



Executive Order 13730 of 20 May 2016

Background

On 20 May 2016, the President signed Executive Order (EO) 13730, which implements numerous changes to the Manual for Courts-Martial. This EO implements changes originating from a number of sources, including Fiscal Year 2016 National Defense Authorization Act requirements, Response Systems to Adult Sexual Assault Crimes Panel recommendations, and case law updates. The EO was published in the Federal Register on 26 May 2016 and is posted on the [Military Justice Branch](#) and [JSC](#) webpages. These changes apply immediately; however, see the last paragraph for guidance for on-going proceedings.

Additionally, within the next week, the Joint Service Committee on Military Justice (JSC) will release Supplementary Materials accompanying the MCM that amend a number of Discussion paragraphs and certain portions of the Analysis appendix of the MCM. These Supplementary Materials will be published in the Federal Register and posted on the Military Justice Branch and JSC webpages.

Rules Affecting Victims' Rights

R.C.M. 104(b)(1)(B). Prohibits a special victims' counsel from receiving a less favorable rating or evaluation due to the zeal with which the counsel represented a client (implements section 544 of the FY16 NDAA).

R.C.M. 305(i)(2)(A)(iv). Recognizes the victim's right to be reasonably protected from the prisoner during a 7-day pretrial confinement review proceeding.

R.C.M. 306(e). Provides victims of alleged sex-related offenses occurring in the United States an opportunity to express a preference as to whether the offense should be tried by court-martial or by civilian prosecutorial authorities, to require that commanders and convening authorities consider such views, and to require commanders and convening authorities to ensure that civilian prosecutorial authorities are informed when victims express a preference for trial in civilian court (implements section 534 of the FY15 NDAA). *See also* [ALNAV 061/15 of 31 Jul 15](#).

R.C.M. 405(i)(2)(A). Recognizes the victim's right to be reasonably protected from the accused at an Article 32 preliminary hearing.

R.C.M. 705(d)(3). Requires consultation with the victim, whenever practicable, before the convening authority accepts a pretrial agreement.

R.C.M. 806(b)(2). Recognizes the right of a victim of an alleged offense to reasonable, accurate, and timely notice of any court-martial proceedings relating to the alleged offense.

R.C.M. 806(b)(6). Recognizes the victim's right to be reasonably protected from the accused during courts-martial.

Significant MCM Changes

- **R.C.M. 104:** Prohibiting less favorable evaluation of VLCs for the zeal with which counsel represented any client.
- **R.C.M. 306(e):** Victim preference on jurisdiction required in certain sexual assault cases.
- **R.C.M. 705(d)(3):** Victim consultation required, whenever practicable, on pretrial agreements.
- **R.C.M. 1103(b)(2)(B)(i):** Verbatim transcripts required when adjudged sentence includes confinement for 12 months or more, a BCD, or any punishment that may not be adjudged by a SPCM.
- **Mil.R.Evid 304(c):** Clarifies that not every element or fact contained in a confession or admission must be independently proven.
- **Mil.R.Evid 504:** Removes references to gender and clarifies the rule.

R.C.M. 1203(g). Requires the Judge Advocates General to establish the means by which victims' petitions for writs of mandamus as described by Article 6b(e), UCMJ, will be forwarded to the Courts of Criminal Appeals (implements section 531 of the FY16 NDAA).

Rules Affecting Court-Martial Procedures

R.C.M. 907(b). Reflects military case law establishing that failure to state an offense is a waivable ground to dismiss a charge or specification.

R.C.M. 1002. Emphasizes existing law providing that courts-martial adjudge a single sentence for all of the offenses of which the accused is found guilty.

R.C.M. 1103(b)(2)(B)(i). Eliminates the requirement to prepare a verbatim record of trial for certain cases in which the accused does not have a right to appellate review by the relevant Court of Criminal Appeals; verbatim transcripts are required for adjudged court-martial sentences that include confinement for twelve months or more, a bad-conduct discharge, or any punishment that may not be adjudged by a special-court-martial.

The Notes accompanying R.C.M. 1107(a) and 1108(b). Clarify application of the FY14 NDAA's amendments to the convening authority's powers under Article 60 of the Uniform Code of Military Justice (UCMJ).

R.C.M. 1107(b)(5) and 1107(c). Reflect the FY14 NDAA's limitations on when the convening authority may set aside or modify a finding of guilty.

R.C.M. 1107(d). Reflects the FY14 NDAA's limitations on the convening authority's power to modify adjudged court-martial sentences.

R.C.M. 1107(e). Reflects limitations that the FY14 NDAA imposed on a convening authority's ability to order a rehearing.

R.C.M. 1109(c)(4)(C), 1109(d), 1109(e), 1109(g), and 1109(h). Provide detailed procedural guidance for determining whether to vacate the suspension of a court-martial sentence due to violation of the conditions of the probationer's suspension.

Amendments to the Military Rules of Evidence

Mil. R. Evid. 304(c). Clarifies that not every element or fact contained in a confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety (implements section 545 of the FY16 NDAA).

Mil. R. Evid. 311. Reflects Supreme Court case law indicating that the exclusionary rule should be applied to suppress the results of a search or seizure only if the exclusion of evidence would deter future unlawful searches or seizures and the benefits of such deterrence outweigh the costs to the justice system.

Mil. R. Evid. 311. Further amended to incorporate Supreme Court case law holding that the exclusionary rule does not apply where an official acts in objectively reasonable reliance on a statute that was later held to violate the Fourth Amendment.

Mil. R. Evid. 414(d)(2)(A). Reflects the FY12 NDAA's enactment of Article 120b, UCMJ.

Mil. R. Evid. 504. Removes references to gender and clarifies the rule.

Mil. R. Evid. 801(d)(1)(B). Conforms to a recent amendment to the Federal Rules of Evidence by excluding from the definition of hearsay statements a declarant-witness's prior statement used to rehabilitate the declarant's credibility as a witness when attacked on another ground.

Mil. R. Evid. 803(6)(E), 803(7)(E), and 803(8)(B). Conform to recent amendments to the Federal Rules of Evidence by assigning the burden of showing lack of trustworthiness to the party opposing the admission of certain evidence relating to business records or public records.

Mil. R. Evid. 803(10)(B). Conforms to a recent amendment to the Federal Rules of Evidence concerning procedures for admitting certifications of the absence of a public record.

Punitive Articles

Pt. IV, ¶ 4.e. Reflects the mandatory punitive discharge for attempts to commit certain violations of Articles 120, 120b, and 125, UCMJ.

Pt. IV, ¶ 110.c. Reflects recent Supreme Court case law imposing limitations on the criminalization of threatening language.

Impact of Executive Order 13730 on On-Going Proceedings and Hearings

As stated in EO 13730, any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action commenced prior to the signing of the EO shall not be invalidated by the new rules and, if still in progress, may proceed as if the new rules had not yet come into effect. *See also U.S. v. Nicholas*, 6 C.M.R. 27 (USCMA 1952). Stated more plainly, if a discrete military justice event began before EO 13730 was signed, the rules that applied to the event when it began continue to apply until the event concludes. Therefore, if an accused was arraigned before 20 May 2016, the new rules would not take effect for that trial.

Links to Executive Order 13730

[http://www.hqmc.marines.mil/sja/Branches/MilitaryJusticeBranch\(JMJ\).aspx](http://www.hqmc.marines.mil/sja/Branches/MilitaryJusticeBranch(JMJ).aspx), References, UCMJ, MCM
<https://jsc.defense.gov/>

Enclosure: (1) Executive Order 13730

Points of Contact

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