to court-martial documents
 - Increased training for commanders
- Two year implementation estimate



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QUESTIONS?



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