

DIVISION E—UNIFORM CODE OF MILITARY JUSTICE REFORM

SEC. 5001. SHORT TITLE.

This division may be cited as the “Military Justice Act of 2016”.

TITLE LI—GENERAL PROVISIONS

Sec. 5101. Definitions.

Sec. 5102. Clarification of persons subject to UCMJ while on inactive-duty training.

Sec. 5103. Staff judge advocate disqualification due to prior involvement in case.

Sec. 5104. Conforming amendment relating to military magistrates.

Sec. 5105. Rights of victim.

SEC. 5101. DEFINITIONS.

(a) **MILITARY JUDGE.**—Paragraph (10) of section 801 of title 10, United States Code (article 1 of the Uniform Code of Military Justice), is amended to read as follows:

“(10) The term ‘military judge’ means a judge advocate designated under section 826(c) of this title (article 26(c)) who is detailed under section 826(a) or section 830a of this title (article 26(a) or 30a).”.

(b) **JUDGE ADVOCATE.**—Paragraph (13) of such section (article) is amended—

(1) in subparagraph (A), by striking “the Army or the Navy” and inserting “the Army, the Navy, or the Air Force”; and

(2) in subparagraph (B), by striking “the Air Force or”.

SEC. 5102. CLARIFICATION OF PERSONS SUBJECT TO UCMJ WHILE ON INACTIVE-DUTY TRAINING.

Paragraph (3) of section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended to read as follows:

“(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

“(i) members of a reserve component; and

“(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

“(B) The periods referred to in subparagraph (A) are the following:

“(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

“(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

“(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.”.

SEC. 5103. STAFF JUDGE ADVOCATE DISQUALIFICATION DUE TO PRIOR INVOLVEMENT IN CASE.

Subsection (c) of section 806 of title 10, United States Code (article 6 of the Uniform Code of Military Justice), is amended to read as follows:

“(c)(1) No person who, with respect to a case, serves in a capacity specified in paragraph (2) may later serve as a staff judge advocate or legal officer to any reviewing or convening authority upon the same case.

“(2) The capacities referred to in paragraph (1) are, with respect to the case involved, any of the following:

“(A) Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge.

“(B) Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.”.

SEC. 5104. CONFORMING AMENDMENT RELATING TO MILITARY MAGISTRATES.

The first sentence of section 806a(a) of title 10, United States Code (article 6a(a) of the Uniform Code of Military Justice), is amended by striking “military judge” and all that follows through the end of the sentence and inserting “military appellate judge, military judge, or military magistrate to perform the duties of the position involved.”.

SEC. 5105. RIGHTS OF VICTIM.

(a) DESIGNATION OF REPRESENTATIVE.—Subsection (c) of section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), is amended in the first sentence by striking “the military judge” and all that follows through the end of the sentence and inserting the following: “the legal guardians of the victim or the representatives of the victim’s estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section.”.

(b) RULE OF CONSTRUCTION.—Subsection (d) of such section (article) is amended—

(1) in paragraph (1), by striking “or” at the end;

(2) in paragraph (2), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new paragraph:

“(3) to impair the exercise of discretion under sections 830 and 834 of this title (articles 30 and 34).”.

(c) INTERVIEW OF VICTIM.—Such section (article) is amended by adding at the end the following new subsection:

“(f) COUNSEL FOR ACCUSED INTERVIEW OF VICTIM OF ALLEGED OFFENSE.—(1) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an offense under this chapter who counsel for the Government intends to call as a witness at a proceeding under this chapter, counsel for the accused shall make any request to interview the victim through the Special Victims' Counsel or other counsel for the victim, if applicable.

“(2) If requested by an alleged victim who is subject to a request for interview under paragraph (1), any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the Government, a counsel for the victim, or, if applicable, a victim advocate.”.

TITLE LII—APPREHENSION AND RESTRAINT

Sec. 5121. Restraint of persons charged.

Sec. 5122. Modification of prohibition of confinement of members of the Armed Forces with enemy prisoners and certain others.

SEC. 5121. RESTRAINT OF PERSONS CHARGED.

Section 810 of title 10, United States Code (article 10 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 810. Art. 10. Restraint of persons charged

“(a) IN GENERAL.—(1) Subject to paragraph (2), any person subject to this chapter who is charged with an offense under this chapter may be ordered into arrest or confinement as the circumstances require.

“(2) When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered into confinement.

“(b) NOTIFICATION TO ACCUSED AND RELATED PROCEDURES.—(1) When a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken—

“(A) to inform the person of the specific offense of which the person is accused; and

“(B) to try the person or to dismiss the charges and release the person.

“(2) To facilitate compliance with paragraph (1), the President shall prescribe regulations setting forth procedures relating to referral for trial, including procedures for prompt forwarding of the charges and specifications and, if applicable, the preliminary hearing report submitted under section 832 of this title (article 32).”.

SEC. 5122. MODIFICATION OF PROHIBITION OF CONFINEMENT OF MEMBERS OF THE ARMED FORCES WITH ENEMY PRISONERS AND CERTAIN OTHERS.

Section 812 of title 10, United States Code (article 12 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 812. Art. 12. Prohibition of confinement of members of the armed forces with enemy prisoners and certain others

“No member of the armed forces may be placed in confinement in immediate association with—

“(1) enemy prisoners; or

“(2) other individuals—

“(A) who are detained under the law of war and are foreign nationals; and

“(B) who are not members of the armed forces.”.

TITLE LIII—NON-JUDICIAL PUNISHMENT

Sec. 5141. Modification of confinement as non-judicial punishment.

SEC. 5141. MODIFICATION OF CONFINEMENT AS NON-JUDICIAL PUNISHMENT.

Section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice), is amended—

(1) in subsection (b)—

(A) in paragraph (2)(A), by striking “on bread and water or diminished rations”; and

(B) in the undesignated matter after paragraph (2), by striking “on bread and water or diminished rations” in the sentence beginning “No two or more”; and

(2) in subsection (d), by striking “on bread and water or diminished rations” in paragraphs (2) and (3).

TITLE LIV—COURT-MARTIAL JURISDICTION

Sec. 5161. Courts-martial classified.

Sec. 5162. Jurisdiction of general courts-martial.

Sec. 5163. Jurisdiction of special courts-martial.

Sec. 5164. Summary court-martial as non-criminal forum.

SEC. 5161. COURTS-MARTIAL CLASSIFIED.

Section 816 of title 10, United States Code (article 16 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 816. Art 16. Courts-martial classified

“(a) IN GENERAL.—The three kinds of courts-martial in each of the armed forces are the following:

“(1) General courts-martial, as described in subsection (b).

“(2) Special courts-martial, as described in subsection (c).

“(3) Summary courts-martial, as described in subsection (d).

“(b) GENERAL COURTS-MARTIAL.—General courts-martial are of the following three types:

“(1) A general court-martial consisting of a military judge and eight members, subject to sections 825(d)(3) and 829 of this title (articles 25(d)(3) and 29).

“(2) In a capital case, a general court-martial consisting of a military judge and the number of members determined under section 825a of this title (article 25a), subject to sections 825(d)(3) and 829 of this title (articles 25(d)(3) and 29).

“(3) A general court-martial consisting of a military judge alone, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

“(c) SPECIAL COURTS-MARTIAL.—Special courts-martial are of the following two types:

“(1) A special court-martial consisting of a military judge and four members, subject to sections 825(d)(3) and 829 of this title (articles 25(d)(3) and 29).

“(2) A special court-martial consisting of a military judge alone—

“(A) if the case is so referred by the convening authority, subject to section 819 of this title (article 19) and such limitations as the President may prescribe by regulation; or

“(B) if the case is referred under paragraph (1) and, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

“(d) SUMMARY COURT-MARTIAL.—A summary court-martial consists of one commissioned officer.”.

SEC. 5162. JURISDICTION OF GENERAL COURTS-MARTIAL.

Section 818 of title 10, United States Code (article 18 of the Uniform Code of Military Justice), is amended—

(1) in subsection (b), by striking “section 816(1)(B) of this title (article 16(1)(B))” and inserting “section 816(b)(3) of this title (article 16(b)(3))”; and

(2) by striking subsection (c) and inserting the following new subsection (c):

“(c) Consistent with sections 819 and 820 of this title (articles 19 and 20), only general courts-martial have jurisdiction over the following offenses:

“(1) A violation of subsection (a) or (b) of section 920 of this title (article 120).

“(2) A violation of subsection (a) or (b) of section 920b of this title (article 120b).

“(3) An attempt to commit an offense specified in paragraph (1) or (2) that is punishable under section 880 of this title (article 80).”.

SEC. 5163. JURISDICTION OF SPECIAL COURTS-MARTIAL.

Section 819 of title 10, United States Code (article 19 of the Uniform Code of Military Justice), is amended—

(1) by striking “Subject to” in the first sentence and inserting the following:

“(a) IN GENERAL.—Subject to”;

(2) by striking “A bad-conduct discharge” and all that follows through the end; and

(3) by adding after subsection (a), as designated by paragraph (1), the following new subsections:

“(b) ADDITIONAL LIMITATION.—Neither a bad-conduct discharge, nor confinement for more than six months, nor forfeiture of pay for more than six months may be adjudged if charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)).

“(c) MILITARY MAGISTRATE.—If charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)), the military judge, with the consent of the parties, may designate a military magistrate to preside over the special court-martial.”.

SEC. 5164. SUMMARY COURT-MARTIAL AS NON-CRIMINAL FORUM.

Section 820 of title 10, United States Code (article 20 of the Uniform Code of Military Justice), is amended—

(1) by inserting “(a) IN GENERAL.— ” before “Subject to”; and

(2) by adding at the end the following new subsection:

“(b) NON-CRIMINAL FORUM.—A summary court-martial is a non-criminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.”.

TITLE LV—COMPOSITION OF COURTS-MARTIAL

- Sec. 5181. Technical amendment relating to persons authorized to convene general courts-martial.
Sec. 5182. Who may serve on courts-martial and related matters.
Sec. 5183. Number of court-martial members in capital cases.
Sec. 5184. Detailing, qualifications, and other matters relating to military judges.
Sec. 5185. Military magistrates.
Sec. 5186. Qualifications of trial counsel and defense counsel.
Sec. 5187. Assembly and impaneling of members and related matters.

SEC. 5181. TECHNICAL AMENDMENT RELATING TO PERSONS AUTHORIZED TO CONVENE GENERAL COURTS-MARTIAL.

Section 822(a)(6) of title 10, United States Code (article 22(a)(6) of the Uniform Code of Military Justice), is amended by striking “in chief”.

SEC. 5182. WHO MAY SERVE ON COURTS-MARTIAL AND RELATED MATTERS.

(a) WHO MAY SERVE ON COURTS-MARTIAL.—Subsection (c) of section 825 of title 10, United States Code (article 25 of the Uniform Code of Military Justice), is amended to read as follows:

“(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

“(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

“(A) the membership of the court-martial be comprised entirely of officers; or

“(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

“(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

“(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.”.

(b) WHO MAY SENTENCE.—Such section (article) is further amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

“(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).

“(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.”.

(c) **DETAIL OF MEMBERS.**—Subsection (e) of such section (article), as redesignated by subsection (b)(1) of this section, is amended by adding at the end the following new paragraph:

“(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).”.

SEC. 5183. NUMBER OF COURT-MARTIAL MEMBERS IN CAPITAL CASES.

Section 825a of title 10, United States Code (article 25a of the Uniform Code of Military Justice), is amended to read as follows:

“§ 825a. Art. 25a. Number of court-martial members in capital cases

“(a) **IN GENERAL.**—In a case in which the accused may be sentenced to death, the number of members shall be 12.

“(b) **CASE NO LONGER CAPITAL.**—Subject to section 829 of this title (article 29)—

“(1) if a case is referred for trial as a capital case and, before the members are impaneled, the accused may no longer be sentenced to death, the number of members shall be eight; and

“(2) if a case is referred for trial as a capital case and, after the members are impaneled, the accused may no longer be sentenced to death, the number of members shall remain 12.”.

SEC. 5184. DETAILING, QUALIFICATIONS, AND OTHER MATTERS RELATING TO MILITARY JUDGES.

(a) **DETAIL TO SPECIAL COURTS-MARTIAL.**—Subsection (a) of section 826 of title 10, United States Code (article 26 of the Uniform Code of Military Justice), is amended—

(1) in the first sentence, by inserting after “each general” the following: “and special”; and

(2) by striking the second sentence.

(b) **QUALIFICATIONS.**—Subsection (b) of such section (article) is amended by striking “qualified for duty” and inserting “qualified, by reason of education, training, experience, and judicial temperament, for duty”.

(c) **DETAIL AND ASSIGNMENT.**—Subsection (c) of such section (article) is amended to read as follows:

“(c)(1) In accordance with regulations prescribed under subsection (a), a military judge of a general or special court-martial shall be designated for detail by the Judge Advocate General of the armed force of which the military judge is a member.

“(2) Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to the military judge’s performance of duty as a military judge.

“(3) A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial—

“(A) may perform such duties only when the officer is assigned and directly responsible to the Judge Advocate General of the armed force of which the military judge is a member; and

“(B) may perform duties of a judicial or nonjudicial nature other than those relating to the officer’s primary duty as a military judge of a general court-martial when such duties are assigned to the officer by or with the approval of that Judge Advocate General.

“(4) In accordance with regulations prescribed by the President, assignments of military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.”.

(d) **DETAIL TO A DIFFERENT ARMED FORCE.**—Such section (article) is further amended by adding at the end the following new subsection:

“(f) A military judge may be detailed under subsection (a) to a court-martial or a proceeding under section 830a of this title (article 30a) that is convened in a different armed force, when so permitted by the Judge Advocate General of the armed force of which the military judge is a member.”.

(e) **CHIEF TRIAL JUDGES.**—Such section (article), as amended by subsection (d), is further amended by adding at the end the following new subsection:

“(g) In accordance with regulations prescribed by the President, each Judge Advocate General shall designate a chief trial judge from among the members of the applicable trial judiciary.”.

SEC. 5185. MILITARY MAGISTRATES.

Subchapter V of chapter 47 of title 10, United States Code, is amended by inserting after section 826 (article 26 of the Uniform Code of Military Justice) the following new section (article):

“§ 826a. Art. 26a. Military magistrates

“(a) **QUALIFICATIONS.**—A military magistrate shall be a commissioned officer of the armed forces who—

“(1) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

“(2) is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the Judge Advocate General of the armed force of which the officer is a member.

“(b) DUTIES.—In accordance with regulations prescribed by the Secretary concerned, in addition to duties when designated under section 819 or 830a of this title (article 19 or 30a), a military magistrate may be assigned to perform other duties of a nonjudicial nature.”.

SEC. 5186. QUALIFICATIONS OF TRIAL COUNSEL AND DEFENSE COUNSEL.

Section 827 of title 10, United States Code (article 27 of the Uniform Code of Military Justice), is amended—

(1) in the first sentence of paragraph (2) of subsection (a), by striking “No person” and all that follows through “trial counsel,” the first place it appears and inserting “No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel,”;

(2) in the first sentence of subsection (b), by striking “Trial counsel or defense counsel” and inserting “Trial counsel, defense counsel, or assistant defense counsel”; and

(3) by striking subsection (c) and inserting the following new subsections:

“(c)(1) Defense counsel and assistant defense counsel detailed for a special court-martial shall have the qualifications set forth in subsection (b).

“(2) Trial counsel and assistant trial counsel detailed for a special court-martial and assistant trial counsel detailed for a general court-martial must be determined to be competent to perform such duties by the Judge Advocate General, under such rules as the President may prescribe.

“(d) To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.”.

SEC. 5187. ASSEMBLY AND IMPANELING OF MEMBERS AND RELATED MATTERS.

Section 829 of title 10, United States Code (article 29 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 829. Art 29. Assembly and impaneling of members; detail of new members and military judges

“(a) ASSEMBLY.—The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused—

“(1) as a result of a challenge;

“(2) under subsection (b)(1)(B); or

“(3) by order of the military judge or the convening authority for disability or other good cause.

“(b) IMPANELING.—(1) Under rules prescribed by the President, the military judge of a general or special court-martial with members shall—

“(A) after determination of challenges, impanel the court-martial; and

“(B) excuse the members who, having been assembled, are not impaneled.

“(2) In a general court-martial, the military judge shall impanel—

“(A) 12 members in a capital case; and

“(B) eight members in a noncapital case.

“(3) In a special court-martial, the military judge shall impanel four members.

“(c) ALTERNATE MEMBERS.—In addition to members under subsection (b), the military judge shall impanel alternate members, if the convening authority authorizes alternate members.

“(d) DETAIL OF NEW MEMBERS.—(1) If, after members are impaneled, the membership of the court-martial is reduced to—

“(A) fewer than 12 members with respect to a general court-martial in a capital case;

“(B) fewer than six members with respect to a general court-martial in a noncapital case; or

“(C) fewer than four members with respect to a special court-martial;

the trial may not proceed unless the convening authority details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2).

“(2) The membership referred to in paragraph (1) is as follows:

“(A) 12 members with respect to a general court-martial in a capital case.

“(B) At least six but not more than eight members with respect to a general court-martial in a noncapital case.

“(C) Four members with respect to a special court-martial.

“(e) DETAIL OF NEW MILITARY JUDGE.—If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.

“(f) EVIDENCE.—(1) In the case of new members under subsection (d), the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape,

videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.

“(2) In the case of a new military judge under subsection (e), the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.”.

TITLE LVI—PRE-TRIAL PROCEDURE

Sec. 5201. Charges and specifications.

Sec. 5202. Certain proceedings conducted before referral.

Sec. 5203. Preliminary hearing required before referral to general court-martial.

Sec. 5204. Disposition guidance.

Sec. 5205. Advice to convening authority before referral for trial.

Sec. 5206. Service of charges and commencement of trial.

SEC. 5201. CHARGES AND SPECIFICATIONS.

Section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 830. Art 30. Charges and specifications

“(a) IN GENERAL.—Charges and specifications—

“(1) may be preferred only by a person subject to this chapter; and

“(2) shall be preferred by presentment in writing, signed under oath before a commissioned officer of the armed forces who is authorized to administer oaths.

“(b) REQUIRED CONTENT.—The writing under subsection (a) shall state that—

“(1) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

“(2) the matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

“(c) DUTY OF PROPER AUTHORITY.—When charges and specifications are preferred under subsection (a), the proper authority shall, as soon as practicable—

“(1) inform the person accused of the charges and specifications; and

“(2) determine what disposition should be made of the charges and specifications in the interest of justice and discipline.”.

SEC. 5202. CERTAIN PROCEEDINGS CONDUCTED BEFORE REFERRAL.

Subchapter VI of chapter 47 of title 10, United States Code, is amended by inserting after section 830 (article 30 of the Uniform Code of Military Justice) the following new section (article):

“§ 830a. Art. 30a. Certain proceedings conducted before referral

“(a) IN GENERAL.—(1) Proceedings may be conducted to review the following matters before referral of charges and specifications to court-martial for trial in accordance with regulations prescribed by the President:

“(A) Pre-referral investigative subpoenas.

“(B) Pre-referral warrants or orders for electronic communications.

“(C) Pre-referral matters referred by an appellate court.

“(2) The regulations prescribed under paragraph (1) shall—

“(A) include procedures for the review of such rulings that may be ordered under this section as the President considers appropriate; and

“(B) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.

“(3) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

“(b) DETAIL OF MILITARY JUDGE.—The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed to proceedings under subsection (a)(1).

“(c) DISCRETION TO DESIGNATE MAGISTRATE TO PRESIDE.—In accordance with regulations prescribed by the Secretary concerned, a military judge detailed to a proceeding under subsection (a)(1), other than a proceeding described in subparagraph (B) of that subsection, may designate a military magistrate to preside over the proceeding.”.

SEC. 5203. PRELIMINARY HEARING REQUIRED BEFORE REFERRAL TO GENERAL COURT-MARTIAL.

(a) IN GENERAL.—Section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), is amended by striking the section heading and subsections (a), (b), and (c) and inserting the following:

“§ 832. Art. 32. Preliminary hearing required before referral to general court-martial

“(a) IN GENERAL.—(1)(A) Except as provided in subparagraph (B), a preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial. The preliminary hearing shall be conducted by an impartial hearing officer, detailed by the convening authority in accordance with subsection (b).

“(B) Under regulations prescribed by the President, a preliminary hearing need not be held if the accused submits a written waiver to the convening authority and the convening authority determines that a hearing is not required.

“(2) The purpose of the preliminary hearing shall be limited to determining the following:

“(A) Whether or not the specification alleges an offense under this chapter.

“(B) Whether or not there is probable cause to believe that the accused committed the offense charged.

“(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense.

“(D) A recommendation as to the disposition that should be made of the case.

“(b) HEARING OFFICER.—(1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who—

“(A) whenever practicable, shall be a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)); or

“(B) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

“(2) In the case of a hearing officer under paragraph (1)(B), a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)) shall be available to provide legal advice to the hearing officer.

“(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the Government at the preliminary hearing.

“(c) REPORT TO CONVENING AUTHORITY.—After a preliminary hearing under this section, the hearing officer shall submit to the convening authority a written report (accompanied by a recording of the preliminary hearing under subsection (e)) that includes the following:

“(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a)(2), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial.

“(2) Recommendations for any necessary modifications to the form of the charges or specifications.

“(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that, under such rules as the President may prescribe, is relevant to disposition under sections 830 and 834 of this title (articles 30 and 34).

“(4) A statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (f).”.

(b) SUNDRY AMENDMENTS.—Subsection (d) of such section (article) is amended—

(1) in paragraph (1), by striking “subsection (a)” in the first sentence and inserting “this section”;

(2) in paragraph (2), by striking “in defense” and all that follows through the end and inserting “that is relevant to the issues for determination under subsection (a)(2).”;

(3) in paragraph (3), by adding at the end the following new sentence: “A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).”; and

(4) in paragraph (4), by striking “the limited purposes of the hearing, as provided in subsection (a)(2)” and inserting “determinations under subsection (a)(2)”.

(c) REFERENCE TO MCM.—Subsection (e) of such section (article) is amended by striking “as prescribed by the Manual for Courts-Martial” in the second sentence and inserting “under such rules as the President may prescribe”.

(d) EFFECT OF VIOLATION.—Subsection (g) of such section (article) is amended by adding at the end the following new sentence: “A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.”.

(e) CONFORMING AMENDMENTS.—The following provisions are each amended by striking “investigating officer” and inserting “preliminary hearing officer”:

(1) Section 806b(a)(3) of title 10, United States Code (article 6b(a)(3) of the Uniform Code of Military Justice).

(2) Section 825(d)(2) of such title (article 25(d)(2) of the Uniform Code of Military Justice).

(3) Section 826(d) of such title (article 26(d) of the Uniform Code of Military Justice).

SEC. 5204. DISPOSITION GUIDANCE.

Section 833 of title 10, United States Code (article 33 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 833. Art 33. Disposition guidance

“ The President shall direct the Secretary of Defense to issue, in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy, non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military

requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.”.

SEC. 5205. ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL.

Section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 834. Art. 34. Advice to convening authority before referral for trial

“(a) GENERAL COURT-MARTIAL.—

“(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

“(A) the specification alleges an offense under this chapter;

“(B) there is probable cause to believe that the accused committed the offense charged;
and

“(C) a court-martial would have jurisdiction over the accused and the offense.

“(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

“(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

“(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

“(c) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

“(1) to correct errors in form; and

“(2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

“(d) REFERRAL DEFINED.—In this section, the term ‘referral’ means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.”.

SEC. 5206. SERVICE OF CHARGES AND COMMENCEMENT OF TRIAL.

Section 835 of title 10, United States Code (article 35 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 835. Art. 35. Service of charges; commencement of trial

“(a) IN GENERAL.—Trial counsel detailed for a court-martial under section 827 of this title (article 27) shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

“(b) COMMENCEMENT OF TRIAL.—(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a))) may be held over the objection of the accused—

“(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

“(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

“(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

“(3) This subsection shall not apply in time of war.”.

TITLE LVII—TRIAL PROCEDURE

Sec. 5221. Duties of assistant defense counsel.

Sec. 5222. Sessions.

Sec. 5223. Technical amendment relating to continuances.

Sec. 5224. Conforming amendments relating to challenges.

Sec. 5225. Statute of limitations.

Sec. 5226. Former jeopardy.

Sec. 5227. Pleas of the accused.

Sec. 5228. Subpoena and other process.

Sec. 5229. Refusal of person not subject to UCMJ to appear, testify, or produce evidence.

Sec. 5230. Contempt.

Sec. 5231. Depositions.

Sec. 5232. Admissibility of sworn testimony by audiotape or videotape from records of courts of inquiry.

Sec. 5233. Conforming amendment relating to defense of lack of mental responsibility.

Sec. 5234. Voting and rulings.

Sec. 5235. Votes required for conviction, sentencing, and other matters.

Sec. 5236. Findings and sentencing.
Sec. 5237. Plea agreements.
Sec. 5238. Record of trial.

SEC. 5221. DUTIES OF ASSISTANT DEFENSE COUNSEL.

Section 838(e) of title 10, United States Code (article 38(e) of the Uniform Code of Military Justice), is amended by striking “, under the direction” and all that follows through “(article 27),”.

SEC. 5222. SESSIONS.

Section 839 of title 10, United States Code (article 39 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a)—

(A) in paragraph (3)—

(i) by striking “if permitted by regulations of the Secretary concerned,”; and

(ii) by striking “and” at the end;

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following new paragraph (4):

“(4) conducting a sentencing proceeding and sentencing the accused in non-capital cases unless the accused requests sentencing by members under section 825 of this title (article 25); and”;
and

(2) in the second sentence of subsection (c), by striking “, in cases in which a military judge has been detailed to the court,”.

SEC. 5223. TECHNICAL AMENDMENT RELATING TO CONTINUANCES.

Section 840 of title 10, United States Code (article 40 of the Uniform Code of Military Justice), is amended by striking “court-martial without a military judge” and inserting “summary court-martial”.

SEC. 5224. CONFORMING AMENDMENTS RELATING TO CHALLENGES.

Section 841 of title 10, United States Code (article 41 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a)(1), by striking “, or, if none, the court,” in the second sentence;

(2) in subsection (a)(2), by striking “minimum” in the first sentence; and

(3) in subsection (b)(2), by striking “minimum”.

SEC. 5225. STATUTE OF LIMITATIONS.

(a) INCREASE IN PERIOD FOR CHILD ABUSE OFFENSES.—Subsection (b)(2)(A) of section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), is amended by striking “five years” and inserting “ten years”.

(b) INCREASE IN PERIOD FOR FRAUDULENT ENLISTMENT OR APPOINTMENT OFFENSES.—Such section (article) is further amended by adding at the end the following new subsection:

“(h) FRAUDULENT ENLISTMENT OR APPOINTMENT.—A person charged with fraudulent enlistment or fraudulent appointment under section 904a(1) of this title (article 104a(1)) may be tried by court-martial if the sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction with respect to that person, as follows:

“(1) In the case of an enlisted member, during the period of the enlistment or five years, whichever provides a longer period.

“(2) In the case of an officer, during the period of the appointment or five years, whichever provides a longer period.”.

(c) DNA EVIDENCE.—Such section (article), as amended by subsection (b) of this section, is further amended by adding at the end the following new subsection:

“(i) DNA EVIDENCE.—If DNA testing implicates an identified person in the commission of an offense punishable by confinement for more than one year, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.”.

(d) CONFORMING AMENDMENTS.—Subsection (b)(2)(B) of such section (article) is amended by striking clauses (i) through (v) and inserting the following new clauses:

“(i) Any offense in violation of section 920, 920a, 920b, 920c, or 930 of this title (article 120, 120a, 120b, 120c, or 130), unless the offense is covered by subsection (a).

“(ii) Maiming in violation of section 928a of this title (article 128a).

“(iii) Aggravated assault, assault consummated by a battery, or assault with intent to commit specified offenses in violation of section 928 of this title (article 128).

“(iv) Kidnapping in violation of section 925 of this title (article 125).”.

(e) SUBSECTION HEADING AMENDMENTS FOR STYLISTIC CONSISTENCY.—Such section (article) is further amended—

(1) in subsection (a), by inserting “NO LIMITATION FOR CERTAIN OFFENSES.—” after “(a)”;

(2) in subsection (b), by inserting “FIVE-YEAR LIMITATION FOR TRIAL BY COURT-MARTIAL.— ” after “(b)”;

(3) in subsection (c), by inserting “TOLLING FOR ABSENCE WITHOUT LEAVE OR FLIGHT FROM JUSTICE.— ” after “(c)”;

(4) in subsection (d), by inserting “TOLLING FOR ABSENCE FROM US OR MILITARY JURISDICTION.— ” after “(d)”;

(5) in subsection (e), by inserting “EXTENSION FOR OFFENSES IN TIME OF WAR DETRIMENTAL TO PROSECUTION OF WAR.— ” after “(e)”;

(6) in subsection (f), by inserting “EXTENSION FOR OTHER OFFENSES IN TIME OF WAR.— ” after “(f)”; and

(7) in subsection (g), by inserting “DEFECTIVE OR INSUFFICIENT CHARGES.— ” after “(g)”.

(f) APPLICATION.—The amendments made by subsections (a), (b), (c), and (d) shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this subsection if the applicable limitation period has not yet expired.

SEC. 5226. FORMER JEOPARDY.

Subsection (c) of section 844 of title 10, United States Code (article 44 of the Uniform Code of Military Justice), is amended to read as follows:

“(c)(1) A court-martial with a military judge alone is a trial in the sense of this section (article) if, without fault of the accused—

“(A) after introduction of evidence; and

“(B) before announcement of findings under section 853 of this title (article 53);

the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

“(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

“(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

“(B) before announcement of findings under section 853 of this title (article 53);

the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.”.

SEC. 5227. PLEAS OF THE ACCUSED.

(a) PLEAS OF GUILTY.—Subsection (b) of section 845 of title 10, United States Code (article 45 of the Uniform Code of Military Justice), is amended—

(1) in the first sentence, by striking “may be adjudged” and inserting “is mandatory”; and

(2) in the second sentence—

(A) by striking “or by a court-martial without a military judge”; and

(B) by striking “, if permitted by regulations of the Secretary concerned.”.

(b) HARMLESS ERROR.—Such section (article) is further amended by adding at the end the following new subsection:

“(c) HARMLESS ERROR.—A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.”.

(c) SUBSECTION HEADING AMENDMENTS FOR STYLISTIC CONSISTENCY.—Such section (article) is further amended—

(1) in subsection (a), by inserting “IRREGULAR AND SIMILAR PLEAS.— ” after “(a)”; and

(2) in subsection (b), by inserting “PLEAS OF GUILTY.— ” after “(b)”.

SEC. 5228. SUBPOENA AND OTHER PROCESS.

(a) AMENDMENTS TO UCMJ ARTICLE.—

(1) IN GENERAL.—Subsection (a) of section 846 of title 10, United States Code (article 46 of the Uniform Code of Military Justice), is amended by striking “The counsel for the Government, the counsel for the accused,” and inserting “In a case referred for trial by court-martial, the trial counsel, the defense counsel,”.

(2) SUBPOENA AND OTHER PROCESS GENERALLY.—Subsection (b) of such section (article) is amended to read as follows:

“(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

“(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

“(2) shall be executed in accordance with regulations prescribed by the President; and

“(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.”.

(3) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—Subsection (c) of such section (article) is amended to read as follows:

“(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

“(1) before a court-martial, military commission, or court of inquiry;

“(2) at a deposition under section 849 of this title (article 49); or

“(3) as otherwise authorized under this chapter.”.

(4) OTHER MATTERS.—Such section (article) is further amended by adding at the end the following new subsections:

“(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

“(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

“(A) for a court-martial, military commission, or court of inquiry;

“(B) for a deposition under section 849 of this title (article 49);

“(C) for an investigation of an offense under this chapter; or

“(D) as otherwise authorized under this chapter.

“(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

“(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

“(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

“(1) order that the subpoena or other process be modified or withdrawn, as appropriate; or

“(2) order the person to comply with the subpoena or other process.”.

(5) SECTION HEADING.—The heading of such section (article) is amended to read as follows:

“§ 846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial”.

(b) CONFORMING AMENDMENTS TO TITLE 18, UNITED STATES CODE.—

(1) Section 2703 of title 18, United States Code, is amended—

(A) in the first sentence of subsection (a);

(B) in subsection (b)(1)(A); and

(C) in subsection (c)(1)(A);

by inserting after ‘warrant procedures’ the following: ‘and, in the case of a court-martial or other proceeding under chapter 47 of title 10 (the Uniform Code of Military Justice), issued under section 846 of that title, in accordance with regulations prescribed by the President’.

(2) Section 2711(3) of title 18, United States Code, is amended—

(A) in subparagraph (A), by striking “or” at the end;

(B) in subparagraph (B), by striking “and” at the end and inserting “or”; and

(C) by adding at the end the following new subparagraph:

“(C) a court-martial or other proceeding under chapter 47 of title 10 (the Uniform Code of Military Justice) to which a military judge has been detailed; and”.

SEC. 5229. REFUSAL OF PERSON NOT SUBJECT TO UCMJ TO APPEAR, TESTIFY, OR PRODUCE EVIDENCE.

(a) IN GENERAL.—Subsection (a) of section 847 of title 10, United States Code (article 47 of the Uniform Code of Military Justice), is amended to read as follows:

“(a) IN GENERAL.—(1) Any person described in paragraph (2) who—

“(A) willfully neglects or refuses to appear; or

“(B) willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce;

is guilty of an offense against the United States.

“(2) The persons referred to in paragraph (1) are the following:

“(A) Any person not subject to this chapter who—

“(i) is issued a subpoena or other process described in subsection (c) of section 846 of this title (article 46); and

“(ii) is provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage.

“(B) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (d) of section 846 of this title (article 46).”.

(b) SECTION HEADING.—The heading of such section (article) is amended to read as follows:

“§ 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence”.

SEC. 5230. CONTEMPT.

(a) AUTHORITY TO PUNISH.—Subsection (a) of section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), is amended to read as follows:

“(a) AUTHORITY TO PUNISH.—(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) may punish for contempt any person who—

“(A) uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

“(B) disturbs the proceeding by any riot or disorder; or

“(C) willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

“(2) A judicial officer referred to in paragraph (1) is any of the following:

“(A) Any judge of the Court of Appeals for the Armed Forces and any judge of a Court of Criminal Appeals under section 866 of this title (article 66).

“(B) Any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under this chapter.

“(C) Any military magistrate designated to preside under section 819 of this title (article 19).

“(D) The president of a court of inquiry.”.

(b) REVIEW.—Such section (article) is further amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) REVIEW.—A punishment under this section—

“(1) if imposed by a military judge or military magistrate, may be reviewed by the Court of Criminal Appeals in accordance with the uniform rules of procedure for the Courts of Criminal Appeals under section 866(g) of this title (article 66(g));

“(2) if imposed by a judge of the Court of Appeals for the Armed Forces or a judge of a Court of Criminal Appeals, shall constitute a judgment of the court, subject to review under the applicable provisions of section 867 or 867a of this title (article 67 or 67a); and

“(3) if imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the President.”.

(c) SECTION HEADING.—The heading of such section (article) is amended to read as follows:

“§ 848. Art. 48. Contempt”.

SEC. 5231. DEPOSITIONS.

Section 849 of title 10, United States Code (article 49 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 849. Art. 49. Depositions

“(a) IN GENERAL.—(1) Subject to paragraph (2), a convening authority or a military judge may order depositions at the request of any party.

“(2) A deposition may be ordered under paragraph (1) only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.

“(3) A party who requests a deposition under this section shall give to every other party reasonable written notice of the time and place for the deposition.

“(4) A deposition under this section shall be taken before, and authenticated by, an impartial officer, as follows:

“(A) Whenever practicable, by an impartial judge advocate certified under section 827(b) of this title (article 27(b)).

“(B) In exceptional circumstances, by an impartial military or civil officer authorized to administer oaths by (i) the laws of the United States or (ii) the laws of the place where the deposition is taken.

“(b) REPRESENTATION BY COUNSEL.—Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under section 827 of this title (article 27). In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as such counsel are provided for in section 838(b) of this title (article 38(b)).

“(c) ADMISSIBILITY AND USE AS EVIDENCE.—A deposition order under subsection (a) does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as provided by subsection (d), a party may use all or part of a deposition as provided by the rules of evidence.

“(d) CAPITAL CASES.—Testimony by deposition may be presented in capital cases only by the defense.”.

SEC. 5232. ADMISSIBILITY OF SWORN TESTIMONY BY AUDIOTAPE OR VIDEOTAPE FROM RECORDS OF COURTS OF INQUIRY.

(a) IN GENERAL.—Section 850 of title 10, United States Code (article 50 of the Uniform Code of Military Justice), is amended by adding at the end the following new subsection:

“(d) AUDIOTAPE OR VIDEOTAPE.—Sworn testimony that—

“(1) is recorded by audiotape, videotape, or similar method; and

“(2) is contained in the duly authenticated record of proceedings of a court of inquiry;

is admissible before a court-martial, military commission, court of inquiry, or military board, to the same extent as sworn testimony may be read in evidence before any such body under subsection (a), (b), or (c).”.

(b) SECTION HEADING.—The heading of such section (article) is amended to read as follows:

“§ 850. Art. 50. Admissibility of sworn testimony from records of courts of inquiry”.

(c) SUBSECTION HEADING AMENDMENTS FOR STYLISTIC CONSISTENCY.—Such section (article) is further amended—

(1) in subsection (a), by inserting “USE AS EVIDENCE BY ANY PARTY.— ” after “(a)”;

(2) in subsection (b), by inserting “USE AS EVIDENCE BY DEFENSE.— ” after “(b)”; and

(3) in subsection (c), by inserting “USE IN COURTS OF INQUIRY AND MILITARY BOARDS.— ” after “(c)”.

SEC. 5233. CONFORMING AMENDMENT RELATING TO DEFENSE OF LACK OF MENTAL RESPONSIBILITY.

Section 850a(c) of title 10, United States Code (article 50a(c) of the Uniform Code of Military Justice), is amended by striking “, or the president of a court-martial without a military judge,”.

SEC. 5234. VOTING AND RULINGS.

Section 851 of title 10, United States Code (article 51 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a), by striking “, and by members of a court-martial without a military judge upon questions of challenge,” in the first sentence;

(2) in subsection (b)—

(A) in the first sentence, by striking “and, except for questions of challenge, the president of a court-martial without a military judge”; and

(B) in the second sentence, by striking “, or by the president” and all that follows through the end of the subsection and inserting “is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.”; and

(3) in subsection (c), by striking “or the president of a court-martial without a military judge” in the matter before paragraph (1).

SEC. 5235. VOTES REQUIRED FOR CONVICTION, SENTENCING, AND OTHER MATTERS.

Section 852 of title 10, United States Code (article 52 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 852. Art. 52. Votes required for conviction, sentencing, and other matters

“(a) IN GENERAL.—No person may be convicted of an offense in a general or special court-martial, other than—

“(1) after a plea of guilty under section 845(b) of this title (article 45(b));

“(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

“(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

“(b) LEVEL OF CONCURRENCE REQUIRED.—

“(1) IN GENERAL.—Except as provided in subsection (a) and in paragraph (2), all matters to be decided by members of a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

“(2) SENTENCING.—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.”.

SEC. 5236. FINDINGS AND SENTENCING.

Section 853 of title 10, United States Code (article 53 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 853. Art. 53. Findings and sentencing

“(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

“(b) SENTENCING GENERALLY.—

“(1) GENERAL AND SPECIAL COURTS-MARTIAL.—

“(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

“(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense in a trial by general or special court-martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.

“(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.

“(2) SUMMARY COURTS-MARTIAL.—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

“(c) SENTENCING FOR CAPITAL OFFENSES.—

“(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the members shall determine whether the sentence for that offense shall be death or a lesser authorized punishment.

“(2) LESSER AUTHORIZED PUNISHMENTS.—In accordance with regulations prescribed by the President, the court-martial may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

“(3) OTHER NON-CAPITAL OFFENSES.—In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.”.

SEC. 5237. PLEA AGREEMENTS.

Subchapter VII of chapter 47 of title 10, United States Code, is amended by inserting after section 853 (article 53 of the Uniform Code of Military Justice), as amended by section 5236 of this Act, the following new section (article):

“§ 853a. Art. 53a. Plea agreements

“(a) IN GENERAL.—(1) At any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

“(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

“(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

“(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

“(b) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

“(1) contains a provision that has not been accepted by both parties;

“(2) contains a provision that is not understood by the accused; or

“(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2)).

“(c) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

“(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

“(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

“(d) BINDING EFFECT OF PLEA AGREEMENT.—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties and the military judge.”.

SEC. 5238. RECORD OF TRIAL.

Section 854 of title 10, United States Code (article 54 of the Uniform Code of Military Justice), is amended—

(1) by striking subsection (a) and inserting the following new subsection (a):

“(a) GENERAL AND SPECIAL COURTS-MARTIAL.—Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a

court-reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the President may prescribe by regulation.”;

(2) in subsection (b)—

(A) by striking “(b) Each special and summary court-martial” and inserting “(b) SUMMARY COURTS-MARTIAL.—Each summary court-martial ”; and

(B) by striking “authenticated” and inserting “certified”;

(3) by striking subsection (c) and inserting the following new subsection (c):

“(c) CONTENTS OF RECORD.—(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation.

“(2) In accordance with regulations prescribed by the President, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.”;

(4) in subsection (d)—

(A) by striking “(d) A copy” and inserting “(d) COPY TO ACCUSED.—A copy ”; and

(B) by striking “authenticated” and inserting “certified”; and

(5) in subsection (e)—

(A) by striking “(e) In the case” and inserting “(e) COPY TO VICTIM.—In the case ”;

(B) by striking “involving a sexual assault or other offense covered by section 920 of this title (article 120),” in the first sentence and inserting “, upon request,”; and

(C) by striking “authenticated” in the second sentence and inserting “certified”.

TITLE LVIII—SENTENCES

Sec. 5301. Sentencing.

Sec. 5302. Effective date of sentences.

Sec. 5303. Sentence of reduction in enlisted grade.

SEC. 5301. SENTENCING.

(a) IN GENERAL.—Section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 856. Art. 56. Sentencing

“(a) SENTENCE MAXIMUMS.—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

“(b) SENTENCE MINIMUMS FOR CERTAIN OFFENSES.—(1) Except as provided in subsection (d) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

“(2) The offenses referred to in paragraph (1) are as follows:

“(A) Rape under subsection (a) of section 920 of this title (article 120).

“(B) Sexual assault under subsection (b) of such section (article).

“(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

“(D) Sexual assault of a child under subsection (b) of such section (article).

“(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

“(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

“(c) IMPOSITION OF SENTENCE.—

“(1) IN GENERAL.—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

“(A) the nature and circumstances of the offense and the history and characteristics of the accused;

“(B) the impact of the offense on—

“(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

“(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

“(C) the need for the sentence—

“(i) to reflect the seriousness of the offense;

“(ii) to promote respect for the law;

“(iii) to provide just punishment for the offense;

“(iv) to promote adequate deterrence of misconduct;

“(v) to protect others from further crimes by the accused;

“(vi) to rehabilitate the accused; and

“(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

“(D) the sentences available under this chapter.

“(2) SENTENCING BY MILITARY JUDGE.—In announcing the sentence in a general or special court-martial in which the accused is sentenced by a military judge alone under section 853 of this title (article 53), the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

“(3) SENTENCING BY MEMBERS.—In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.

“(4) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—(A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

“(B) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused’s life unless—

“(i) the sentence is set aside or otherwise modified as a result of—

“(I) action taken by the convening authority or the Secretary concerned; or

“(II) any other action taken during post-trial procedure and review under any other provision of subchapter IX of this chapter;

“(ii) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

“(iii) the accused is pardoned.

“(d) APPEAL OF SENTENCE BY THE UNITED STATES.—(1) With the approval of the Judge Advocate General concerned, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

“(A) the sentence violates the law; or

“(B) the sentence is plainly unreasonable.

“(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).”.

(b) CONFORMING AMENDMENT.—Section 856a of title 10, United States Code (article 56a of the Uniform Code of Military Justice), is repealed.

SEC. 5302. EFFECTIVE DATE OF SENTENCES.

(a) IN GENERAL.—Section 857 of title 10, United States Code (article 57 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 857. Art. 57. Effective date of sentences

“(a) EXECUTION OF SENTENCES.—A court-martial sentence shall be executed and take effect as follows:

“(1) FORFEITURE AND REDUCTION.—A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

“(A) the date that is 14 days after the date on which the sentence is adjudged; or

“(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

“(2) CONFINEMENT.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

“(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

“(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

“(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

“(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

“(b) DEFERRAL OF SENTENCES.—

“(1) IN GENERAL.—On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

“(2) DEFERRAL OF CERTAIN PERSONS SENTENCED TO CONFINEMENT.—In any case in which a court-martial sentences a person referred to in paragraph (3) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

“(3) COVERED PERSONS.—Paragraph (2) applies to a person subject to this chapter who—

“(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

“(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

“(4) STATE DEFINED.—In this subsection, the term ‘State’ includes the District of Columbia and any Commonwealth, territory, or possession of the United States.

“(5) DEFERRAL WHILE REVIEW PENDING.—In any case in which a court-martial sentences a person to confinement, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

“(c) APPELLATE REVIEW.—

“(1) COMPLETION OF APPELLATE REVIEW.—Appellate review is complete under this section when—

“(A) a review under section 865 of this title (article 65) is completed; or

“(B) a review under section 866 of this title (article 66) is completed by a Court of Criminal Appeals and—

“(i) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

“(ii) such a petition is rejected by the Court of Appeals for the Armed Forces; or

“(iii) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

“(I) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

“(II) such a petition is rejected by the Supreme Court; or

“(III) review is otherwise completed in accordance with the judgment of the Supreme Court.

“(2) COMPLETION AS FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.”.

(b) CONFORMING AMENDMENTS.—

(1) Subchapter VIII of chapter 47 of title 10, United States Code, is amended by striking section 857a (article 57a of the Uniform Code of Military Justice).

(2) Subchapter IX of chapter 47 of title 10, United States Code, is amended by striking section 871 (article 71 of the Uniform Code of Military Justice).

(3) The second sentence of subsection (a)(1) of section 858b of title 10, United States Code (article 58b of the Uniform Code of Military Justice), is amended by striking “section 857(a) of this title (article 57(a))” and inserting “section 857 of this title (article 57)”.

SEC. 5303. SENTENCE OF REDUCTION IN ENLISTED GRADE.

Section 858a of title 10, United States Code (article 58a of the Uniform Code of Military Justice), is amended—

(1) in subsection (a)—

(A) by striking “Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a” and inserting “A”;

(B) by striking “as approved by the convening authority” and inserting “as set forth in the judgment of the court-martial entered into the record under section 860c of this title (article 60c)”; and

(C) in the matter after paragraph (3), by striking “of that approval” and inserting “on which the judgment is so entered”; and

(2) in subsection (b), by striking “disapproved, or, as finally approved” and inserting “reduced, or, as finally affirmed”.

TITLE LIX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

- Sec. 5321. Post-trial processing in general and special courts-martial.
- Sec. 5322. Limited authority to act on sentence in specified post-trial circumstances.
- Sec. 5323. Post-trial actions in summary courts-martial and certain general and special courts-martial.
- Sec. 5324. Entry of judgment.
- Sec. 5325. Waiver of right to appeal and withdrawal of appeal.
- Sec. 5326. Appeal by the United States.
- Sec. 5327. Rehearings.
- Sec. 5328. Judge advocate review of finding of guilty in summary court-martial.
- Sec. 5329. Transmittal and review of records.
- Sec. 5330. Courts of Criminal Appeals.
- Sec. 5331. Review by Court of Appeals for the Armed Forces.
- Sec. 5332. Supreme Court review.
- Sec. 5333. Review by Judge Advocate General.
- Sec. 5334. Appellate defense counsel in death penalty cases.
- Sec. 5335. Authority for hearing on vacation of suspension of sentence to be conducted by qualified judge advocate.
- Sec. 5336. Extension of time for petition for new trial.
- Sec. 5337. Restoration.
- Sec. 5338. Leave requirements pending review of certain court-martial convictions.

SEC. 5321. POST-TRIAL PROCESSING IN GENERAL AND SPECIAL COURTS-MARTIAL.

Section 860 of title 10, United States Code (article 60 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 860. Art 60. Post-trial processing in general and special courts-martial

“(a) STATEMENT OF TRIAL RESULTS.—(1) The military judge of a general or special court-martial shall enter into the record of trial a document entitled ‘Statement of Trial Results’, which shall set forth—

“(A) each plea and finding;

“(B) the sentence, if any; and

“(C) such other information as the President may prescribe by regulation.

“(2) Copies of the Statement of Trial Results shall be provided promptly to the convening authority, the accused, and any victim of the offense.

“(b) POST-TRIAL MOTIONS.—In accordance with regulations prescribed by the President, the military judge in a general or special court-martial shall address all post-trial motions and other post-trial matters that—

“(1) may affect a plea, a finding, the sentence, the Statement of Trial Results, the record of trial, or any post-trial action by the convening authority; and

“(2) are subject to resolution by the military judge before entry of judgment.”.

SEC. 5322. LIMITED AUTHORITY TO ACT ON SENTENCE IN SPECIFIED POST-TRIAL CIRCUMSTANCES.

Subchapter IX of chapter 47 of title 10, United States Code, is amended by inserting after section 860 (article 60 of the Uniform Code of Military Justice), as amended by section 5321 of this Act, the following new section (article):

“§ 860a. Art. 60a. Limited authority to act on sentence in specified post-trial circumstances

“(a) IN GENERAL.—(1) The convening authority of a general or special court-martial described in paragraph (2)—

“(A) may act on the sentence of the court-martial only as provided in subsection (b), (c), or (d); and

“(B) may not act on the findings of the court-martial.

“(2) The courts-martial referred to in paragraph (1) are the following:

“(A) A general or special court-martial in which the maximum sentence of confinement established under subsection (a) of section 856 of this title (article 56) for any offense of which the accused is found guilty is more than two years.

“(B) A general or special court-martial in which the total of the sentences of confinement imposed, running consecutively, is more than six months.

“(C) A general or special court-martial in which the sentence imposed includes a dismissal, dishonorable discharge, or bad-conduct discharge.

“(D) A general or special court-martial in which the accused is found guilty of a violation of subsection (a) or (b) of section 920 of this title (article 120), section 920b of this title (article 120b), or such other offense as the Secretary of Defense may specify by regulation.

“(3) Except as provided in subsection (d), the convening authority may act under this section only before entry of judgment.

“(4) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

“(b) REDUCTION, COMMUTATION, AND SUSPENSION OF SENTENCES GENERALLY.—(1) Except as provided in subsection (c) or (d), the convening authority may not reduce, commute, or suspend any of the following sentences:

“(A) A sentence of confinement, if the total period of confinement imposed for all offenses involved, running consecutively, is greater than six months.

“(B) A sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

“(C) A sentence of death.

“(2) The convening authority may reduce, commute, or suspend any sentence not specified in paragraph (1).

“(c) **SUSPENSION OF CERTAIN SENTENCES UPON RECOMMENDATION OF MILITARY JUDGE.**—(1) Upon recommendation of the military judge, as included in the Statement of Trial Results, together with an explanation of the facts supporting the recommendation, the convening authority may suspend—

“(A) a sentence of confinement, in whole or in part; or

“(B) a sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

“(2) The convening authority may not, under paragraph (1)—

“(A) suspend a mandatory minimum sentence; or

“(B) suspend a sentence to an extent in excess of the suspension recommended by the military judge.

“(d) **REDUCTION OF SENTENCE FOR SUBSTANTIAL ASSISTANCE BY ACCUSED.**—(1) Upon a recommendation by the trial counsel, if the accused, after sentencing and before entry of judgment, provides substantial assistance in the investigation or prosecution of another person, the convening authority may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

“(2) Upon a recommendation by a trial counsel, designated in accordance with rules prescribed by the President, if the accused, after entry of judgment, provides substantial assistance in the investigation or prosecution of another person, a convening authority, designated under such regulations, may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

“(3) In evaluating whether the accused has provided substantial assistance under this subsection, the convening authority may consider the presentence assistance of the accused.

“(e) **SUBMISSIONS BY ACCUSED AND VICTIM.**—(1) In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of an offense. Such rules shall include—

“(A) procedures for notice of the opportunity to make such submissions;

“(B) the deadlines for such submissions; and

“(C) procedures for providing the accused and any victim of an offense with a copy of the recording of any open sessions of the court-martial and copies of, or access to, any admitted, unsealed exhibits.

“(2) The convening authority shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

“(f) DECISION OF CONVENING AUTHORITY.—(1) The decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

“(2) If, under this section, the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall include a written explanation of the reasons for such action.

“(3) If, under subsection (d)(2), the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall be forwarded to the chief trial judge for appropriate modification of the entry of judgment, which shall be transmitted to the Judge Advocate General for appropriate action.”.

SEC. 5323. POST-TRIAL ACTIONS IN SUMMARY COURTS-MARTIAL AND CERTAIN GENERAL AND SPECIAL COURTS-MARTIAL.

Subchapter IX of chapter 47 of title 10, United States Code, is amended by inserting after section 860a (article 60a of the Uniform Code of Military Justice), as added by section 5322 of this Act, the following new section (article):

“§ 860b. Art. 60b. Post-trial actions in summary courts-martial and certain general and special courts-martial

“(a) IN GENERAL.—(1) In a court-martial not specified in section 860a(a)(2) of this title (article 60a(a)(2)), the convening authority may—

“(A) dismiss any charge or specification by setting aside the finding of guilty;

“(B) change a finding of guilty to a charge or specification to a finding of guilty to a lesser included offense;

“(C) disapprove the findings and the sentence and dismiss the charges and specifications;

“(D) disapprove the findings and the sentence and order a rehearing as to the findings and the sentence;

“(E) disapprove, commute, or suspend the sentence, in whole or in part; or

“(F) disapprove the sentence and order a rehearing as to the sentence.

“(2) In a summary court-martial, the convening authority shall approve the sentence or take other action on the sentence under paragraph (1).

“(3) Except as provided in paragraph (4), the convening authority may act under this section only before entry of judgment.

“(4) The convening authority may act under this section after entry of judgment in a general or special court-martial in the same manner as the convening authority may act under section 860a(d)(2) of this title (article 60a(d)(2)). Such action shall be forwarded to the chief trial judge, who shall ensure appropriate modification to the entry of judgment and shall transmit the entry of judgment to the Judge Advocate General for appropriate action.

“(5) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

“(b) LIMITATIONS ON REHEARINGS.—The convening authority may not order a rehearing under this section—

“(1) as to the findings, if there is insufficient evidence in the record to support the findings;

“(2) to reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; or

“(3) to reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter.

“(c) SUBMISSIONS BY ACCUSED AND VICTIM.—In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of the offense. Such rules shall include the matter required by section 860a(e) of this title (article 60a(e)).

“(d) DECISION OF CONVENING AUTHORITY.—(1) In a general or special court-martial, the decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

“(2) If the convening authority acts on the findings or the sentence under subsection (a)(1), the decision of the convening authority shall include a written explanation of the reasons for such action.”.

SEC. 5324. ENTRY OF JUDGMENT.

Subchapter IX of chapter 47 of title 10, United States Code, is amended by inserting after section 860b (article 60b of the Uniform Code of Military Justice), as added by section 5323 of this Act, the following new section (article):

“§ 860c. Art. 60c. Entry of judgment

“(a) ENTRY OF JUDGMENT OF GENERAL OR SPECIAL COURT-MARTIAL.—(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

“(A) The Statement of Trial Results under section 860 of this title (article 60).

“(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

“(i) any post-trial action by the convening authority; or

“(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

“(2) Under rules prescribed by the President, the judgment under paragraph (1) shall be—

“(A) provided to the accused and to any victim of the offense; and

“(B) made available to the public.

“(b) SUMMARY COURT-MARTIAL JUDGMENT.—The findings and sentence of a summary court-martial, as modified by any post-trial action by the convening authority under section 860b of this title (article 60b), constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the President.”.

SEC. 5325. WAIVER OF RIGHT TO APPEAL AND WITHDRAWAL OF APPEAL.

Section 861 of title 10, United States Code (article 61 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 861. Art. 61. Waiver of right to appeal; withdrawal of appeal

“(a) WAIVER OF RIGHT TO APPEAL.—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appellate review in each case subject to such review under section 866 of this title (article 66). Such a waiver shall be—

“(1) signed by the accused and by defense counsel; and

“(2) attached to the record of trial.

“(b) WITHDRAWAL OF APPEAL.—In a general or special court-martial, the accused may withdraw an appeal at any time.

“(c) DEATH PENALTY CASE EXCEPTION.—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

“(d) WAIVER OR WITHDRAWAL AS BAR.—A waiver or withdrawal under this section bars review under section 866 of this title (article 66).”.

SEC. 5326. APPEAL BY THE UNITED STATES.

Section 862 of title 10, United States Code (article 62 of the Uniform Code of Military Justice), is amended—

(1) in paragraph (1) of subsection (a)—

(A) in the matter before subparagraph (A), by striking “court-martial” and all that follows through the colon at the end and inserting “general or special court-martial, or in a pretrial proceeding under section 830a of this title (article 30a), the United States may appeal the following:”; and

(B) by adding at the end the following new subparagraph:

“(G) An order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.”;

(2) in paragraph (2) of subsection (a)—

(A) by striking “(2)” and inserting “(2)(A)”; and

(B) by adding at the end the following new subparagraph:

“(B) An appeal of an order or ruling may not be taken when prohibited by section 844 of this title (article 44).”; and

(3) by adding at the end the following:

“(d) The United States may appeal a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

“(e) The provisions of this section shall be liberally construed to effect its purposes.”.

SEC. 5327. REHEARINGS.

Section 863 of title 10, United States Code (article 63 of the Uniform Code of Military Justice), is amended—

(1) by inserting “(a)” before “Each rehearing”;

(2) in the second sentence, by striking “may be approved” and inserting “may be adjudged”;

(3) by striking the third sentence; and

(4) by adding at the end the following new subsections:

“(b) If the sentence adjudged by the first court-martial was in accordance with a plea agreement under section 853a of this title (article 53a) and the accused at the rehearing does not comply with the agreement, or if a plea of guilty was entered for an offense at the first court-martial and a plea of not

guilty was entered at the rehearing, the sentence as to those charges or specifications may include any punishment not in excess of that which could have been adjudged at the first court-martial.

“(c) If, after appeal by the Government under section 856(d) of this title (article 56(d)), the sentence adjudged is set aside and a rehearing on sentence is ordered by the Court of Criminal Appeals or Court of Appeals for the Armed Forces, the court-martial may impose any sentence that is in accordance with the order or ruling setting aside the adjudged sentence, subject to such limitations as the President may prescribe by regulation.”.

SEC. 5328. JUDGE ADVOCATE REVIEW OF FINDING OF GUILTY IN SUMMARY COURT-MARTIAL.

(a) IN GENERAL.—Subsection (a) of section 864 of title 10, United States Code (article 64 of the Uniform Code of Military Justice), is amended by striking the first two sentences and inserting the following:

“(a) IN GENERAL.—Under regulations prescribed by the Secretary concerned, each summary court-martial in which there is a finding of guilty shall be reviewed by a judge advocate. A judge advocate may not review a case under this subsection if the judge advocate has acted in the same case as an accuser, preliminary hearing officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The heading of such section (article) is amended to read as follows:

“§ 864. Art. 64. Judge advocate review of finding of guilty in summary court-martial”.

(2) Subsection (b) of such section (article) is amended—

(A) by striking “(b) The record” and inserting “(b) RECORD.—The record”;

(B) in paragraph (1), by adding “or” at the end;

(C) by striking paragraph (2); and

(D) by redesignating paragraph (3) as paragraph (2).

(3) Subsection (c)(3) of such section (article) is amended by striking “section 869(b) of this title (article 69(b)).” and inserting “section 869 of this title (article 69).”.

SEC. 5329. TRANSMITTAL AND REVIEW OF RECORDS.

Section 865 of title 10, United States Code (article 65 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 865. Art. 65. Transmittal and review of records

“(a) TRANSMITTAL OF RECORDS.—

“(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

“(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

“(b) CASES FOR DIRECT APPEAL.—

“(1) AUTOMATIC REVIEW.—If the judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward the record of trial to the Court of Criminal Appeals for review under section 866(b)(2) of this title (article 66(b)(2)).

“(2) CASES ELIGIBLE FOR DIRECT APPEAL REVIEW.—

“(A) IN GENERAL.—If the case is eligible for direct review under section 866(b)(1) of this title (article 66(b)(1)), the Judge Advocate General shall—

“(i) forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, upon request of the accused, to represent the accused before the Court of Criminal Appeals; and

“(ii) upon written request of the accused, forward a copy of the record of trial to civilian counsel provided by the accused.

“(B) INAPPLICABILITY.—Subparagraph (A) shall not apply if the accused—

“(i) waives the right to appeal under section 861 of this title (article 61); or

“(ii) declines in writing the detailing of appellate defense counsel under subparagraph (A)(i).

“(c) NOTICE OF RIGHT TO APPEAL.—

“(1) IN GENERAL.—The Judge Advocate General shall provide notice to the accused of the right to file an appeal under section 866(b)(1) of this title (article 66(b)(1)) by means of depositing in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the official service record of the accused.

“(2) INAPPLICABILITY UPON WAIVER OF APPEAL.—Paragraph (1) shall not apply if the accused waives the right to appeal under section 861 of this title (article 61).

“(d) REVIEW BY JUDGE ADVOCATE GENERAL.—

“(1) BY WHOM.—A review conducted under this subsection may be conducted by an attorney within the Office of the Judge Advocate General or another attorney designated under regulations prescribed by the Secretary concerned.

“(2) REVIEW OF CASES NOT ELIGIBLE FOR DIRECT APPEAL.—

“(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial that is not eligible for direct appeal under paragraph (1) or (3) of section 866(b) of this title (article 66(b)).

“(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision providing each of the following:

“(i) A conclusion as to whether the court had jurisdiction over the accused and the offense.

“(ii) A conclusion as to whether the charge and specification stated an offense.

“(iii) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.

“(iv) A response to each allegation of error made in writing by the accused.

“(3) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN, OR NOT FILED.—

“(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial if—

“(i) the accused waives the right to appeal or withdraws appeal under section 861 of this title (article 61); or

“(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph (A), (B), or (C) of section 866(b)(1) of this title (article 66(b)(1)).

“(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing conclusions on the matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B).

“(e) REMEDY.—

“(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

“(2) REHEARING.—In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

“(3) REMEDY WITHOUT REHEARING.—

“(A) DISMISSAL WHEN NO REHEARING ORDERED.—If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

“(B) DISMISSAL WHEN REHEARING IMPRACTICAL.—If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.”.

SEC. 5330. COURTS OF CRIMINAL APPEALS.

(a) APPELLATE MILITARY JUDGES.—Subsection (a) of section 866 of title 10, United States Code (article 66 of the Uniform Code of Military Justice), is amended—

(1) in the second sentence, by striking “subsection (f)” and inserting “subsection (h)”;

(2) in the fourth sentence, by inserting after “highest court of a State” the following: “and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge”; and

(3) by adding at the end the following new sentence: “In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.”.

(b) REVISION OF APPELLATE PROCEDURES.—Such section (article) is further amended—

(1) by redesignating subsections (e), (f), (g), and (h) as subsections (g), (h), (i), and (j), respectively; and

(2) by striking subsections (b), (c), and (d) and inserting the following new subsections:

“(b) REVIEW.—

“(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction over a timely appeal from the judgment of a court-martial, entered into the record under section 860c of this title (article 60c), as follows:

“(A) On appeal by the accused in a case in which the sentence extends to confinement for more than six months and the case is not subject to automatic review under paragraph (3).

“(B) On appeal by the accused in a case in which the Government previously filed an appeal under section 862 of this title (article 62).

“(C) On appeal by the accused in a case that the Judge Advocate General has sent to the Court of Criminal Appeals for review of the sentence under section 856(d) of this title (article 56(d)).

“(D) In a case in which the accused filed an application for review with the Court under section 869(d)(1)(B) of this title (article 69(d)(1)(B)) and the application has been granted by the Court.

“(2) REVIEW OF CERTAIN SENTENCES.—A Court of Criminal Appeals shall have jurisdiction over all cases that the Judge Advocate General orders sent to the Court for review under section 856(d) of this title (article 56(d)).

“(3) AUTOMATIC REVIEW.—A Court of Criminal Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under section 860c of this title (article 60c) includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more.

“(c) TIMELINESS.—An appeal under subsection (b)(1) is timely if it is filed as follows:

“(1) In the case of an appeal by the accused under subsection (b)(1)(A) or (b)(1)(B), if filed before the later of—

“(A) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); or

“(B) the date set by the Court of Criminal Appeals by rule or order.

“(2) In the case of an appeal by the accused under subsection (b)(1)(C), if filed before the later of—

“(A) the end of the 90-day period beginning on the date the accused is notified that the application for review has been granted by letter placed in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record; or

“(B) the date set by the Court of Criminal Appeals by rule or order.

“(d) DUTIES.—

“(1) CASES APPEALED BY ACCUSED.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

“(2) ERROR OR EXCESSIVE DELAY.—In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).

“(e) CONSIDERATION OF APPEAL OF SENTENCE BY THE UNITED STATES.—

“(1) IN GENERAL.—In considering a sentence on appeal or review as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

“(A) whether the sentence violates the law; and

“(B) whether the sentence is plainly unreasonable.

“(2) RECORD ON APPEAL OR REVIEW.—In an appeal or review under this subsection or section 856(d) of this title (article 56(d)), the record on appeal or review shall consist of—

“(A) any portion of the record in the case that is designated as pertinent by either of the parties;

“(B) the information submitted during the sentencing proceeding; and

“(C) any information required by rule or order of the Court of Criminal Appeals.

“(f) LIMITS OF AUTHORITY.—

“(1) SET ASIDE OF FINDINGS.—

“(A) IN GENERAL.—If the Court of Criminal Appeals sets aside the findings, the Court—

“(i) may affirm any lesser included offense; and

“(ii) may, except when prohibited by section 844 of this title (article 44), order a rehearing.

“(B) DISMISSAL WHEN NO REHEARING ORDERED.—If the Court of Criminal Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.

“(C) DISMISSAL WHEN REHEARING IMPRACTICABLE.—If the Court of Criminal Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

“(2) SET ASIDE OF SENTENCE.—If the Court of Criminal Appeals sets aside the sentence, the Court may—

“(A) modify the sentence to a lesser sentence; or

“(B) order a rehearing.

“(3) ADDITIONAL PROCEEDINGS.—If the Court determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue,

subject to such limitations as the Court may direct and under such regulations as the President may prescribe.”.

(c) ACTION WHEN REHEARING IMPRACTICABLE AFTER REHEARING ORDER.—Subsection (g) of such section (article), as redesignated by subsection (b)(1) of this section, is amended—

(1) in the first sentence, by striking “convening authority” and inserting “appropriate authority”; and

(2) by striking the last sentence.

(d) SECTION HEADING.—The heading of such section (article) is amended to read as follows:

“§ 866. Art. 66. Courts of Criminal Appeals”.

(e) SUBSECTION HEADING AMENDMENTS FOR STYLISTIC CONSISTENCY.—Such section (article) is further amended—

(1) in subsection (a), by inserting “COURTS OF CRIMINAL APPEALS.— ” after “(a)”;

(2) in subsection (g), as redesignated by subsection (b)(1) of this section, by inserting “ACTION IN ACCORDANCE WITH DECISIONS OF COURTS.— ” after “(g)”;

(3) in subsection (h), as so redesignated, by inserting “RULES OF PROCEDURE.— ” after “(h)”;

(4) in subsection (i), as so redesignated, by inserting “PROHIBITION ON EVALUATION OF OTHER MEMBERS OF COURTS.— ” after “(i)”;

(5) in subsection (j), as so redesignated, by inserting “INELIGIBILITY OF MEMBERS OF COURTS TO REVIEW RECORDS OF CASES INVOLVING CERTAIN PRIOR MEMBER SERVICE.— ” after “(j)”.

SEC. 5331. REVIEW BY COURT OF APPEALS FOR THE ARMED FORCES.

(a) JAG NOTIFICATION.—Subsection (a)(2) of section 867 of title 10, United States Code (article 67 of the Uniform Code of Military Justice), is amended by inserting after “the Judge Advocate General” the following: “, after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps,”.

(b) BASIS FOR REVIEW.—Subsection (c) of such section (article) is amended—

(1) by inserting “(1)” after “(c)”;

(2) by designating the second sentence as paragraph (2);

(3) by designating the third sentence as paragraph (3);

(4) by designating the fourth sentence as paragraph (4); and

(5) in paragraph (1), as designated by paragraph (1) of this subsection, by striking “only with respect to” and all that follows through the end of the sentence and inserting “only with respect to—

“(A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or

“(B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals.”.

SEC. 5332. SUPREME COURT REVIEW.

The second sentence of section 867a(a) of title 10, United States Code (article 67a(a) of the Uniform Code of Military Justice), is amended by inserting before “Court of Appeals” the following: “United States”.

SEC. 5333. REVIEW BY JUDGE ADVOCATE GENERAL.

Section 869 of title 10, United States Code (article 69 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 869. Art. 69. Review by Judge Advocate General

“(a) **IN GENERAL.**—Upon application by the accused and subject to subsections (b), (c), and (d), the Judge Advocate General may modify or set aside, in whole or in part, the findings and sentence in a court-martial that is not reviewed under section 866 of this title (article 66).

“(b) **TIMING.**—To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than one year after the date of completion of review under section 864 or 865 of this title (article 64 or 65), as the case may be. The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.

“(c) **SCOPE.**—(1)(A) In a case reviewed under section 864 or 865(b) of this title (article 64 or 65(b)), the Judge Advocate General may set aside the findings or sentence, in whole or in part on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

“(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

“(C) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

“(D) If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

“(2) In a case reviewed under section 865(b) of this title (article 65(b)), review under this section is limited to the issue of whether the waiver or withdrawal of an appeal was invalid under the law. If the

Judge Advocate General determines that the waiver or withdrawal of an appeal was invalid, the Judge Advocate General shall order appropriate corrective action under rules prescribed by the President.

“(d) COURT OF CRIMINAL APPEALS.—(1) A Court of Criminal Appeals may review the action taken by the Judge Advocate General under subsection (c)—

“(A) in a case sent to the Court of Criminal Appeals by order of the Judge Advocate General; or

“(B) in a case submitted to the Court of Criminal Appeals by the accused in an application for review.

“(2) The Court of Criminal Appeals may grant an application under paragraph (1)(B) only if—

“(A) the application demonstrates a substantial basis for concluding that the action on review under subsection (c) constituted prejudicial error; and

“(B) the application is filed not later than the earlier of—

“(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or

“(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

“(3) The submission of an application for review under this subsection does not constitute a proceeding before the Court of Criminal Appeals for purposes of section 870(c)(1) of this title (article 70(c)(1)).

“(e) ACTION ONLY ON MATTERS OF LAW.—Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under subsection (d), the Court may take action only with respect to matters of law.”.

SEC. 5334. APPELLATE DEFENSE COUNSEL IN DEATH PENALTY CASES.

Section 870 of title 10, United States Code (article 70 of the Uniform Code of Military Justice), is amended by adding at the end the following new subsection:

“(f) To the greatest extent practicable, in any capital case, at least one defense counsel under subsection (c) shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.”.

SEC. 5335. AUTHORITY FOR HEARING ON VACATION OF SUSPENSION OF SENTENCE TO BE CONDUCTED BY QUALIFIED JUDGE ADVOCATE.

(a) **IN GENERAL.**—Subsection (a) of section 872 of title 10, United States Code (article 72 of the Uniform Code of Military Justice), is amended by inserting after the first sentence the following new sentence: “The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing.”.

(b) **TECHNICAL AMENDMENTS.**—Such section (article) is further amended—

(1) in the last sentence of subsection (a), by striking “if he so desires” and inserting “if the probationer so desires”; and

(2) in the second sentence of subsection (b)—

(A) by striking “If he” and inserting “If the officer exercising general court-martial jurisdiction”; and

(B) by striking “section 871(c) of this title (article 71(c))” and inserting “section 857 of this title (article 57)”.

SEC. 5336. EXTENSION OF TIME FOR PETITION FOR NEW TRIAL.

The first sentence of section 873 of title 10, United States Code (article 73 of the Uniform Code of Military Justice), is amended by striking “two years after approval by the convening authority of a court-martial sentence” and inserting “three years after the date of the entry of judgment under section 860c of this title (article 60c)”.

SEC. 5337. RESTORATION.

Section 875 of title 10, United States Code (article 75 of the Uniform Code of Military Justice), is amended by adding at the end the following new subsection:

“(d) The President shall prescribe regulations, with such limitations as the President considers appropriate, governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.”.

SEC. 5338. LEAVE REQUIREMENTS PENDING REVIEW OF CERTAIN COURT-MARTIAL CONVICTIONS.

Section 876a of title 10, United States Code (article 76a of the Uniform Code of Military Justice), is amended—

(1) in the first sentence, by striking “, as approved under section 860 of this title (article 60),”; and

(2) in the second sentence, by striking “on which the sentence is approved under section 860 of this title (article 60)” and inserting “of the entry of judgment under section 860c of this title (article 60c)”.

TITLE LX—PUNITIVE ARTICLES

Sec. 5401. Reorganization of punitive articles.
Sec. 5402. Conviction of offense charged, lesser included offenses, and attempts.
Sec. 5403. Soliciting commission of offenses.
Sec. 5404. Malingering.
Sec. 5405. Breach of medical quarantine.
Sec. 5406. Missing movement; jumping from vessel.
Sec. 5407. Offenses against correctional custody and restriction.
Sec. 5408. Disrespect toward superior commissioned officer; assault of superior commissioned officer.
Sec. 5409. Willfully disobeying superior commissioned officer.
Sec. 5410. Prohibited activities with military recruit or trainee by person in position of special trust.
Sec. 5411. Offenses by sentinel or lookout.
Sec. 5412. Disrespect toward sentinel or lookout.
Sec. 5413. Release of prisoner without authority; drinking with prisoner.
Sec. 5414. Penalty for acting as a spy.
Sec. 5415. Public records offenses.
Sec. 5416. False or unauthorized pass offenses.
Sec. 5417. Impersonation offenses.
Sec. 5418. Insignia offenses.
Sec. 5419. False official statements; false swearing.
Sec. 5420. Parole violation.
Sec. 5421. Wrongful taking, opening, etc. of mail matter.
Sec. 5422. Improper hazarding of vessel or aircraft.
Sec. 5423. Leaving scene of vehicle accident.
Sec. 5424. Drunkenness and other incapacitation offenses.
Sec. 5425. Lower blood alcohol content limits for conviction of drunken or reckless operation of vehicle, aircraft, or vessel.
Sec. 5426. Endangerment offenses.
Sec. 5427. Communicating threats.
Sec. 5428. Technical amendment relating to murder.
Sec. 5429. Child endangerment.
Sec. 5430. Rape and sexual assault offenses.
Sec. 5431. Deposit of obscene matter in the mail.
Sec. 5432. Fraudulent use of credit cards, debit cards, and other access devices.
Sec. 5433. False pretenses to obtain services.
Sec. 5434. Robbery.
Sec. 5435. Receiving stolen property.
Sec. 5436. Offenses concerning Government computers.
Sec. 5437. Bribery.
Sec. 5438. Graft.
Sec. 5439. Kidnapping.
Sec. 5440. Arson; burning property with intent to defraud.
Sec. 5441. Assault.
Sec. 5442. Burglary and unlawful entry.
Sec. 5443. Stalking.
Sec. 5444. Subornation of perjury.
Sec. 5445. Obstructing justice.
Sec. 5446. Misprision of serious offense.
Sec. 5447. Wrongful refusal to testify.
Sec. 5448. Prevention of authorized seizure of property.
Sec. 5449. Wrongful interference with adverse administrative proceeding.

- Sec. 5450. Retaliation.
Sec. 5451. Extraterritorial application of certain offenses.
Sec. 5452. Table of sections.

SEC. 5401. REORGANIZATION OF PUNITIVE ARTICLES.

Sections of subchapter X of chapter 47 of title 10, United States Code (articles of the Uniform Code of Military Justice), are transferred within subchapter X and redesignated as follows:

- (1) ENLISTMENT AND SEPARATION.—Sections 883 and 884 (articles 83 and 84) are transferred so as to appear (in that order) after section 904 (article 104) and are redesignated as sections 904a and 904b (articles 104a and 104b), respectively.
- (2) RESISTANCE, FLIGHT, BREACH OF ARREST, AND ESCAPE.—Section 895 (article 95) is transferred so as to appear after section 887 (article 87) and is redesignated as section 887a (article 87a).
- (3) NONCOMPLIANCE WITH PROCEDURAL RULES.—Section 898 (article 98) is transferred so as to appear after section 931 (article 131) and is redesignated as section 931f (article 131f).
- (4) CAPTURED OR ABANDONED PROPERTY.—Section 903 (article 103) is transferred so as to appear after section 908 (article 108) and is redesignated as section 908a (article 108a).
- (5) AIDING THE ENEMY.—Section 904 (article 104) is redesignated as section 903b (article 103b).
- (6) MISCONDUCT AS PRISONER.—Section 905 (article 105) is transferred so as to appear after section 897 (article 97) and is redesignated as section 898 (article 98).
- (7) SPIES; ESPIONAGE.—Sections 906 and 906a (articles 106 and 106a) are transferred so as to appear (in that order) after section 902 (article 102) and are redesignated as sections 903 and 903a (articles 103 and 103a), respectively.
- (8) MISBEHAVIOR OF SENTINEL.—Section 913 (article 113) is transferred so as to appear after section 894 (article 94) and is redesignated as section 895 (article 95).
- (9) DRUNKEN OR RECKLESS OPERATION OF A VEHICLE, AIRCRAFT, OR VESSEL.—Section 911 (article 111) is transferred so as to appear after section 912a (article 912a) and is redesignated as section 913 (article 113).
- (10) HOUSEBREAKING.—Section 930 (article 130) is redesignated as section 929a (article 129a).
- (11) STALKING.—Section 920a (article 120a) is transferred so as to appear after section 929a (article 129a), as redesignated by paragraph (10), and is redesignated as section 930 (article 130).

(12) FORGERY.—Section 923 (article 123) is transferred so as to appear after section 904b (article 104b), as transferred and redesignated by paragraph (1), and is redesignated as section 905 (article 105).

(13) MAIMING.—

(A) IN GENERAL.—Section 924 (article 124) is transferred so as to appear after section 928 (article 128) and is redesignated as section 928a (article 128a).

(B) CONFORMING AMENDMENTS.—Section 919a(b) (article 919a(b)) is amended—

(i) by striking “924,” and inserting “928a,”; and

(ii) by striking “124,” and inserting “128a”.

(14) FRAUDS AGAINST THE UNITED STATES.—Section 932 of (article 132) is transferred so as to appear after section 923a (article 123a) and is redesignated as section 924 (article 124).

SEC. 5402. CONVICTION OF OFFENSE CHARGED, LESSER INCLUDED OFFENSES, AND ATTEMPTS.

Section 879 of title 10, United States Code (article 79 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 879. Art. 79. Conviction of offense charged, lesser included offenses, and attempts

“(a) IN GENERAL.—An accused may be found guilty of any of the following:

“(1) The offense charged.

“(2) A lesser included offense.

“(3) An attempt to commit the offense charged.

“(4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.

“(b) LESSER INCLUDED OFFENSE DEFINED.—In this section (article), the term ‘lesser included offense’ means—

“(1) an offense that is necessarily included in the offense charged; and

“(2) any lesser included offense so designated by regulation prescribed by the President.

“(c) REGULATORY AUTHORITY.—Any designation of a lesser included offense in a regulation referred to in subsection (b) shall be reasonably included in the greater offense.”.

SEC. 5403. SOLICITING COMMISSION OF OFFENSES.

Section 882 of title 10, United States Code (article 82 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 882. Art. 82. Soliciting commission of offenses

“(a) SOLICITING COMMISSION OF OFFENSES GENERALLY.—Any person subject to this chapter who solicits or advises another to commit an offense under this chapter (other than an offense specified in subsection (b)) shall be punished as a court-martial may direct.

“(b) SOLICITING DESERTION, MUTINY, SEDITION, OR MISBEHAVIOR BEFORE THE ENEMY.—Any person subject to this chapter who solicits or advises another to violate section 885 of this title (article 85), section 894 of this title (article 94), or section 99 of this title (article 99)—

“(1) if the offense solicited or advised is attempted or is committed, shall be punished with the punishment provided for the commission of the offense; and

“(2) if the offense solicited or advised is not attempted or committed, shall be punished as a court-martial may direct.”.

SEC. 5404. MALINGERING.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 882 (article 82 of the Uniform Code of Military Justice), as amended by section 5403 of this Act, the following new section (article):

“§ 883. Art. 83. Malingering

“Any person subject to this chapter who, with the intent to avoid work, duty, or service—

“(1) feigns illness, physical disablement, mental lapse, or mental derangement; or

“(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.”.

SEC. 5405. BREACH OF MEDICAL QUARANTINE.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 883 (article 83 of the Uniform Code of Military Justice), as added by section 5404 of this Act, the following new section (article):

“§ 884. Art. 84. Breach of medical quarantine

“Any person subject to this chapter—

“(1) who is ordered into medical quarantine by a person authorized to issue such order; and

“(2) who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before being released from the quarantine by proper authority;

shall be punished as a court-martial may direct.”.

SEC. 5406. MISSING MOVEMENT; JUMPING FROM VESSEL.

Section 887 of title 10, United States Code (article 87 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 887. Art. 87. Missing movement; jumping from vessel

“(a) MISSING MOVEMENT.—Any person subject to this chapter who, through neglect or design, misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.

“(b) JUMPING FROM VESSEL INTO THE WATER.—Any person subject to this chapter who wrongfully and intentionally jumps into the water from a vessel in use by the armed forces shall be punished as a court-martial may direct.”.

SEC. 5407. OFFENSES AGAINST CORRECTIONAL CUSTODY AND RESTRICTION.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 887a (article 87a of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(2) of this Act, the following new section (article):

“§ 887b. Art. 87b. Offenses against correctional custody and restriction

“(a) ESCAPE FROM CORRECTIONAL CUSTODY.—Any person subject to this chapter—

“(1) who is placed in correctional custody by a person authorized to do so;

“(2) who, while in correctional custody, is under physical restraint; and

“(3) who escapes from the physical restraint before being released from the physical restraint by proper authority;

shall be punished as a court-martial may direct.

“(b) BREACH OF CORRECTIONAL CUSTODY.—Any person subject to this chapter—

“(1) who is placed in correctional custody by a person authorized to do so;

“(2) who, while in correctional custody, is under restraint other than physical restraint; and

“(3) who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority;

shall be punished as a court-martial may direct.

“(c) BREACH OF RESTRICTION.—Any person subject to this chapter—

“(1) who is ordered to be restricted to certain limits by a person authorized to do so; and

“(2) who, with knowledge of the limits of the restriction, goes beyond those limits before being released by proper authority;

shall be punished as a court-martial may direct.”.

SEC. 5408. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER; ASSAULT OF SUPERIOR COMMISSIONED OFFICER.

Section 889 of title 10, United States Code (article 89 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 889. Art. 89. Disrespect toward superior commissioned officer; assault of superior commissioned officer

“(a) DISRESPECT.—Any person subject to this chapter who behaves with disrespect toward that person’s superior commissioned officer shall be punished as a court-martial may direct.

“(b) ASSAULT.—Any person subject to this chapter who strikes that person’s superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer’s office shall be punished—

“(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

“(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.”.

SEC. 5409. WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.

Section 890 of title 10, United States Code (article 90 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 890. Art. 90. Willfully disobeying superior commissioned officer

“Any person subject to this chapter who willfully disobeys a lawful command of that person’s superior commissioned officer shall be punished—

“(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

“(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.”.

SEC. 5410. PROHIBITED ACTIVITIES WITH MILITARY RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 893 (article 93 of the Uniform Code of Military Justice), the following new section (article):

“§ 893a. Art. 93a. Prohibited activities with military recruit or trainee by person in position of special trust

“(a) ABUSE OF TRAINING LEADERSHIP POSITION.—Any person subject to this chapter—

“(1) who is an officer, a noncommissioned officer, or a petty officer;

“(2) who is in a training leadership position with respect to a specially protected junior member of the armed forces; and

“(3) who engages in prohibited sexual activity with such specially protected junior member of the armed forces;

shall be punished as a court-martial may direct.

“(b) ABUSE OF POSITION AS MILITARY RECRUITER.—Any person subject to this chapter—

“(1) who is a military recruiter and engages in prohibited sexual activity with an applicant for military service; or

“(2) who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the armed forces who is enlisted under a delayed entry program;

shall be punished as a court-martial may direct.

“(c) CONSENT.—Consent is not a defense for any conduct at issue in a prosecution under this section (article).

“(d) DEFINITIONS.—In this section (article):

“(1) SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES.—The term ‘specially protected junior member of the armed forces’ means—

“(A) a member of the armed forces who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;

“(B) a member of the armed forces who is a cadet, a midshipman, an officer candidate, or a student in any other officer qualification program; and

“(C) a member of the armed forces in any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

“(2) TRAINING LEADERSHIP POSITION.—The term ‘training leadership position’ means, with respect to a specially protected junior member of the armed forces, any of the following:

“(A) Any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers’ training corps unit, a training program for entry into the armed forces, or any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

“(B) Faculty and staff of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.

“(3) APPLICANT FOR MILITARY SERVICE.—The term ‘applicant for military service’ means a person who, under regulations prescribed by the Secretary concerned, is an applicant for original enlistment or appointment in the armed forces.

“(4) MILITARY RECRUITER.—The term ‘military recruiter’ means a person who, under regulations prescribed by the Secretary concerned, has the primary duty to recruit persons for military service.

“(5) PROHIBITED SEXUAL ACTIVITY.—The term ‘prohibited sexual activity’ means, as specified in regulations prescribed by the Secretary concerned, inappropriate physical intimacy under circumstances described in such regulations.”.

SEC. 5411. OFFENSES BY SENTINEL OR LOOKOUT.

Section 895 of title 10, United States Code (article 95 of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(8) of this Act, is amended to read as follows:

“§ 895. Art. 95. Offenses by sentinel or lookout

“(a) DRUNK OR SLEEPING ON POST, OR LEAVING POST BEFORE BEING RELIEVED.—Any sentinel or lookout who is drunk on post, who sleeps on post, or who leaves post before being regularly relieved, shall be punished—

“(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

“(2) if the offense is committed other than in time of war, by such punishment, other than death, as a court-martial may direct.

“(b) LOITERING OR WRONGFULLY SITTING ON POST.—Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.”.

SEC. 5412. DISRESPECT TOWARD SENTINEL OR LOOKOUT.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 895 (article 95 of the Uniform Code of Military Justice), as amended by section 5411 of this Act, the following new section (article):

“§ 895a. Art. 95a. Disrespect toward sentinel or lookout

“(a) **DISRESPECTFUL LANGUAGE TOWARD SENTINEL OR LOOKOUT.**—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

“(b) **DISRESPECTFUL BEHAVIOR TOWARD SENTINEL OR LOOKOUT.**—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.”.

SEC. 5413. RELEASE OF PRISONER WITHOUT AUTHORITY; DRINKING WITH PRISONER.

Section 896 of title 10, United States Code (article 96 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 896. Art. 96. Release of prisoner without authority; drinking with prisoner

“(a) **RELEASE OF PRISONER WITHOUT AUTHORITY.**—Any person subject to this chapter—

“(1) who, without authority to do so, releases a prisoner; or

“(2) who, through neglect or design, allows a prisoner to escape;

shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.

“(b) **DRINKING WITH PRISONER.**—Any person subject to this chapter who unlawfully drinks any alcoholic beverage with a prisoner shall be punished as a court-martial may direct.”.

SEC. 5414. PENALTY FOR ACTING AS A SPY.

Section 903 of title 10, United States Code (article 103 of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(7) of this Act, is amended by inserting before the period at the end of the first sentence the following: “or such other punishment as a court-martial or a military commission may direct”.

SEC. 5415. PUBLIC RECORDS OFFENSES.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 903b (article 103b of the Uniform Code of Military Justice), as redesignated by section 5401(5) of this Act, the following new section (article):

“§ 904. Art. 104. Public records offenses

“Any person subject to this chapter who, willfully and unlawfully—

“(1) alters, conceals, removes, mutilates, obliterates, or destroys a public record; or

“(2) takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record;

shall be punished as a court-martial may direct.”.

SEC. 5416. FALSE OR UNAUTHORIZED PASS OFFENSES.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 905 (article 105 of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(12) of this Act, the following new section (article):

“§ 905a. Art. 105a. False or unauthorized pass offenses

“(a) **WRONGFUL MAKING, ALTERING, ETC.**—Any person subject to this chapter who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

“(b) **WRONGFUL SALE, ETC.**—Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

“(c) **WRONGFUL USE OR POSSESSION.**—Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.”.

SEC. 5417. IMPERSONATION OFFENSES.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 905a (article 105a of the Uniform Code of Military Justice), as added by section 5416 of this Act, the following new section (article):

“§ 906. Art. 106. Impersonation of officer, noncommissioned or petty officer, or agent or official

“(a) **IN GENERAL.**—Any person subject to this chapter who, wrongfully and willfully, impersonates—

“(1) an officer, a noncommissioned officer, or a petty officer;

“(2) an agent of superior authority of one of the armed forces; or

“(3) an official of a government;

shall be punished as a court-martial may direct.

“(b) **IMPERSONATION WITH INTENT TO DEFRAUD.**—Any person subject to this chapter who, wrongfully, willfully, and with intent to defraud, impersonates any person referred to in paragraph (1), (2), or (3) of subsection (a) shall be punished as a court-martial may direct.

“(c) IMPERSONATION OF GOVERNMENT OFFICIAL WITHOUT INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.”.

SEC. 5418. INSIGNIA OFFENSES.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 906 (article 106 of the Uniform Code of Military Justice), as added by section 5417 of this Act, the following new section (article):

“§ 906a. Art. 106a. Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button

“Any person subject to this chapter—

“(1) who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and

“(2) who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person’s uniform or civilian clothing;

shall be punished as a court-martial may direct.”.

SEC. 5419. FALSE OFFICIAL STATEMENTS; FALSE SWEARING.

Section 907 of title 10, United States Code (article 107 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 907. Art. 107. False official statements; false swearing

“(a) FALSE OFFICIAL STATEMENTS.—Any person subject to this chapter who, with intent to deceive—

“(1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or

“(2) makes any other false official statement knowing it to be false;

shall be punished as a court-martial may direct.

“(b) FALSE SWEARING.—Any person subject to this chapter—

“(1) who takes an oath that—

“(A) is administered in a matter in which such oath is required or authorized by law; and

“(B) is administered by a person with authority to do so; and

“(2) who, upon such oath, makes or subscribes to a statement;

if the statement is false and at the time of taking the oath, the person does not believe the statement to be true, shall be punished as a court-martial may direct.”.

SEC. 5420. PAROLE VIOLATION.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 907 (article 107 of the Uniform Code of Military Justice), as amended by section 5419 of this Act, the following new section (article):

“§ 907a. Art. 107a. Parole violation

“Any person subject to this chapter—

“(1) who, having been a prisoner as the result of a court-martial conviction or other criminal proceeding, is on parole with conditions; and

“(2) who violates the conditions of parole;

shall be punished as a court-martial may direct.”.

SEC. 5421. WRONGFUL TAKING, OPENING, ETC. OF MAIL MATTER.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 909 (article 109 of the Uniform Code of Military Justice), the following new section (article):

“§ 909a. Art. 109a. Mail matter: wrongful taking, opening, etc.

“(a) TAKING.—Any person subject to this chapter who, with the intent to obstruct the correspondence of, or to pry into the business or secrets of, any person or organization, wrongfully takes mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

“(b) OPENING, SECRETING, DESTROYING, STEALING.—Any person subject to this chapter who wrongfully opens, secretes, destroys, or steals mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.”.

SEC. 5422. IMPROPER HAZARDING OF VESSEL OR AIRCRAFT.

Section 910 of title 10, United States Code (article 110 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 910. Art. 110. Improper hazarding of vessel or aircraft

“(a) WILLFUL AND WRONGFUL HAZARDING.—Any person subject to this chapter who, willfully and wrongfully, hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished by death or such other punishment as a court-martial may direct.

“(b) NEGLIGENT HAZARDING.—Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished as a court-martial may direct.”.

SEC. 5423. LEAVING SCENE OF VEHICLE ACCIDENT.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 910 (article 110 of the Uniform Code of Military Justice), as amended by section 5422 of this Act, the following new section (article):

“§ 911. Art. 111. Leaving scene of vehicle accident

“(a) DRIVER.—Any person subject to this chapter—

“(1) who is the driver of a vehicle that is involved in an accident that results in personal injury or property damage; and

“(2) who wrongfully leaves the scene of the accident—

“(A) without providing assistance to an injured person; or

“(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

“(b) SENIOR PASSENGER.—Any person subject to this chapter—

“(1) who is a passenger in a vehicle that is involved in an accident that results in personal injury or property damage;

“(2) who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and

“(3) who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident—

“(A) without providing assistance to an injured person; or

“(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.”.

SEC. 5424. DRUNKENNESS AND OTHER INCAPACITATION OFFENSES.

Section 912 of title 10, United States Code (article 112 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 912. Art. 112. Drunkenness and other incapacitation offenses

“(a) DRUNK ON DUTY.—Any person subject to this chapter who is drunk on duty shall be punished as a court-martial may direct.

“(b) INCAPACITATION FOR DUTY FROM DRUNKENNESS OR DRUG USE.—Any person subject to this chapter who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.

“(c) DRUNK PRISONER.—Any person subject to this chapter who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.”.

SEC. 5425. LOWER BLOOD ALCOHOL CONTENT LIMITS FOR CONVICTION OF DRUNKEN OR RECKLESS OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL.

Subsection (b)(3) of section 913 of title 10, United States Code (article 113 of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(9) of this Act, is amended—

(1) by striking “0.10 grams” both places it appears and inserting “0.08 grams”; and

(2) by adding at the end the following new sentence: “The Secretary may by regulation prescribe limits that are lower than the limits specified in the preceding sentence, if such lower limits are based on scientific developments, as reflected in Federal law of general applicability.”.

SEC. 5426. ENDANGERMENT OFFENSES.

Section 914 of title 10, United States Code (article 114 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 914. Art. 114. Endangerment offenses

“(a) RECKLESS ENDANGERMENT.—Any person subject to this chapter who engages in conduct that—

“(1) is wrongful and reckless or is wanton; and

“(2) is likely to produce death or grievous bodily harm to another person;

shall be punished as a court-martial may direct.

“(b) DUELING.—Any person subject to this chapter—

“(1) who fights or promotes, or is concerned in or connives at fighting, a duel; or

“(2) who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority;

shall be punished as a court-martial may direct.

“(c) FIREARM DISCHARGE, ENDANGERING HUMAN LIFE.—Any person subject to this chapter who, willfully and wrongly, discharges a firearm, under circumstances such as to endanger human life shall be punished as a court-martial may direct.

“(d) CARRYING CONCEALED WEAPON.—Any person subject to this chapter who unlawfully carries a dangerous weapon concealed on or about his person shall be punished as a court-martial may direct.”.

SEC. 5427. COMMUNICATING THREATS.

Section 915 of title 10, United States Code (article 115 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 915. Art. 115. Communicating threats

“(a) COMMUNICATING THREATS GENERALLY.—Any person subject to this chapter who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.

“(b) COMMUNICATING THREAT TO USE EXPLOSIVE, ETC.—Any person subject to this chapter who wrongfully communicates a threat to injure the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct.

“(c) COMMUNICATING FALSE THREAT CONCERNING USE OF EXPLOSIVE, ETC.—Any person subject to this chapter who maliciously communicates a false threat concerning injury to the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct. As used in the preceding sentence, the term ‘false threat’ means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.”.

SEC. 5428. TECHNICAL AMENDMENT RELATING TO MURDER.

Section 918(4) of title 10, United States Code (article 118(4) of the Uniform Code of Military Justice), is amended by striking “forcible sodomy,”.

SEC. 5429. CHILD ENDANGERMENT.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 919a (article 119a of the Uniform Code of Military Justice), the following new section (article):

“§ 919b. Art. 119b. Child endangerment

“Any person subject to this chapter—

“(1) who has a duty for the care of a child under the age of 16 years; and

“(2) who, through design or culpable negligence, endangers the child’s mental or physical health, safety, or welfare;

shall be punished as a court-martial may direct.”.

SEC. 5430. RAPE AND SEXUAL ASSAULT OFFENSES.

(a) OFFENSE OF SEXUAL ASSAULT.—Subsection (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(2) in paragraph (2)—

(A) by striking “another person when” and inserting “another person—

“(B) when”; and

(B) by inserting before subparagraph (B), as added by subparagraph (A) of this paragraph, the following new subparagraph:

“(A) without the consent of the other person; or”.

(b) DEFINITIONS.—

(1) SEXUAL ACT.—Paragraph (1) of subsection (g) of such section (article) is amended to read as follows:

“(1) SEXUAL ACT.—The term ‘sexual act’ means—

“(A) the penetration, however slight, of the penis into the vulva or anus or mouth;

“(B) contact between the mouth and the penis, vulva, scrotum, or anus; or

“(C) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.”.

(2) SEXUAL CONTACT.—Paragraph (2) of such subsection is amended to read as follows:

“(2) SEXUAL CONTACT.—The term ‘sexual contact’ means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.”.

(3) REPEAL OF DEFINITION OF BODILY HARM.—Such subsection is further amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(4) CONSENT.—Paragraph (7) of such subsection, as redesignated by paragraph (3)(B) of this subsection, is further amended—

(A) in subparagraph (A)—

(i) in the second sentence, by striking “or submission resulting from the use of force, threat of force, or placing another in fear”;

(ii) by inserting after the second sentence, as amended by clause (i) of this subparagraph the following new sentence: “Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent.”; and

(iii) in the last sentence, by striking “shall not” and inserting “does not”;

(B) in subparagraph (B), by striking “subparagraph (B) or (D)” and inserting “subparagraph (B) or (C)”; and

(C) in subparagraph (C)—

(i) by striking the first sentence; and

(ii) in the last sentence, by striking “, or whether” and all that follows and inserting a period.

(5) INCAPABLE OF CONSENTING.—Such subsection is further amended by adding at the end the following new paragraph (8):

“(8) INCAPABLE OF CONSENTING.—The term ‘incapable of consenting’ means the person is—

“(A) incapable of appraising the nature of the conduct at issue; or

“(B) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.”.

(c) RAPE AND SEXUAL ASSAULT OF A CHILD.—Subsection (h)(1) of section 920b of title 10, United States Code (article 120b of the Uniform Code of Military Justice), is amended by inserting before the period at the end the following: “, except that the term ‘sexual act’ also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person ”.

SEC. 5431. DEPOSIT OF OBSCENE MATTER IN THE MAIL.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 920 (article 120 of the Uniform Code of Military Justice), the following new section (article):

“§ 920a. Art. 120a. Mails: deposit of obscene matter

“ Any person subject to this chapter who, wrongfully and knowingly, deposits obscene matter for mailing and delivery shall be punished as a court-martial may direct.”.

SEC. 5432. FRAUDULENT USE OF CREDIT CARDS, DEBIT CARDS, AND OTHER ACCESS DEVICES.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 921 (article 121 of the Uniform Code of Military Justice), the following new section (article):

“§ 921a. Art. 121a. Fraudulent use of credit cards, debit cards, and other access devices

“(a) IN GENERAL.—Any person subject to this chapter who, knowingly and with intent to defraud, uses—

“(1) a stolen credit card, debit card, or other access device;

“(2) a revoked, cancelled, or otherwise invalid credit card, debit card, or other access device; or

“(3) a credit card, debit card, or other access device without the authorization of a person whose authorization is required for such use;

to obtain money, property, services, or anything else of value shall be punished as a court-martial may direct.

“(b) ACCESS DEVICE DEFINED.—In this section (article), the term ‘access device’ has the meaning given that term in section 1029 of title 18.”.

SEC. 5433. FALSE PRETENSES TO OBTAIN SERVICES.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 921a (article 121a of the Uniform Code of Military Justice), as added by section 5432 of this Act, the following new section (article):

“§ 921b. Art. 121b. False pretenses to obtain services

“Any person subject to this chapter who, with intent to defraud, knowingly uses false pretenses to obtain services shall be punished as a court-martial may direct.”.

SEC. 5434. ROBBERY.

Section 922 of title 10, United States Code (article 122 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 922. Art. 122. Robbery

“Any person subject to this chapter who takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.”.

SEC. 5435. RECEIVING STOLEN PROPERTY.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 922 (article 122 of the Uniform Code of Military Justice), as amended by section 5434 of this Act, the following new section (article):

“§ 922a. Art. 122a. Receiving stolen property

“Any person subject to this chapter who wrongfully receives, buys, or conceals stolen property, knowing the property to be stolen property, shall be punished as a court-martial may direct.”.

SEC. 5436. OFFENSES CONCERNING GOVERNMENT COMPUTERS.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 922a (article 122a of the Uniform Code of Military Justice), as added by section 5435 of this Act, the following new section (article):

“§ 923. Art. 123. Offenses concerning Government computers

“(a) IN GENERAL.—Any person subject to this chapter who—

“(1) knowingly accesses a Government computer, with an unauthorized purpose, and by doing so obtains classified information, with reason to believe such information could be used to the injury of the United States, or to the advantage of any foreign nation, and intentionally communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted such information to any person not entitled to receive it;

“(2) intentionally accesses a Government computer, with an unauthorized purpose, and thereby obtains classified or other protected information from any Government computer; or

“(3) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization to a Government computer;

shall be punished as a court-martial may direct.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘computer’ has the meaning given that term in section 1030 of title 18.

“(2) The term ‘Government computer’ means a computer owned or operated by or on behalf of the United States Government.

“(3) The term ‘damage’ has the meaning given that term in section 1030 of title 18.”.

SEC. 5437. BRIBERY.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 924 (article 124 of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(14) of this Act, the following new section (article):

“§ 924a. Art. 124a. Bribery

“(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

“(1) who occupies an official position or who has official duties; and

“(2) who wrongfully asks, accepts, or receives a thing of value with the intent to have the person’s decision or action influenced with respect to an official matter in which the United States is interested;

shall be punished as a court-martial may direct.

“(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, with the intent to influence the decision or action of the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.”.

SEC. 5438. GRAFT.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 924a (article 124a of the Uniform Code of Military Justice), as added by section 5437 of this Act, the following new section (article):

“§ 924b. Art. 124b. Graft

“(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

“(1) who occupies an official position or who has official duties; and

“(2) who wrongfully asks, accepts, or receives a thing of value as compensation for or in recognition of services rendered or to be rendered by the person with respect to an official matter in which the United States is interested;

shall be punished as a court-martial may direct.

“(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, as compensation for or in recognition of services rendered or

to be rendered by the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.”.

SEC. 5439. KIDNAPPING.

Section 925 of title 10, United States Code (article 125 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 925. Art. 125. Kidnapping

“Any person subject to this chapter who wrongfully—

“(1) seizes, confines, inveigles, decoys, or carries away another person; and

“(2) holds the other person against that person’s will;

shall be punished as a court-martial may direct.”.

SEC. 5440. ARSON; BURNING PROPERTY WITH INTENT TO DEFRAUD.

Section 926 of title 10, United States Code (article 126 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 926. Art. 126. Arson; burning property with intent to defraud

“(a) AGGRAVATED ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein, to the knowledge of that person, there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

“(b) SIMPLE ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets fire to the property of another is guilty of simple arson and shall be punished as a court-martial may direct.

“(c) BURNING PROPERTY WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, willfully, maliciously, and with intent to defraud, burns or sets fire to any property shall be punished as a court-martial may direct.”.

SEC. 5441. ASSAULT.

Section 928 of title 10, United States Code (article 128 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 928. Art. 128. Assault

“(a) ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—

“(1) attempts to do bodily harm to another person;

“(2) offers to do bodily harm to another person; or

“(3) does bodily harm to another person;

is guilty of assault and shall be punished as a court-martial may direct.

“(b) AGGRAVATED ASSAULT.—Any person subject to this chapter—

“(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon; or

“(2) who, in committing an assault, inflicts substantial bodily harm, or grievous bodily harm on another person;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

“(c) ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—

“(1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.

“(2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping.”.

SEC. 5442. BURGLARY AND UNLAWFUL ENTRY.

Section 929 of title 10, United States Code (article 129 of the Uniform Code of Military Justice), and section 929a of such title (article 129a), as redesignated by section 5401(10) of this Act, are amended to read as follows:

“§ 929. Art. 129. Burglary; unlawful entry

“(a) BURGLARY.—Any person subject to this chapter who, with intent to commit an offense under this chapter, breaks and enters the building or structure of another shall be punished as a court-martial may direct.

“(b) UNLAWFUL ENTRY.—Any person subject to this chapter who unlawfully enters—

“(1) the real property of another; or

“(2) the personal property of another which amounts to a structure usually used for habitation or storage;

shall be punished as a court-martial may direct.”.

SEC. 5443. STALKING.

Section 930 of title 10, United States Code (article 130 of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(11) of this Act, is amended to read as follows:

“§ 930. Art. 130. Stalking

“(a) IN GENERAL.—Any person subject to this chapter—

“(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

“(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner; and

“(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

is guilty of stalking and shall be punished as a court-martial may direct.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘conduct’ means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

“(2) The term ‘course of conduct’ means—

“(A) a repeated maintenance of visual or physical proximity to a specific person;

“(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

“(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

“(3) The term ‘repeated’, with respect to conduct, means two or more occasions of such conduct.

“(4) The term ‘immediate family’, in the case of a specific person, means—

“(A) that person’s spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

“(B) any other person living in his or her household and related to him or her by blood or marriage.

“(5) The term ‘intimate partner’, in the case of a specific person, means—

“(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

“(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.”.

SEC. 5444. SUBORNATION OF PERJURY.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931 (article 131 of the Uniform Code of Military Justice), the following new section (article):

“§ 931a. Art. 131a. Subornation of perjury

“(a) IN GENERAL.—Any person subject to this chapter who induces and procures another person—

“(1) to take an oath; and

“(2) to falsely testify, depose, or state upon such oath;

shall, if the conditions specified in subsection (b) are satisfied, be punished as a court-martial may direct.

“(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

“(1) The oath is administered with respect to a matter for which such oath is required or authorized by law.

“(2) The oath is administered by a person having authority to do so.

“(3) Upon the oath, the other person willfully makes or subscribes a statement.

“(4) The statement is material.

“(5) The statement is false.

“(6) When the statement is made or subscribed, the person subject to this chapter and the other person do not believe that the statement is true.”.

SEC. 5445. OBSTRUCTING JUSTICE.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931a (article 131a of the Uniform Code of Military Justice), as added by section 5444 of this Act, the following new section (article):

“§ 931b. Art. 131b. Obstructing justice

“Any person subject to this chapter who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings

pending, with intent to influence, impede, or otherwise obstruct the due administration of justice shall be punished as a court-martial may direct.”.

SEC. 5446. MISPRISION OF SERIOUS OFFENSE.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931b (article 131b of the Uniform Code of Military Justice), as added by section 5445 of this Act, the following new section (article):

“§ 931c. Art. 131c. Misprision of serious offense

“Any person subject to this chapter—

“(1) who knows that another person has committed a serious offense; and

“(2) wrongfully conceals the commission of the offense and fails to make the commission of the offense known to civilian or military authorities as soon as possible;

shall be punished as a court-martial may direct.”.

SEC. 5447. WRONGFUL REFUSAL TO TESTIFY.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931c (article 131c of the Uniform Code of Military Justice), as added by section 5446 of this Act, the following new section (article):

“§ 931d. Art. 131d. Wrongful refusal to testify

“Any person subject to this chapter who, in the presence of a court-martial, a board of officers, a military commission, a court of inquiry, a preliminary hearing, or an officer taking a deposition, of or for the United States, wrongfully refuses to qualify as a witness or to answer a question after having been directed to do so by the person presiding shall be punished as a court-martial may direct.”.

SEC. 5448. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931d (article 131d of the Uniform Code of Military Justice), as added by section 5447 of this Act, the following new section (article):

“§ 931e. Art. 131e. Prevention of authorized seizure of property

“Any person subject to this chapter who, knowing that one or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, destroys, removes, or otherwise disposes of the property with intent to prevent the seizure thereof shall be punished as a court-martial may direct.”.

SEC. 5449. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931f (article 131f of the Uniform Code of Military Justice), as transferred and redesignated by section 5401(3) of this Act, the following new section (article):

“§ 931g. Art. 131g. Wrongful interference with adverse administrative proceeding

“Any person subject to this chapter who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this chapter, wrongfully acts with the intent—

“(1) to influence, impede, or obstruct the conduct of the proceeding; or

“(2) otherwise to obstruct the due administration of justice;

shall be punished as a court-martial may direct.”.

SEC. 5450. RETALIATION.

Subchapter X of chapter 47 of title 10, United States Code, is amended by inserting after section 931g (article 131g of the Uniform Code of Military Justice), as added by section 5449 of this Act, the following new section (article):

“§ 932. Art. 132. Retaliation

“(a) IN GENERAL.—Any person subject to this chapter who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication—

“(1) wrongfully takes or threatens to take an adverse personnel action against any person; or

“(2) wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person;

shall be punished as a court-martial may direct.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘protected communication’ means the following:

“(A) A lawful communication to a Member of Congress or an Inspector General.

“(B) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

“(i) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

“(ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

“(2) The term ‘Inspector General’ has the meaning given that term in section 1034(h) of this title.

“(3) The term ‘covered individual or organization’ means any recipient of a communication specified in clauses (i) through (v) of section 1034(b)(1)(B) of this title.

“(4) The term ‘unlawful discrimination’ means discrimination on the basis of race, color, religion, sex, or national origin.”.

SEC. 5451. EXTRATERRITORIAL APPLICATION OF CERTAIN OFFENSES.

Section 934 of title 10, United States Code (article 134 of the Uniform Code of Military Justice), is amended by adding at the end the following new sentence: “As used in the preceding sentence, the term ‘crimes and offenses not capital’ includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.”.

SEC. 5452. TABLE OF SECTIONS.

The table of sections at the beginning of subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended to read as follows:

“SUBCHAPTER X—PUNITIVE ARTICLES”.

“Sec. Art.

“877. Art. 77. Principals.

“878. Art. 78. Accessory after the fact.

“879. Art. 79. Conviction of offense charged, lesser included offenses, and attempts.

“880. Art. 80. Attempts.

“881. Art. 81. Conspiracy.

“882. Art. 82. Soliciting commission of offenses.

“883. Art. 83. Malingering.

“884. Art. 84. Breach of medical quarantine.

“885. Art. 85. Desertion.

“886. Art. 86. Absence without leave.

“887. Art. 87. Missing movement; jumping from vessel.

“887a. Art. 87a. Resistance, flight, breach of arrest, and escape.

“887b. Art. 87b. Offenses against correctional custody and restriction.

“888. Art. 88. Contempt toward officials.

“889. Art. 89. Disrespect toward superior commissioned officer; assault of superior commissioned officer.

“890. Art. 90. Willfully disobeying superior commissioned officer.

“891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.

“892. Art. 92. Failure to obey order or regulation.

“893. Art. 93. Cruelty and maltreatment.

“893a. Art. 93a. Prohibited activities with military recruit or trainee by person in position of special trust.

“894. Art. 94. Mutiny or sedition.

“895. Art. 95. Offenses by sentinel or lookout.
“895a. Art. 95a. Disrespect toward sentinel or lookout.
“896. Art. 96. Release of prisoner without authority; drinking with prisoner.
“897. Art. 97. Unlawful detention.
“898. Art. 98. Misconduct as prisoner.
“899. Art. 99. Misbehavior before the enemy.
“900. Art. 100. Subordinate compelling surrender.
“901. Art. 101. Improper use of countersign.
“902. Art. 102. Forcing a safeguard.
“903. Art. 103. Spies.
“903a. Art. 103a. Espionage.
“903b. Art. 103b. Aiding the enemy.
“904. Art. 104. Public records offenses.
“904a. Art. 104a. Fraudulent enlistment, appointment, or separation.
“904b. Art. 104b. Unlawful enlistment, appointment, or separation.
“905. Art. 105. Forgery.
“905a. Art. 105a. False or unauthorized pass offenses.
“906. Art. 106. Impersonation of officer, noncommissioned or petty officer, or agent or official.
“906a. Art. 106a. Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button.
“907. Art. 107. False official statements; false swearing.
“907a. Art. 107a. Parole violation.
“908. Art. 108. Military property of the United States—Loss damage, destruction, or wrongful disposition.
“908a. Art. 108a. Captured or abandoned property.
“909. Art. 109. Property other than military property of the United States—Waste, spoilage, or destruction.
“909a. Art. 109a. Mail matter: wrongful taking, opening, etc..
“910. Art. 110. Improper hazarding of vessel or aircraft.
“911. Art. 111. Leaving scene of vehicle accident.
“912. Art. 112. Drunkenness and other incapacitation offenses.
“912a. Art. 112a. Wrongful use, possession, etc., of controlled substances.
“913. Art. 113. Drunken or reckless operation of a vehicle, aircraft, or vessel.
“914. Art. 114. Endangerment offenses.
“915. Art. 115. Communicating threats.
“916. Art. 116. Riot or breach of peace.
“917. Art. 117. Provoking speeches or gestures.
“918. Art. 118. Murder.
“919. Art. 119. Manslaughter.
“919a. Art. 119a. Death or injury of an unborn child.
“919b. Art. 119b. Child endangerment.
“920. Art. 120. Rape and sexual assault generally.
“920a. Art. 120a. Mails: deposit of obscene matter.
“920b. Art. 120b. Rape and sexual assault of a child.
“920c. Art. 120c. Other sexual misconduct.
“921. Art. 121. Larceny and wrongful appropriation.
“921a. Art. 121a. Fraudulent use of credit cards, debit cards, and other access devices.
“921b. Art. 121b. False pretenses to obtain services.
“922. Art. 122. Robbery.
“922a. Art. 122a. Receiving stolen property.
“923. Art. 123. Offenses concerning Government computers.
“923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds.

“924. Art. 124. Frauds against the United States.
“924a. Art. 124a. Bribery.
“924b. Art. 124b. Graft.
“925. Art. 125. Kidnapping.
“926. Art. 126. Arson; burning property with intent to defraud.
“927. Art. 127. Extortion.
“928. Art. 128. Assault.
“928a. Art 128a. Maiming.
“929. Art. 129. Burglary; unlawful entry.
“930. Art. 130. Stalking.
“931. Art. 131. Perjury.
“931a. Art. 131a. Subornation of perjury.
“931b. Art. 131b. Obstructing justice.
“931c. Art. 131c. Misprision of serious offense.
“931d. Art. 131d. Wrongful refusal to testify.
“931e. Art. 131e. Prevention of authorized seizure of property.
“931f. Art. 131f. Noncompliance with procedural rules.
“931g. Art. 131g. Wrongful interference with adverse administrative proceeding.
“932. Art. 132. Retaliation.
“933. Art. 133. Conduct unbecoming an officer and a gentleman.
“934. Art. 134. General article.”

TITLE LXI—MISCELLANEOUS PROVISIONS

Sec. 5501. Technical amendments relating to courts of inquiry.
Sec. 5502. Technical amendment to Article 136.
Sec. 5503. Articles of Uniform Code of Military Justice to be explained to officers upon commissioning.
Sec. 5504. Military justice case management; data collection and accessibility.

SEC. 5501. TECHNICAL AMENDMENTS RELATING TO COURTS OF INQUIRY.

Section 935(c) of title 10, United States Code (article 135(c) of the Uniform Code of Military Justice), is amended—

(1) by striking “(c) Any person” and inserting “(c)(1) Any person”;

(2) by designating the second and third sentences as paragraphs (2) and (3), respectively; and

(3) in paragraph (2), as so designated, by striking “subject to this chapter or employed by the Department of Defense” and inserting “who is (A) subject to this chapter, (B) employed by the Department of Defense, or (C) with respect to the Coast Guard, employed by the department in which the Coast Guard is operating when it is not operating as a service in the Navy, and”.

SEC. 5502. TECHNICAL AMENDMENT TO ARTICLE 136.

Section 936 of title 10, United States Code (article 136 of the Uniform Code of Military Justice), is amended by striking the last five words in the section heading.

SEC. 5503. ARTICLES OF UNIFORM CODE OF MILITARY JUSTICE TO BE EXPLAINED TO OFFICERS UPON COMMISSIONING.

Section 937 of title 10, United States Code (article 137 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a), by striking “(a)(1) The sections of this title (articles of the Uniform Code of Military Justice)” and inserting “ (a) ENLISTED MEMBERS.—(1) The sections (articles) of this chapter (the Uniform Code of Military Justice) ”;

(2) by striking subsection (b); and

(3) by adding after subsection (a) the following new subsections:

“(b) OFFICERS.—(1) The sections (articles) of this chapter (the Uniform Code of Military Justice) specified in paragraph (2) shall be carefully explained to each officer at the time of (or within six months after)—

“(A) the initial entrance of the officer on active duty as an officer; or

“(B) the initial commissioning of the officer in a reserve component.

“(2) This subsection applies with respect to the sections (articles) specified in subsection (a)(3) and such other sections (articles) as the Secretary concerned may prescribe by regulation.

“(c) TRAINING FOR CERTAIN OFFICERS.—Under regulations prescribed by the Secretary concerned, officers with the authority to convene courts-martial or to impose non-judicial punishment shall receive periodic training regarding the purposes and administration of this chapter. Under regulations prescribed by the Secretary of Defense, officers assigned to duty in a joint command or a combatant command, who have such authority, shall receive additional specialized training regarding the purposes and administration of this chapter with respect to joint commands and the combatant commands.

“(d) AVAILABILITY AND MAINTENANCE OF TEXT.—The text of this chapter (the Uniform Code of Military Justice) and the text of the regulations prescribed by the President under this chapter shall be—

“(1) made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member’s personal examination; and

“(2) maintained by the Secretary of Defense in electronic formats that are updated periodically and made available on the Internet.”.

SEC. 5504. MILITARY JUSTICE CASE MANAGEMENT; DATA COLLECTION AND ACCESSIBILITY.

(a) IN GENERAL.—Subchapter XI of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by adding at the end the following new section (article):

“§ 940a. Art. 140a. Case management; data collection and accessibility

“The Secretary of Defense shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system, including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

“(1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).

“(2) Case processing and management.

“(3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.

“(4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Defense shall carry out section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as added by subsection (a).

(2) STANDARDS AND CRITERIA.—Not later than 4 years after the date of the enactment of this Act, the standards and criteria under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as added by subsection (a), shall take effect.

TITLE LXII—MILITARY JUSTICE REVIEW PANEL AND ANNUAL REPORTS

Sec. 5521. Military Justice Review Panel.

Sec. 5522. Annual reports.

SEC. 5521. MILITARY JUSTICE REVIEW PANEL.

Section 946 of title 10, United States Code (article 146 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 946. Art. 146. Military Justice Review Panel

“(a) ESTABLISHMENT.—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the ‘Military Justice Review Panel’ (in this section referred to as the ‘Panel’).

“(b) MEMBERS.—

“(1) NUMBER OF MEMBERS.—The Panel shall be composed of thirteen members.

“(2) APPOINTMENT OF CERTAIN MEMBERS.—Each of the following shall appoint one member of the Panel:

“(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

“(B) The Attorney General.

“(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

“(3) APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

“(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

“(B) The Chief Justice of the United States.

“(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

“(c) QUALIFICATIONS OF MEMBERS.—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

“(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

“(e) TERM; VACANCIES.—Each member shall be appointed for a term of eight years, and no member may serve more than one term. Any vacancy shall be filled in the same manner as the original appointment.

“(f) REVIEWS AND REPORTS.—

“(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.—During fiscal year 2020, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.

“(2) SENTENCING DATA COLLECTION AND REPORT.—During fiscal year 2020, the Panel shall gather and analyze sentencing data collected from each of the armed forces from general and special courts-martial applying offense-based sentencing under section 856 of this title (article 56). The sentencing data shall include the number of accused who request member sentencing and the number who request sentencing by military judge alone, the offenses which the accused were convicted of, and the resulting sentence for each offense in each case. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall provide the sentencing data in the format and for the duration established by the chair of the Panel. Not later than October 31, 2020, the Panel shall submit to the Committees on Armed Services of the Senate and the House

of Representatives through the Secretary of Defense a report setting forth the Panel's findings and recommendations on the need for sentencing reform.

“(3) PERIODIC COMPREHENSIVE REVIEWS.—During fiscal year 2024 and every eight years thereafter, the Panel shall conduct a comprehensive review and assessment of the operation of this chapter.

“(4) PERIODIC INTERIM REVIEWS.—During fiscal year 2028 and every eight years thereafter, the Panel shall conduct an interim review and assessment of such other aspects of the operation of this chapter as the Panel considers appropriate. In addition, at the request of the Secretary of Defense, the Panel may, at any time, review and assess other specific matters relating to the operation of this chapter.

“(5) REPORTS.—Not later than December 31 of each year during which the Panel conducts a review and assessment under this subsection, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of such review and assessment, including the Panel’s findings and recommendations.

“(g) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties under this section.

“(h) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chair of the Panel, a department or agency of the Federal Government shall provide information that the Panel considers necessary to carry out its duties under this section.

“(i) ADMINISTRATIVE MATTERS.—

“(1) MEMBERS TO SERVE WITHOUT PAY.—Members of the Panel shall serve without pay, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Panel.

“(2) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the Panel.

“(j) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel.”.

SEC. 5522. ANNUAL REPORTS.

Subchapter XII of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by adding at the end the following new section (article):

“§ 946a. Art. 146a. Annual reports

“(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal

year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

“(b) SERVICE REPORTS.—Not later than December 31 each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:

“(1) Data on the number and status of pending cases.

“(2) Information on the appellate review process, including—

“(A) information on compliance with processing time goals;

“(B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were (i) reversed because of command influence or denial of the right to speedy review or (ii) otherwise remitted because of loss of records of trial or other administrative deficiencies; and

“(C) an analysis of each case in which a provision of this chapter was held unconstitutional.

“(3)(A) An explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates—

“(i) to participate competently as trial counsel and defense counsel in cases under this chapter;

“(ii) to preside as military judges in cases under this chapter; and

“(iii) to perform the duties of Special Victims’ Counsel, when so designated under section 1044e of this title.

“(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.

“(4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.

“(5) Such other matters regarding the operation of this chapter as may be appropriate.

“(c) SUBMISSION.—Each report under this section shall be submitted—

“(1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

“(2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.”.

TITLE LXIII—CONFORMING AMENDMENTS AND EFFECTIVE DATES

Sec. 5541. Amendments to UCMJ subchapter tables of sections.

Sec. 5542. Effective dates.

SEC. 5541. AMENDMENTS TO UCMJ SUBCHAPTER TABLES OF SECTIONS.

The tables of sections for the specified subchapters of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), are amended as follows:

(1) SUBCHAPTER II; APPREHENSION AND RESTRAINT.—The table of sections at the beginning of subchapter II is amended—

(A) by striking the item relating to section 810 (article 10) and inserting the following new item:

“810. Art. 10. Restraint of persons charged.”; and

(B) by striking the item relating to section 812 (article 12) and inserting the following new item:

“812. Art. 12. Prohibition of confinement of members of the armed forces with enemy prisoners and certain others.”.

(2) SUBCHAPTER V; COMPOSITION OF COURTS-MARTIAL.—The table of sections at the beginning of subchapter V is amended—

(A) by striking the item relating to section 825a (article 25a) and inserting the following new item:

“825. Art. 25a. Number of court-martial members in capital cases.”;

(B) by inserting after the item relating to section 826 (article 26) the following new item:

“826a. Art. 26a. Military magistrates.”; and

(C) by striking the item relating to section 829 (article 29) and inserting the following new item:

“829. Art. 29. Assembly and impaneling of members; detail of new members and military judges.”.

(3) SUBCHAPTER VI; PRE-TRIAL PROCEDURE.—The table of sections at the beginning of subchapter VI is amended—

(A) by inserting after the item relating to section 830 (article 30) the following new item:

“830. Art. 30a. Certain proceedings conducted before referral.”; and

(B) by striking the items relating to sections 832 through 835 (articles 32 through 35) and inserting the following new items:

“832. Art. 32. Preliminary hearing required before referral to general court-martial.

“833. Art. 33. Disposition guidance.

“834. Art. 34. Advice to convening authority before referral for trial.

“835. Art. 35. Service of charges; commencement of trial.”.

(4) SUBCHAPTER VII; TRIAL PROCEDURE.—The table of sections at the beginning of subchapter VII is amended—

(A) by striking the items relating to sections 846 through 848 (articles 46 through 48) and inserting the following new items:

“846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial.

“847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence.

“848. Art. 48. Contempt.”;

(B) by striking the item relating to section 850 (article 50) and inserting the following new item:

“850. Art. 50. Admissibility of sworn testimony from records of courts of inquiry.”;

(C) by striking the items relating to section 852 (article 52) and inserting the following new item:

“852. Art. 52. Votes required for conviction, sentencing, and other matters.”; and

(D) by striking the item relating to section 853 (article 53) and inserting the following new items:

“853. Art. 53. Findings and sentencing.

“853a. Art. 53a. Plea agreements.”.

(5) SUBCHAPTER VIII; SENTENCES.—The table of sections at the beginning of subchapter VIII is amended—

(A) by striking the item relating to section 856 (article 56) and inserting the following new item:

“856. Art. 56. Sentencing.”; and

(B) by striking the items relating to sections 856a and 857a (articles 56a and 57a).

(6) SUBCHAPTER IX; POST-TRIAL PROCEDURE.—The table of sections at the beginning of subchapter IX is amended—

(A) by striking the items relating to sections 860 and 61 (articles 60 and 61) and inserting the following new items:

“860. Art. 60. Post-trial processing in general and special courts-martial.

“860a. Art. 60a. Limited authority to act on sentence in specified post-trial circumstances.

“860b. Art. 60b. Post-trial actions in summary courts-martial and certain general and special courts-martial.

“860c. Art. 60c. Entry of judgment.

“861. Art. 61. Waiver of right to appeal; withdrawal of appeal.”;

(B) by striking the items relating to sections 864 through 866 (articles 64 through 66) and inserting the following new items:

“864. Art. 64. Judge advocate review of finding of guilty in summary court-martial.

“865. Art. 65. Transmittal and review of records.

“866. Art. 66. Courts of Criminal Appeals.”;

(C) by striking the item relating to section 869 (article 69) and inserting the following new item:

“869. Art. 69. Review by Judge Advocate General.”; and

(D) by striking the item relating to section 871 (article 71).

(7) SUBCHAPTER XI; MISCELLANEOUS PROVISIONS.—The table of sections at the beginning of subchapter XI is amended—

(A) by striking the item relating to section 936 (article 136) and inserting the following new item:

“936. Art. 136. Authority to administer oaths.”; and

(B) by inserting after the item relating to section 940 (article 140) the following new item:

“940a. Art. 140a. Case management; data collection and accessibility.”.

(8) SUBCHAPTER XII; UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—The table of sections at the beginning of subchapter XII is amended by striking the item relating to section 946 (article 146) and inserting the following new items:

“946. Art. 146. Military Justice Review Panel.

“946a. Art. 146a. Annual reports.”.

SEC. 5542. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this division, the amendments made by this division shall take effect on the date designated by the President, which date shall be not later than the first day of the first calendar month that begins two years after the date of the enactment of this Act.

(b) IMPLEMENTING REGULATIONS.—The President shall prescribe regulations implementing this division and the amendments made by this division by not later than one year after the date of the enactment of this Act, except as otherwise provided in this division.

(c) APPLICABILITY.—

(1) IN GENERAL.—Subject to the provisions of this division and the amendments made by this division, the President shall prescribe in regulations whether, and to what extent, the amendments made by this division shall apply to a case in which one or more actions under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), have been taken before the effective date of such amendments.

(2) INAPPLICABILITY TO CASES IN WHICH CHARGES ALREADY REFERRED TO TRIAL ON EFFECTIVE DATE.—Except as otherwise provided in this division or the amendments made by this division, the amendments made by this division shall not apply to any case in which charges are referred to trial by court-martial before the effective date of such amendments. Proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

(3) PUNITIVE ARTICLE AMENDMENTS.—

(A) IN GENERAL.—The amendments made by title LX shall not apply to any offense committed before the effective date of such amendments.

(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.

(4) SENTENCING AMENDMENTS.—The regulations prescribing the authorized punishments for any offense committed before the effective date of the amendments made by title LVIII shall apply to the authorized punishments for the offense, as in effect at the time the offense is committed.