

## Military Justice Branch (JAM) Practice Advisory 1-14

13 Jan 2014

Subj: FY14 NDAA MILITARY JUSTICE RELATED PROVISIONS

Encl: (1) FY14 NDAA summary of military justice provisions  
(2) FY14 NDAA implementation date tracker

1. Purpose. To provide an overview and summary of the military justice related provisions in the 2014 National Defense Authorization Act (FY14 NDAA). The President signed the FY14 NDAA on 26 December 2013.

### 2. Background

a. There are 38 sections of the FY14 NDAA that make significant changes to the military's sexual assault prevention and response programs (SAPR), the military justice system, and other related programs. Nineteen of those sections, containing 21 changes, directly affect the practice of military justice in the Marine Corps. For all 38 sections combined, there are five different implementation deadlines (immediate, 120 days, 180 days, one year, and those tied to the timeline for the Response Systems Panel). The implementation of these changes will require a mixture of DoD, DoN, USMC, and Joint Service Committee (JSC) action.

b. Enclosure (1) contains an excerpt of all the SAPR and military justice related provisions in the FY14 NDAA, with a hyperlinked table of contents and executive summaries of each section. It is designed to be an easy reference tool for you to examine all of the new changes and track their implementation. Enclosure (1) is available at ([http://www.hqmc.marines.mil/sja/Branches/MilitaryJusticeBranch\(JAM/MilitaryJustice.aspx\)](http://www.hqmc.marines.mil/sja/Branches/MilitaryJusticeBranch(JAM/MilitaryJustice.aspx))). Enclosure (2) is available at the same location and contains a chart of the implementation dates for all the provisions in Enclosure (1).

c. At this time, there are nine provisions relating to military justice that require immediate implementation. They are listed in paragraph 3 of this Practice Advisory. JAM will publish specific guidance, as required, on the implementation of other specific NDAA provisions with later implementation timelines, in separate Practice Advisories.

### 3. FY14 NDAA provisions requiring immediate implementation

a. Sec. 1701 - Codification of CVRA. This section adds Article 6b to the UCMJ and incorporates all eight Crime Victims' Rights Act (CVRA) rights into the UCMJ. Although the rights are effective immediately, there is a one-year requirement to issue regulations implementing those rights, to include an enforcement mechanism for those rights. To implement these changes, DoD and the services will

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issue updates to regulations, as required, and the JSC will draft required changes to the RCM through an executive order.

b. Sec. 1703 - Modification of Statute of Limitations. This section eliminates the statute of limitations under Article 43(a), UCMJ for sexual assault and sexual assault of a child.

c. Sec. 1704 - Requirements for DC to Interview Victims. This section amends Article 46, UCMJ to require defense counsel to make requests to interview sexual assault victims through trial counsel if provided notice by trial counsel that the victim may testify at an Article 32 preliminary hearing or court-martial. Additionally, at the request of the victim, either the trial counsel, victim's counsel, or victim advocate must be present during the defense interview. The new requirement applies to victims of Articles 120, 120a, 120b, 120c, 125, and attempts to commit those offenses.

d. Sec. 1707 - Repeal of Consensual Sodomy. Article 125, UCMJ is amended to remove the offense of consensual sodomy. Forcible sodomy and bestiality remain offenses under Article 125.

e. Sec. 1713 - Temporary Reassignment of an Accused. This section says the Secretary of Defense (SecDef) may provide guidance for commanders regarding their authority to reassign members alleged to have committed offenses under Arts. 120, 120a, 120b, 120c, 125, and attempts thereof. The SecDef, in a memorandum dated 14 August 2013, directed the services to publish similar guidance. The Marine Corps (M&RA) will be publishing this guidance via MARADMIN in the near future.

f. Sec. 1714 - Expansion of Protected Communications. This section expands the class of covered communications and prohibitions on retaliatory personnel actions that are protected by Title 10. It prohibits unfavorable personnel action as a reprisal against a member of the Armed Forces for making or preparing or being perceived as making or preparing a communication to a Member of Congress, an IG, a member of a DoD inspection, investigation, or law enforcement organization, any person in the chain of command, or a court-martial.

g. Sec. 1742 - Mandatory Notification to MCIO. Upon receipt of a report of a "sex-related offense" against a commander's Marine, the commander must immediately forward the report to the servicing Military Criminal Investigation Organization (MCIO), such as NCIS, Army CID, or AFOSI. "Sex-related offense" is not defined in the section, but this is an existing requirement under Enclosure (1), Chapter 3, Paragraph 3(a) of MCO 1752.5B, Sexual Assault Prevention and Response Program.

h. Sec. 1744 - Review of Decisions Not to Refer. Requires the Secretaries of the military departments to provide for review of

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decisions not to refer charges for certain sexual offenses. The statute requires two different levels of review, based on two specific triggers. The first trigger, and accompanying level of review, is when the Article 34 pretrial advice recommends referral and the convening authority (CA) declines to refer all charges under Arts. 120(a), 120(b), 125, and attempts thereof. In that situation, the Secretary must review the decision to not refer the charges. The second trigger, and accompanying level of review, is when the Article 34 pretrial advice recommends not referring any of the same charges listed in the first trigger and the CA agrees to not refer the charges. In that situation, the next superior GCMCA must review the decision to not refer the case.

i. Sec. 1745 - Required Documentation in Service Records.  
Requires notation in a member's records if the member is convicted by court-martial or received nonjudicial punishment or administrative action for sex-related offenses.

  
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