

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
POLICY DIRECTIVE 51-2**



16 JANUARY 2024

Law

**MILITARY JUSTICE AND OTHER
CRIMINAL PROCEEDINGS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at www.e-Publishing.af.mil for downloading or ordering.

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JA
(Lt Gen Charles L. Plummer)
Senior Coordinator,
(Maj Gen Shawn N. Bratton, USSF)

Supersedes: AFPD51-2, 21 June 2021

Pages: 17

This publication implements Title 10 United States Code (USC) Sections 801-946a, the Uniform Code of Military Justice (UCMJ); the Manual for Courts-Martial (MCM), 2023 edition; 10 USC § 1044, *Legal assistance*; 10 USC § 1044e, *Special Victims' Counsel for victims of sex-related offenses*; 10 USC § 1565b, *Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates*; Pub. L 117-81, *National Defense Authorization Act for Fiscal Year 2022*; Pub. L 117-263, *National Defense Authorization Act for Fiscal Year 2023*; Department of Defense (DoD) Instruction 1030.02, *Victim and Witness Assistance*; and DoD Instruction 5525.09, *Compliance with Court Orders by Service Members and DoD Civilian Employees, and Their Family Members Outside the United State*. This publication applies to the Regular Air Force, the Air Force Reserve, the Air National Guard and the United States Space Force. Provisions making military personnel available to civilian authorities for criminal prosecution also apply to civilian employees (including non-appropriated fund employees) and dependents. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. Refer recommended changes and questions about this publication to the office of primary responsibility (OPR) using the Department of the Air Force (DAF) Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate functional chain of command. This publication may not be supplemented or further implemented/extended. All waivers must be submitted to the Air Force Military Justice Law and Policy Division (AF/JAJM), the publication OPR.

SUMMARY OF CHANGES

This directive has been substantially revised and needs to be completely reviewed. Major changes include: adding provisions for the establishment of the Office of Special Trial Counsel, defining roles and responsibilities for The Judge Advocate General and Lead Special Trial Counsel, and removing the prohibition against plea agreements to a specified term of confinement in light of changes to Rule for Courts-Martial (R.C.M.) 705.

1. Overview.

1.1. This directive ensures a military justice system that is both expeditious and fair by preserving the due process rights of DAF service members facing criminal and administrative action, treating victims with dignity and respect, and promoting and enforcing good order and discipline in the DAF.

1.2. This directive reasserts the DAF's commitment to training and equipping attorneys, paralegals, and support staff to expertly execute all facets of the military justice system with a focus on specialized skills, such as highly trained and experienced military justice litigators—especially those dedicated to sexual assault and domestic violence litigation.

1.3. This directive establishes an expectation that the DAF will collaborate with its civilian counterparts to prosecute civilians accused of committing federal offenses on DAF installations and will cooperate with civil authorities to ensure service member status is not used as a mechanism to avoid civilian prosecution. This Directive does not confer any rights, benefits, or form of due process on any individual nor does it create any obligations for the United States, the DoD, or the DAF.

1.4. This directive extends all existing authority, policy, delegations, publications, rights, and privileges regarding military justice within the United States Air Force (USAF) to the United States Space Force (USSF) service, USSF commanders, and USSF personnel. “Department of the Air Force” or “DAF” will be used when the USAF and USSF are referred to collectively.

2. Policy. The DAF shall:

2.1. Consider the USAF and USSF as one armed force for purposes of policies, procedures, and authorities for all military justice, administrative matters, and legal support matters. This includes the exercise of control and disciplinary authority over personnel assigned or attached to either armed force for matters pertaining to military justice, administrative matters, and separations.

2.2. Establish policies for implementing and administering a military justice system that promotes ethical, impartial, uniform and consistently-applied standards; deters misconduct; ensures due process; and increases mission readiness within the DAF.

2.3. Recruit, maintain, organize, train, and equip attorneys, paralegals, and support staff responsible for representing the interests of the DAF in all facets of the military justice system, with emphasis on:

2.3.1. Courts-martial, appellate practice, nonjudicial punishment, and other matters affecting good order and discipline.

2.3.2. The criminal investigation and prosecution capability and the special victim investigation and prosecution capability.

2.3.3. Independent legal representation for individuals, to include specific clients with interests that may not align with those of the DAF. This representation includes, but is not limited to, the following practice areas:

2.3.3.1. Defense Counsel. Counsel shall be detailed to advise and represent DAF service members who are eligible for defense services. Defense services include, at a minimum, all phases of a court-martial, nonjudicial punishment, and designated administrative proceeding.

2.3.3.2. Victims' Counsel. Counsel shall be detailed to advise and represent DAF victims and other victims who are eligible for victims' counsel services.

2.3.3.3. Disability Counsel. Disability counsel shall be appointed to advise and represent DAF service members entered into the Disability Evaluation System.

2.4. Establish the Office of Special Trial Counsel (OSTC), to provide expert, specialized, independent, and ethical representation of the United States, under the direct civilian control of the Secretary of the Air Force, in the investigation and trial-level litigation of covered offenses, as prescribed by Article 1(17) of the UCMJ, and other offenses over which the office exercises authority pursuant to Article 24a, UCMJ. OSTC will report directly to the Secretary of the Air Force with no intervening authority.

2.5. Process allegations under the UCMJ without undue delay, and process courts-martial expeditiously from pretrial through trial and post-trial phases.

2.6. Exercise UCMJ jurisdiction over USAF Reserve, National Guard, and retired service members, where appropriate.

2.6.1. DAF Reserve and National Guard service members who are recalled to active duty for courts-martial may not be sentenced to confinement or be required to serve a punishment consisting of any restriction of liberty during the recalled period of duty without prior approval by the Secretary of the Air Force.

2.6.2. Retired DAF service members who are subject to UCMJ jurisdiction will not ordinarily be tried by court-martial unless the alleged misconduct is adverse to a significant military interest of the United States or a nexus exists between the alleged misconduct and the military.

2.6.2.1. Secretary of the Air Force approval is required prior to preferral of charges unless the statute of limitations will expire imminently. In such cases, charges should be preferred and Secretarial approval should be obtained as soon as possible thereafter.

2.6.2.2. Retired DAF service members recalled to active duty by the Secretary of the Air Force may be tried by a court-martial convened by a DAF convening authority and confined in accordance with applicable instructions.

2.7. Ensure victims and witnesses are treated with fairness, dignity, and respect. This is accomplished by:

2.7.1. Ensuring all the rights afforded to victims and witnesses by law and policy are preserved in criminal, nonjudicial, and administrative proceedings.

2.7.2. Ensuring systems, programs, and personnel are in place at the installation level to provide information on available victim and witness benefits and services and help obtain those benefits and services.

2.7.3. Exercising discretion in allocating Victims' Counsel Division personnel and resources to represent victims who, despite not being covered by statutory eligibility criteria, allege a sexual offense or other offense was committed against them by a person who, at the time of the offense, was a DAF service member subject to military jurisdiction under Article 2, UCMJ.

2.7.4. Providing victims timely access to available treatment and services for which they are eligible and helping mitigate the physical, emotional, and pecuniary hardships resulting from UCMJ offenses or the processing of their allegations.

2.8. Be authorized, pursuant to the Military Rules of Evidence (M.R.E.) and R.C.M., to allow competent search authorities, other than those listed in M.R.E. 315(d)(1) and (2), to issue search authorizations, if appointed in accordance with procedures prescribed by The Judge Advocate General (TJAG).

2.9. Permit military judges to issue search authorizations prior to and after referral in accordance with M.R.E. 315(d)(2).

2.10. Be authorized to place a DAF service member subject to the UCMJ under restraint by military authorities pending delivery to federal, state, or local authorities for prosecution in accordance with rules prescribed by TJAG.

2.11. Demonstrate full support of civilian legal authorities seeking the presence of DAF service members, overseas civilian personnel, and overseas dependents in a United States (U.S.) civilian criminal proceeding. With respect to interstate extradition, military personnel have the same status as non-military personnel.

2.12. Deliver persons arrested under the Military Extraterritorial Jurisdiction Act, 18 USC §§ 3261-3267, to the custody of U.S. civilian law enforcement authority for removal to the United States as soon as is practicable.

2.13. Ensure Article 58a(a), UCMJ, will not operate to automatically reduce the grade of an enlisted DAF service member. All court-martial reductions in grade shall be based upon adjudged and approved sentences.

2.14. Ensure DAF service members are not tried by court-martial or receive nonjudicial punishment for substantially the same act(s) or transaction(s) for which a state or foreign court has tried them, unless the Secretary of the Air Force grants an exception to this policy. DAF service members may not be tried by court-martial or receive nonjudicial punishment for substantially the same act(s) or transaction(s) for which a federal court has tried them.

2.15. Give careful consideration prior to entering into a plea agreement or pretrial agreement. A plea agreement or pretrial agreement is appropriate when there are benefits to the government and the accused. A plea agreement or pretrial agreement should not be entered into by the government solely for expediency (i.e., to dispose of a case quickly with minimal consideration for the consequences of the agreement).

2.16. Support federal, state, and local authorities in the prosecution of civilians who commit criminal offenses on DAF property. This is accomplished by:

2.16.1. Referring civilian criminal misconduct arising on domestic DAF property to the appropriate federal, state, or local authorities to the maximum extent possible.

2.16.2. Supporting the prosecution in U.S. district courts or federal magistrate courts of civilians who commit offenses in violation of federal law, including applicable assimilated state criminal laws, on DAF installations where the United States has either exclusive or concurrent jurisdiction.

2.16.3. Taking steps necessary to relinquish that jurisdiction to the civilian authorities such that it is converted to concurrent jurisdiction when deemed appropriate in accordance with [paragraph 3.1.8](#).

3. Responsibilities and Authorities.

3.1. The Secretary of the Air Force:

3.1.1. Is responsible for, and has the authority necessary to conduct, all affairs of the DAF in accordance with 10 USC § 9013, *Secretary of the Air Force*. This includes ultimate oversight over the DAF military justice system.

3.1.2. Determines which of the commanders designated to convene courts-martial in Articles 22, 23, and 24, UCMJ, may exercise those powers.

3.1.3. Has direct court-martial convening authority over the Chief of Staff of the Air Force (CSAF), the Vice Chief of Staff of the Air Force, Air Force major command commanders, and Air Force generals and lieutenant generals not assigned to a major command or a combatant command.

3.1.4. Has direct court-martial convening authority over the Chief of Space Operations (CSO), the Vice Chief of Space Operations, Space Force field command commanders, and Space Force generals and lieutenant generals not assigned to a field command or combatant command.

3.1.5. Is the only individual in the DAF who may claim the privilege from disclosure of classified information under M.R.E. 505.

3.1.6. Is the only individual in the DAF who may claim the privilege from disclosure of government information other than classified information under M.R.E. 506.

3.1.7. May, in accordance with Article 15(a), UCMJ, place limitations on the categories of commanding officers authorized to administer nonjudicial punishment, and on the kind and amount of punishment authorized. Additionally, consistent with the MCM, Part V, the Secretary of the Air Force may prescribe superior authorities authorized to act on nonjudicial punishment appeals.

3.1.8. May, when deemed appropriate, for the purposes of prosecuting civilian criminal misconduct arising on domestic DAF property, relinquish to a state, or to a commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of DAF property in accordance with 10 USC § 2683, *Relinquishment of legislative jurisdiction; minimum drinking age on military installations*.

3.1.9. Exercises direct reporting authority over OSTC with no intervening authorities.

3.2. The Chief of Staff of the Air Force:

3.2.1. Is designated authority to act on nonjudicial punishment appeals in which the Secretary of the Air Force is the “next superior authority” as defined in the “Terms” section of [Attachment 1](#), such as when the commander of a major command, direct reporting unit, or a field operating agency imposes punishment. The CSAF may further delegate this authority to the Vice Chief of Staff of the Air Force (VCSAF). See also [paragraph 3.8.3](#).

3.3. The Chief of Space Operations:

3.3.1. Is designated authority to act on nonjudicial punishment appeals in which the Secretary of the Air Force is the “next superior authority” as defined in the “Terms” section of [Attachment 1](#), such as when the commander of a field command, direct reporting unit, or a field operating agency imposes punishment. The CSO may further delegate this authority to the Vice Chief of Space Operations (VCSO). See also [paragraph 3.9.3](#).

3.4. The Judge Advocate General:

3.4.1. Is responsible for interpreting and issuing implementing instructions consistent with this directive.

3.4.2. Will establish such policies, procedures, and delegations necessary to uniformly administer military justice and promote the ability for commanders to enforce good order and discipline in the DAF.

3.4.2.1. Will continue to advise command on the investigation and prosecution of all offenses over which OSTC does not have authority or does not exercise authority. Judge advocates must be trained to become experts in military justice and serve as a bridge between commander-referred offenses and offenses under OSTC authority.

3.4.2.2. Will maintain effective integration with OSTC to establish and sustain a military justice system that timely holds Airmen and Guardians accountable for misconduct.

3.4.3. Will organize the military justice components of the Judge Advocate General’s Corps to maintain independent and adversarial capabilities.

3.4.3.1. Consistent with R.C.M. 503(c), TJAG shall ensure USAF judge advocates are detailed as trial counsel, defense counsel, and victims’ counsel for courts-martial referred and convened by DAF convening authorities. For cases referred by OSTC, TJAG shall ensure USAF judge advocates are detailed as defense counsel and victims’ counsel and are available to be detailed as trial counsel to support OSTC.

3.4.3.2. Consistent with R.C.M. 503(b)(1), TJAG shall ensure military judges are detailed to general and special courts-martial convened by DAF convening authorities. Additionally, appellate military judges assigned to the United States Air Force Court of Criminal Appeals may be detailed to any court-martial convened by DAF convening authorities with the concurrence of the Chief Appellate Judge.

3.4.3.3. TJAG shall ensure court reporters are detailed to general and special courts-martial convened by DAF convening authorities.

3.4.3.4. The Air Force Court of Criminal Appeals is the responsible service Court of Criminal Appeals for the DAF.

- 3.4.3.5. All trial judges, appellate judges, and persons who act in a quasi-judicial capacity must be free to make judicial determinations with absolute independence.
- 3.4.3.6. Individual counsel will perform their functions with the sole objective of furthering their clients' interests, consistent with DAF professional responsibility obligations and their status as officers of the court.
- 3.4.4. Will establish policies and procedures to implement a timely, effective, and worldwide criminal investigation and prosecution capability and special victim investigation and prosecution capability. The capability shall ensure specially trained USAF military prosecutors and paralegals work collaboratively with military criminal investigative organizations and Victim and Witness Assistance Program (VWAP) personnel to provide guidance and support during the investigation and prosecution of qualifying offenses.
- 3.4.5. Will establish policies and procedures to implement the allocation of Victims' Counsel Division personnel and resources to represent victims who are not covered by statutory eligibility criteria on a categorical or case-by-case basis.
- 3.4.6. Will establish policies and procedures to provide representational legal services as appropriate on a categorical or case-by-case basis to individuals who are not statutorily eligible for representation under 10 USC §§ 1044, 1044e, 1565b, or Pub. L. 116-92, National Defense Authorization Act for Fiscal Year 2020, Sec. 548, provided the alleged offender was, at the time of the offense, and continues to be, subject to military jurisdiction under Article 2 of the UCMJ at the time of request for victims' counsel representation, and where the provision of services furthers the mission of the DAF. The provision of such services under these conditions is subject to available manning and resources. See DAFI 51-207 for detailed eligibility criteria. This authority may be delegated as appropriate, but no lower than the Chief District Victims' Counsel. DAFI 51-207. This authority includes, but is not limited to, detailing victims' counsel on a categorical or case-by-case basis to represent:
- 3.4.6.1. Victims of sex-related offenses under the UCMJ, regardless of eligibility for legal assistance services under 10 USC § 1044; and
- 3.4.6.2. Victims of other offenses under the UCMJ, regardless of eligibility for legal assistance services under 10 USC § 1044.
- 3.4.7. May waive the 72-hour victims' counsel availability requirement when exigent circumstances or related military activities prevent a victims' counsel from being made available to a service member of the armed forces. In such circumstances TJAG shall ensure a victims' counsel is made available as soon as practicable. This authority may be delegated no lower than the Chief, Victims' Counsel Division.
- 3.4.8. Will establish policies and procedures regarding the use of defense investigators.
- 3.4.9. Is designated as the Component Responsible Official for the DAF for coordinating, implementing, and managing the VWAP consistent with DoD Instruction 1030.02, *Victim and Witness Assistance*.
- 3.4.9.1. TJAG shall implement policies to ensure that victims of offenses alleged against DAF service members are routinely informed of the status of the case to include

significant events involving any investigation, prosecution, alternate disposition, and confinement resulting from the allegation(s), and that such notifications be documented in a system of records.

3.4.9.2. TJAG, in conjunction with the Lead Special Trial Counsel, shall implement policies to ensure that all victims who allege a sex-related offense having occurred in the United States are afforded an opportunity to communicate their prosecutorial preference (i.e., whether the allegation is prosecuted by the applicable armed force or civilian authorities with jurisdiction over the allegation), and that such preference be documented in a system of records.

3.4.9.3. TJAG shall implement policies to ensure that the responsible commander periodically notifies all victims who allege a sex-related offense against a DAF service member of the status of a final determination on any case that does not result in a referral to court-martial, to include the decision not to take any action.

3.4.10. Will issue instructions to assess compliance with this directive that measures the administration of military justice in two key areas: (1) timeliness of courts-martial and nonjudicial punishments; and (2) deterrent effectiveness as shown through courts-martial and nonjudicial punishments rates per thousand.

3.4.11. Will issue mandatory instructions outlining the exercise of UCMJ jurisdiction by convening authorities—duly authorized by the UCMJ or the Secretary of the Air Force to exercise that authority—over tenant organizations, general officers, DAF Reserve and National Guard service members, and for any other unique command structure requiring a clarification in jurisdictional areas of responsibility not otherwise designated in this directive.

3.4.12. Will issue mandatory instructions outlining the exercise of UCMJ jurisdiction as it pertains to nonjudicial punishment.

3.4.13. Will issue mandatory instructions regarding the procedures to recall a DAF Reserve or National Guard service member to active duty for court-martial or nonjudicial punishment.

3.4.14. Will issue mandatory instructions for installation legal office support to DAF law enforcement agencies in accomplishing DAF obligations under federal law, DoD, and DAF policy related to criminal titling, indexing, deoxyribonucleic acid (DNA) collection and submission, sex offender notification, and firearms prohibition under 18 USC §§ 921, *Definitions*; 922, *Unlawful Acts*; and 925, *Exceptions: Relief from Disabilities*.

3.4.15. Is designated authority under Article 74(a), UCMJ, to remit or suspend any part or amount of an unexecuted sentence except in those scenarios identified in [paragraph 3.4.15.1](#) for DAF courts-martial. The term “unexecuted part of a sentence” includes that part which has been approved and ordered executed but which has not been carried out (e.g., unserved confinement and uncollected forfeitures). TJAG may delegate this authority to any level.

3.4.15.1. Authority to act under [paragraph 3.4.15](#) and its subparagraphs is reserved to the Secretary of the Air Force in the following scenarios:

3.4.15.1.1. Any sentence of a person convicted by a military tribunal under the

Secretary of the Air Force's jurisdiction resulting from the President's commutation of a sentence of death to a lesser punishment.

3.4.15.1.2. Any sentence the Secretary of the Air Force or the President approved and ordered into execution.

3.4.15.1.3. Any sentence of confinement for life without eligibility for parole, after the sentence is ordered executed.

3.4.15.1.4. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized under the MCM.

3.4.15.1.5. Those referred to the Secretary of the Air Force for action by commanders authorized to exercise Article 74 authority. **See paragraph 3.7.4 and paragraph 3.7.5.**

3.4.15.2. Nothing in this paragraph should be construed to limit a convening authority's discretion under Article 60a or Article 60b, UCMJ.

3.4.16. Approves requests to deliver DAF service members from overseas to U.S. federal, tribal, state, or local authorities pursuant to a court order for a felony offense or a contempt involving the unlawful removal of a child from the jurisdiction of the lawful custodian. Only the Under Secretary of Defense for Personnel and Readiness (USD P&R) may deny such a request.

3.4.16.1. TJAG approves or denies requests for return of DAF service members from overseas for any other offense if doing so is in the best interest of the DAF.

3.4.16.2. TJAG approves or denies requests to deliver DAF service members stationed within the United States to federal, state, or local authorities pursuant to a court order for any offense.

3.4.16.3. If appropriate, TJAG may approve a delay in taking action to comply with a civilian request. Such delays will not exceed ninety days and will not be granted in connection with federal court orders issued in cases of charges brought under the Military Extraterritorial Jurisdiction Act.”.

3.4.17. Is, in addition to any appellate court duly authorized to review DAF court-martial cases, designated as a superior competent authority under R.C.M. 1112(d)(2). TJAG may delegate this responsibility under this rule.

3.5. The Lead Special Trial Counsel (LSTC):

3.5.1. Reports directly to the Secretary of the Air Force, without intervening authority, and is responsible for interpreting and issuing implementing OSTC instructions consistent with this directive.

3.5.2. Will lead OSTC and maintain effective integration with the Office of the Judge Advocate General to establish and sustain a military justice system that holds Airmen and Guardians accountable for misconduct in a timely manner.

3.5.3. Will establish such policies, procedures, and delegations necessary to exercise OSTC's statutory authorities. OSTC will represent the United States during the

investigation and trial-level litigation of the covered offenses as prescribed by Article 1(17), UCMJ, and other offenses over which the office exercises authority pursuant to Article 24a, UCMJ.

3.5.3.1. OSTC will execute its duties independently of the military chains of command of both the victims of alleged covered offenses and those accused of covered offenses and any other offenses over which the office exercises authority.

3.5.3.2. OSTC will exercise its authority free from unlawful or unauthorized influence or coercion. No person may attempt to coerce or, by any unauthorized means, influence the action of any Special Trial Counsel (STC) with respect to the performance of their duties.

3.5.3.3. Consistent with R.C.M. 503(c)(1), the LSTC shall ensure STC are detailed as trial counsel for courts-martial referred under OSTC authority. STC may detail other trial counsel who are judge advocates with concurrence of their supervising staff judge advocate.

3.5.3.4. Only the LSTC or, in the absence of the LSTC, the officer exercising the authorities of the LSTC, may approve or deny a request to detail a STC to a court-martial in which OSTC has no authority or has not exercised its authority. Requests to detail STC will be made to the LSTC. The authority to grant or deny such requests may not be further delegated. The decision is final and cannot be reviewed.

3.5.4. Will enter and maintain reciprocal agreements with all other Services' LSTC to provide for the legal representation of the United States in the investigation and trial-level litigation by another Service's OSTC of any offense over which that OSTC is precluded from exercising authority because either the accused or victim is a member of the relevant OSTC.

3.5.5. Will have exclusive authority to determine whether to file an appeal under Article 62, UCMJ, in cases where OSTC has exercised authority. This authority must be exercised in consultation with appellate government counsel in the Office of the Judge Advocate General. Appellate government counsel will litigate those appeals on behalf of the United States and are responsible for the substance and content of submissions to the appellate courts.

3.5.6. Is designated authority to grant immunity under R.C.M. 704(c) for offenses over which a STC has exercised authority and has not deferred. This authority is delegable within OSTC.

3.5.7. Will establish policy to reconsider the deferral of a covered offense if an accused demands trial by court-martial following an offer for nonjudicial punishment under Article 15, UCMJ.

3.6. Military Justice Law and Policy Division (AF/JAJM):

3.6.1. Functions as a component of the Office of The Judge Advocate General for matters pursuant to the UCMJ, as determined by TJAG, operating in coordination with the Director, Military Justice and Discipline Directorate.

3.6.2. The Chief, AF/JAJM, may identify the "next superior authority" in accordance with 10 USC 815(e) to act as the appellate authority for nonjudicial punishment matters when a

unique command structure or situation exists that is not covered in instructions implementing this directive. In no case may the Chief, JAJM, identify an appellate authority who is junior in grade to the commander imposing nonjudicial punishment.

3.6.3. Is the responsible agency for DAF records of trial.

3.7. Commanders:

3.7.1. Will support the fair and timely processing of all military justice actions in accordance with this directive and with direction prescribed by TJAG. Processing timelines should not ordinarily drive substantive decisions.

3.7.2. Will be given reasonable opportunity to provide non-binding disposition input to OSTC for members of their unit who are a victim and/or an accused of offenses under OSTC authority.

3.7.3. Possessing special court-martial convening authority and in the grade of O-6 or higher, may exercise initial disposition authority for sex-related offenses over which OSTC has not exercised authority. This includes allegations of the following sex-related offenses: Articles 120, 120b, 120c, 125 (if alleged to have been committed prior to 1 January 2019), 130 (Article 120a if alleged to have been committed prior to 1 January 2019), and 80 (attempts of these offenses) of the UCMJ and collateral misconduct arising out of the same series of events. Initial disposition authority is withheld from all subordinate commanders.

3.7.4. Exercising initial disposition authority pursuant to [paragraph 3.7.3](#) must provide written notice to their general court-martial convening authority within 30 days of their initial disposition decision regarding allegations of the following sex-related offenses: Articles 120, 130 (Article 120a if alleged to have been committed prior to 1 January 2019), 120b, 120c, 125 (if alleged to have been committed prior to 1 January 2019), and 80 (attempts of these offenses) of the UCMJ.

3.7.5. Possessing general court-martial convening authorities are designated Article 74(a), UCMJ, authority to remit or suspend any part or amount of an unexecuted portion of a sentence in cases other than those specified in [paragraph 3.4.14.1](#) and where TJAG has not previously acted.

3.7.6. Possessing special court-martial convening authorities are designated Article 74(a), UCMJ, authority to remit or suspend any part or amount of an unexecuted portion of a sentence adjudged by a summary or special court-martial in cases other than those specified in [paragraph 3.4.14.1](#) and where neither TJAG nor a general court-martial convening authority has previously acted. However, a special court-martial convening authority may suspend, but not remit, a punitive discharge.

3.7.7. Exercising general court-martial convening authority share concurrent authority with TJAG to approve the delivery of DAF service members to federal, state, or local authorities pursuant to a court order and requirements in DAFI 51-201 and this publication. This authority may be delegated to the installation commander or to the Senior Air Force Officer (SAFO) or Senior Space Force Officer (SSFO) on a joint installation where the installation commander is not a member of the DAF. Commanders will respond promptly to requests from civilian authorities for access to service members.

3.7.8. Exercising convening authorities may detail as members of general or special courts-martial persons under that convening authority's command or made available by their commander, even if those persons are of an armed force different from that of the convening authority or accused, consistent with R.C.M. 503(a)(3).

3.7.9. May transfer a properly constituted or initiated proceeding by the USAF or USSF to another armed force within the DAF. A transferred proceeding shall not be deemed invalid and jurisdiction over any matter will not lapse if transferred and continued in the jurisdiction of another armed force within the DAF.

3.8. The Commander, Air Force District of Washington (AFDW/CC):

3.8.1. Is, and its subordinate units for general, special, and summary court-martial convening authority are, authorized to exercise nonjudicial punishment and court-martial convening authority, and to act on other actions requiring command authority, over the following:

3.8.1.1. USAF service members assigned to an organization not subordinate to a USAF or USSF general court-martial convening authority and who are not assigned to a USAF or USSF commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, USAF field operating agencies, USAF direct reporting units, and elements of DoD activities, DoD field agencies and other departments and agencies of the United States government. This authority is held concurrently with element commanders and SAFOs of activities outside the USAF.

3.8.1.2. USAF service members assigned or attached to Headquarters Air Force, including the Air Staff, the Office of the CSO (informally referred to as the Space Staff), and the Office of the Secretary of the Air Force; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; the White House; the DoD, including the Office of the Secretary of Defense, and federal departments, agencies, embassies, and billets within allied services are attached to AFDW for the exercise of court-martial convening authority, nonjudicial punishment, and administrative separations.

3.8.1.3. DAF personnel stationed or otherwise performing duty at or near Fort Meade but not assigned, attached, or detailed to the 70th Intelligence, Surveillance and Reconnaissance Wing or Space Delta 7.

3.8.1.4. Military judges and staff assigned to the Air Force Trial Judiciary (AF/JAT), regardless of base of assignment, and the appellate judges and staff assigned to the Air Force Court of Criminal Appeals.

3.8.1.5. STC and staff assigned to OSTC, regardless of base of assignment. Although AFDW/CC exercises convening authority in these cases, disposition authority will be exercised by another military service's OSTC and in accordance with the reciprocal agreement established between the services' OSTC.

3.8.1.6. DAF inmates, parolees, and members on appellate leave assigned to the Air Force Security Forces Center, Confinement and Corrections Directorate, are attached to AFDW and its subordinate commands for court-martial convening authority.

- 3.8.1.7. DAF service members assigned to the North Atlantic Treaty Organization and stationed in Europe are attached to United States Air Forces Europe (USAFE) for disciplinary purposes.
- 3.8.2. Acts as the convening authority to order a contingent confinement hearing for unpaid fines adjudged by a court-martial and ordered executed by a USAF convening authority where the accused is no longer a USAF service member.
- 3.8.3. Acts as the “next superior authority” for nonjudicial punishment appeals where the SAFO or USAF element commander of an activity outside the USAF imposes punishment. However, if AFDW/CC is not senior in grade to the SAFO or USAF element commander who imposed punishment, CSAF is the next superior authority. The CSAF may delegate this authority to the VCSAF.
- 3.8.4. May authorize searches involving USAF controlled or occupied spaces of the Pentagon Reservation or USAF personnel located, assigned, or attached therein, pursuant to M.R.E. 315.
- 3.8.5. Is authorized, as a general court-martial convening authority, to order the involuntary recall to active duty for purposes of court-martial or nonjudicial punishment USAF Reserve and National Guard service members assigned or attached to USAF organizations at the time an offense was allegedly committed.
- 3.9. The Commander, Space Operations Command (SpOC/CC):
- 3.9.1. Is, and its subordinate units for general, special, and summary court-martial convening authority are, authorized to exercise nonjudicial punishment and court-martial convening authority, and to act on other actions requiring command authority, over the following:
- 3.9.1.1. USSF service members assigned to an organization not subordinate to a USSF or USAF general court-martial convening authority and who are not assigned to a USSF or USAF commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, USSF field operating agencies, USSF direct reporting units, and Elements of DoD activities, DoD field agencies and other departments and agencies of the United States Government. This authority is held concurrently with element commanders and SSFOs of activities outside the USSF.
- 3.9.1.2. USSF service members assigned or attached to Headquarters Air Force, including the Office of the CSO, the Air Staff, and the Office of the Secretary of the Air Force; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; the White House; the DoD, including the Office of the Secretary of Defense, and federal departments, agencies, embassies, and billets within allied services are attached to SpOC for the exercise of court-martial convening authority, nonjudicial punishment, and administrative separations.
- 3.9.2. Acts as the convening authority to order a contingent confinement hearing for unpaid fines adjudged by a court-martial and ordered executed by a USSF convening authority where the accused is no longer a USSF service member.

3.9.3. Acts as the “next superior authority” for nonjudicial punishment appeals where the SSFO or USSF element commander of an activity outside the USSF imposes punishment. However, if SpOC/CC is not senior in grade to the commander who imposed punishment, the CSO is the next superior authority. CSO may delegate this authority to the VCSO.

3.9.4. May authorize searches involving USSF controlled or occupied spaces of the Pentagon Reservation or USSF personnel located, assigned, or attached therein, pursuant to M.R.E. 315.

FRANK KENDALL
Secretary of the Air Force

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

10 USC §§ 801-946a, *Uniform Code of Military Justice*

10 USC §1044, *Legal Assistance*

10 USC § 1044e, *Special Victims' Counsel for victims of sex-related offenses*

10 USC § 1565b, *Victims of sexual assault: Access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates*

10 USC § 2683, *Relinquishment of legislative jurisdiction; minimum drinking age on military installations*

10 USC § 9013, *Secretary of the Air Force*

18 USC § 921, *Definitions*

18 USC § 922, *Unlawful acts*

18 USC § 925, *Exceptions: Relief from disabilities*

18 USC §§ 3261-3267, *Military Extraterritorial Jurisdiction Act*

37 USC § 401, *Definitions*

Pub. L. 113-66, *National Defense Authorization Act for Fiscal Year 2014*

Pub. L. 116-92, *National Defense Authorization Act for Fiscal Year 2020*

Pub. L 117-81, *National Defense Authorization Act for Fiscal Year 2022*

Pub. L 117-263, *National Defense Authorization Act for Fiscal Year 2023*

Manual for Courts-Martial, United States, 2023

DoD Instruction 1030.02, *Victim and Witness Assistance*, 27 July 2023

DoD Instruction 5525.09, *Compliance with Court Orders by Service Members and DoD Civilian Employees and Their Family Members Outside the United States*, 23 April 2019

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

Prescribed Forms

None

Adopted Forms

DAF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFI—Air Force Instruction

AFDW—Air Force District of Washington

CSAF—Chief of Staff of the Air Force
CSO—Chief of Space Operations
DAF—Department of the Air Force
DAFI—Department of the Air Force Instruction
DNA—Deoxyribonucleic Acid
DoD—Department of Defense
HAF—Headquarters Air Force
LSTC—Lead Special Trial Counsel
MCM—Manual for Courts-Martial
M.R.E.—Military Rule of Evidence
OSTC—Office of Special Trial Counsel
R.C.M.—Rule for Courts-Martial
SAFO—Senior Air Force Officer
SpOC—Space Operations Command
SSFO—Senior Space Force Officer
OSTC—Office of Special Trial Counsel
TJAG—The Judge Advocate General
UCMJ—Uniform Code of Military Justice
US—United States
USAF—United States Air Force
USAFE—United States Air Forces Europe
USC—United States Code
USSF—United States Space Force
VCSAF—Vice Chief of Staff of the Air Force
VCSO—Vice Chief of Space Operations
VWAP—Victim and Witness Assistance Program

Office Symbols

AFDW/CC—Commander, Air Force District of Washington
AF/JAJM—Air Force Military Justice Law and Policy Division
JAT—Air Force Trial Judiciary
SpOC/CC—Commander, Space Operations Command
USD P&R—Under Secretary of Defense for Personnel and Readiness

Terms

Commander—A commissioned officer who, by virtue of rank and assignment, exercises command authority over a military organization or prescribed territorial area, which under pertinent official directives is recognized as a “command.”

Component Responsible Official—The official responsible for coordinating, implementing and managing the VWAP. TJAG is the DAF component responsible official.

Court-Martial Convening Authority—A commander or equivalent person that exercises court-martial convening authority powers as set out in the UCMJ and MCM. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.

Contingent Confinement—Confinement authorized by a court-martial in the form of a fine-enforcement provision.

Covered Offense—An offense enumerated under Article 1(17), UCMJ.

Department of the Air Force—Military department of the Department of Defense which consists of Headquarters Air Force (HAF) at the executive level, and USAF and USSF at the Service level, overseen by the Secretary of the Air Force.

Dependent—Generally, the spouse, unmarried child, parent of the member, or person in the member’s legal custody, if those persons meet certain criteria. For further information, see 37 USC § 401, *Definitions*.

General Court-Martial Convening Authority—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

Next Superior Authority—For purposes of nonjudicial punishment under Article 15, UCMJ, the next superior authority is generally the immediate DAF commander superior to the officer who imposed the punishment. The next superior authority must be superior or equal in grade to the commander who imposed punishment.

Offense—Crime punishable under the UCMJ or the law of applicable local, state, other federal (including, where applicable, tribal), or foreign jurisdiction.

Sex-Related Offenses—Violations of Articles 120, 120b, 120c, 125 (if alleged to have been committed prior to 1 January 2019), 130 (Article 120a if alleged to have been committed prior to 1 January 2019), and 80 (attempts of these offenses), UCMJ.

Special Court-Martial Convening Authority—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

Victim—The definition of victim varies throughout the military justice process. Practitioners must consult the MCM to determine which definition of victim applies at each stage and what rights are afforded to victims at that particular stage. See also DAFI 51-207.

Victim and Witness Assistance Program Coordinator—The individual selected by the staff judge advocate to implement and manage VWAP.

Witness—A person who has information or evidence of a crime and provides that information or evidence to a DAF official. When the witness is a minor, the term includes an appropriate family member. For purposes of obligations under VWAP and this instruction, the term “witness” does not include a purely defense witness, law enforcement acting in their official capacity, government expert witnesses or consultants, or an individual allegedly involved in a crime as a conspirator, accomplice, or principal.